

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Gino J. Agnello, Clerk

CHANGES TO FEDERAL RULES THAT REQUIRE AMENDMENT OF TIME
DEADLINES IN CIRCUIT RULES AND OPERATING PROCEDURES

REQUEST FOR COMMENTS AND NOTICE OF AMENDMENT

On March 26, 2009, the Supreme Court approved changes to Federal Rule of Civil Procedure 6 and Federal Rule of Criminal Procedure 45, as well as changes to similar appellate and bankruptcy rules that address the method in which time is calculated in the federal courts. On May 7, 2009, the Statutory Time Period Technical Amendments Act of 2009 was enacted (Pub. L. No. 111-016). The law adjusts the time periods in 28 statutes that are impacted by the upcoming federal rule changes. Both the statutory and rules changes will take effect on the same day, December 1, 2009.

Pursuant to 28 U.S.C. § 2071(e), § 2077(b) the court has determined that there is an immediate need to amend Circuit Rules 10(a), 10 (d)(2), 22 (f), 22.2(d), 26, 34 and 51(c) to take account of these changes. Also United States Court of Appeals for the Seventh Circuit Operating Procedures 1(c)1, 5(a), 5(b),5(d)(2), 9 (c), 9(e), 9(g) and 9(j) will be changed. A copy of the amended local rules and operating procedures is attached. Additions are indicated in *italic* print.

The court hereby invites public comments on these amendments. Comments should be submitted by December 5, 2009, and addressed to:

Office of the Clerk
U.S. Court of Appeals for the Seventh Circuit
United States Courthouse
219 South Dearborn Street, Suite 2700
Chicago, Illinois 60604

November 5, 2009

Gino J. Agnello
Clerk of Court

CIRCUIT RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(As amended December 1, 2009)

Circuit Rule 10. Preparation of Record in District Court Appeals

(a) *Record Preparation Duties.* The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (with the exceptions listed below). The transcript of a deposition is "filed" within the meaning of this rule, and an exhibit is "received or offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat deposition transcripts or exhibits as part of the record. These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure that exhibits and transcripts to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within ~~ten days~~ *14 days* after the filing of the notice of appeal. The following items will not be included in a record unless specifically requested by a party by item and date of filing within ~~ten days~~ *14 days* after the notice of appeal is filed or unless specifically ordered by this court:

- briefs and memoranda,
- notices of filings,
- subpoenas,
- summonses,
- motions to extend time,
- affidavits and admissions of service and mailing,
- notices of settings,
- depositions and notices, and
- jury lists.

(d) *Ordering Transcripts in Criminal Cases.*

(2) *Transcripts in Other Criminal Cases.* ~~Within 10 days~~ *Within 14 days* after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel shall deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

Circuit Rule 22. Death Penalty Cases

(f) Panel or En Banc Rehearing.

(1) Any active judge of the court may, within 14 days after filing of the opinion, notify the panel and the clerk to hold issuance of the mandate and poll the court for en banc consideration. If the mandate has already issued, it may be recalled by the panel or by the en banc court. ~~All judges are to vote within 10 days~~ *All judges are to vote within 14 days* after the request for the vote on en banc consideration. A judge unable by reason of illness or absence to act within the time allowed by this rule may extend the time to act for a reasonable period upon written notice to the other judges. Unless within 30 days after the petition for rehearing, or the answer to the petition (if one has been requested), is filed, a majority of the panel, or of the judges in active service, has voted to grant rehearing or rehearing en banc, the court will enter an order denying the petition.

Circuit Rule 22.2. Successive Petitions for Collateral Review

(d) The applicant may file a reply memorandum ~~within 10 days~~ *within 14 days* of the response, after which the request will be submitted to a panel of the court for decision.

Circuit Rule 26. Extensions of Time to File Briefs

Extensions of time to file briefs are not favored. A request for an extension of time shall be in the form of a motion supported by affidavit. The date the brief is due shall be stated in the motion. The affidavit must disclose facts which establish to the satisfaction of the court that with due diligence, and giving priority to the preparation of the brief, it will not be possible to file the brief on time.

In addition, if the time for filing the brief has been previously extended, the affidavit shall set forth the filing date of any prior motions and the court's ruling thereon. All factual statements required by this rule shall be set forth with specificity. Generalities, such as that the purpose of the motion is not for delay, or that counsel is too busy will not be sufficient.

Grounds that may merit consideration are:

(1) Engagement in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth (a) a description of action taken on a request for continuance or deferment of other litigation; (b) an explanation of the reasons why other litigation should receive priority over the case in which the petition is filed; and (c) other relevant circumstances including why other

associated counsel cannot either prepare the brief for filing or, in the alternative, relieve the movant's counsel of the other litigation claimed as a ground for extension.

(2) The matter under appeal is so complex that an adequate brief cannot reasonably be prepared by the date the brief is due, provided that the complexity is factually demonstrated in the affidavit.

(3) Extreme hardship to counsel will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

The motion shall be filed ~~at least five days~~ *at least seven days* before the brief is due, unless it is made to appear in the motion that the facts which are the basis of the motion did not exist earlier or were not, or with due diligence could not have been, known earlier to the movant's counsel. Notice of the fact that an extension will be sought must be given to the opposing counsel together with a copy of the motion prior to the filing thereof.

Circuit Rule 34. Oral Argument

(a) *Notice to Clerk.* The names of counsel intending to argue orally shall be furnished to the clerk not later than ~~two days~~ *seven days* before the argument.

Circuit Rule 51. Duties of Counsel on Appeal; Summary Disposition of Certain Appeals by Convicted Persons; Waiver of Appeal

(c) *Time for Filing Motion to Withdraw in a Criminal Case.*
Any motion to withdraw for good cause (other than the frivolousness of an appeal) must be filed in the court of appeals ~~within 10 days~~ *within 14 days* of the notice of appeal. The court of appeals will make all appellate appointments.

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
OPERATING PROCEDURES**

These are procedures for the court's internal operations. The court may dispense with their use in particular cases. Litigants acquire no rights under these procedures.

(c) Motion Practice.

(1) Motions That May Require Immediate Action. A staff attorney will read upon filing the following motions (whether labeled emergency or not): (i) for bond; (ii) for injunction; (iii) for stay of injunction; (iv) for stay of an agency order; (v) to dismiss appeals not by agreement; (vi) for leave to appeal from an interlocutory order pursuant to 28 U.S.C. § 1292(b); (vii) to stay or recall the mandate; (viii) to supplement the record; and (ix) all other emergency motions. If the motion requires immediate action, it will be taken to the motions judge and, if necessary, a panel. If it does not require immediate action, the staff attorney will ~~wait up to ten days~~ *wait up to 14 days* or a response to be filed before taking the motion to the motions judge or panel.

5. Hearings and Rehearings En Banc

(a) Request for Answer and Subsequent Request for Vote. If a petition for rehearing en banc is filed, a request for an answer (which may be made by any Seventh Circuit judge in regular active service or by any member of the panel that rendered the decision sought to be reheard) must be made within ~~10 days~~ *14 days* after the distribution of the en banc petition. If an answer is requested, the clerk shall notify the prevailing party that an answer be filed within 14 days from the date of the court's request. Within ~~10 days~~ *14 days* of the distribution of the answer, any judge entitled to request an answer, may request a vote on the petition for rehearing en banc.

(b) Request for Vote When No Answer Requested. Ordinarily an answer will be requested prior to a request for a vote. A request for a vote on the petition (which may be made by any judge entitled to request an answer) must be made within ~~10 days~~ *14 days* from the distribution of the petition. If a vote is so requested, the clerk shall notify the prevailing party that an answer to the petition is due within 14 days.

(d) Voting.

(2) Time for Voting. Judges are expected to vote ~~within 10 days~~ *within 14 days* of the request for a vote or ~~within 10 days~~ *within 14 days* of the filing of the answer

pursuant to the request for a vote, whichever is later.

9. Presumptive Times for Action

(c) Responding to drafts circulated by other judges is the first order of business. Every judge should respond by approval, memorandum suggesting changes, or notice that a separate opinion is under active consideration ~~within 10 days~~ *within 14 days* of the circulation of a draft.

(e) Once the opinion has issued, judges should act promptly on any further motions. In particular, members of the panel should vote ~~within 10 days~~ *within 14 days* on any petition for rehearing. Under Operating Procedure 5, judges have ~~10 days~~ *14 days* to request a response to a petition for rehearing en banc, and ~~10 days~~ *14 days* to call for a vote on the petition once the response has been received. Once a judge has called for a vote, all other judges should register their votes within ~~10 days~~ *14 days*. Once this time (including extensions described below) has passed, and sufficient votes have been received to grant or deny the petition for rehearing or petition for rehearing en banc, the court will enter an order to that effect without waiting for additional responses.

(g) A judge who believes that additional time is required to permit full consideration should notify the other members of the panel to that effect. If the judge believes that more than 30 days (in the case of opinions) or ~~10 days~~ *14 days* (in the case of other actions), in addition to the time presumptively established by this procedure, is essential, the judge also should notify the chief judge of the delay and the reasons for it.

(j) When the presumptive time for action established by this procedure is ~~10 days~~ *14 days*, the time may be extended on notice that a judge is unavailable to act on judicial business. The time specified by this notice is added to the time presumptively established by this procedure.