

ADOPTED 07/15/2022

Briefs and appendices filed under briefing orders issued on or after 07/15/2022 must comply with [Fourth Circuit Appendix Pagination & Brief Citation Guide](#).

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ADOPTION OF LOCAL RULE 28(g) AMENDMENT OF LOCAL RULES 25(a) & (b), 30(b) & 31(d) AMENDMENT OF INTERNAL OPERATING PROCEDURES 47.1 & 47.2

PLEASE TAKE NOTICE that the Court intends to adopt Local Rule 28(g); amend Local Rules 25(a) & (b), 30(b) & 31(d); and amend Internal Operating Procedures (I.O.P.s) 47.1 & 47.2. The principal changes are summarized below:

- **Adoption of Local Rule 28(g). Citations to the Appendix.**

The Court is implementing a “Citelinks” utility within the Judiciary’s CM/ECF system that hyperlinks appendix citations in the briefs to the cited page of the appendix. The Citelinks functionality requires that counsel paginate the appendix using Bates page numbering and a standard prefix and that citations to the appendix in the brief use the same prefix. Citelinks leaves the official filing in PACER unchanged but creates hyperlinks in copies of the briefs and appendices used by the Court.

To implement this functionality, new Local Rule 28(g) requires that pagination of the appendix and citations to the appendix in the brief follow the [Fourth Circuit Appendix Pagination & Brief Citation Guide](#). A joint appendix is paginated and cited with a JA or J.A. prefix. A supplemental appendix is paginated and cited with an SA or S.A. prefix.

- **Amendment of Local Rule 25(a). Electronic Case Filing System.**

The requirement that pro se litigants file a motion for electronic filing is eliminated from Local Rule 25(a)(1) & (2). Approval of the litigant’s electronic filing application is required as part of the registration process, making a separate motion unnecessary.

Former 25(a)(1)(C)’s procedure for adopting the electronic administrative record as the appendix in an agency case is eliminated. The agency will continue to file the administrative record in electronic form if available. Rather than adopting the administrative record by linking to it, however, the petitioner will download the administrative record, add a joint appendix cover page and table of contents, paginate the joint appendix using the Bates numbering and formatting required by the [Fourth Circuit Appendix Pagination & Brief Citation Guide](#), and file it as a joint appendix. Citations in the parties’ briefs must be to the joint appendix (JA or J.A.) rather than to the administrative record.

The provision at former 25(a)(1)(D) exempting cases proceeding under *Anders v. California*, 386 U.S. 738 (1967), from the appendix requirement is eliminated. Briefs and appendices prepared in accordance with the [Fourth Circuit Appendix Pagination & Brief Citation Guide](#) will now be required in *Anders* cases.

- **Amendment of Local Rule 25(b). Use of Email or Facsimile; Service.**

Email is added as a filing method that may be authorized by the clerk’s office for use in emergency situations. Documents filed by email or facsimile must be served outside

the CM/ECF system in accordance with FRAP 25(c), and proof of service is required in accordance with FRAP 25(d).

- **Amendment of Local Rule 30(b). Appendix Contents; Pagination; Number of Copies.**

New subsection (b)(4) requires numbering of appendix pages using the Bates numbering feature of the software used to convert the document to PDF and the format required by the [Fourth Circuit Appendix Pagination & Brief Citation Guide](#).

“Unless otherwise directed by the Court,” is added at subsection (b)(5) to clarify that the Court may modify the requirement to file one paper copy of the appendix with the electronic copy.

- **Amendment of Local Rule 31(d). Number of Copies.**

“Unless otherwise directed by the Court,” is added at subsection (d)(1) to clarify that the Court may modify the requirement to file one paper copy of the brief with the electronic copy.

- **Amendment of I.O.P.-47.1. Judicial Conference.**

Clarification is added that bankruptcy judges on recall and part-time magistrate judges may attend the Judicial Conference but are not required to do so.

- **Amendment of I.O.P.-47.2. Membership in the Judicial Conference of the Circuit.**

The list of Ex Officio members has been updated and renumbered. Provisions have been added to permit one attendance under the outreach scholarship program to qualify toward conference membership; to permit circuit and district judges to designate up to two nominees for invitation to the first conference occurring after the 2018 conference; to provide for annual vs. biennial dues assessment; and to address the effect of suspension or disbarment of any permanent member or member emeritus from any bar of which the lawyer is a member. Language has been removed pertaining to changes made in the 2014 amendment that is no longer applicable.

These changes will take effect July 15, 2022, subject to revision in light of comments received. Interested parties may submit comments on or before July 8, 2022, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219
Or via email to:
rulecomments@ca4.uscourts.gov

The Fourth Circuit Rulebook is available [here](#)

May 27, 2022

Date



Clerk

Local Rule 28(g). Citations to the Appendix.

Citations in the brief to a joint or supplemental appendix must be in the format required by the Fourth Circuit Appendix Pagination & Brief Citation Guide.

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~~any 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 any required 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.** Formal appendices must be filed and served electronically. 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~~any 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 any required 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~~D) **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 and pro se parties who wish to file electronically in a pending case 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 [Email or Facsimile](#); ~~Equipment~~; Service.

- (1) **Use of [Email or Facsimile](#) ~~Equipment~~.** Documents may be transmitted for filing by use of [email or facsimile](#) ~~transmission equipment~~ only when an emergency situation exists and advance permission has been obtained [from the clerk's office](#) ~~to use the clerk's office facsimile equipment~~. Several printing services in Richmond will accept documents by [email or facsimile](#) for [in-person](#) filing with the Court. Their telephone numbers may be obtained from the clerk's office. When a ~~facsimile~~ copy is filed [by email or facsimile](#), the original, signed document need not be filed.
- (2) **Service.** [Documents filed by email or facsimile must be served outside the CM/ECF system in accordance with FRAP 25\(c\), and proof of service is required in accordance with FRAP 25\(d\).](#) 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 30(b). Appendix Contents; [Pagination](#); 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) **[Pagination:](#)** [The pages of a joint or supplemental appendix must be numbered using the automated Bates numbering feature of the software used to convert the document to PDF and the format required by the \[Fourth Circuit Appendix Pagination & Brief Citation Guide\]\(#\).](#)

- (45) **Number of Copies:**

- (A) **Filing:** Unless otherwise directed by the Court, one~~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 31(d). Number of Copies.

- (1) **Filing:** Unless otherwise directed by the Court, one~~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.

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, district, magistrate and bankruptcy judges of the Circuit, in active service, ~~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, and advising means of improving the administration of justice within ~~such~~ the 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. Bankruptcy judges on recall, and part-time magistrate judges, may attend, but are not required to do so.
- (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 dues 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 dues shall be a condition to retention of conference membership. The Chief Judge is entitled to excuse payment of such ~~fees~~ dues in the proper circumstances.

I.O.P.-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 Solicitor General of the United States, or designee.

~~(2-3)~~ 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.

~~(34)~~ One representative of the federal bar association elected to the Federal Bar Council from the Fourth Circuit, each conference year, on a rotational basis.

~~(45)~~ All United States Attorneys in the Circuit.

~~(56)~~ 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 Chief Justices of the courts of last resort of Federally-recognized Native American Nations within the Circuit.

~~(89)~~ All Attorneys General of the states comprising this Circuit.

~~(910)~~ The Chief Judge of the United States Court of Appeals for the Armed Forces.

~~(1011)~~ The Chief Judge of the United States Tax Court.

~~(1112)~~ One representative of each ABA-accredited law school within the Circuit.

(13) One representative of the Clerks of Court of 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. Any one attendance under the outreach scholarship program qualifies toward permanent conference membership.

(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.~~ For the first conference occurring after the 2018 conference, a judge may designate one additional nominee for invitation to the conference.

(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~~ annual dues 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~~-dues 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 Circuit Judge for good cause shown, or by again qualifying for permanent membership under (B)(2)(a) above.

(C) Effect of suspension or disbarment.

(1) Suspension for misconduct from the bar of any state or court shall result in dismissal from the conference, following receipt of such notice, at the sole discretion of the Chief Circuit Judge. Upon being reinstated to good standing with the bar, a former member may be readmitted to membership by again qualifying for permanent membership under (B)(2)(a) above.

(2) Disbarment from the bar of any state or court shall result in permanent dismissal from the conference, following receipt of such notice, at the sole discretion of the Chief Circuit Judge.