

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

Gino J. Agnello, Clerk of Court

June 19, 2014

**Notice of Proposed Circuit Rule Changes
And Opportunity for Comment**

Notice is hereby given that the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 2071 proposes revisions of Circuit Rules 3, 10, 11, 22, 26.1, 28, 34, 45 and 46. Written comments on the proposed rule changes should be sent by August 1, 2014, to:

Advisory Committee
c/o Clerk of Court
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, IL 60604

Comments can also be made via e-mail at: USCA7_Clerk@ca7.uscourts.gov

Deletions are shown by strikeouts. New text is highlighted in red. There is an explanation of the rationale for each suggested change.

**CIRCUIT RULE 3. Notice of Appeal, Docketing Fee, Docketing Statement,
and Designation of Counsel of Record**

(a) *Forwarding Copy of Notice of Appeal.* When the clerk of the district court sends **transmits** to the clerk of this court a copy of the notice of appeal ~~The clerk of the district court shall also complete and include the Seventh Circuit Appeal Information Sheet in the form prescribed by this court...~~

(d) *Counsel of Record.* The attorney whose name appears on the docketing statement or other document first filed by that party in this court will be deemed counsel of record ... The docketing statement or other document must provide the post office address, **email address** and telephone number of counsel...The names of other members of the Bar of this Court and, if desired, their post office **and email** addresses, may be added ...

CR 3(a). Because all records are sent to the clerk electronically the word “transmits” better expresses this concept. Because the district court docket is available on line, the “Appeal Information Sheet” is no longer used by the clerk’s office and is generally less accurate than a current docket report.

CR 3(d). Electronic filing requires that most noticing and service be done electronically,

email addresses of all counsel is now a necessity.

CIRCUIT RULE 10. Preparation of Record in District Court Appeals.

(e) *Indexing of Transcript.* The transcript of proceedings to be transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) shall be bound **produced** by the reporter in a volume or volumes, with the pages consecutively numbered throughout all volumes....

CR 10. Because all transcripts are sent to the clerk electronically the word “produced” better expresses this concept. Court reporters no longer need to “bind” paper copies of the transcript in volumes.

CIRCUIT RULE 11. Record on Appeal.

(a) *Record Transmission.* ~~Appellate records from the Eastern Division of the Northern District of Illinois are to be transmitted to the court of appeals when prepared. Prepared appellate records from all other courts in the circuit are to be temporarily retained by the district court clerk's office pursuant to Rule 11(c), Fed. R. App. P. Rule 11(c) certification is not required. After~~ **When** the appeal is ready for scheduling for oral argument or submission, the clerk of the court of appeals will notify the district court clerk to transmit the record to the court of appeals....

(d) *Withdrawal of Record.* During the time allowed for the preparation and filing of a brief, an attorney for a party or a party acting *pro se* may withdraw **the any record not in electronic format** upon giving a receipt to the clerk who has physical custody of the record. Once a panel of judges is assigned, a **non-electronic** record may not be withdrawn without an order of the court. Original exhibits may not be withdrawn but may be examined only in the clerk's office. The party who has withdrawn **the a non-electronic** record may not file a brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn. Except as provided above, **the non-electronic records** shall not be taken from a clerk's office without leave of this court on written motion. Failure of a party to return **the non-electronic records** to the clerk may be treated as contempt of court....

CR 11(a). Because all records are sent to us electronically and we always have access to the district court records electronically (and counsel via PACER) this transmittal protocol is no longer necessary. If the court wants the record transmitted prior to submission it can be so ordered but all district court records can be accessed on-line at any time.

CR11(d). This change will cover any instance where we do have paper or other non-paper record items such as exhibits.

CIRCUIT RULE 22. Death Penalty Cases.

(a)(3) Pursuant to 18 U.S.C. §3006A, and ~~21 U.S.C. §848(q)~~ **18 U.S.C. §3599**, 28 U.S.C. §2254(h), and 28 U.S.C. §2255(g), appellate counsel

(b)(3) Upon filing a notice of appeal, the appellant shall immediately transmit to the court ~~four copies of~~ **a copy of**, or a citation to, each

(h)(2) An appellant may not file a motion to stay execution or to vacate a stay of execution unless there is an appeal accompanied by a certificate of appealability or ~~four copies of~~ a request that this court

(h)(3) The movant shall file ~~four copies of~~ the motion and shall

(h)(6) ... Each side must keep the clerk informed of the home and office telephone number **and email address** of one attorney who will serve as emergency representative.

CR 22(a)(3). This section of Rule 22 references 21 U.S.C. §848(q) which was repealed. Most of the content of that section is now in 18 U.S.C. §3599.

CR 22. We no longer need multiple copies with electronic documents.

CR 22(h)(6). An email address is needed for electronic noticing and service.

CIRCUIT RULE 26.1. Disclosure Statement

(a) *Who Must File.* ~~Every~~ **Each** attorney for a non-governmental party or amicus curiae, and ~~every~~ **each** private attorney representing a governmental party, must file a **separate** statement under this rule. A party or amicus required to file a corporate disclosure statement under Fed. R. App. P. 26.1 may combine the information required by subsection (b) of this rule with the statement required by the national rule. **A disclosure statement constitutes an attorney's appearance. An attorney filing a disclosure statement need not file a representation statement under Fed. R. App. P. 12(b).**

(b) *Contents of Statement.* The statement must disclose the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court. If any litigant is using a pseudonym, the statement must disclose the litigant's true name. A disclosure required by the preceding sentence will be kept under seal. **Attorneys are encouraged to use the disclosure statement form posted on the Court of Appeals' website.**

(c) *Time for Filing.* The statement under this rule and Fed. R. App. P. 26.1 must be filed no later than 21 days after docketing the appeal, with a party's first motion or response to an adversary's motion, or when directed by the court, whichever time is earliest. A disclosure statement **for each attorney for a non-governmental party or amicus curiae, and each private attorney representing a governmental party**, also must accompany any petition for permission to appeal under Fed. R. App. P. 5 and must be included with ~~each party's brief~~ **a second or successive petition for collateral review, an appellant's brief, an appellee's brief, a brief of amicus curiae, and any petition for rehearing en banc.** See **Cir. R. 22.2(a)(1); Fed. R. App. P. 28(a)(1), (b); Fed. R. App. P. 29(c)(1); Cir. R. 35.**

(d) *Duty to Update.* Counsel must file updated disclosure statements under this rule and Fed. R. App. P. 26.1 within 14 days of any change in the information required to be disclosed.

CR 26.1 is amended to state more clearly that a disclosure statement serves as an attorney's appearance, and that a separate representation statement, Fed. R. App. P. 12(b), need not be filed.

CIRCUIT RULE 28. Briefs.

~~(c) *Statement of the Facts.* The statement of facts required by Fed. R. App. P. 28(a)(7) shall be a fair summary without argumnet or comment. No fact shall be stated in this part of the brief unless it is supported by a reference to the page or pages of the record or the appendix where that fact appears. (c) [Deleted]~~

(d) *Briefs in Multiple Appeals.*

~~(1) *Order and Number of Briefs.*~~

~~(A) (1) If a cross-appeal is filed, the clerk will designate which party will file the opening brief, and will set a briefing schedule **in accordance with Fed. R. App. P. 28.1.** The adverse party may file a combined responsive brief and opening brief in its own appeal. This brief may not exceed the page limitation for principal briefs. The party that filed the opening brief may file a combined responsive brief to the cross-appeal and reply brief in its own appeal. This brief may not exceed the page limitation for reply briefs.~~

~~(B) (2) The court will entertain motions for realignment of the briefing schedule and enlargement of the number of pages when the norm established by this rule proves inappropriate. Because it is improper to take a cross-appeal in order to advance additional arguments in support of a judgment, the court will not grant motions under this subsection by cross-appellants that do not seek to enlarge their rights under the judgment.~~

~~(2)~~ (3) Captions of Briefs in Multiple Appeals. When two or more parties file cross-appeals or other separate but related appeals, the briefs shall bear the appellate case numbers and captions of all related appeals.

CR 28(c). The December 1, 2013 amendment to FRAP 28(a)(6)&(7) merged the Statement of Facts into the Statement of the Case and eliminated subsection (7). The consensus of the committee was to eliminate this section as duplication of the FRAP rule.

CR 28(d). With the enacting of Fed. R. App. P. 28.1 the part of this section of the Circuit Rule 28 addressing the order and number of briefs is superceded. The committee agreed it be stricken and the remaining paragraphs renumbered.

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~~ **five** business days before the argument.

(b) *Calendar.*

(1) The calendar for a particular day will generally consist of ~~three~~ **six** appeals scheduled for oral argument at 9:30 a.m., ~~one appeal scheduled for oral argument at 10:30 a.m., and two~~ appeals scheduled for oral argument at 2:00 p.m. ...

CR34(a). Two days notice has proven inadequate and the clerk requested that the rule specify a period of 5 business days advance notice of who will present oral argument.

CR34(b). We suggest correcting the language to reflect the way the court currently schedules arguments. We no longer use the 9:30, 10:30; 2:00pm schedule.

CIRCUIT RULE 45. Fees.

~~— (a) *Fees To Be Collected by the Clerk.* The fees to be collected by the clerk are as follows:~~

~~— (1) For docketing a case on appeal or review, or docketing any other proceeding, \$100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.~~

~~— (2) For every search of the records of the court and certifying the results of the same, \$20.~~

~~— (3) For certifying or exemplifying any document or paper, whether the certification or exemplification is made directly on the document, or by separate instrument, \$7.~~

~~— (4) For reproducing any record or paper, 50 cents per page. This fee does not include certification.~~

~~— (5) For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, \$20.~~

~~— (6) For each printed copy of any opinion, including any separate and dissenting opinions in the case, regardless of whether the copy is certified, \$2, but no charge shall be assessed for:~~

- ~~(i) A copy of the opinion furnished to each party of record in the case, and~~
- ~~(ii) Copies of opinions furnished those appearing upon a "Public Interest List" established by order of the court in the interest of providing proper and adequate media of dissemination to the general public.~~
- ~~(7) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$35.~~
- ~~(8) For a check paid into the court which is returned for lack of funds, \$35.~~
- ~~(9) No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.~~

(a) Fees To Be Collected by the Clerk. All fees collected by the clerk shall be in accordance with the Court of Appeals Miscellaneous Fee Schedule established by the Judicial Conference of the United States under 28 U.S.C. §1913. No other fees for miscellaneous services than those prescribed by the Judicial Conference of the United States shall be charged or collected by any clerk of court.

(b) Fees To Be Paid in Advance. The clerk shall not be required to docket any proceeding or perform any other service until all fees due to the clerk have been paid, except at the direction of a judge of this court or at the instance of a party who is entitled to proceed without prepayment of fees.

CR45. Fees which the clerk may collect are now controlled by the fee schedule promulgated by the Judicial Conference of the United States pursuant to 28 U.S.C. §1913. We suggest that the rule merely reference the statute and the fee schedule to reflect this. Also, as the Judicial Conference periodically adjusts fees up or down, the court would not have to amend the rule itself whenever the Fee Schedule is changed.

CIRCUIT RULE 46. Attorneys.

(b) Admission Fees. The prescribed fee for admission is a \$15.00 local fee plus a national fee prescribed by the Court of Appeals Miscellaneous Fee Schedule, except that attorneys who have been appointed by the district court or this court to represent a party on appeal in forma pauperis, law clerks to judges of this court or the district courts, and attorneys employed by the United States or any agency thereof need not pay the fee. The clerk shall receive the \$15.00 local fee as trustee of the lawyers fund and shall deposit it in a bank designated by the court. Payments from the fund shall be made for the purchase of law books, for library conveniences, or other court purposes, by checks duly signed by the clerk as trustee and countersigned by two judges of this court.

CR 46. We suggest that this rule be amended to reflect the addition of the national fee directed by the Court of Appeals Miscellaneous Fee Schedule for admissions to this court.