APPEAL AS OF RIGHT - HOW TAKEN

Local Rule 3(a). Filing and Docket Fees.

Upon filing a notice of appeal, appellant shall pay the clerk of the district court a fee of $505, which includes a $5 filing fee for the notice of appeal and a $500 fee for docketing the appeal in this Court.

Local Rule 3(b). Docketing Statement.

To assist counsel in giving prompt attention to the substance of an appeal, to help reduce the ordering of unnecessary transcripts, to provide the Clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management, and to provide necessary information for any mediation conference conducted under Local Rule 33, counsel filing a notice of appeal, petition for review, or application for enforcement for any direct or cross-appeal must complete a docketing statement (form available at www.ca4.uscourts.gov) and file it with the Clerk of the Court of Appeals within 14 days of docketing of the appeal. A copy of the docketing statement must be served on the opposing party or parties.

The docketing statement shall have attached to it any transcript order.

Although a party will not be precluded from raising additional issues, counsel should make every effort to include in the docketing statement all of the issues that will be presented to the Court. Failure to file the docketing statement within the time set forth above will cause the Court to initiate the process for dismissing a case under Local Rule 45.

If an opposing party concludes that the docketing statement is in any way inaccurate, incomplete, or misleading, the Clerk's Office should be informed in writing of any errors and any proposed additions or corrections within 10 days of service of the docketing statement, with copies to all other parties.

I.O.P.-3.1. Transmission of District Court Order.

The clerk of the district court shall transmit to the Clerk of the Court of Appeals a copy of the order appealed from, along with copies of the materials required by FRAP 3(d)(1).

APPEAL BY PERMISSION

Local Rule 5. Interlocutory Orders.

The Court of Appeals will initially enter a petition for permission to appeal upon the miscellaneous docket; a docket fee shall not be required unless the petition is granted. A Disclosure of Corporate Affiliations statement must be filed with the petition and answer. See FRAP 26.1 and Local Rule 26.1. Upon granting the petition, the Court of Appeals will notify the district court by copy of the order and transfer the case to the regular docket.

APPEAL IN A BANKRUPTCY CASE

Local Rule 6(a). Bankruptcy Records.

The district or bankruptcy court in possession of the record in a bankruptcy appeal in which all parties are represented by counsel shall retain the record until and unless it is requested by the court of appeals.

I.O.P.-6.1. Bankruptcy Appeals.

The Fourth Circuit has not established panels of three bankruptcy judges to hear appeals from bankruptcy courts pursuant to 28 U.S.C. § 158.

STAY OR INJUNCTION PENDING APPEAL

Local Rule 8. Stay or Injunction Pending Appeal.

Filing a notice of appeal does not automatically stay the operation of the judgment, order or decision for which review is sought. If an application to the district court for temporary relief pending appeal is not practicable, counsel must make a specific showing of the reasons the application was not made to the district court in the first instance. Any motion to the Court of Appeals should include copies of all previous applications for relief and their outcome and any relevant parts of the record. A Disclosure of Corporate Affiliations statement must accompany the motion and any response unless the parties have previously filed disclosure statements with the Court in the case. See FRAP 26.1 and Local Rule 26.1. Filing and assignment of emergency motions for stay or injunction pending appeal are governed by Local Rule 27(e). An order granting a stay or injunction pending appeal remains in effect until issuance of the mandate or further order of the Court and may be conditioned upon the filing of a supersedeas bond in the district court.

RELEASE IN A CRIMINAL CASE

Local Rule 9(a). Release Prior to Judgment of Conviction.

A criminal defendant may be released in accordance with the conditions set by the district court prior to judgment of conviction. If the district court refuses to release the prisoner, or sets conditions for release that cannot be met, the order is appealable as a matter of right and will be given prompt consideration by the Court of Appeals. Counsel should submit memoranda in support of their position on appeal and, in cases involving corporate defendants, Disclosure of Corporate Affiliations statements required by FRAP 26.1 and Local Rule 26.1. The appeal is usually decided without oral argument upon the materials presented by the parties. A motion for release pending determination of the appeal may be filed and will be assigned as provided in Local Rule 27(e).

Local Rule 9(b). Release After Conviction and Notice of Appeal.

After the district court has ruled on a motion for bail or reduction of bail pending appeal, the appellant may renew the motion for release, or for a modification of the conditions of release, before the Court of Appeals without noting an additional appeal. A copy of the district court statement of reasons should accompany the motion. The motion will be submitted to a three-judge panel for decision.

Local Rule 9(c). Recalcitrant Witnesses.

When an appeal arises from the incarceration of a witness who refuses to testify or produce evidence in any court or grand jury proceeding, the Court of Appeals is required by statute, 28 U.S.C. § 1826, to decide the appeal within 30 days of the filing of the notice of appeal. Therefore, counsel should immediately contact the Clerk's Office regarding all such witness contempt matters so that the appeal may be expedited for resolution within the statutory guidelines.

THE RECORD ON APPEAL

Local Rule 10(a). Retention of the Record on Appeal in the District Court.

In cases in which all parties are represented by counsel on appeal, the district court clerk will transmit with the notice of appeal sent to the Court of Appeals a certificate that the record of docket entries is available upon request. The district court clerk will notify the Court of Appeals of the subsequent filing of any transcript in the case. The district court will then retain the record on appeal until and unless a judge of this Court asks the Clerk of this Court to obtain it. Upon receipt of a request from the Clerk of the Court of Appeals, the clerk of the district court will assemble and transmit the record on appeal within 48 hours.

Local Rule 10(b). Records on Appeal.

The preparation and transmittal of the record on appeal is the obligation of the clerk of the lower court, board or agency, and any questions concerning form or content should be addressed to the trial forum in the first instance. Parties should check with the clerk of the lower court, board or agency to determine whether everything relevant to the issues on appeal will be included initially in the record on appeal in order to obviate motions to supplement the record. The record is transmitted to the appellate court as soon as it is complete, except as provided in Local Rule 10(a). Local Rule 10(a) does not apply to records in cases in which one or more parties are proceeding without counsel on appeal.

Local Rule 10(c). Transcripts.

(1) **Responsibilities and designation.** The appellant has the duty of ordering transcript of all parts of the proceedings material to the issues to be raised on appeal whether favorable or unfavorable to appellant's position. Appellant should complete the transcript order (form available at www.ca4.uscourts.gov) and distribute the form to the Clerk of the Court of Appeals, the court reporter, the clerk of the district court, and the appellee.

Before the transcript order is distributed, appellant must make appropriate financial arrangements with the court reporter for either immediate payment in full or in other form acceptable to the court reporter, payment pursuant to the Criminal Justice Act, or at government expense pursuant to 28 U.S.C. § 753(f).

In cross-appeals each party must order those parts of the transcript pertinent to the issues of such appeals. The parties are encouraged to agree upon those parts of the transcript jointly needed and to apportion the cost, with additional portions being ordered and paid for by the party considering them essential to that party's appeal.

If the entire transcript of proceedings is not to be prepared, the appellant's docketing statement filed pursuant to Local Rule 3(b) may constitute the statement of issues required by FRAP 10(b)(3)(A).

(2) **Monitoring and receipt by clerk.** Failure to order timely a transcript, failure to make satisfactory financial arrangements with the court reporter, or failure to specify in adequate detail those proceedings to be transcribed will subject the appeal to dismissal by the clerk for want of prosecution pursuant to Local Rule 45. The Clerk's Office is charged with monitoring the status of transcripts pending with court reporters.

(3) **Statement in lieu of transcript.** The parties may prepare and sign a statement of the case in lieu of the transcript or the entire record on appeal. The use of a statement in lieu of a transcript of a hearing substantially accelerates the appellate process. The statement should contain a description of the essential facts averred and proved or sought to be proved and a summary of pertinent testimony.

(4) **Guidelines for Preparation of Appellate Transcripts in the Fourth Circuit.** The Fourth Circuit Judicial Council has adopted guidelines to define the obligations of appellants, appellees, clerks of the district court, court reporters and the Clerk of the Court of Appeals in the ordering, preparation, and filing of transcripts completed pursuant to these rules.

Local Rule 10(d). Supplemental Records, Modification, or Correction.

Disputes concerning the accuracy or composition of the record on appeal should be resolved in the trial court in the first instance, although the Court of Appeals has the power, either on motion or of its own accord, to require that the record be corrected or supplemented. It is unnecessary to seek permission of the Court of Appeals to supplement the record and the record may be supplemented by the parties by stipulation or by order of the district court at any time during the appellate process.

FORWARDING THE RECORD

Local Rule 11(a). Transcript Acknowledgments.

Upon receipt of an order for a transcript, the Clerk of the Court of Appeals will prepare for the reporter a transcript order acknowledgment which will set forth the date the transcript order was received in the Clerk's Office and the transcript due date, computed from the order receipt date in accordance with the time limits set forth in the applicable district court reporter management plan. If the transcript order is correct in all respects, except for an order date error in the reporter's favor, no response will be required from the reporter. If the reporter believes that there is a problem with the transcript order, he or she must complete a copy of the acknowledgment form noting the problem and return it to the Court of Appeals within 7 days of receipt of the form by the reporter, or within such further time as the Court of Appeals allows. The time for completion of the transcript will automatically cease to run until the problem has been remedied. The Clerk of the Court of Appeals will send a new transcript order acknowledgment setting forth new transcript order and filing dates taking into account the delay caused by resolving the problem with the original transcript order.

Local Rule 11(b). Time Limits for Filing Transcripts.

Although FRAP 11(b)(1)(B) requires that transcripts be completed within 30 days from the purchase order date, this Court routinely uses instead the time limits set forth in the district court reporter management plans. All of the plans establish a 60-day period for preparation of transcripts, with the following exceptions:

(1) Special provisions adopted by the Fourth Circuit Judicial Council for appeals by incarcerated criminal defendants:
   (a) transcripts of 1000 pages or less shall be filed within 30 days of transcript order and completion of satisfactory financial arrangements.
   (b) transcripts of more than 1000 pages shall be filed within the time ordered by the Clerk of the Court of Appeals.

(2) Special circumstances, such as:
   (a) bail appeals,
   (b) death penalty cases, or
   (c) other expedited procedures in which the transcript shall be filed within the time ordered by the Clerk of the Court of Appeals.

Local Rule 11(c). Exhibits.

Counsel should be aware that certain portions of the record will not be transmitted to the Court of Appeals as part of the record. If bulky documents and physical exhibits are required by a party for oral argument, the party must make advance arrangements with the clerks of both courts for their

transportation and receipt. Such arrangements are best made after the completion of the briefing schedule on appeal and receipt of notice of oral argument.

Local Rule 11(d). Access of Counsel to Original Record.

Counsel desiring to use the record on appeal in preparing their case should make arrangements with the clerk of the district court for access to the record. Under Local Rule 10(a), records in cases in which all parties are represented by counsel are retained by the district court clerk during appeal unless a judge of the Court of Appeals requests that they be obtained. If the record is transmitted to the Court of Appeals, the record may be withdrawn upon proper application and returned to the trial court or the nearest district court clerk's office for counsel's review. Law professors representing indigents by Court appointment may request that the record be sent to the law school for their review.

I.O.P.-11.1. Sanctions for Court Reporter's Failure to File a Timely Transcript.

The Fourth Circuit Judicial Council has implemented a resolution of the Judicial Conference of the United States which mandates sanctions for the late delivery of transcripts. For transcripts not delivered within the time limits set forth in Local Rule 11(b), the reporter may charge only 90 percent of the prescribed fee; for a transcript not delivered within 30 days after that time the reporter may charge only 80 percent of the prescribed fee. The time period in criminal proceedings for the preparation of transcripts that are ordered before sentencing shall not begin to run until after entry of the judgment and commitment order.

DOCKETING THE APPEAL; FILING A REPRESENTATION STATEMENT; FILING THE RECORD

Local Rule 12(a). Appeals by Aggrieved Non-parties in the Lower Court.

If the appellant was not a party to the lower court proceeding, the appeal shall be styled "In re _____, Appellant," and the title of the action in the district court shall also be given.

Local Rule 12(b). Joint Appeals/Cross-appeals and Consolidations.

For the purpose of identifying consolidated appeals and cross-appeals, the earliest docketed appeal will be designated the lead case and identified by an "L" following its docket number. The parties should designate lead counsel for each side and communicate lead counsel's identity in writing to the clerk within 14 days of the consolidation order. Although most consolidations will be on the Court's own motion, a party is not precluded from filing a request.

Local Rule 12(c). Expedition of Appeals.

The Court on its own motion or on motion of the parties may expedite an appeal for briefing and oral argument. Any motion to expedite should state clearly the reasons supporting expedition, the ability of the parties to present the appeal on the existing record, and the need for oral argument.

Local Rule 12(d). Abeyance.

In the interest of docket control the Court may, either on its own motion or upon request, place a case in abeyance pending disposition of matters before this Court or other courts which may affect the ultimate resolution of an appeal. During the period of time a case is held in abeyance the appeal remains on the docket but nothing is done to advance the case to maturity and resolution. If a case is held in abeyance for cases other than a Fourth Circuit case, the parties will be required to make periodic status reports.

Local Rule 12(e). Intervention.

A party who appeared as an intervenor in a lower court proceeding shall be considered a party to the appeal upon filing a notice of appearance. Otherwise, a motion for leave to intervene must be filed with the Court of Appeals. Any notice of appearance or motion to intervene should indicate the side upon which the movant proposes to intervene. The provisions of FRAP 15(d) govern intervention in appeals from administrative agencies. Intervenors are required to join in the brief for the side which they support unless leave to file a separate brief is granted by the Court.

REVIEW OR ENFORCEMENT OF AN AGENCY ORDER - HOW OBTAINED; INTERVENTION

Local Rule 15(a). Docketing Fee.

Upon filing a petition for review of an agency order, petitioner shall pay the prescribed docketing fee of $500, payable to the Clerk, U.S. Court of Appeals, or submit a properly executed application for leave to proceed in forma pauperis.

Local Rule 15(b). Petitions for Review.

Whenever filing a petition for review or an application or cross-application for enforcement, the party shall attach to the petition, application or cross-application a copy of the agency order for which review or enforcement is sought. The petition, application or cross-application shall also be accompanied by a list of respondents specifically identifying the respondents' names and the addresses where respondents may be served with copies of the petition, application or cross-application.

STAY PENDING REVIEW

Local Rule 18. Procedures.

This Court's local rules accompanying FRAP 8 and 27 apply also to applications for stays under FRAP 18.

WRITS OF MANDAMUS AND PROHIBITION, AND OTHER EXTRAORDINARY WRITS

Local Rule 21(a). Case Captions for Extraordinary Writs.

A petition for a writ of mandamus or writ of prohibition shall not bear the name of the district judge, but shall be entitled simply "In re _____, Petitioner." To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge.

Local Rule 21(b). Petitions for Mandamus or Prohibition.

Strict compliance with the requirements of FRAP 21 is required of all petitioners, even pro se litigants. Petitioner must pay the prescribed docket fee of $500, payable to the Clerk, U.S. Court of Appeals; submit the forms required by Local Rule 21(c)(1) for cases subject to that Local Rule; or submit a properly executed application for leave to proceed in forma pauperis. The parties are required to submit Disclosure of Corporate Affiliations statements with the petition and answer. See FRAP 26.1 and Local Rule 26.1.

After docketing, the clerk shall submit the application to a three-judge panel. A motion for emergency relief pending determination of the petition may be filed and will be assigned in accordance with Local Rule 27(e).

If the Court believes the writ should not be granted, it will deny the petition without requesting an answer. Otherwise the Court will direct the clerk to obtain an answer. After an answer has been filed, the Court ordinarily will decide the merits of the petition on the materials submitted without oral argument. Occasionally, however, briefs may be requested and the matter set for oral argument.

Local Rule 21(c). Fees and Costs for Prisoner Petitions for Mandamus, Prohibition, or other Extraordinary Relief.

(1) **Proceedings Arising out of Civil Matters.** A prisoner filing a petition for writ of mandamus, prohibition, or other extraordinary relief in a matter arising out of a civil case must pay the full $500 docket fee. A prisoner who is unable to prepay this fee may apply to pay the fee in installments by filing with the Court of Appeals (1) an application to proceed without prepayment of fees; (2) a certified copy of the prisoner's trust fund account statement for the six-month period immediately preceding the filing of the notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined; and (3) a form consenting to the collection of fees from the prisoner's trust account.

The Court of Appeals will assess an initial partial filing fee of 20% of the greater of:

(a) the average monthly deposits to the prisoner's account for the six-month period immediately preceding the filing of the petition; or

(b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the petition.

The Court will direct the agency having custody of the prisoner to collect this initial partial fee from the prisoner's trust account, and to collect the remainder of the $500 fee, as well as any other fees, costs, or sanctions imposed by the Court, in monthly installments of 20% of the preceding month's deposits credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the Clerk, U.S. Court of Appeals, each time the amount in the account exceeds $10 until all fees, costs, and sanctions are paid for the petition.

If a prisoner proceeding under this rule fails to file the forms or make the payments required by the Court, the appeal will be dismissed pursuant to Local Rule 45.

(2) **Effect of Prior Actions and Appeals on Proceedings Arising out of Civil Matters.** A prisoner who has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted, may not proceed in a matter arising out of a civil case without prepayment of fees unless the prisoner is under imminent danger of serious physical injury.

(3) **Proceedings Arising out of Criminal Matters.** A prisoner who is unable to prepay the full $ 500 docket fee for a petition for writ of mandamus, prohibition, or other extraordinary relief arising out of a criminal case may apply to proceed without the prepayment of fees by filing an application for leave to proceed in forma pauperis.

Local Rule 21(d). Petitions for Writ of Mandamus Pursuant to 18 U.S.C. § 3771, Crime Victims' Rights.

A petition for writ of mandamus asserting the rights of a crime victim pursuant to 18 U.S.C. § 3771(d)(3) shall bear the caption "PETITION FOR WRIT OF MANDAMUS PURSUANT TO 18 U.S.C. § 3771, CRIME VICTIMS' RIGHTS." Before filing such a petition, the petitioner must notify the Court of Appeals that such a petition will be filed and must arrange for immediate service

of the petition on the relevant parties. Such notification must be by telephone call to the Office of the Clerk during normal office hours (804-916-2700).

A failure to comply with these requirements will adversely affect the Court's ability to decide the petition within 72 hours as required by 18 U.S.C. § 3771(d)(3).

HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

Local Rule 22(a). Certificates of Appealability.

(1) The following procedures apply in cases in which the district court has not granted a certificate of appealability ("certificate"):

(A) The appellant may submit a request for a certificate with the Court of Appeals specifying the issues on which the appellant seeks authorization to appeal and giving a statement of the reasons why a certificate should be issued. The request shall be submitted either in the form prescribed by Fed. R. App. P. 27 for motions or on a form provided by the clerk. The clerk shall refer the request and other relevant materials to a three-judge panel. If the panel denies a certificate, the appeal will be dismissed. If the panel grants a certificate, the clerk shall enter a briefing order specifying the issues the Court will review.

NOTE: Subsection (1)(A) allows an appellant to request a certificate before a briefing order is entered. With respect to the form of the request, the Rule largely tracks former Fourth Circuit Rule 22(a). Because briefing orders are entered promptly after the appeal is docketed, this subsection is likely to affect relatively few appellants. However, when an appellant does file a request before a briefing order is entered, the most efficient course for the Court is to consider that request without waiting for a brief.

(B) If no express request for a certificate has been filed pursuant to Subsection (1)(A) of this Rule, the notice of appeal will be treated as a request for a certificate. See Fed. R. App. P. 22(b)(2). To assist the Court in resolving this request, the clerk shall enter a Preliminary Briefing Order directing the appellant to file a brief on the merits and, if required by applicable rules, an appendix. The Preliminary Briefing Order shall neither require nor authorize a brief from the appellee, nor shall it make any statement regarding a reply brief by the appellant, but in all other respects it shall be substantially identical to a standard briefing order entered pursuant to Local Rule 31(b) or Local Rule 34(b), as appropriate. The clerk shall refer the appellant's brief and other relevant materials to a three-judge panel for a determination of whether the appellant has made a substantial showing of the denial of a constitutional right as to any claim presented in the brief. If the panel denies a certificate, the appeal will be dismissed. If the panel grants a certificate, the clerk shall enter a Final Briefing Order stating that a certificate has been granted and directing the appellee to file a brief addressing the issue or issues that the Court has accepted for review, and providing for the filing of a reply brief by the appellant.

NOTE: Subsection (1)(B) sets forth the procedures that are likely to be followed in most cases. Under these procedures, the Court, having not received any request for a certificate, will direct the appellant to file a brief on the merits. Although not expressly stated in the Rule, the appellant may also file a separate request for a certificate along with his brief; this ensures that the appellant will not be prevented from making arguments relating to the certificate that are separate from the arguments on the merits. Regardless of whether a separate request is filed, the Court will look at the brief but will not use it to make a final decision; instead, as stated in this section, the Court will only determine whether the appellant has made the showing required by 28 U.S.C. § 2253(c)(2). If a certificate is granted, the Court will enter an order directing the appellee to file a brief addressing the issues the Court has accepted for review.

(2) The following procedures apply in cases in which the district court has granted a certificate of appealability as to at least one issue:

(A) The appellant may submit a request for a certificate as to additional issues, along with a statement of the reasons why the expanded certificate should be issued. The request shall be submitted either in the form prescribed by Fed. R. App. P. 27 for motions or on a form provided by the clerk. The clerk shall refer the request and other relevant materials to a three-judge panel. After the panel has granted or denied such a request, the clerk shall enter a briefing order directing the parties to file briefs addressing the issues the Court will review.

NOTE: Section (2) of this Rule parallels Section (1). Just as Section (1) prescribes separate procedures depending on whether the appellant files a request for a certificate before a briefing order is entered, Section (2) makes different provisions depending on whether a request to expand the certificate is filed before a briefing order is entered.

Subsection (2)(A) addresses the situation in which the request is filed, and provides that the request will be considered before the Court enters its briefing order. In both language and effect, this section is substantially identical to Subsection (1)(A) of the Rule.

(B) If no express request to expand the certificate has been filed pursuant to Subsection (2)(A) of this Rule, the clerk shall enter a briefing order directing the parties to file briefs addressing the issues certified for review by the district court. If the appellant's brief on the merits addresses issues beyond the scope of the certificate granted by the district court, this Court will not review those additional issues unless the appellant files, simultaneously with the brief on the merits, a statement containing the names of the parties, the case number, and a list of the issues that the appellant wishes to add to the certificate. Such statement may also, but need not, present reasons why the certificate should be expanded. Upon receipt of the statement, the clerk shall suspend briefing and refer the brief, the statement, and other relevant materials to a three-judge panel. Once the panel has determined whether to expand the certificate, the clerk shall enter a Final Briefing Order specifying the issue or issues the Court will review.

NOTE: Subsection (2)(B) governs the situation in which the district court grants a certificate as to some issues and the appellant wishes to raise additional issues but does not request expansion of the certificate before a briefing order is entered. Under this subsection, the appellant must brief all the issues he wishes to raise and then file a separate statement identifying the issues he has addressed that were not certified by the district court. If the appellant does not file an appropriate statement, the Court will not review any issues beyond the scope of the certificate granted by the district court. Cf. Valerio v. Crawford, 306 F.3d 742, 764-65 (9th Cir. 2002) (en banc) (discussing circuit rule barring expansion of certificate absent express request). When, however, the appellant files a proper statement, the Court will suspend briefing and decide whether to expand the certificate before requiring the appellee to file its brief; this process parallels the process for granting a certificate ab initio, as described in Subsection (1)(B).

The purpose of the statement described in Subsection (2)(B) is to trigger the pause in the briefing process during which the Court will consider whether to expand the certificate. This pause will assist the Court in complying with Miller-El v. Cockrell, 123 S. Ct. 1029 (2003), by ensuring a separation between the certification inquiry and the final inquiry into the merits.

The statement required by this subsection need not be long or detailed in order to serve its underlying purpose. On the contrary, the Court will accept a simple list of issues addressed in the brief but not certified for review by the district court, although the appellant is also permitted to present a more extended discussion. The clerk may provide appellants with an explanation of the statement requirement along with a warning that failure to file an appropriate statement will result in forfeiture of all issues beyond the scope of the certificate granted by the district court.

(3) A request to grant or expand a certificate, including a brief filed pursuant to Subsection (1)(B) of this Rule or a brief and statement filed pursuant to Subsection (2)(B), shall be referred to a panel of three judges. If any judge of the panel is of the opinion that the applicant has made the showing required by 28 U.S.C. § 2253(c), the certificate will issue.

NOTE: Section (3) retains our current practice of referring requests for certification to three-judge panels. While Fed. R. App. P. 22(a) may afford the Court some flexibility in this matter, the use of three-judge panels is consistent with Fed. R. App. P. 27(c), which provides that a single judge "may not dismiss or otherwise determine an appeal or other proceeding."

The authority for a single judge to issue a certificate derives from § 2253. See 28 U.S.C. § 2253(c)(1) (providing that certain appeals may not proceed "[u]nless a circuit justice or judge issues a certificate of appealability").

(4) In considering a request to grant or expand a certificate, including a brief filed pursuant to Subsection (1)(B) of this Rule or a brief and statement filed pursuant to Subsection (2)(B), the panel or any judge of the panel may request additional submissions from either party.

NOTE: This section allows the panel to either rule on a certificate based on the materials already received or seek additional information from the parties. Although the Rule does not limit panel discretion, it is likely that panels will seek additional submissions in relatively few cases and will instead issue (or expand) a certificate if the appellant has made a sufficient showing to justify further inquiry.

(5) Notwithstanding any other statement within this Rule, whenever the Court appoints counsel for a pro se appellant, counsel shall have an opportunity to file a brief on the merits addressing all issues as to which the district court or this Court has granted a certificate, unless the Court directs otherwise.

NOTE: This section reflects our current practice of ordering a second round of briefing whenever the Court appoints counsel in a pro se case. This section will prevent any inference that the new Rule has either altered that practice or reduced the discretion of the Court to follow a different procedure in a particular case.

Local Rule 22(b). Death Penalty Cases and Motions for Stay of Execution.

(1) **Statement Certifying Existence of Sentence of Death.** Whenever a petition for writ of habeas corpus or motion to vacate a federal sentence in which a sentence of death is involved is filed in the district court or the Court of Appeals, the petitioner shall file with the petition a statement certifying the existence of a sentence of death and the emergency nature of the proceedings and listing any proposed date of execution, any previous cases filed by petitioner in federal court and any cases filed by petitioner pending in any other court. The clerk of the district court shall immediately forward to the Court of Appeals a copy of any such statement filed, and shall immediately notify by telephone the Court of Appeals upon issuance of a final order in that case. If a notice of appeal is filed, the clerk of the district court shall transmit the available record forthwith. The clerk of the Court of Appeals will maintain a special docket for such cases and these cases shall be presented to the Court of Appeals on an expedited basis.

(2) **Lodging of Documents.** In cases in which an execution date has been set, counsel shall lodge with the clerk of the Court of Appeals all district court documents as they are filed and any pertinent state court materials. If an execution date is imminent, counsel may also lodge proposed appellate papers in anticipation of having to seek emergency appellate relief.

(3) **Motion for Stay of Execution.** Any motion for stay of execution shall be considered initially in conjunction with any pending application for a certificate of appealability. Should a party file a motion to stay execution or a motion to vacate an order granting a stay of execution, the following documents shall accompany such motion:

(a) The habeas petition or motion to vacate filed in the district court;
(b) Each brief or memorandum of authorities filed by either party in the district court;
(c) Any available transcript of proceedings before the district court;
(d) The memorandum opinion giving the reasons advanced by the district court for denying relief;
(e) The district court judgment denying relief;
(f) The application to the district court for stay;
(g) Any certificate of appealability or order denying a certificate of appealability;
(h) The district court order granting or denying a stay and a statement of reasons for its action; and
(i) A copy of the docket entries of the district court.

Local Rule 22(c). Petitions for Rehearing in Death Penalty Cases.

Once the Court's mandate has issued in a death penalty case, any petition for panel or en banc rehearing should be accompanied by a motion to recall the mandate and motion to stay the execution.

Generally, the Court will not enter a stay of execution solely to allow for additional time for counsel to prepare, or for the Court to consider, a petition for rehearing. Consequently, counsel should take all possible steps to assure that any such petition is filed sufficiently in advance of the scheduled execution date to allow it to be considered by the Court. Counsel should notify the Clerk's Office promptly of their intention to file a petition for rehearing so that arrangements can be made in advance for the most expeditious consideration of the matter by the Court.

Local Rule 22(d). Motions for Authorization.

Any individual seeking to file in the district court a second or successive application for relief pursuant to 28 U.S.C. § 2254 or § 2255 shall first file a motion with the Court of Appeals for authorization as required by 28 U.S.C. § 2244, on the form provided by the clerk for such motions. The motion shall be entitled "In re _____, Movant." The motion must be accompanied by copies of the § 2254 or § 2255 application which movant seeks authorization to file in the district court, as well as all prior § 2254 or § 2255 applications challenging the same conviction and sentence, all court opinions and orders disposing of those applications, and all magistrate judge's reports and recommendations issued on those applications. The movant shall serve a copy of the motion with attachments on the respondent named in the proposed application and shall file the original motion with attachments in the Court of Appeals. Failure to provide the requisite information and attachments may result in denial of the motion for authorization.

If the Court requires a response to the motion, it will direct that the response be received by the clerk for filing within no more than seven days. The Court will enter an order granting or denying authorization within 30 days of filing of the motion, and the clerk will transmit a copy of the order to the district court. If authorization is granted, a copy of the application will be attached to the order for filing in the district court. No motion or request for reconsideration, petition for rehearing, or any other paper seeking review of the granting or denial of authorization will be allowed.

I.O.P.-22.1. Death Penalty Cases.

Once a notice of appeal has been filed in a case involving a sentence of death where an execution date has been set, a panel of three judges will be promptly identified for consideration of all matters related to the case. The position of coordinator of case information in death penalty cases has been established in the Clerk's Office of the Court of Appeals for the purpose of establishing personal liaison with district court personnel and counsel to aid in the expeditious treatment of appeals involving a sentence of death. An expedited briefing schedule will be established when necessary to allow the Court the opportunity to review all issues presented.

PROCEEDING IN FORMA PAUPERIS

Local Rule 24. Prisoner Appeals.

(a) Payment of Fees and Costs Required. A prisoner appealing a judgment in a civil action must pay in full the $505 fee required for commencement of the appeal. A prisoner who is unable to prepay this fee may apply to pay the fee in installments by filing with the Court of Appeals (1) an application to proceed without prepayment of fees; (2) a certified copy of the prisoner's trust fund account statement or institutional equivalent for the six-month period immediately preceding the filing of the notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined; and (3) a form consenting to the collection of fees from the prisoner's trust account.

The Court of Appeals will assess an initial partial filing fee of 20% of the greater of:

(1) the average monthly deposits to the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal; or

(2) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal.

Based upon the prisoner's consent, the Court will direct the agency having custody of the prisoner to collect this initial partial fee from the prisoner's trust account, and to collect the remainder of the $505 filing fee, as well as any other fees, costs, or sanctions imposed by the Court of Appeals, in monthly installments of 20% of the preceding month's deposits credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the district court each time the amount in the account exceeds $10 until all fees, costs, and sanctions are paid for the appeal.

If a prisoner proceeding under this rule fails to file the forms or make the payments required by the Court, the appeal will be dismissed pursuant to Local Rule 45.

(b) Effect of Prior Actions and Appeals. A prisoner who has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted, may not proceed on appeal without prepayment of fees unless the prisoner is under imminent danger of serious physical injury.

FILING AND SERVICE

Local Rule 25(a). Electronic Case Filing System.

With the exception of administrative matters, all cases filed in the Court are assigned to the Court's Case Management/Electronic Case Filing System (CM/ECF).

(1) **Scope of Electronic Filing.** Unless granted an exception for good cause or unless filing only a disclosure statement or a motion to withdraw from representation, counsel must file all documents in accordance with the requirements of this rule. Pro se litigants are not required to file documents electronically but may be authorized to file electronically in a pending case upon motion and compliance with the Court's CM/ECF registration requirements. Documents filed electronically must be filed in Portable Document Format (PDF). Text-searchable format is required for briefs and preferred for all documents. Except as provided below or ordered by the Court, paper copies of electronic documents are not required.

(A) **New Cases.** New petitions for review, applications for enforcement, petitions for permission to appeal, petitions for mandamus or prohibition, and motions to authorize successive post-conviction applications must be filed using one of the following options:

(i) **Submit New Case through CM/ECF Utilities:** File petition in electronic form by selecting "Submit New Case" under CM/ECF Utilities and uploading the petition as a new case. Paper copies are not required, but the petition must be served conventionally, outside the CM/ECF system. The petition is deemed filed as of the date the electronic document was received by the clerk's office.

or

(ii) **File in Paper Form:** File the original petition in paper form and serve the petition conventionally, outside the CM/ECF system. The petition is filed as of the date the paper document was received in the clerk's office. Additional copies are not required.

(B) **Briefs.** Formal briefs must be filed and served electronically. In addition, counsel must file the paper copies required by Local Rule 31(d). The brief is deemed filed as of the date and time stated on the notice of docket activity for the electronic brief, provided that paper copies are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office by the next business day. Service of the paper brief is not required if the brief was served electronically on counsel and on any party not represented by counsel.

(C) **Administrative Records.** The agency filing the administrative record in agency review or enforcement cases and in social security appeals must file the original or one certified copy of the record, either in paper form or through CM/ECF in electronic form.

(i) If the agency files the administrative record in electronic form, counsel filing the opening brief may adopt the administrative record in lieu of filing an appendix under section (D) below and file the required paper copies of the administrative record. The paper copies of the administrative record should be produced using double-sided copying, and must be securely bound down the left side without obscuring text and be identified as the administrative record on white covers bound with each copy. In social security appeals, appellant's counsel must also file an appendix under section (D) below that contains any district court documents necessary for appellate review.

(ii) If the agency files the administrative record in paper form, counsel filing the opening brief must file an appendix in accordance with section (D) below.

(D) **Appendices.** Unless electronic and paper copies of the administrative record are filed in an agency review or enforcement case under (C) above or no appendix is required because a criminal appeal is proceeding under Anders v. California, electronic filing of a joint appendix is required. In addition, counsel must file the paper copies required by Local Rule 30(b)(4). The appendix is deemed filed as of the date and time stated on the notice of docket activity for the electronic filing of the appendix, provided that paper copies of the appendix are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office by the next business day. Service of the paper appendix is

not required if the electronic appendix was served on counsel and on any party not represented by counsel.

(E) **Vouchers.** Criminal Justice Act and other payment vouchers are maintained as financial records and filed outside the CM/ECF system.

(2) **Eligibility, Registration, Passwords.** Attorneys who intend to practice in this Court should register as filing users of the Court's CM/ECF system. Pro se parties who wish to file electronically in a pending case should register as filing users and file a motion for leave to file electronically in the pending case.

Registration for electronic filing constitutes consent to electronic service of all documents as provided in this rule and the Federal Rules of Appellate Procedure. Filing users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. Filing users may be sanctioned for failure to comply with this provision.

A filing user may withdraw from participation in CM/ECF by providing the clerk with written notice of withdrawal. A filing user's withdrawal from participation in CM/ECF does not alter the requirement that documents be filed in compliance with this rule.

(3) **Consequences of Electronic Filing.** Electronic transmission of a document to CM/ECF consistent with this rule, together with the transmission of a notice of docket activity from the Court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the Court's local rules and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b).

A document filed electronically is deemed filed at the date and time stated on the notice of docket activity from the Court. Unless otherwise directed by the Court, filing must be completed before midnight Eastern Time, as shown on the notice of docket activity, to be considered timely filed that day.

Before filing a document with the Court, a filing user must verify its legibility and completeness. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed.

If an extension of time or leave of Court is required to file a document, a filing user should file the motion to extend filing time or other appropriate motion using the motion event and the underlying document using the document event. If the Court denies the motion, it will strike the underlying document. If the Court grants the motion, the underlying document will remain on the docket.

(4) **Service of Documents by Electronic Means.** The notice of docket activity that is generated by the Court's electronic filing system constitutes service of the filed document on any registered CM/ECF users, and proof of service is not required as to such users. Parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically, and proof of service is required in accordance with FRAP 25(d).

If a document (such as a sealed document or a new case) cannot be served electronically, the filer must serve the document conventionally, outside the CM/ECF system, and file proof of service.

(5) **Entry of Court-Issued Documents.** Except as otherwise provided by local rule or Court order, all orders, decrees, opinions, judgments, and proceedings of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with

these rules, which will constitute entry on the docket kept by the clerk under FRAP 36 and 45(b).

Any order or other Court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.

(6) **Attachments and Exhibits to Motions and Original Proceedings.** Unless the Court permits or requires traditional paper filing, filing users must submit in electronic form all documents referenced as exhibits or attachments. Material should be excerpted to include only such portions as are germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or the complete document.

(7) **Sealed Documents.** Sealed material must be filed in accordance with Local Rule 25(c) and served conventionally, outside the CM/ECF system.

(8) **Retention Requirements.** Documents that are electronically filed and require original signatures other than that of the filing user must be maintained in paper form by the filing user for a period of three years after issuance of the Court's final mandate in the case. On request of the Court, the filing user must provide original documents for review.

(9) **Signatures**. The user log-in and password required to submit documents to the CM/ECF system, together with that person's name on a signature block, serve as the filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the Court's local rules, and any other purpose for which a signature is required in connection with proceedings before the Court.

No filing user or other person may knowingly permit or cause to permit a filing user's log-in and password to be used by anyone other than an authorized agent of the filing user.

Documents requiring signatures of more than one party must be electronically filed either by: submitting a scanned document containing all necessary signatures; representing the consent of the other parties on the document; identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or any other manner approved by the Court.

Electronically represented signatures of all parties and filing users as described above are presumed to be valid signatures. If any party, counsel of record, or filing user objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 days, file a notice setting forth the basis of the objection.

(10) **Notice of Court Orders and Judgments.** Immediately upon the entry of an order, judgment, or opinion in a case assigned to CM/ECF, the clerk will electronically transmit a notice of docket activity to filing users in the case. Electronic transmission of the notice of docket activity constitutes the notice and service required by FRAP 36(b) and 45(c).

The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.

(11) **Technical Failures.** A party or attorney who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.

(12) **Hyperlinks.** Electronically filed documents may contain hyperlinks to: other portions of the same document or other documents filed on appeal; documents filed in the lower court that are part of the record on appeal; and statutes, rules, regulations, and opinions.

Hyperlinks do not replace citations to the appendix, record, or legal authority and are not considered part of the appellate record. Documents must contain standard citations in

support of statements of fact or points of law, in addition to any hyperlink. The Court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.

Local Rule 25(b). Use of Facsimile Equipment, Service.

(1) **Use of Facsimile Equipment.** Documents may be transmitted for filing by use of facsimile transmission equipment only when an emergency situation exists and advance permission has been obtained to use the clerk's office facsimile equipment. Several printing services in Richmond will accept documents by facsimile for filing with the Court. Their telephone numbers may be obtained from the clerk's office. When a facsimile copy is filed, the original, signed document need not be filed.

(2) **Service.** Except as otherwise provided by local rule or Court order, service on a party represented by counsel must be on all counsel of record.

Local Rule 25(c) Confidential and Sealed Materials.

(1) **Certificates of Confidentiality.** At the time of filing any appendix, brief, motion, or other document containing or otherwise disclosing materials held under seal by another court or agency, counsel or a pro se party shall file a certificate of confidentiality.

(A) Record material held under seal by another court or agency remains subject to that seal on appeal unless modified or amended by the Court of Appeals.

(B) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

(i) identify the sealed material;

(ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;

(iii) specify the terms of the protective order governing the information; and

(iv) identify the appellate document that contains the sealed information.

(2) **Motions to Seal.** Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below.

(A) A motion to seal may be filed with the Court of Appeals when:

(i) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;

(ii) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or

(iii) additional material filed for the first time on appeal warrants sealing.

(B) Any motion to seal filed with the Court of Appeals shall:

(i) identify with specificity the documents or portions thereof for which sealing is requested;

(ii) state the reasons why sealing is necessary;

(iii) explain why a less drastic alternative to sealing will not afford adequate protection; and

(iv) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(C) A motion to seal filed with the Court of Appeals will be placed on the public docket for at least 5 days before the Court rules on the motion, but the materials subject to a motion to seal will be held under seal pending the Court's disposition of the motion.

(3) **Filing of Confidential and Sealed Material**.

(A) **Appendices:** When sealed material is included in the appendix, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix. In criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume that is served only on counsel for the United States and for the defendant who is the subject of the report.

(B) **Briefs, Motions, and Other Documents:** When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed:

(i) a complete version under seal in which the sealed material has been distinctively marked and

(ii) a redacted version of the same document for the public file.

(C) **Personal Data Identifying Information:** Personal data identifying information, such as an individual's social security number, an individual's tax identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, must be excluded or partially redacted from filings in accordance with FRAP 25(a)(5).

(D) **Marking of Sealed and Ex Parte Material:** The first page of any appendix, brief, motion, or other document tendered or filed under seal shall be conspicuously marked SEALED and all copies shall be placed in an envelope marked SEALED. If filed ex parte, the first page and the envelope shall also be marked EX PARTE.

(E) **Method of Filing:**

(i) **Appendices:** Local Rule 30(b)(4) sets forth the number of paper copies required for public and sealed volumes of the appendix. Sealed volumes are accompanied by a certificate of confidentiality or motion to seal, in both paper and electronic form. Electronic sealed volumes are filed using the entry SEALED JOINT APPENDIX or SEALED SUPPLEMENTAL APPENDIX, which automatically seals the appendix for Court access only.

(ii) **Formal Briefs:** Local Rule 31(d) sets forth the number of paper copies required for public and sealed versions of formal briefs. The sealed version is accompanied by a certificate of confidentiality or motion to seal, in both paper and electronic form. The electronic sealed version of the brief is filed using the entry SEALED BRIEF, which automatically seals the brief for Court access only.

(iii) **Other Documents:** Any other sealed document is filed electronically using the entry SEALED DOCUMENT, which automatically seals the document for Court access only. A certificate of confidentiality or motion to seal is also filed electronically.

(F) **Method of Service:** All sealed appendices, briefs, and documents must be served in paper form, because only the Court can access the sealed electronic appendix, brief, or document.

(G) **Responsibility for Compliance:** The responsibility for following the required procedures in filing confidential and sealed material rests solely with counsel and the parties. The clerk will not review each filing for compliance with this rule.

(H) **Public Access:** Unless filed under seal, case documents are publicly available on the Internet, except that in immigration and social security cases, only the Court's orders and opinions are available to the public on the Internet. Remote electronic access to other documents in immigration and social security cases is available only to persons

participating in the case as CM/ECF filing users. Counsel should notify clients regarding the availability of filings on the Internet so that an informed decision may be made on what information is to be included in a public document filed with the Court.

COMPUTING AND EXTENDING TIME

Local Rule 26. State Holidays and Inclement Weather.

Whenever a party in computing a filing or service date relies upon an extension of time due to the inaccessibility of the Clerk's Office because of inclement weather or other conditions, or due to a state holiday, counsel must certify such reliance in the certificate of service or by separate written declaration.

DISCLOSURE STATEMENT

Local Rule 26.1. Disclosure Statement.

(a) **Disclosure Requirements Applicable to Parties and Proposed Intervenors.**

(1) **Who Must File.**

(A) **Civil, Agency, Bankruptcy, and Mandamus Cases.** A party or proposed intervenor in a civil, agency, bankruptcy, or mandamus case, other than the United States or a party proceeding in forma pauperis, must file a disclosure statement, except that a state or local government is not required to file a disclosure statement in a case in which the opposing party is proceeding without counsel.

(B) **Criminal and Post-Conviction Cases with Corporate Party.** A corporate party in a criminal or post-conviction case must file a disclosure statement.

(C) **Criminal Cases with Organizational Victim.** Absent a showing of good cause, the government must file a disclosure statement in a criminal case in which there is an organizational victim.

(2) **Information to Be Disclosed by Parties and Proposed Intervenors.**

(A) **Information Required by FRAP 26.1**. A party or proposed intervenor must make the disclosures required by FRAP 26.1.

(B) **Information About Other Financial Interests**. A party or proposed intervenor must identify any publicly held corporation, whether or not a party to the present litigation, that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement, or state that there is no such corporation.

(C) **Information About Other Publicly Held Legal Entities.** Whenever required by FRAP 26.1 or this rule to disclose information about a corporation that has issued shares to the public, a party or proposed intervenor shall also disclose information about similarly situated master limited partnerships, real estate investment trusts, or other legal entities whose shares are publicly held or traded, or state that there are no such entities.

(D) **Information About Trade Association Members.** A trade association proceeding as a party or proposed intervenor must identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding

or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member.

(b) **Disclosure Requirements Applicable to Corporate Amicus Curiae.**

(1) **Who Must File.** If an amicus curiae is a corporation, the amicus curiae brief must include a disclosure statement.

(2) **Information to Be Disclosed by Corporate Amicus Curiae.** A corporate amicus curiae must disclose the same information that sections (a)(2)(A), (B) & (C) require parties to disclose.

(c) **Form.** The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a filer has no disclosures to make.

(d) **Time of Filing.** A party's disclosure statement must be filed within 14 days of docketing of the appeal, unless earlier pleadings are submitted for the Court's consideration, in which case the disclosure statement shall be filed at that time.

(e) **Amendment.** Filers are required to amend their disclosure statements when necessary to maintain their current accuracy.

MOTIONS

Local Rule 27(a). Content of Motions; Notification and Consent.

In cases where all parties are represented by counsel, all motions shall contain a statement by counsel that counsel for the other parties to the appeal have been informed of the intended filing of the motion. The statement shall indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

Local Rule 27(b). Procedural Orders Acted on by Clerk; Reconsideration Thereof.

Motions and applications for orders if consented to, or if unopposed after due notice to all interested parties has been given or waived, or if the orders sought are procedural or relate to the preparation or printing of the appendix and briefs on appeal, or are such as are ordinarily granted as of course and without notice or hearing, need not be submitted to the Court, or to a judge thereof. Such orders may be entered for the Court by the clerk, who shall forthwith send copies thereof to the parties.

Any party adversely affected by an order entered by the clerk pursuant to this rule shall be entitled to request reconsideration of the clerk's action by the Court, if within 14 days after entry of the order, such party shall file with the clerk and serve upon the parties to the proceedings a request, in writing, for reconsideration, vacation or modification of the order, stating the grounds for such request. The clerk shall thereupon submit to the Court the request for reconsideration, vacation or modification, the motion or application upon which the order was entered, and any responses by other parties which may have been filed in support or opposition to the request. The Court may thereafter take such action as may be proper.

Local Rule 27(c). Form of Motions.

A Disclosure of Corporate Affiliations statement must accompany the motion unless previously filed with the Court. See FRAP 26.1 and Local Rule 26.1. Counsel should always review carefully the specific rule which authorizes relief to ascertain the requirements, and any motion should contain or be accompanied by any supporting documents required by a specific rule. If a motion is supported by attachments, these materials should also be served and filed with the motion. The parties should not make requests for procedural and substantive relief in a single motion, but should make each request in a separate motion.

Local Rule 27(d). Responses; Replies.

(1) **Responses**. Although any party may file a response to a motion, a party need not respond to a motion until requested to do so by the Court. The three-day mailing period permitted by FRAP 26(c) does not apply to responses requested by the Court or clerk by letter wherein a response date is set forth in the request. A Disclosure of Corporate Affiliations statement must accompany any response to a motion unless previously filed with the Court. See FRAP 26.1 and Local Rule 26. If the Court acts upon a motion without a response, any party adversely affected by such action may by application to the Court request reconsideration, vacation or modification of the Court's action.

(2) **Replies.** The Court will not ordinarily await the filing of a reply before reviewing a motion and response. If movant intends to file a reply and does not want the Court to actively consider the motion and response until a reply is filed, movant shall notify the clerk in writing of the intended filing of the reply and request that this Court not act on the motion until the reply is received.

Local Rule 27(e). Panel Assignments and Emergency Motions.

There is a strong presumption that the Court will act, in all but routine procedural matters, through panels or en banc, as prescribed by 28 U.S.C. § 46(c). Ordinarily, counsel shall present all motions to the clerk for presentation to the Court. Application to a single judge should be made only in exceptional circumstances where action by a panel would be impractical due to the requirements of time. In such exceptional circumstances, counsel shall attempt to notify the clerk's office that application is being made directly to a single judge, and copies of all papers presented to the judge shall be presented to the clerk as soon as practical for filing.

When a single judge determines to act, the matter will be referred to a panel as early in the process as is practical. As soon as a matter has been assigned to a panel, any action in the matter will be decided by the panel.

The selection of motion panels is similar to the process set forth in I.O.P. 34.1 for hearing panels. In a case where a request for single judge action is made to the clerk and action by a panel is not feasible, the clerk will assign the matter to a judge selected at random. In cases where a single judge, selected at random, has found it necessary to act, the clerk will fill out the panel with the at-random selection of two additional judges. In cases in which a single judge, selected by counsel, has found it necessary to act, the clerk will assign the matter to a three-judge panel selected at random, which may or may not include the single judge who acted in the case.

Local Rule 27(f). Motions for Summary Disposition.

(1) **Motions for Summary Affirmance or Reversal.** Motions for summary affirmance or reversal filed prior to completion of briefing should include a showing that the issues raised on appeal are in fact manifestly unsubstantial and appropriate for disposition by motion. Absent such a showing, the Court will defer action on the motion until briefing is complete.

(2). **Motion to Dismiss.** Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or on other procedural grounds should be filed within the time allowed for the filing of the response brief. The Court may also sua sponte summarily dispose of any appeal at any time.

(3) **Suspension of Briefing.** Suspension of briefing pending ruling on a motion to summarily affirm, reverse, or dismiss should be requested by separate motion.

BRIEFS

Local Rule 28(a). Consolidated Cases and Briefs.

Related appeals or petitions for review will be consolidated in the Office of the Clerk, with notice to all parties, at the time a briefing schedule is established. One brief shall be permitted per side, including parties permitted to intervene, in all cases consolidated by Court order, unless leave to the contrary is granted upon good cause shown. In consolidated cases lead counsel shall be selected by the attorneys on each side and that person's identity made known in writing to the clerk within 14 days of the date of the order of consolidation. In the absence of an agreement by counsel, the clerk shall designate lead counsel. The individual so designated shall be responsible for the coordination, preparation and filing of the briefs and appendix.

Local Rule 28(b). Addenda and Attachments to Briefs.

A party may comply with the requirements of FRAP 28(f) and FRAP 32.1(b) by including material or items designated therein in an addendum at the end of the brief or by supplying them to the Court under separate cover. Should a party wish to supplement the brief with matters other than those designated in FRAP 28(f) or FRAP 32.1(b), the additional material must be presented to the Court under separate cover, accompanied by a motion for leave to file such supplemental material as an attachment to the brief.

Local Rule 28(c). Responsibilities of Counsel Listed on a Brief.

The Court will interpret the listing of an attorney on a brief as a representation that he or she is capable of arguing the appeal if lead counsel is unavailable.

Local Rule 28(d). Joint Appeals and Consolidations.

Where multiple parties are directed to file a consolidated brief, counsel on the same side of the case should confer and agree upon a means for assuring that the positions of all parties are addressed within the length limits allowed and that each counsel will have an opportunity to review and approve the consolidated brief before it is filed.

Motions to file separate briefs are not favored by the Court and are granted only upon a particularized showing of good cause, such as, but not limited to, cases in which the interests of the parties are adverse. Generally unacceptable grounds for requests to file separate briefs include representations that the issues presented require a brief in excess of the length limitations established by FRAP 32(a)(7) (appropriately addressed by a motion to exceed length limit), that counsel cannot coordinate their efforts due to different geographical locations, or that the participation of separate counsel in the proceedings below entitles each party to separate briefs on appeal.

If a motion to file separate briefs is granted, the length of such briefs may be limited by the Court. The parties shall continue to share the time allowed for oral argument.

Local Rule 28(e). Citation of Additional Authorities.

Counsel may, without leave of Court, present a letter drawing the Court's attention to supplemental authorities under Rule 28(j) and serve a copy on all counsel of record. The Court may grant leave for or direct the filing of additional memoranda, which may include additional argument before, during or after oral argument.

Local Rule 28(f). Statement of Case.

The statement of the case required by FRAP 28(a)(6) must include a narrative statement of all of the facts necessary for the Court to reach the conclusion which the brief desires with references to the specific pages in the appendix that support each of the facts stated.

BRIEF OF AN AMICUS CURIAE

Local Rule 29(a) Leave to File Amicus Briefs

The Court will prohibit the filing of or strike an amicus brief that would result in the recusal of a member of the panel that has been assigned to the case or in the recusal of a member of the en banc court from a vote on whether to hear or rehear a case en banc.

Local Rule 29(b). Copies of Amicus Briefs

(1) During Consideration of Case on the Merits. If filed during consideration of the case on the merits, one paper copy and one electronic copy of the amicus brief must be filed. The Court will order the filing of additional paper copies for oral argument or if otherwise needed. Service of paper copies of the amicus brief is not required if the brief was served electronically on counsel and on any party not represented by counsel.

(2) During Consideration of Petition for Rehearing or Rehearing en Banc. If filed during consideration of whether to grant rehearing or rehearing en banc, one electronic copy of the amicus brief must be filed. No paper copies are required unless ordered by the Court. Service of paper copies of the amicus brief is not required if the brief was served electronically on counsel and on any party not represented by counsel.

APPENDIX TO THE BRIEFS

Local Rule 30(a). Attorney Sanctions for Unnecessary Appendix Designations.

The Court, on its own motion or on motion of any party, may impose sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary material in the appendix. Attorneys shall receive reasonable notice and opportunity to respond before the imposition of any sanction. A party's motion for the imposition of sanctions will be entertained only if filed within 14 days after entry of judgment and only if counsel for the moving party previously objected to the designation of the allegedly unnecessary material in writing to opposing counsel within 14 days of the material's designation.

Local Rule 30(b). Appendix Contents; Number of Copies.

(1) **Required Contents:** In designating or agreeing upon the contents of the appendix, and in assembling the appendix, the parties should avoid unnecessary duplication of materials. The appellee's designation should only include those additional parts of the record to which it wishes to direct the Court's attention that have not already been designated by the appellant.

The use of a selectively abridged record allows the judges to refer easily to relevant parts of the record and saves the parties the considerable expense of reproducing the entire record. Although there is no limit on the length of the appendix except as provided in Local Rule 32(a), it is unnecessary to include everything in the appendix. The appendix should, however, contain the final order or order appealed from, the complaint or petition, as finally amended (civil appeals) or indictment (criminal appeals), as well as all other parts of the record which are vital to the understanding of the basic issues on appeal. Although the entire record is available to the Court should it believe that additional portions are important to a full understanding of the issues, citation to portions of the record not included in the appendix is not favored.

(2) **Table of Contents; Witness Names and Type of Examination:** The table of contents to the appendix should be sufficiently detailed to be helpful to the Court. Referring to the transcript of a trial under a single reference to "proceeding" or "trial transcript" is not sufficient. When the testimony of a witness is included in the appendix, the testimony should be clearly

identified in the table of contents, beneath the proceeding in which it occurred. The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) should also be clearly indicated at the top of each page of the appendix where the witness's testimony appears. Exhibits should be listed in the table of contents by number or letter and by name or brief description.

(3) **Sentencing Guideline Appeals:** In all criminal appeals seeking review of the application of the sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate sealed volume, stamped "SEALED" on the volume itself and on the envelope containing it, and be accompanied by a certificate stating that the volume contains sealed material. In criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume that is served only on counsel for the United States and for the defendant who is the subject of the report.

(4) **Number of Copies:**

(A) **Filing:** One paper copy and one electronic copy of any joint, sealed, or supplemental appendix must be filed. The Court will order the filing of additional paper copies for oral argument or if otherwise needed by the Court.

(B) **Service:** If the electronic appendix is served on counsel and on any party not represented by counsel, service of the paper appendix is not required. One paper copy of any sealed appendix volume must be served on lead counsel for each party separately represented who is authorized to have access to the sealed volume and on any party not represented by counsel who is authorized to have access to the sealed volume.

Local Rule 30(c). Responsibility of Parties.

Notwithstanding that FRAP 30 provides that the appellant shall prepare and file the appendix, the Court considers the coordination of preparing the appendix to be the responsibility of both sides. The failure of a side to designate does not absolve the other side from the responsibility.

Except under the most extraordinary circumstances, supplementary appendices will not be accepted. If the appellant omits from the appendix the portions designated by the appellee, the appellant will be required to file a corrected appendix incorporating such material, and to bear the cost regardless of the outcome of the appeal.

If a party files a motion for leave to file a supplemental appendix, the motion must specifically identify the contents of the supplemental appendix, state that the items are matters of record, and set forth good cause why the original appendix should not be returned for insertion of the additional materials.

Local Rule 30(d). Dispensing with Appendix.

Motions to proceed on the original record pursuant to FRAP 30(f) are carefully reviewed in the Fourth Circuit and are not usually granted unless the appellant is proceeding in forma pauperis, the record is short, or the appeal is expedited. Even if the motion is granted, counsel must include an abbreviated appendix consisting of:

i. pertinent district court docket entries,
ii. indictment or complaint,
iii. judgment or order being appealed,
iv. notice of appeal,
v. any crucial portions of the transcript of proceedings referred to in appellant's brief, and
vi. a copy of the order granting leave to proceed on the original record.

The requisite number of copies of the abbreviated appendix as set forth in Local Rule 30(b) must be filed with the brief.

SERVING AND FILING BRIEFS

Local Rule 31(a). Shortened Time for Service and Filing of Briefs in Criminal Cases.

Pursuant to the authority conferred by FRAP 31(a)(2), the time for serving and filing briefs in criminal appeals is shortened as follows: the appellant shall serve and file appellant's brief and appendix within thirty-five days after the date on which the briefing order is filed; the appellee shall serve and file appellee's brief within twenty-one days after service of the brief of the appellant; the appellant may serve and file a reply brief within ten days after service of the brief of the appellee.

Local Rule 31(b). Briefing Orders.

A formal briefing schedule shall be sent to the parties upon receipt of the record or determination by the Clerk that the record is complete -- whichever occurs first. Thus, the time for designating the contents of the joint appendix and the filing of briefs is controlled by the briefing order and not the receipt of the record as provided in FRAP 31(a)(1).

Local Rule 31(c). Briefing Extensions.

Extensions will be granted only when extraordinary circumstances exist. A motion for an extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The Court discourages these motions and may deny the motion entirely or grant a lesser period of time than the time requested.

Local Rule 31(d). Number of Copies.

(1) **Filing:** One paper copy and one electronic copy of briefs must be filed. The Court will order the filing of additional paper copies for oral argument or if otherwise needed by the Court.

(2) **Service:** Service of paper copies of briefs is not required if the brief was served electronically on counsel and on any party not represented by counsel. One paper copy of any sealed brief must be served on lead counsel for each party separately represented who is authorized to have access to the sealed brief and on any party not represented by counsel who is authorized to have access to the sealed brief.

(3) **Page-Proof Briefs:** If the Court allows a deferred appendix, the parties are required to file their page-proof briefs in electronic form only. After the deferred appendix is filed, filing and service of final briefs are governed by (1) and (2) above.

FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

Local Rule 32(a). Reproduction of Appendices.

Double-sided copying of appendices is preferred in all cases. No joint appendix in a court-appointed case should exceed 500 pages without advance permission from the Court; unless such permission is granted, reimbursement of copy expenses will be limited to 500 pages.

Local Rule 32(b). Length of Briefs.

The Fourth Circuit encourages short, concise briefs. Under no circumstances may a brief exceed the length limitations in FRAP 32(a)(7) and FRAP 28.1(e)(2) without the Court's advance permission.

A motion for permission to submit a longer brief must be made to the Court of Appeals at least 10 days prior to the due date of the brief and must be supported by a statement of reasons. These motions are not favored and will be granted only for exceptional reasons.

Local Rule 32(c). Correction of Briefs and Appendices.

If briefs, appendices, or other papers are illegible or are not in the form required by the federal rules or by this Court's local rules or standards when filed, counsel will be required to file corrected copies of the document. If the corrected copies are not submitted within the time allowed by the clerk, they must be accompanied by a motion to file out of time.

CITING JUDICIAL DISPOSITIONS

Local Rule 32.1. Citation of Unpublished Dispositions.

Citation of this Court's unpublished dispositions issued prior to January 1, 2007, in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case.

If a party believes, nevertheless, that an unpublished disposition of this Court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP 32.1(b) are met.

APPEAL CONFERENCES

Local Rule 33. Circuit Mediation Conferences.

All civil and agency cases in which all parties are represented by counsel on appeal will be reviewed by a circuit mediator after the filing of the docketing statements required by Local Rule 3(b). The circuit mediator will determine whether a mediation conference may assist either the Court or the parties. Counsel for a party may also request a conference if counsel believes it will be of assistance to the Court or the parties. Counsel's participation is required at any scheduled conference. Mediation conferences will generally be conducted by telephone but may be conducted in person in the discretion of a circuit mediator. Mediation conferences may be adjourned from time to time by a circuit mediator. Purposes of the mediation conference include:

(a) Jurisdictional review;
(b) Simplification, clarification, and reduction of issues;
(c) Discussion of settlement; and
(d) Consideration of any other matter relating to the efficient management and disposition of the appeal.

Although the time allowed for filing of briefs is not automatically tolled by proceedings under this local rule, if the parties wish to pursue, or are engaged in, settlement discussions, counsel for any party may move to extend the briefing schedule. The mediator, through the Clerk of the Court, may enter orders which control the course of proceedings and, upon agreement of the parties, dispose of the case.

Statements and comments made during all mediation conferences, and papers or electronic information generated during the process, are not included in Court files except to the extent disclosed by orders entered under this local rule. Information disclosed in the mediation process shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the mediation program participants. Confidentiality is required of all participants in the mediation proceedings. All statements, documents, and discussions in such proceedings shall be kept confidential. The mediator, attorneys, and other participants in the mediation shall not disclose

such statements, documents, or discussions without prior approval of the Standing Panel on Attorney Discipline. Any alleged violations of this rule shall be referred to the Court's Standing Panel on Attorney Discipline for a determination pursuant to Local Rule 46(g) of whether imposition of discipline is warranted. All proceedings before the Standing Panel on Attorney Discipline involving confidential information under this procedure shall be confidential.

ORAL ARGUMENT

Local Rule 34(a). Oral Argument; Pre-argument Review and Summary Disposition of Appeals; Statement Regarding the Need for Oral Argument.

In the interest of docket control and to expedite the final disposition of pending cases, the chief judge may designate a panel or panels to review any pending case at any time before argument for disposition under this rule.

In reviewing pending cases before argument, the panel will utilize the minimum standards set forth in FRAP 34(a)(2). If all of the judges of the panel to which a pending appeal has been referred conclude that oral argument is not to be allowed, they may make any appropriate disposition without oral argument including, but not limited to, affirmance or reversal.

Because any case may be decided without oral argument, all major arguments should be fully developed in the briefs. In furtherance of the disposition of pending cases under this rule, parties may include in their briefs at the conclusion of the argument a statement setting forth the reasons why, in their opinion, oral argument should be heard.

Local Rule 34(b). Informal Briefs.

Whenever the Court determines pursuant to Local Rule 22(a) that briefing is appropriate on an appeal in a non-capital case from the denial of a writ of habeas corpus or of a motion under 28 U.S.C. § 2255, or whenever any pro se appeal is filed from any other type of judgment or order, the clerk shall notify the appellant that appellant shall file, within 21 days after service of such notice, an informal brief, listing the specific issues and supporting facts and arguments raised on appeal. Appellee is permitted, but not required, to file an informal response brief within 14 days after service of appellant's informal brief, and appellant is permitted, but not required, to file an informal reply brief within 10 days after service of appellee's informal response brief. Appellant's informal brief and any informal response and reply briefs filed by the parties shall be considered, together with the record and other relevant documents, by the panel to which the proceeding has been referred. The Court will limit its review to the issues raised in the informal brief.

The informal brief may be submitted on a form provided by the clerk and shall provide the specific information required by the form. The parties need not limit their briefs solely to the form. An additional supporting memorandum may be attached if a party deems it necessary in order to address adequately the issues raised, but the informal brief and any supporting memorandum shall not exceed the length limitations established by FRAP 32(a)(7). It is unnecessary to attach record excerpts since the record is before the Court. It is not necessary to cite cases in an informal brief. Unless additional copies are requested by the Clerk, only the original informal brief must be filed with the Court and copies served on the other parties to the case.

Once an informal briefing schedule has been established the parties may file a formal brief only with the permission of the Court. The Court initially reviews cases that are informally briefed under its procedures set forth in Local Rule 34(a) pertaining to pre-argument review.

If the panel reviewing an informal brief submitted by an indigent pro se litigant determines that further briefing and possible oral argument would be of assistance, counsel will be appointed and

directed to file additional formal briefs. In any appeal that has been informally briefed, the Court may direct that additional briefs be filed prior to oral argument.

Local Rule 34(c). Court Sessions and Notification to Counsel.

The Court sits in Richmond, Virginia, to hear cases during six to eight separate argument weeks scheduled between September and June. The Court also sits at law schools within the Circuit and at other special argument sessions. The Court's oral argument schedule is available on the Court's Internet site, www.ca4.uscourts.gov.

The Court initially hears and decides cases in panels consisting of three judges with the Chief Judge or most senior active judge presiding. Each panel regularly hears oral argument in four cases each day during court week; additional cases are added as required.

Attorneys appearing for oral argument must register with the Clerk's Office on the morning of argument to learn of courtroom assignment, order of appearance, and allocation of oral argument time. Counsel not already a member of the Fourth Circuit bar will be admitted to practice before the Court at that time upon compliance with the provisions of Local Rule 46(b).

The Court generally convenes at 9:30 a.m., with the exception of the last day of the session, when it convenes at 8:30 a.m., and with the exception of en banc oral arguments, which begin at 9:00 a.m. Counsel will receive notification from the Clerk's Office of the starting time for each panel.

Preparation for the argument calendar begins in the Clerk's Office at least two months prior to argument. Upon receiving notice that a case has been tentatively assigned to an argument session, counsel must inform the clerk, within the time provided in the notice, of any conflict or other matter that would affect scheduling of the case for that session. After a case has been scheduled for argument, any motion that would affect the argument date must show good cause for the requested relief and that the relief could not have been requested within the period set by the Court for notice of conflicts. Continuance of an established oral argument date is not granted because of a prior professional commitment. Although a case will not be removed from the calendar because of a scheduling conflict by counsel after the notification of oral argument has been issued, the Court may direct another lawyer from the same firm to argue the appeal if counsel of record cannot be present.

Local Rule 34(d). Argument Time.

Briefs for the cases assigned to a hearing panel are distributed by the clerk to the judges on a hearing panel at the time the hearing panel assignments are made. The members of the Court hearing oral argument will have read the briefs before the hearing and therefore will be familiar with the case. In oral argument, counsel should emphasize the dispositive issues.

Since the appellant is allowed to open and close the argument, counsel for appellant should indicate at registration before oral argument how much time counsel wants to reserve for rebuttal. It is recommended that no more than two attorneys argue per side. Each side is normally allowed 20 minutes, even in consolidated cases, but counsel may not need the full time allotted or the Court may shorten or extend the time allotted. In social security disability cases, black lung cases, and labor cases where the primary issue is whether the agency's decision is supported by substantial evidence and in criminal cases where the primary issue involves the application of the sentencing guidelines, each side is limited to 15 minutes. In black lung cases in which the Director, Office of Workers' Compensation Programs, has been granted leave to file a separate brief, the Director will share argument time with whichever side the Director's brief supports.

If counsel believes that more time is needed for oral argument, a written motion setting forth the reasons for additional time and whether the other parties consent must be submitted well in advance of the hearing date. The Court may sua sponte extend the allotted time during the argument or it may terminate the argument whenever in its judgment further argument is unnecessary.

Local Rule 34(e). Motion to Submit on Briefs.

As soon as possible upon completion of the briefing schedule or within 10 days of tentative notification of oral argument, whichever is earlier, any party may file a motion to submit the case on the briefs without the necessity of oral argument. Such motions are not granted as a matter of course. A motion to submit on briefs should not be used to alleviate a scheduling conflict after the notification of oral argument has been issued.

I.O.P.-34.1. Calendar Assignments and Panel Composition.

The Clerk of Court maintains a list of mature cases available for oral argument and on a monthly basis merges those cases with a list of three-judge panels provided by a computer program designed to achieve total random selection.

The composition of each panel usually changes each day during court week except on those occasions where only one panel is sitting in a given geographical location. Every effort is made to assign cases for oral argument to judges who have had previous involvement with the case on appeal through random assignment to a preargument motion or prior appeal in the matter, but there is no guarantee that any of the judges who have previously been involved with an appeal will be assigned to a hearing panel. The varied assignment of judges to panels and the independent assignment of varied cases to panels is designed, insofar as practicable, to assure the opportunity for each judge to sit with all other judges an equal number of times, and to assure that both the appearance and the fact of presentation of particular types of cases to particular judges is avoided.

-34.2. Disposition Without Oral Argument.

A decision against oral argument must be unanimous, and if a case is decided without oral argument the decision on the merits generally will be unanimous also. Whenever at least one member of the review panel determines that oral argument would be of assistance, the panel notifies the clerk who places the case on the oral argument calendar.

-34.3. Audio Files of Oral Argument.

Audio files of oral arguments are made available on the Court's Internet site, without charge, by the next business day. Counsel are reminded that the following information should not be included in argument to the Court:

(A) Personal data protected by Fed. R. App. P. 25(a)(5):
- (1) social security and taxpayer identification numbers;
- (2) dates of birth;
- (3) names of minor children;
- (4) financial account numbers; and
- (5) home addresses in criminal cases.

(B) Criminal case information protected by the Judiciary's Privacy Policy for Electronic Case Files:
- (1) unexecuted summonses or warrants;
- (2) pretrial bail or presentence investigation reports;
- (3) statements of reasons in the judgment of conviction;
- (4) juvenile records;
- (5) identifying information about jurors or potential jurors;
- (6) financial affidavits filed under the Criminal Justice Act;
- (7) ex parte requests to authorize services under the Criminal Justice Act; and
- (8) sealed documents (e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation, or victim statements).

Any motion to seal argument must be filed on the public docket at least five days before oral argument, in accordance with Local Rule 25(c)(2). Audio files of sealed arguments will not be released absent an order of the Court unsealing the argument.

EN BANC DETERMINATION

Local Rule 35. En Banc Proceedings.

(a) Petition for Rehearing En Banc. A petition for rehearing en banc must be made at the same time, and in the same document, as a petition for rehearing. The request for en banc consideration shall be stated plainly in the title of the petition. Petitions for rehearing en banc will be distributed to all active judges of the Court, to senior judges who request distribution, and to any senior or visiting judge who may have heard and decided the appeal.

(b) Decision to Hear or Rehear a Case En Banc. A majority of the circuit judges who are in regular active service and who are not disqualified may grant a hearing or rehearing en banc. A poll on whether to rehear a case en banc may be requested, with or without a petition, by an active judge of the Court or by a senior or visiting judge who sat on the panel that decided the case originally. Unless a judge requests that a poll be taken on the petition, none will be taken. If no poll is requested, the panel's order on a petition for rehearing will bear the notation that no member of the Court requested a poll. If a poll is requested and hearing or rehearing en banc is denied, the order will reflect the vote of each participating judge. A judge who joins the Court after a petition has been submitted to the Court, and before an order has been entered, will be eligible to vote on the decision to hear or rehear a case en banc.

(c) Decision of Cases Heard or Reheard En Banc. A court en banc shall consist of all eligible, active and participating judges of the Court, except that any senior judge of the Court may (1) participate in en banc rehearing of a decision of a panel of which the judge was a member or (2) continue to participate in the decision of a case or controversy that was heard or reheard by the en banc court at a time when the judge was in regular active service. A judge who joins the Court after argument of a case to an en banc Court will not be eligible to participate in the decision of the case. A judge who joins the Court after submission of a case to an en banc Court without oral argument will participate in the decision of the case. Granting of rehearing en banc vacates the previous panel judgment and opinion; the rehearing is a review of the judgment or decision from which review is sought and not a review of the judgment of the panel.

(d) Additional Briefing for En Banc Hearing or Rehearing. If the Court grants hearing or rehearing en banc, and if a majority of the Court agrees additional briefing is desirable, the Court, on motion by a party or on its own initiative, may order full en banc briefing or supplemental en banc briefing addressing issues specified by the Court. If additional briefing is required, the Court's en banc briefing schedule will indicate whether full briefs or supplemental briefs must be filed and, where appropriate, the issue(s) to be addressed. As appropriate, full or supplemental en banc briefs should address (i) the necessity of securing or maintaining uniformity of the Court's decisions; (ii) whether the Court should revise existing circuit precedent; (iii) intervening precedent; and (iv) any other issue(s) identified by the Court in the briefing order.

(e) Reproduction Costs for Briefs and Appendices Required for En Banc Review. Each party will bear the initial cost of additional copies of its own briefs required by the Court for

en banc review. The party that requested the hearing or rehearing en banc will bear the initial cost of filing additional copies of the appendix or supplemental appendix required for en banc review. In the event that cross petitions for hearing or rehearing en banc are granted, the parties will share equally the initial cost of preparing additional copies of the appendix or supplemental appendix required for en banc review.

ENTRY OF JUDGMENT; NOTICE

Local Rule 36(a). Publication of Decisions.

Opinions delivered by the Court will be published only if the opinion satisfies one or more of the standards for publication:

i. It establishes, alters, modifies, clarifies, or explains a rule of law within this Circuit; or
ii. It involves a legal issue of continuing public interest; or
iii. It criticizes existing law; or
iv. It contains a historical review of a legal rule that is not duplicative; or
v. It resolves a conflict between panels of this Court, or creates a conflict with a decision in another circuit.

The Court will publish opinions only in cases that have been fully briefed and presented at oral argument. Opinions in such cases will be published if the author or a majority of the joining judges believes the opinion satisfies one or more of the standards for publication, and all members of the Court have acknowledged in writing their receipt of the proposed opinion. A judge may file a published opinion without obtaining all acknowledgments only if the opinion has been in circulation for ten days and an inquiry to the non-acknowledging judge's chambers has confirmed that the opinion was received.

Local Rule 36(b). Unpublished Dispositions; Opinion Distribution.

Unpublished opinions give counsel, the parties, and the lower court or agency a statement of the reasons for the decision. They may not recite all of the facts or background of the case and may simply adopt the reasoning of the lower court. Published and unpublished opinions are sent to the trial court or agency in which the case originated, to counsel for all parties in the case, and to litigants in the case not represented by counsel. Published and unpublished opinions are also posted on the Court's Web site each day and distributed in electronic form to subscribers to the Court's daily opinion lists. Published and unpublished opinions issued since January 1, 1996 are available free of charge at www.ca4.uscourts.gov.

Counsel may move for publication of an unpublished opinion, citing reasons. If such motion is granted, the unpublished opinion will be published without change in result.

I.O.P.-36.1.Opinion Preparation Assignments.

The custom of the Fourth Circuit is to reserve judgment at the conclusion of oral argument. A conference of the panel is held promptly after oral argument, usually immediately after the presentation of the case. Although a tentative decision may be reached at this conference, additional conferences are sometimes necessary. Opinion assignments are made by the Chief Judge on the basis of recommendations from the presiding judge of each panel on which the Chief Judge did not sit.

-36.2. Circulation of Opinions in Argued Cases.

Although one judge writes the opinion, every panel member is equally involved in the process of decision. An appeal may be heard and decided by two of the three judges assigned to a panel, when one judge becomes unavailable. If a panel is reduced to two and the two cannot agree, however, the

case will be reargued before a new three-judge panel which may or may not include prior panel members.

When a proposed opinion in an argued case is prepared and submitted to other panel members, copies are provided to the non-sitting judges, including the senior judges, and their comments are solicited. The opinion is then finalized. The Clerk's Office never receives advance notice of when a decision will be rendered, so counsel should not call for such information.

-36.3. Summary Opinions.

If all judges on a panel of the Court agree following oral argument that an opinion in a case would have no precedential value, and that summary disposition is otherwise appropriate, the Court may decide the appeal by summary opinion. A summary opinion identifies the decision appealed from, sets forth the Court's decision and the reason or reasons therefor, and resolves any outstanding motions in the case. It does not discuss the facts or elaborate on the Court's reasoning.

-36.4 Internet Citations in Opinions

Internet resources cited in the Court's opinions that can be saved in PDF format will be preserved by the opinion's author at the time of viewing and placed on the Court's docket as opinion attachments when the opinion is filed.

COSTS

Local Rule 39(a). Reproduction Costs.

The cost of producing and binding necessary copies of briefs and appendices in the form required by Fed. R. App. P. 32 shall be taxable as costs at a rate equal to actual cost, but not higher than 15 cents per page for each copy required for filing and service by Local Rules 30(b)(4) and 31(d) or by order of the Court.

Local Rule 39(b). Bill of Costs.

The verified bill of costs may be that of a party or counsel, and should be accompanied by the printer's itemized statement of charges. When costs are sought for or against the United States, counsel should cite the statutory authority relied upon. Taxation of costs will not be delayed by the filing of a petition for rehearing or other post-judgment motion. A late affidavit for costs must be accompanied by a motion for leave to file. The clerk rules on all bills of costs and objections in the first instance.

Local Rule 39(c). Recovery of Costs in the District Court.

The only costs generally taxable in the Court of Appeals are: (1) the docketing fee if the appellant is the prevailing party; and (2) the cost of printing or reproducing briefs and appendices, including exhibits.

Although some costs are "taxable" in the Court of Appeals, all costs are recoverable in the district court after issuance of the mandate. If the matter of costs has not been settled before issuance of the mandate, the clerk will send a supplemental "Bill of Costs" to the district court for inclusion in the mandate at a later date.

Various costs incidental to an appeal must be settled at the district court level. Among such items are: (1) the cost of the reporter's transcript; (2) the fee for filing the notice of appeal; (3) the fee for preparing and transmitting the record; and (4) the premiums paid for any required appeal bond. Application for recovery of these expenses by the successful party on appeal must be made in the district court, and should be made only after issuance of the mandate by the Court of Appeals. These costs, if erroneously applied for in the Court of Appeals, will be disallowed without prejudice to the right to reapply for them in the district court.

PETITION FOR PANEL REHEARING

Local Rule 40(a). Filing of Petition.

Although petitions for rehearing are filed in a great many cases, few are granted. Filing a petition solely for purposes of delay or in order merely to reargue the case is an abuse of privilege. Whenever a request for rehearing en banc is contained in a petition, such fact must be stated plainly on the cover of and in the title of the document. Only the original petition for rehearing or rehearing en banc is required unless additional copies are requested by the Clerk.

Local Rule 40(b). Statement of Purpose.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist:

i. A material factual or legal matter was overlooked in the decision.
ii. A change in the law occurred after the case was submitted and was overlooked by the panel.
iii. The opinion is in conflict with a decision of the United States Supreme Court, this Court, or another court of appeals and the conflict is not addressed in the opinion.
iv. The proceeding involves one or more questions of exceptional importance.

A petition should only be made to direct the Court's attention to one or more of the above situations. The points to be raised should be succinctly listed in counsel's statement of purpose.

Local Rule 40(c). Time Limits for Filing Petitions.

The Court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc. The Clerk's Office will deny as untimely any petition received in the Clerk's Office later than 45 days after entry of judgment in any civil case where the United States, or an agency or officer thereof is a party, or 14 days after the entry of judgment in any other case. The only grounds for an extension of time to file a petition, or to accept an untimely petition, are as follows:

i. the death or serious illness of counsel, or of a member of counsel's immediate family (or in the case of a party proceeding without counsel, the death or serious illness of the party or a member of the party's immediate family); or
ii. an extraordinary circumstance wholly beyond the control of counsel or of a party proceeding without counsel.

Petitions for rehearing and petitions for en banc rehearing from incarcerated persons proceeding without the assistance of counsel are deemed filed when they are delivered to prison or jail officials. All other such petitions are deemed filed only when received in the Clerk's Office.

Local Rule 40(d). Papers Filed After Denial of a Petition for Rehearing.

Except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the Office of the Clerk shall not receive motions or other papers requesting further relief in a case after the Court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

I.O.P.-40.1. Submission of Petitions for Rehearing to the Court.

The Clerk's Office will hold any petition for rehearing or petition for rehearing en banc until the time for filing all such petitions, or any extension thereof granted in the particular case, has run. Thereafter, all petitions for rehearing in the same case will be distributed to the Court simultaneously.

-40.2. Panel Rehearing.

The panel of judges who heard and decided the appeal will rule on the petition for rehearing. Such panel may include a senior circuit judge or a visiting judge sitting in the Fourth Circuit by designation.

If a petition for rehearing is granted, the original judgment and opinion of the Court are vacated and the case will be reheard before the original panel. The Court may direct the filing of additional briefs, or the parties may seek leave of Court to file additional briefs.

MANDATE: CONTENTS; ISSUANCE AND EFFECTIVE DATE; STAY

Local Rule 41. Motion for Stay of the Mandate.

A motion for stay of the issuance of the mandate shall not be granted simply upon request. Ordinarily the motion shall be denied unless there is a specific showing that it is not frivolous or filed merely for delay. A motion to stay the mandate pending the filing of a petition for certiorari must show that the certiorari petition would present a substantial question and set forth good cause for a stay. Stay requests are normally acted upon without a request for a response.

I.O.P.-41.1. Issuance of the Mandate.

On the date of issuance of the mandate, the Clerk of the Court will issue written notice to the parties and the clerk of the lower court that the judgment of the Court of Appeals takes effect that day. The trial court record will be returned to the clerk of that court once the mandate has issued.

-41.2. Petitions for Writs of Certiorari.

A petition for a writ of certiorari must be filed with the Supreme Court within 90 days of the entry of judgment in a criminal case or a civil case. The time for the petition does not run from the issuance of the mandate, but from the date of judgment which is also the opinion date. If a petition for rehearing or a petition for rehearing en banc is timely filed, the time runs from the date of denial of that petition. Counsel should consult the Rules of the Supreme Court for details on how to proceed with the petition.

The Rules of the Supreme Court do not require that the record accompany a petition for certiorari and the record will not be forwarded unless specifically requested by the petitioner or counsel. Requests to certify and transmit the record to the Supreme Court prior to action on the petition for a writ of certiorari are disfavored by the Supreme Court. The Clerk of the Supreme Court will request the record from the Court of Appeals when review of the record is desired by the Supreme Court prior to action on a petition for writ of certiorari or upon granting certiorari if the record has not been transmitted earlier. The same procedures are followed for Supreme Court review by certification pursuant to 28 U.S.C. § 1254(2).

If a case is remanded to the Court of Appeals from the Supreme Court, the case shall be reopened under the original docket number and the Court of Appeals may require additional briefs and oral argument, summarily dispose of the case, or take any other action consistent with the Supreme Court's opinion.

VOLUNTARY DISMISSAL

Local Rule 42. Voluntary Dismissals.

In civil cases, the stipulation of dismissal or motion for voluntary dismissal may be signed by counsel. In criminal cases, however, the agreement or motion must be signed or consented to by the individual party appellant personally or counsel must file a statement setting forth the basis for counsel's understanding that the appellant wishes to dismiss the appeal and the efforts made to obtain the appellant's written consent. Counsel must serve a copy of this statement on appellant.

CLERK'S DUTIES

Local Rule 45. Dismissals for Failure to Prosecute.

When an appellant in either a docketed or non-docketed appeal fails to comply with the Federal Rules of Appellate Procedure or the rules or directives of this Court, the clerk shall notify the appellant or, if appellant is represented by counsel, appellant's counsel that upon the expiration of 15 days from the date thereof the appeal will be dismissed for want of prosecution, unless prior to that date appellant remedies the default. Should the appellant fail to comply within said 15-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue the mandate. In no case shall the appellant be entitled to reinstate the case and remedy the default after the same shall have been dismissed under this rule, unless by order of this Court for good cause shown. The dismissal of an appeal shall not limit the authority of this Court, in an appropriate case, to take disciplinary action against defaulting counsel.

I.O.P.-45.1. Clerk's Office.

The Clerk's Office is located on the fifth floor of the United States Courthouse Annex in Richmond, Virginia, and is open from 8:30 a.m. to 5:00 p.m. every weekday, except federal holidays. All correspondence concerning cases pending before the Court should be addressed to:

Clerk, United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517
Telephone 804/916-2700

-45.2. Public Information.

The Court's opinions, rules, procedures, forms, and argument calendar are available at www.ca4.uscourts.gov. Docket information is also available at www.ca4.uscourts.gov to users with a log-in name and password for the Judiciary's PACER system (Public Access to Court Electronic Records). Information concerning the status of appeals and the operation of rules and procedures may be obtained from the Clerk's Office by telephone inquiry. Matters of public record may be reviewed upon request at the Clerk's Office and case documents may be transmitted to the district court for review by counsel upon proper application to the Clerk's Office.

ATTORNEYS

Local Rule 46(a). Legal Assistance to Indigents by Law Students.

An eligible law student with the written consent of an indigent and the attorney of record may appear in this Court on behalf of that indigent in any case. An eligible law student with the written consent of the United States Attorney or authorized representative may also appear in this Court on behalf of the United States in any case. An eligible law student with the written consent of the State Attorney General or authorized representative may also appear in this Court on behalf of that state in any case. In each case, the written consent shall be filed with the clerk.

An eligible law student may assist in the preparation of briefs and other documents to be filed in this Court, but such briefs or documents must be signed by the attorney of record. The student may also participate in oral argument with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of that work. The attorney should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.

In order to make an appearance pursuant to this rule, the law student must:

1. Be duly enrolled in a law school approved by the American Bar Association;
2. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;
3. Be certified by the dean of the student's law school as being of good character and competent legal ability which certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time by mailing notice to the clerk or by termination by this Court without notice of hearing and without any showing of cause;
4. Be introduced to the Court by an attorney admitted to practice before this Court;
5. Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require;
6. Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility or Rules of Professional Conduct in force in the state in which the student's law school is located.

Local Rule 46(b). Admission to Practice.

Only attorneys admitted to the bar of this Court may practice before the Court. An attorney may be named on a brief filed in this Court without being admitted to the bar of the Fourth Circuit, provided that at least one lawyer admitted to practice in this Court also appears on the brief. Any other document submitted by an attorney who is not a member of the bar of the Fourth Circuit will be accepted for filing conditioned on his or her qualifying for membership within a reasonable time.

Each applicant for admission to the bar of this Court shall file with the clerk an application on the form approved by the Court and furnished by the clerk. Thereafter, upon written or oral motion of a member of the bar of the Court, the Court will act upon the application. A qualified attorney may be admitted upon personal appearance in open court. It is not necessary that an applicant appear in open court for the purpose of being admitted unless the Court shall otherwise order.

The requisite $228 fee must accompany the application, but attorneys appointed by the Court to represent a party in forma pauperis, counsel for the United States and any agency thereof who has a case pending before this Court, and law clerks to the judges of the Court and to the district judges, magistrate judges, and bankruptcy judges within this Circuit shall be admitted to the bar of this

Court without the payment of an admission fee. The clerk shall credit $188 of each $228 fee to the Judiciary's fee account and designate the remaining $40 for deposit to a fund maintained by the Court for the benefit of the bench and bar in the administration of justice.

A certificate indicating that an attorney has been admitted to practice before the Fourth Circuit will be sent to counsel by mail after admission.

Local Rule 46(c). Appearance of Counsel; Withdrawal; Substitutions.

Each attorney of record must file a written appearance with the clerk within 14 days after the appeal is docketed or after being retained or appointed. At the time of docketing, the clerk will send to each counsel or party in the trial court an "appearance of counsel" form. This form should be filled out and returned to the Clerk of the Fourth Circuit within 14 days. Thereafter, the Court will send correspondence, notices of oral argument, and copies of final decisions only to those attorneys who have filed their appearance forms. This form does not affect the attorney information listed on opinions, as that information is drawn from the names listed on the principal briefs.

Once an appearance in an appeal has been filed, an attorney may not withdraw from representation without notice to the party he or she is representing and consent of the Court. A motion to withdraw should state fully the reason for the request. Substitution of counsel of record can be accomplished by submitting a counsel of record form or written appearance for new counsel along with existing counsel's motion to withdraw or strike appearance.

Local Rule 46(d). Appointment of Counsel.

In any appeal in which appointment of counsel is mandated by section (a)(1) of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1), counsel is appointed upon the docketing of the appeal without prior notice to the attorney who represented the indigent in the case below. The duty of counsel appointed under the CJA extends through advising an unsuccessful appellant in writing of the right to seek review in the Supreme Court. If the appellant requests in writing that a petition for a writ of certiorari be filed and in counsel's considered judgment there are grounds for seeking Supreme Court review, counsel shall file such a petition. If appellant requests that a petition for a writ of certiorari be filed but counsel believes that such a petition would be frivolous, counsel may file a motion to withdraw with the Court of Appeals. The motion must reflect that a copy was served on the client and that the client was informed of the right to file a response to the motion within seven days. The Clerk will hold the motion after filing for fifteen days before submitting it to the Court to allow time for appellant's response, if any, to be received.

Assignment of counsel is discretionary in other indigent cases. Therefore, such cases receive a preliminary review before a decision is made regarding appointment of counsel. In assigning counsel, the Court may direct counsel to brief a particular issue, but counsel is free to address any additional issues which appear to be meritorious.

Payment of counsel appointed under the CJA is governed by 18 U.S.C. § 3006A(d) and this Circuit's Plan in Implementation of the Criminal Justice Act. Unless compensation for legal services becomes available to assigned counsel by statute, the Court will pay counsel assigned for appellate representation not covered by the CJA a maximum fee of $750 plus expenses from the Attorney Admission Fund.

To receive payment from the Court, court-appointed or court-assigned counsel in all cases must submit to the Clerk's Office an itemized statement of expenses, with receipts, within sixty days of final disposition of the case. Depending upon the course of the case, this may be sixty days from (1) the date of judgment, (2) dismissal of the appeal, or (3) denial of a petition for rehearing. Before the expiration of the sixty-day time period the Court, for good cause shown, may grant counsel an extension of time to file the application for compensation and reimbursement. If court-appointed

counsel files a petition for writ of certiorari with the Supreme Court, the 60-day period for applying for compensation and reimbursement runs from the date of filing the petition for writ of certiorari.

Local Rule 46(e). Attorney's Fees and Expenses.

The Court may award attorney's fees and expenses whenever authorized by statute. Any application for an award must include a reference to the statutory basis for the request and a detailed itemization of the amounts requested. Court-appointed counsel may apply for an award of fees and expenses, but any award by the Court is in lieu of the regular appointment fees provided by the Court. In certain agency cases, counsel may submit the standard government form for fees and expenses provided by the agency for approval by the Court.

Local Rule 46(f). Proceeding Pro Se.

An individual may proceed without the aid of counsel, but should so inform the Court at the earliest possible time. In any pro se appeal, the clerk shall notify the parties that they shall file informal briefs as provided by Local Rule 34(b). The Court will limit its review to the issues raised in the informal briefs and will consider the need for the appointment of counsel when reviewing the appeal under Local Rule 34(a). Cases involving pro se litigants are ordinarily not scheduled for oral argument.

Local Rule 46(g). Rules of Disciplinary Enforcement.

(1) A member of the bar of this Court may be disciplined by this Court as a result of
   (a) Conviction in any court of the United States, the District of Columbia, or any state, territory or commonwealth of the United States, of any felony or of any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, or theft;
   (b) Imposition of discipline by any other court of whose bar the attorney is a member, or an attorney's disbarment by consent or resignation from the bar of such court while an investigation into allegations of misconduct is pending;
   (c) Conduct with respect to this Court which violates the rules of professional conduct or responsibility in effect in the state or other jurisdiction in which the attorney maintains his or her principal office, the Federal Rules of Appellate Procedure, the local rules of this Court, or orders or other instructions of this Court; or
   (d) Any other conduct unbecoming a member of the bar of this Court.

(2) Discipline may consist of disbarment, suspension from practice before this Court, monetary sanction, removal from the roster of attorneys eligible for appointment as Court-appointed counsel, reprimand, or any other sanction that the Court may deem appropriate. Disbarment is the presumed discipline for conviction of a crime specified in paragraph (1)(a) above. The identical discipline imposed by another court is presumed appropriate for discipline taken as a result of that other court's action pursuant to paragraph (1)(b). A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client.

(3) The clerk reviews reports received from other courts concerning discipline imposed on members of the bar of this Court. He refers to the Court all disbarments, suspensions, resignations during the pendency of misconduct investigations, and other actions sufficient to cast doubt upon the member's continuing qualification to practice before this Court.

(4) The clerk issues a notice to show cause why a member of the bar shall not be disciplined by this Court upon receipt of official notification of an attorney's conviction of a crime specified in paragraph (1)(a) or of the imposition of discipline by another court referred to this Court pursuant to paragraph (3) above, or upon the Court's determination that cause may exist for discipline pursuant to paragraphs (1)(c) or (1)(d). Such notice is sent by certified mail,

directs that a response be filed within 30 days of the date of the notice, and directs that the attorney complete and return to the clerk within that time a declaration of the names and addresses of other bars to which he or she is admitted, using the form supplied by the clerk, whether or not the attorney chooses otherwise to respond to the notice. The clerk also appends a copy of Local Rule 46(g).

(5) Upon receiving official notification that a member of the bar has been convicted of a crime specified in paragraph (1)(a), the clerk automatically will issue an order suspending the attorney's privilege to practice before this Court pending the Court's determination of appropriate discipline.

(6) An attorney to whom a notice to show cause has been sent may consent to disbarment, by filing with the clerk an affidavit stating that the attorney desires to consent to disbarment and that:

(a) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(b) The attorney is aware that there is a presently pending proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(c) The attorney acknowledges that the material facts so alleged are true; and

(d) The attorney so consents because the attorney knows that he or she cannot successfully defend himself or herself.

The order disbarring the attorney on consent is a matter of public record. However, the affidavit will not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(7) If the attorney fails to respond to the notice within 30 days, or such other time as the Court shall allow, the clerk enters an order imposing the presumptive discipline. If no presumptive discipline is specified for the conduct, the clerk notifies the Court of the attorney's non-response and the Court takes such action as it deems appropriate.

(8) All matters pertaining to discipline of attorneys are submitted to the Court's Standing Panel on Attorney Discipline, which consists of three active circuit judges, each of whom is appointed by the Chief Judge to serve on the Panel for a three-year term. The initial members of the Standing Panel are appointed for terms of one, two, and three years so that the Panel members' terms are staggered for continuity of decision making. If any member of the Standing Panel is unable to hear a particular matter, the clerk randomly designates another active circuit judge to the Panel for the purpose of disposing of that matter.

(9) The Standing Panel considers all materials submitted by an attorney to whom notice to show cause has issued. The Panel may request further information from a court that has previously imposed discipline on the attorney, or from its disciplinary agency. A copy of any such information is made available to the attorney or to his or her counsel. Should an attorney request a hearing on the matter it will be heard by the Standing Panel at a time and place of its choosing.

(10) The Court may at any time appoint counsel to investigate or prosecute a disciplinary matter, or to represent an indigent attorney instructed to show cause. The Court prefers to appoint as prosecuting counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. However, if the state disciplinary agency declines appointment, or the Court deems other counsel more appropriate, it may appoint any other member of the bar as prosecuting counsel. Counsel appointed either for

prosecution or defense will be compensated for his or her services according to the Court's plan for appointment of counsel in criminal cases, from the attorney admission fund.

(11) The Court's order imposing discipline will set forth the nature of the discipline imposed; if disbarment or suspension from practice before the Court, the terms upon which reinstatement will occur or be considered by the Court; and any instructions to the clerk concerning the notification of the Court's action to be given to other courts or official bodies.

(12) The clerk is responsible for

(a) Automatically initiating show cause proceedings when official notice of an attorney's conviction of a crime specified in paragraph (1)(a) or discipline by another court pursuant to paragraph (3) is brought to his or her attention;

(b) Bringing to the attention of the Standing Panel instances of violations by members of the bar of this Court of the Federal Rules of Appellate Procedure, this Court's local rules or this Court's orders or other instructions that may warrant discipline;

(c) Obtaining declarations of the names and addresses of other bars of which an attorney possibly subject to discipline by this Court may be a member; and

(d) Unless directed otherwise by the Court, within 10 days of the imposition of discipline upon a member of the bar of this Court, notifying all other courts of those bars the attorney reports that he or she is a member, and the American Bar Association's National Disciplinary Data Bank, of the Court's action, enclosing a certified copy of the Court's order.

LOCAL RULES BY COURTS OF APPEALS

Local Rule 47(a). Procedures for Adoption of Local Rules and Internal Operating Procedures.

Following tentative approval of an amendment to its local rules or internal operating procedures, and consultation with its Advisory Committee on Rules and Procedures, the Court of Appeals will provide public notice of the proposed amendment and an opportunity for comment.

The Court will set a period for comment for each proposed amendment, based upon the urgency of the matter involved. If the Court determines that there is an immediate need for a rule, the Court may provide that an amendment take immediate effect, and promptly thereafter afford notice and opportunity for comment.

Notice of a proposed amendment will be provided by distribution of the proposed change to all district judges, bankruptcy judges, magistrate judges, district and bankruptcy clerks, United States Attorneys, and state bar associations within the Circuit. Notice will also be sent to all legal newspapers and bar journals within the Circuit. Such notice shall include the text of a proposed amendment, unless it is lengthy. If the amendment is lengthy, the notice will describe the purpose and effect of the proposed amendment, and advise interested parties to obtain copies of the text of the proposed amendment from the clerk. Any person or organization requesting routine notice of proposed amendments to the Court's rules and internal operating procedures may, by letter to the clerk, be placed on the mailing list for such proposed changes.

All comments will be addressed to the Clerk of the Court of Appeals. If comments are received, they will be circulated to all members of the Court prior to the effective date of the proposed amendment, unless the amendment was given immediate effect.

Local Rule 47(b). Advisory Committee on Rules and Procedures.

The Court's Advisory Committee on Rules and Procedures shall consist of five attorneys, one from each of the states constituting the Fourth Circuit.

The members shall be appointed by the Chief Judge of the Circuit for three-year terms. The terms shall be staggered, so that no more than two members' terms expire in any year. No person may serve more than two full three-year terms.

The Chief Judge of the Circuit shall designate one of the members to serve as chair of the Committee. The clerk shall serve as the Court's principal liaison with the Committee.

The Committee shall study the Court's local rules and internal operating procedures, make recommendations concerning them, and advise the Court concerning all proposed changes to them.

I.O.P.-47.1. Judicial Conference.

(A) There shall be held pursuant to 28 U.S.C. § 333 a conference of all the circuit and district judges, all bankruptcy judges and all full-time magistrate judges of the Circuit for the purpose of considering the business of the courts, advising means of improving the administration of justice within such Circuit, and discussion of ideas with respect to the administration of justice. It shall be the duty of every judge of the Circuit in active service and every full-time magistrate judge to attend such conference.

(B) The first day of the conference shall be devoted to a session for the judges alone, in which there shall be discussed matters affecting the state of the dockets and the administration of justice in their respective districts.

(C) Members of the bar to be designated, as hereafter set forth, shall be members of the conference. Such members, except members emeritus, shall participate in the conference discussions and deliberations on the second and third days.

(D) Members of the conference from the bar shall be as provided in I.O.P. 47.2 as approved by the active circuit judges sitting from time to time in administrative session.

(E) The Circuit Executive of this Court shall be the secretary of the conference, and shall make and preserve an accurate record of its proceedings.

(F) Each member of the bar designated as a member of the conference shall pay a membership fee in an amount fixed by the Court of Appeals, to be applied to the payment of the expenses of the conference as approved by the Chief Judge of the Circuit. The payment of the membership fee shall be a condition to retention of conference membership. The Chief Judge is entitled to excuse payment of such fee in the proper circumstances.

-47.2. Membership in the Judicial Conference of the Circuit.

There shall be four types of members of the conference: ex officio members, nominees, permanent members, and members emeritus.

(A) **Ex officio members.**

(1) The Attorney General of the United States, or designee.

(2) The presidents of the state bar associations of the states of the Circuit. When two bar associations in the same state are both recognized under this rule, the president of each shall be entitled to attend, and the maximum number of members of the conference from the bar, from any state, under this provision, shall be limited to two. As long as there is only one state bar association in Maryland, the Bar Association of Baltimore City may be treated as a state bar association under this provision

(3) One representative of the federal bar association elected to the Federal Bar Council from the Fourth Circuit, each conference year, on a rotational basis.

(4) All United States Attorneys in the Circuit.

(5) All Federal Public Defenders in the Circuit.
(6) All Community Defenders in the Circuit.
(7) All Chief Justices of the courts of last resort of the states comprising this Circuit.
(8) All Attorneys General of the states comprising this Circuit.
(9) The Chief Judge of the United States Court of Appeals for the Armed Forces.
(10) The Chief Judge of the United States Tax Court.
(11) One representative of each accredited law school within the Circuit.

(B) **Members designated by judges.**

(1) **Nominees.**

Lawyers who are not permanent members of the conference as set forth under (B)(2) below are invited by the Chief Judge as guests of a scheduled conference upon nomination by an active or senior circuit or district judge.

(a) Each active or senior circuit judge or district judge may designate one nominee for invitation to the conference. For the first conference occurring after the 2013 conference only, a judge may reinvite up to two nominees whom the judge has previously invited, but who have not yet become members, and the judge may also extend an invitation to one new nominee.

(b) Each new circuit or district judge attending his or her first two conferences as a judge may designate three nominees for invitation to the conference.

(c) Each Program Committee Chair may designate two nominees for invitation to the conference.

(2) **Permanent members.**

(a) By attending two conferences as a nominee under (B)(1) above, a lawyer shall become a permanent member of the conference, entitled to attend future conferences. In order to retain such permanent member status, a permanent member must timely pay all membership fees in the amount fixed for permanent membership.

(b) A former or retired circuit or district judge of the Circuit shall be a permanent member of the conference, entitled for life to attend all conferences.

(3) **Members emeritus.**

A permanent member for ten years or more shall become a member emeritus upon electing to assume member emeritus status and properly notifying the conference secretary of such decision. In order to retain member emeritus status, a member emeritus must timely pay all membership fees in the amount fixed for emeritus membership. A member emeritus will not be invited to attend future conferences, except as a nominee under (B)(1) above. A member emeritus may be reinstated as a permanent member by designation of the Chief Judge for good cause shown, or by again qualifying for permanent membership under (B)(2) above.