

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NOTICE OF CONFORMING AMENDMENTS TO
LOCAL RULES 3(a), 15(a), 21(b), 21(c), & 24

PLEASE TAKE NOTICE that the Court intends to amend Local Rules 3(a), 15(a), 21(b), 21(c), and 24 to conform to amendments to the Court of Appeals Miscellaneous Fee Schedule adopted by the United States Judicial Conference and scheduled to take effect November 1, 2003.

In conformance with amendment of the Court of Appeals Miscellaneous Fee Schedule, the amendments to Local Rules 3(a), 15(a), 21(b), 21(c), and 24 reflect the increase in the fee for docketing a case on appeal or review, or for docketing any other proceeding in the Court of Appeals, from \$100 to \$250.

The conforming amendments will take effect on November 1, 2003. Comments may be submitted on or before October 31, 2003, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

October 9, 2003

Date

/s/ Patricia S. Connor

Clerk

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 ~~\$105.00~~ **\$255**, which includes a ~~\$5.00~~ filing fee for the notice of appeal and a ~~\$100.00~~ **\$250** fee for docketing the appeal in this Court.

Local Rule 15(a). Docketing Fee.

Upon filing a petition for review of an agency order, petitioner shall pay the prescribed docketing fee of ~~\$100~~ **\$250**, payable to the Clerk, U.S. Court of Appeals, or submit a properly executed application for leave to proceed in forma pauperis.

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 ~~\$100~~ **\$250** 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 and Other Entities with a Direct Financial Interest in Litigation statements with the petition and answer. See FRAP 26.1, Local Rule 26.1, and Form A.

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 ~~\$100~~ **\$250** 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 ~~\$100~~ **\$250** 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 \$100 \$250 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 24. Prisoner Appeals

(a) Payment of Fees and Costs Required. A prisoner appealing a judgment in a civil action must pay in full the \$105 \$255 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 \$105 \$255 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.