

UNITED STATES COURT OF APPEALS

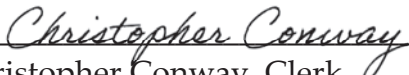
For the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, Illinois 60604

Christopher G. Conway
Clerk of Court
312-435-5850

July 16, 2024

Notice of Adoption of Modifications to Circuit Rules 31, 34, 40, 47, and 60

On April 12, 2024, this court issued notice that it proposed modifications to Circuit Rules 31, 34, 40, 47, and 60. The court carefully considered the comments received and made an additional modification to Circuit Rule 34. The court hereby provides notice of adoption of the attached modifications, effective immediately.



Christopher Conway, Clerk

CIRCUIT RULE 31. Filing of Briefs and Failure to Timely File Briefs

- (a) *Time for Filing Briefs.* Except in agency cases, the time for filing briefs shall run from the date the appeal is docketed, regardless of the completeness of the record at the time of docketing, unless the court orders otherwise.
- (b) *Number of Briefs Required.* The clerk of this court is authorized to accept ten copies of briefs as substantial compliance with Rule 31(b), Fed. R. App. P. Appointed counsel shall also file ten copies.
- (c) *Failure of Appellant to File Brief.* When an appellant's original brief is not filed when it is due, the procedure shall be as follows:
 - (1) *All Criminal Cases in Which the Defendant Has Counsel and Civil Cases With Court-Appointed Counsel.* The clerk shall enter an order directing counsel to show cause within 14 days why disciplinary action should not be taken. The court will then take appropriate action.
 - (2) *All Other Cases.* The clerk shall enter an order directing counsel, or a pro se appellant, to show cause why the appeal should not be dismissed. The court will then take appropriate action.
- (d) *Failure of Appellee to File Brief.* When an appellee's brief is not filed on time, the clerk shall enter an order requiring the appellee to show cause within 14 days why the case should not be treated as ready for oral argument or submission and the appellee denied oral argument. The court will then take appropriate action.
- (e) [Rescinded]

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 five business days before the argument.

(b) *Calendar.*

(1) The calendar for a particular day will generally consist of six appeals scheduled for oral argument at 9:30 a.m. The amount of time allotted for oral argument will be set based on the nature of the case. The clerk will notify counsel of the allocation approximately 21 days before the argument. The types of cases listed below are to be given priority, though the sequence of listing here is not intended to indicate relative priority among the types of cases.

- (i) Appeal from an order of confinement after refusal of an immunized witness to testify before the grand jury. (These appeals must be decided within 30 days.) 28 U.S.C. § 1826.
- (ii) Criminal Appeals. Rule 45(b), Fed. R. App. P.
- (iii) Appeals from orders refusing or imposing conditions of release, which will be heard without the necessity of briefs. Rule 9, Fed. R. App. P.
- (iv) Appeals involving issues of public importance.
- (v) Habeas corpus and 28 U.S.C. § 2255 appeals.
- (vi) Appeals from the granting, denying, or modifying of injunctions.
- (vii) Petitions for writs of mandamus and prohibition and other extraordinary writs. Rule 21(b) and (c), Fed. R. App. P.
- (viii) “Any other action if good cause therefore is shown. For purposes of this subsection, ‘good cause’ is shown if a

right under the Constitution of the United States or a Federal Statute (including rights under section 552 of Title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit." 28 U.S.C. § 1657.

- (2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule more than one appeal for oral argument the same day in order to minimize travel time and expenses.
 - (3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the court avoid scheduling the oral argument for a particular day or week will be respected, if possible.
 - (4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule it. Requests under subparagraphs (2) and (3) of this paragraph must be submitted by letter filed electronically with the clerk's office and should be made by no later than seven days after the filing of the appellee's brief. Counsel must specify the dates and general reasons why counsel is unavailable in the letter, and counsel's signature serves as an averment of the accuracy of those statements. The court may choose not to accommodate unavailability requests made more than seven days after the filing of the appellee's brief. Any request for rescheduling of oral argument must be made by formal motion in accordance with Circuit Rule 34(e).
- (c) *Divided Argument Not Favored.* Divided arguments on behalf of a single party or multiple parties with the same interests are not favored by the court. When such arguments are nevertheless divided or when more than one counsel argues on the same side for parties with differing interests, the time allowed shall be apportioned between such counsel in their own discretion. If counsel are unable to agree, the court will allocate the time.
- (d) *Preparation.* In preparing for oral arguments, counsel should be mindful that this court follows the practice of reading briefs prior to oral argument.

- (e) *Waiver, Postponement, or Presentation of Oral Argument by Telephonic or Video Communications.* Any request for waiver, postponement, or remote presentation of a scheduled oral argument must be made by formal motion. Unless good cause is shown, no later than 14 days before the argument date and after conferring with opposing counsel, a party may file a motion to waive, postpone, or present oral argument by telephonic or video-communications platforms approved by the court. The motion shall: (1) state the reason for the request; (2) indicate whether the request is opposed or unopposed; (3) if seeking postponement, state why postponement is necessary instead of oral argument by telephonic or video communications or by other counsel of record; and (4) if requesting to present oral argument by telephonic or video communications, identify which counsel wish to appear remotely. The court prefers joint motions. Postponements will be granted only in extraordinary circumstances. Any motion for the waiver, postponement, or remote presentation of a scheduled oral argument made less than 14 days before the argument date must specify the facts that are the basis of the motion that did not exist earlier.
- (f) *Statement Concerning Oral Argument.* A party may include, as part of a principal brief, a short statement explaining why oral argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34(a). This statement does not operate as a waiver of oral argument. Any request for waiver of oral argument must be made by formal motion in accordance with Circuit Rule 34(e).
- (g) *Citation of Authorities at Oral Argument.* Counsel should not cite or discuss a case at oral argument unless the case has been cited in one of the briefs or promptly drawn to the attention of the court and opposing counsel by a filing under Fed R. App. P. 28(j).
- (h) *Argument by Law Student.* The court may permit a law student to present oral argument under supervision of a member of this court's bar, with the client's written approval, if the representation is permitted under the applicable state licensure rules (*e.g.*, Ill. Sup. Ct. R. 711; Ind. Admis. and Disc. R. 2.1; Wis. Sup. Ct. R. 50). The supervising attorney's motion must be filed at least 14 days before the date on which argument is to be held and must state the reasons why presentation of argument by a law student is appropriate.

CIRCUIT RULE 40. Petitions for Rehearing

- (a) *Table of Contents.* The petition for rehearing shall include a table of contents with page references and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (b) *Number of Copies.* Ten copies of a petition for rehearing shall be filed, except that fifteen shall be filed if the petitioner suggests rehearing en banc.
- (c) *Time for Filing After Decision in Agency Case.* The date on which this court enters a final order or files a dispositive opinion is the date of the “entry of judgment” for the purpose of commencing the period for filing a petition for rehearing in accordance with Fed. R. App. P. 40, notwithstanding the fact that a formal detailed judgment is entered at a later date.
- (d) *Time for Filing after Decision from the Bench.* The time limit for filing a petition for rehearing shall run from the date of this court’s written order following a decision from the bench.
- (e) *Rehearing Sua Sponte before Decision.* A proposed opinion approved by a panel of this court adopting a position which would overrule a prior decision of this court or create a conflict between or among circuits shall not be published unless it is first circulated among the active members of this court and a majority of them do not vote to rehear en banc the issue of whether the position should be adopted. In the discretion of the panel, a proposed opinion which would establish a new rule or procedure may be similarly circulated before it is issued. When the position is adopted by the panel after compliance with this procedure, the opinion, when published, shall contain a footnote worded, depending on the circumstances, in substance as follows:

This opinion has been circulated among all judges of this court in regular active service. (No judge favored, or, A majority did not favor) a rehearing en banc on the question of (e.g., overruling *Doe v. Roe.*)

CIRCUIT RULE 47. Advisory Committee

The court shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one law school professor, and three attorneys from each state of the circuit, Illinois, Indiana, and Wisconsin, who have demonstrated a commitment to the Seventh Circuit, and, as *ex officio* members, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this court. The district judges, attorneys, and law school professors on the committee shall serve three-year terms and may serve for no more than a total of two terms.

The court shall appoint a chair from the membership of the committee. The chair shall serve for a two-year term and may serve for no more than a total of two terms as chair. The advisory committee shall promulgate its own rules, and call its own meetings. The advisory committee shall arrange for notice of proposed rule changes and shall consider comments received. From time to time, as it deems necessary or advisable, the advisory committee shall make recommendations to the circuit council or to the court. Suggestions for consideration by the advisory committee may be filed with the clerk of this court.

CIRCUIT RULE 60. Seventh Circuit Judicial Conference

- (a) *Purpose of the Conference.* The Chief Judge shall call a circuit judicial conference either annually or biennially in accordance with 28 U.S.C. § 333 and all applicable Judicial Conference policies and guidance for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit.
- (b) *Members of the Conference.* Each active Circuit, District, Bankruptcy, and Magistrate Judge of the Circuit shall be a member of the conference. The following shall be members of the conference and are encouraged to attend: (1) Senior Circuit, District, Bankruptcy, and Magistrate Judges; (2) Circuit Executive, Deputy Circuit Executive, Senior Staff Attorney for the Seventh Circuit, staff attorneys, and law clerks to all active and senior status Circuit, District, Bankruptcy, and Magistrate Judges; (3) Clerks and Deputy Clerks of the Court of Appeals, District Courts and Bankruptcy Courts in the Circuit; (4) United States Attorneys in the Circuit and their legal staffs; (5) Federal Defenders and Community Defenders in the Circuit and their legal staffs; (6) Members of the Seventh Circuit bar; (7) Special guests invited by the Chief Judge; (8) United States Trustees in the Circuit and their legal staffs; and (9) at the discretion of the Chief Judge, any member of the bar of any court interested in the work of the courts and the administration of justice in the Circuit.
- (c) *Executive Session.* All or part of one day of the conference may be designated by the Chief Judge as an executive session to be attended only by active Circuit, District, Bankruptcy, and Magistrate Judges, and other court personnel.