LOCAL RULES OF THE SECOND CIRCUIT

LOCAL RULES RELATING TO THE ORGANIZATION OF THE COURT

§ 0.11. Name

The name of the court, as fixed by 28 U.S.C. § 41, 43(a), is "United States Court of Appeals for the Second Circuit."

§ 0.12. Seal

The seal of the court shall contain the words "United States" on the upper part of the outer edge; and the words "Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "Second Circuit" in two lines, in the center, with a dash beneath.

§ 0.13. Terms

One term of this court shall be held annually at the City of New York commencing on such day in August or September as the court may designate. It shall be adjourned to such times and places as the court may from time to time direct.

§ 0.14. Quorum

(a) Two judges shall constitute a quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any judge who does attend or, in the absence of any judge, the clerk may adjourn the court for such time as may be appropriate. Any judge attending when less than a quorum is present or at any time when the court is in recess may make any necessary procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. (See Part 2, Local Rule 27(f)).

(b) (Interim) Unless directed otherwise, a panel of the court shall consist of three judges. If a judge of a panel of the court shall cease to continue with the consideration of any matter by reason of recusal, death, illness, resignation, incapacity, or other reason, the two remaining judges will determine the matter if they reach agreement and neither requests the designation of a third judge. If they do not reach agreement or either requests such a designation, another circuit judge will be designated by the Clerk to sit in place of the judge who has been relieved. The parties shall be advised of such designation, but no additional argument will be had or briefs received unless otherwise ordered.

§ 0.15. Disclosure of Interested Parties

[Superceded by FRAP 26.1]

§ 0.16. Clerk

(See generally Federal Rule 45 of the Federal Rules of Appellate Procedure.)

(a) The clerk's office shall be kept at the United States Court House, 40 Foley Square, New York City, and shall be open from 9:00 o'clock A.M. until 5:00 o'clock P.M. daily, except Saturdays, Sundays and legal holidays.

(b) The clerk may permit any original record or paper to be taken from the courtroom or from the office upon such statement of need as the clerk may require, and upon receipt for such record or paper.

(c) When it is required that the record be certified to the Supreme Court of the United States, the clerk if possessed of the original papers, exhibits, and transcript of proceedings of the district court or agency and a copy of the docket entries of that court or agency shall certify and transmit them and the original papers filed in this court.

§ 0.17. Clerk's Fees

The clerk charges fees and costs in accordance with 28 U.S.C. § 1913, as posted on this court's website. When fees are payable to this court, the payee name is "United States Court of Appeals for the Second Circuit."

§ 0.18. Entry of Orders by the Clerk

The clerk shall prepare, sign and enter the following without submission to the court or a judge unless otherwise directed:

(1) orders for the dismissal of an appeal under Rule 42(b) or pursuant to an order of the court or a judge;

(2) procedural orders on consent;

(3) orders on mandate from the Supreme Court of the United States;

(4) judgments in appeals from the United States Tax Court based on a stipulation of the parties.

(5) orders and judgments on decisions by the court in motions and appeals. (See Rule 36 of Federal Rules of Appellate Procedure.)

(6) orders scheduling the docketing of the record and filing of briefs and argument, which may include a provision that, in the event of default by the appellant in docketing the record or filing the appellant's brief, the appeal will be dismissed by the clerk;

(7) orders dismissing appeals in all cases where a brief for the appellant has not been filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.

(8) orders of dismissal as provided in Interim Local Rule § 0.29(d).

§ 0.19. Process

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

§ 0.20. Opinions of the Court

(a) Delivery. Opinions will be delivered at any time, whether the court is in session or not, and are delivered by handing them to the clerk to be recorded.

(b) Preservation of Original Opinions. The original opinions of the court shall be filed with the clerk for preservation.

§ 0.21. Library

The library of this court shall be open to members of any court of the United States and their staffs, to law officers of the Government, and to members of the bar of this court. It shall be open during such hours as reasonable needs require and be governed by such regulations as the librarian, with the approval of the court, may prescribe. Books shall not be removed from the building.

§ 0.22. Judicial Conference of the Second Circuit

1. **Purpose**. There shall be held annually, at such time and place as shall be designated by the chief judge of the circuit, a conference of all the circuit, district and bankruptcy judges, and magistrate judges, of the circuit for the purpose of considering the state of business of the courts and ways and means of improving the administration of justice within the circuit. It shall be the duty of each circuit and district judge in the circuit, in active service, and each bankruptcy judge serving for a term pursuant to 28 U.S.C. § 152, to attend the conference unless excused by the chief judge. The circuit justice shall be invited to attend.

2. **Sessions**. A portion of the conference, to be known as the "executive session" shall be for the judges alone and shall be devoted to a discussion of matters affecting the state of the dockets and the administration of justice throughout the circuit. At other sessions of the conference, members of the bar, to be chosen as set forth in the succeeding paragraph, shall be members of the conference and shall participate in its discussions and deliberations.

3. **Members of the Bar**. Members of the conference from the bar shall be selected to

reflect a cross-section of lawyers who currently practice before federal courts in this circuit; members should be willing and able to contribute actively to conference purposes. In order to assure that fresh views are represented, no judge may invite the same individual more than two years out of any five. The membership shall be composed of the following:

(a) The presidents of the state bar associations of the three states of the circuit and a member from each of such associations to be designated by their respective presidents with a view to giving appropriate representation to various areas of the state.

(b) Each United States Attorney of the circuit or an Assistant United States Attorney designated by the United States Attorney.

(c) The Public Defender (or an assistant designated by the Public Defender) for any district within the circuit, and a representative of a community defender organization, authorized to act generally in any district, designated by the president of such organization.

(d) Such number of invitees by the circuit justice, and the active and senior circuit and district judges, as the judicial council may determine for each conference.

(e) Such additional number of lawyers as shall be selected jointly by the chief judge and the conference chairperson in light of their competence and interest in the subject or subjects to be considered at the conference. These conference members also shall be selected to reflect a cross-section of lawyers who currently practice before federal courts in this circuit, and may include:

    (i) Members of county and local bar associations in the circuit, selected in consultation with their respective presidents, reflecting the geography and the relative size and activity in federal litigation of those associations;

    (ii) The dean, or other representative of the faculty of law schools within the circuit;

    (iii) Members of State/Federal Judicial Councils within the circuit (including especially state court chief judges or chief justices);

    (iv) Members of the United States Senate and House of Representatives with a particular interest in the work of the federal courts;

    (v) Former presidents of the American Bar Association residing or

practicing in the Second Circuit; the current member of the Board of Governors of the American Bar Association from the Second Circuit; the current member of the Standing Committee on the Federal Judiciary of the American Bar Association from the circuit; the chairperson of such committee if residing or practicing in the circuit; and the president, former presidents, and the executive director of the American Law Institute if residing or practicing in the circuit;

(vi) Members of the staff of federal courts within the circuit not enumerated elsewhere in this rule.

(f) Any retired Justice of the Supreme Court of the United States residing within the circuit, any present or former Attorney General of the United States residing or practicing within the circuit, and any circuit or district judge of the circuit who has resigned such office.

(g) The Director (or, if the Director is unable to attend, the Director's designee) of the Administrative Office of the United States Courts, and the Director (or designee) of the Federal Judicial Center.

(h) The circuit and district court executives and clerks of the courts within the circuit.

(i) Members of the committee provided for in paragraph 4 of this Rule, and past chairpersons and executive secretaries of such committee.

4. **Committee.** To assist in the conduct of the conference (other than the executive session), the chief judge shall appoint annually, subject to the approval of the judicial council, members of a committee to be known as the Planning and Program Committee. The committee, whose members shall be appointed to staggered three-year terms, shall include the presidents of the state bar associations of the three states of the circuit and such number of judges and members of the bar of the circuit as the chief judge may determine.

5. **Chairperson.** The chief judge may also appoint a conference chairperson to be selected from among the active judges of the circuit.

6. **Representative to the Judicial Conference of the United States**.

(a) Three months before the date of the Judicial Conference of the Second Circuit at which the district judge member of the Judicial Conference of the United States from the Second Circuit is to be chosen, the chief judges of the district courts of the circuit, acting together as a nominating committee, shall nominate no more than three active district judges of the circuit (not excluding one of their own number) as candidates for the office of district

judge member from the Second Circuit. The names of the nominees will be mailed to all the judges of the circuit and to the clerk of the court of appeals, who is the secretary of the conference, at least thirty days before the date of the executive session of the Circuit Judicial Conference.

(b) Additional active district judges may be put in nomination (I) from the floor at the executive session in replacement of any nominee of the chief judges who is disabled or declines to stand, and (ii) from the floor at the executive session by written nomination signed by at least one-fourth of the judges of the circuit. The one-fourth requirement shall not include vacant judgeships or judgeships for which commissions have been signed but the nominees have not been sworn and have not taken office at the time the nominating petition is signed. No judge may sign more than one such nomination and such nomination may not include more than one judge.

(c) The judge receiving a plurality of the votes of the active judges of the circuit will be the circuit's choice. Voting will be by secret, written ballot. Any judge who expects to be absent from the meeting may send in a judge's ballot unsigned and enclosed in an inner, sealed envelope, to the secretary of the conference provided that the ballot reaches the secretary before the executive meeting is convened.

(d) No judge may succeed himself or herself to a second successive term by election and no judge of any district court may succeed a judge from the same district unless at least three years have elapsed since the expiration of such earlier judge's term; however, in the case of a judge who is a member of the Executive Committee of the Judicial Conference of the United States, such judge may be elected to a second successive term in order to continue eligibility to serve on the Executive Committee.

(e) In the event that it is not convenient to conduct at a Judicial Conference the election referred to herein, such election may be conducted by mail ballot following action by the nominating committee, according to such procedures as that body may establish.

§ 0.23. Dispositions in Open Court or by Summary Order

[Superceded by Second Circuit Local Rule 32.1]

§ 0.24. Complaints With Respect to Conduct of Judges

[Superceded July 1, 1987 by the Rules of Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §372(c). See Court’s website, Forms Page.]

§ 0.25. Equal Access to Justice Act Fees

Applications authorized by 28 U.S.C. §2412(d)(1)(B) shall be filed within 30 days of this court's judgment, and petitions for review authorized by 5 U.S.C. §504(c)(2) shall be filed within 30 days of the agency's fee determination. Applications and petitions shall be filed with the clerk of this court (original and four copies), served on all parties, and submitted on form AO 291. (A T1080 Motion Information Statement is also required.)

§ 0.26. Permissive Review After Appeal of a Magistrate's Judgment to the District Court

Petitions for leave to appeal authorized by 28 U.S.C. §636(c)(5) shall be filed with the clerk of this court (original and four copies) within 30 days of the District Court's judgment and shall be served on all parties.

§ 0.27. Certification of Questions of State Law

Where authorized by state law, this Court may certify to the highest court of a state an unsettled and significant question of state law that will control the outcome of a case pending before this Court. Such certification may be made by this Court sua sponte or on motion of a party filed with the clerk of this Court. Certification will be in accordance with the procedures provided by the state's legislature or highest state court rules, e.g. Conn. Public Act No. 85-111; New York Court of Appeals Rule 500.7. Certification may stay the proceedings in this Court pending the state court's decision whether to accept the certification and its decision of the certified question.

§ 0.28. Death Penalty Cases.

This rule describes the administration of capital cases in this Court. Capital case, as used in this rule, means any application in this Court, to which the person under sentence is a party, that challenges, defends, or otherwise relates to the validity or execution of a death sentence that has been imposed. Capital cases ordinarily will be heard by panels composed in the manner described herein. The Court, however, may deviate from these procedures; their publication does not give any litigant a right to require that they be followed.

(1) Certificate of Death Penalty Case. Upon the filing of any proceeding in a district court of this circuit or in this Court challenging a sentence of death imposed pursuant to a federal or state court judgment, each party in such proceeding must file a Certificate of Death Penalty Case with the Clerk of the Court of Appeals. A Certificate of Death Penalty Case must also be filed by the U.S. Attorney upon the return of a verdict recommending a sentence of death in a district court of this circuit.

The Certificate must be in the form provided as annexed to these rules, or in substantially similar form, and must set forth the names, telephone numbers and addresses of the parties and counsel; the proposed date of execution of the sentence, if set; and the emergency nature of the proceedings, if applicable.

A special tracking docket is maintained by the Clerk of this Court for all cases in which a district court of this circuit has imposed a sentence of death, and for all proceedings in a district court of this circuit or in this Court challenging a sentence

of death imposed pursuant to a federal or state court judgment.

(2) Preparation and Transmittal of the Record. Upon the filing of a notice of appeal from an order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1) in a death penalty case in the district court, the Clerk of the district court and appellant's counsel must immediately prepare the record for the appeal. The record must be transmitted to this Court within five days of the filing of the notice of appeal unless such order is entered within twenty-one (21) days of the date of a scheduled execution, in which case the record must be transmitted immediately by an expedited means of delivery.

(3) Monitoring of Cases and Lodging of Relevant Documents. The Clerk of the Court of Appeals is authorized to monitor the status of scheduled executions and pending litigation in connection with any case within the geographical boundaries of this circuit wherein a warrant or order setting an execution date has been entered, and to establish communications with all parties and relevant state and/or federal courts. The Clerk may direct parties to lodge with this Court five copies of (1) all relevant portions of previous state and/or federal court records, or the entire record, and (2) all pleadings, briefs, and transcripts of any ongoing proceedings. The Clerk may docket such materials in advance of this Court's jurisdiction, under a miscellaneous docket, pending receipt of a notice of appeal or application in such case. This miscellaneous docket case is closed upon the opening of a regularly docketed case in this Court, or upon other final disposition of the case without its reaching this Court (for example, a reversal of the sentence or conviction which is not appealed, or a carrying out of the execution).

(4) Capital Case Pool and Panels.

(a) Capital Case Pool. The capital case pool of judges consists of all active judges of the Court and those senior judges who have filed with the Clerk a statement of willingness to serve on capital case panels.

(b) Capital Case Panel. Upon receipt of a notice of appeal from the district court, an application for a certificate of appealability, or other application to this Court for relief in a capital case, the Clerk dockets the case and assigns it to a capital case panel (except as provided in paragraph 5 of this rule). A capital case panel consists of three judges, of whom at least one is an active judge of the Court.

(c) Selection. Judges are assigned to capital case panels by random drawing from the capital case pool. If a judge is unable to serve, that judge's name is returned to the pool after a replacement has been drawn. In the event a random drawing results in the names of three senior judges having been selected, the name of the third such senior judge is set aside and the selection process continues until an active judge's name is drawn; after the active judge's name has been drawn, the third senior judge's name is returned to the pool.

(d) Rotation. A judge drawn from the capital case pool to serve on a capital case panel is not returned to the pool until the pool is exhausted. When the pool has been exhausted, the Clerk prepares a new capital case pool and selects capital case panels from the pool in like manner.

(e) Replacement. If any judge serving on a capital case panel is unable to continue to serve, a replacement is drawn from the capital case pool, and the judge ceasing to serve on the panel is returned to the pool.

(f) Duties of Capital Case Panel. A capital case panel assigned to a particular capital case handles all matters pertaining to that case, including but not limited to the merits of a direct appeal and of all petitions for collateral review, motions for stay of execution, motions to vacate a stay of execution, applications for a certificate of appealability, motions for an order authorizing the district court to consider a second or successive application for habeas corpus, appeals from subsequent petitions, and remands from the United States Supreme Court.

When practical, a capital case panel hearing a direct appeal from a death sentence imposed in federal court hears together with it the direct appeals of co-defendants, at least to the extent they involve issues in common with the appeal of the person sentenced to death. Non-common issues in the appeals of co-defendants may be severed and assigned to an ordinary panel.

(g) Applications for Certificate of Appealability. Applications for a certificate of appealability are referred initially to a single judge of the capital case panel, who has authority to grant the certificate. If the single judge does not grant the certificate, the application is referred to the full panel for disposition by majority vote.

(5) Original Petitions. All original applications for habeas corpus relief filed in the Clerk's office in a capital case are referred to a judge on the capital case panel in accordance with the approved operating procedures of this Court. Such an application ordinarily is transferred to the appropriate district court.

(6) Ruling on Certificate of Appealability. This Court may rule on a certificate of appealability whether or not a formal request is made of this Court, either as a preliminary matter or as part of a merits review of the case.

(7) Stays of Execution and Motions to Vacate Orders Granting Stay of a Federal or State Court Judgment.

(a) Limits on Stays of Execution. Notwithstanding any provision of this paragraph 7, stays of execution are not granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph 7 for a stay are ineffective in any case in which such stay would be inconsistent with the limitations of 28 U.S.C. § 2262, or any other governing statute.

(b) Emergency Motions. Emergency motions or applications are filed with the Clerk of the Court of Appeals. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by telefacsimile. Counsel are encouraged to communicate with the Clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court. The motion or application must contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in such prior actions.

(c) Documents Required for Motions for Stay or to Vacate Stay. The party moving for a stay of execution of a sentence of death or to vacate a stay must file the original and four (4) copies (a total of five) of the motion and serve all parties. A copy of the documents listed below must be attached to the original and to each copy of the motion. If time does not permit, the motion may be filed without attachments, but the movant must file the necessary copies as soon as possible. (If the respondent (the State or the U.S. Attorney) has indicated to the petitioner that it does not seek to oppose the stay immediately and the petitioner states this fact in the petition, these documents need not be filed with the application but must be filed within ten (10) days after the application is filed.)

(i) The indictment or other accusatory instrument;

(ii) The judgment of conviction containing the sentence of death;

(iii) The petition or complaint filed in the district court;

(iv) The opinion of the district court setting forth the reasons for granting or denying relief;

(v) The district court judgment granting or denying relief;

(vi) The district court order granting or denying a stay, and the statement of reasons for its action;

(vii) The certificate of appealability or order denying a certificate of appealability;

(viii) A copy of each state or federal court opinion or judgment bearing on the issues presented in the motion in cases in which appellant was a party;

(ix) A copy of the docket entries of the district court; and

(x) A copy of the notice of appeal.

(d) Automatic Stays. In any case in which a sentence of death has been imposed by a district court of this circuit, or by a state court within the circuit, execution of the sentence of death is automatically stayed upon the filing of a notice of appeal from the judgment of conviction or a notice of appeal from the denial of the first application in federal court seeking relief from the sentence of death. The clerk must promptly enter an order implementing the stay. Unless vacated or modified, the stay provided by this subparagraph remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of conviction or of the denial of such first application. The stay may be modified or vacated by the assigned panel at any time.

(e) Other Stays. A stay of any duration up to that specified in subparagraph 7(f)(i) may be ordered in any case by the assigned capital case panel, upon the affirmative vote of any judge of that panel.

(f) Duration of Stays: Terminology. Use of the following terminology to specify the duration of a stay denotes the durations specified below:

(i) If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the standard duration" under this rule, this signifies that, unless vacated or modified, the stay remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of the district court, or of the Court of Appeals in the case of an original petition filed there.

(ii) If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the duration of the appeal," this signifies that, unless vacated or modified, the stay remains in effect until the Court's mandate issues. Absent an order to the contrary preceded by timely notice to counsel, the mandate does not issue until the time for filing a petition for rehearing has expired, or, if such a petition has been filed, until the petition and any petition for rehearing in banc have been determined.

(g) Stays in Relation to Petitions for Rehearing.

(i) Petitions for rehearing accompanied by petitions for rehearing in banc are circulated to all judges of the capital case pool simultaneously with the circulation of the petition for rehearing to the assigned capital case panel. Judges participating in the petition for rehearing in banc may vote on a stay of execution of a sentence of death immediately, without waiting for the action of the assigned panel as to the petition for rehearing.

(ii) A stay of execution of a sentence of death pending disposition of the petition for rehearing and the petition for rehearing in banc is granted upon the affirmative vote of any two judges eligible to participate in a rehearing in banc.

(h) All stay applications must be filed with the Clerk of the Court. In each case in which the Court orders a stay of execution, the Clerk of the Court issues a written order in the name of the Court specifying the duration of the stay.

(i) During non-business hours, emergency stay applications must be directed to an assigned representative of the Clerk (the duty clerk), whose telephone number is left with the courthouse security officers. The duty clerk must immediately advise the members of the assigned panel of the filing of an emergency stay application.

(j) In the event the members of the assigned panel cannot be reached by the duty clerk, the duty clerk advises the judge of the court assigned at that time to hear emergency applications of the filing of an off-hours emergency stay application. Notwithstanding the provisions of subparagraphs 7(e) and 7(g)(ii), the applications judge may stay an execution until such time as the application can be placed before the assigned panel or the Court in banc.

UNITED STATES COURT OF APPEALS for the SECOND CIRCUIT
CERTIFICATE OF DEATH PENALTY CASE

_____ DISTRICT COURT U.S.D.C. DOCKET NUMBER	LOCATION (CITY)
_____ DATE PETITION FILED	
---------- [CASE CAPTION], Petitioner, -v.- Respondent. ----------	_____ Fee Status Paid _____ IFP _____ IFP Pending _____
COUNSEL FOR PETITIONER (Name, Address & Telephone Number)	COUNSEL FOR RESPONDENT (Name, Address & Telephone Number)
PETITIONER'S NAME, PRISONER I.D. #, INSTITUTION OF INCARCERATION, ADDRESS &TELEPHONE NUMBER	
THIS CASES ARISES FROM: State Court Judgment _____.	Federal Court Judgment _____.
Complete each of the following statements applicable to this case:	
1. EXECUTION HAS BEEN SCHEDULED FOR_____. (Date) 2. A verdict recommending a sentence of death was rendered on _____. (Date)	
EXPLANATION OF EMERGENCY NATURE OF PROCEEDINGS (attach pages, as necessary).	
HAS PETITIONER PREVIOUSLY FILED CASES IN FEDERAL COURT? _____ YES _____ NO (If yes, give the Court, caption, docket number, filing date, disposition, and disposition date).	
DOES PETITIONER HAVE CASES PENDING IN OTHER COURTS? _____ YES _____ NO (If yes, give the Court, caption, docket number, filing date, and status..) I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.	
_____ Signature _____ Type or Print Name	
NOTE: THE COURT OF APPEALS PERIODICALLY WILL REQUEST CASE STATUS REPORTS. PARTIES ARE UNDER A CONTINUING AFFIRMATIVE OBLIGATION TO IMMEDIATELY NOTIFY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT OF ANY CHANGES OR ADDITIONS TO THE INFORMATION CONTAINED ON THIS FORM.	

Interim § 0.29. Non-Argument Calendar

(a) The following appeals or petitions for review, and any motions filed thereon, will be initially placed on the Non-Argument Calendar:

An appeal or petition for review, in which a party seeks review of the denial of -

1. A claim for asylum under the Immigration and Nationality Act ("INA");

2. A claim for withholding of removal under the INA;

3. A claim for withholding or deferral of removal under the Convention Against Torture ("CAT"); or

4. A motion to reopen or reconsider an order involving one of the claims listed above.

Proceedings on the Non-Argument Calendar will be disposed of by a three-judge panel without oral argument unless the Court transfers the proceeding to the Regular Argument Calendar.

(b) To the extent practicable, the Clerk's Office will promptly identify proceedings to be placed on the Non-Argument Calendar and issue scheduling orders for them upon the receipt of the certified record. The scheduling order will inform the parties that the proceeding has been placed on the Non-Argument Calendar. Any party to a proceeding on the Non-Argument Calendar may request to have the proceeding transferred to the Regular Argument Calendar. Such a request shall not be made by motion but must be included in the party's brief, identified by a separate heading, and will be adjudicated in conformity with Federal Rule of Appellate Procedure 34(a)(2) and Local Rule 34(d)(1). In its discretion, the Court may at any time transfer a proceeding from the Non-Argument Calendar to the Regular Argument Calendar. Upon the transfer of a case from the Non-Argument Calendar to the Regular Argument Calendar, no briefs may be filed, other than those specified in the scheduling order, unless leave of Court is obtained. The Court may at any time sua sponte, with notice to the parties, tentatively transfer a proceeding mistakenly placed on the Regular Argument Calendar to the Non-Argument Calendar.

(c) The Civil Appeals Management Plan shall not apply mandatorily to proceedings on the Non-Argument Calendar. However, any party to a proceeding on the Non-Argument Calendar may request a conference under the Civil Appeals Management Plan, which will be promptly provided. A request for a conference will not alter a scheduling order.

(d) An appeal or petition for review on the Non-Argument Calendar may be dismissed by the Clerk if, 15 days after the due date, the party seeking a review has failed to file its brief. The filing of a motion for an extension of time to file a brief does not stay or alter an existing deadline. If the respondent or appellee fails to file its brief by the due date, the Clerk may calendar the proceedings for decision as early as 15 days following the due date.

LOCAL RULES SUPPLEMENTING FEDERAL RULES OF APPELLATE PROCEDURE

Local Rule 3(d). Mailing of Notice of Appeal by Clerks of District Courts to Clerk of Court of Appeals

The clerks of the district courts shall mail to the clerk of the court of appeals copies of notices of appeal in all cases and not simply in those described in FRAP 3(d).

Local Rule 4(b). Duties of all Retained Attorneys in Criminal Cases and all Criminal Justice Act-appointed Attorneys; Motions for Leave to Withdraw as Counsel on Appeal Where Retained in a Criminal Case or Appointed under Criminal Justice Act, Duties of Appellate Counsel in the Event of Affirmance

(a) When a defendant convicted following trial wishes to appeal, trial counsel, whether retained or appointed by the district court, is responsible for representing the defendant until relieved by the Court of Appeals.

(b) If trial counsel was appointed under the Criminal Justice Act, 18 U.S.C. §3006A, and intends to prosecute the appeal, this court may accept the District Court's finding that the defendant is financially unable to employ counsel and no further proof of the defendant's indigency need be submitted unless specifically required.

(c) Any counsel wishing to be relieved on appeal shall, before moving to that end, advise the defendant that the defendant must promptly obtain other counsel unless the defendant desires to proceed pro se and that if the defendant is financially unable to obtain counsel, a lawyer may be appointed by this court under the Criminal Justice Act. If the defendant wishes to have a lawyer so appointed on appeal, counsel must see to it that the defendant receives and fills out the appropriate application forms, which are available from the office of the Clerk of this court. If the defendant desires to proceed pro se, counsel must advise the defendant of the requirements concerning the time within which the record must be docketed and the brief filed.

(d) A motion to withdraw as counsel on appeal where the attorney is retained in a criminal case or appointed under the Criminal Justice Act must state the reasons for such relief and must be accompanied by one of the following:

1. A showing that new counsel has been retained or appointed to represent defendant; or

2. The defendant's completed application for appointment of counsel under the Criminal Justice Act or a showing that such application has already been filed in the Court of Appeals; or

3. An affidavit or signed statement from the defendant showing that the defendant has been advised that the defendant may retain new counsel or apply for appointment of counsel and expressly stating that the defendant does not wish to be represented by counsel but elects to appear pro se; or

4. An affidavit or signed statement from the defendant showing that the defendant has been advised of the defendant's rights with regard to the appeal and expressly stating that the defendant elects to withdraw the defendant's appeal; or

5. A showing that exceptional circumstances prevent counsel from meeting any of the requirements stated in subdivisions (1) to (4) above. Such a motion must be accompanied by proof of service on the defendant and the Government and will be determined, without oral argument, by a single judge. See Local Rule 27.

(e) This Local Rule is supplementary to the Amended Plan to Supplement the Plans Adopted by the Several District Courts Within the Circuit, as required by the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended.

Local Rule 9. Release in Criminal Cases

An application pursuant to Rule 9(b) shall contain in the following order:

1. the name of appellant; the District Court docket number of the case; the offense of which appellant was convicted; the date and terms of sentence; and the place where appellant has been ordered confined;

2. the facts with respect to whether application for bail has been made and denied, and the reasons given for the denial, if known; and the facts and reasons why the action by the District Court on the application does not afford the relief to which the applicant considers himself entitled;

3. a concise statement of the questions involved on the appeal, with sufficient facts to give the essential background and a showing that the questions on appeal are not frivolous;

4. such other matters as may be deemed pertinent;

5. a certificate by counsel, or by applicant if acting pro se, that the appeal is not taken for delay.

Local Rule 11. Exhibits

(a) The district court may, by rule or order, direct that any or all exhibits need not be filed with the clerk upon their offer or receipt in evidence but may be retained in the custody of the attorney (or of a party not represented by an attorney) who produced them, unless an appeal is taken, in which event the following provisions of this rule shall apply.

(b) The parties are encouraged to agree with respect to which exhibits are "necessary for the determination of the appeal." See Rule 11(a). In the absence of agreement, the appellant shall, not later than 15 days after the filing of the notice of appeal, serve on the appellee a designation of the exhibits the appellant considers to be necessary. If the appellee considers other exhibits to be necessary, the appellee shall serve a cross-designation upon the appellant within 10 days after service of appellant's designation.

(c) Except as provided in paragraph (d), it shall be the duty of any attorney or party having possession of an exhibit designated pursuant to paragraph (b) of this rule, promptly to make such exhibit or a true copy thereof available at the office of the clerk of the district court. The clerk of the district court shall transmit all such exhibits to the clerk of the court of appeals as part of the record pursuant to Rule 11(b). Exhibits which have not been designated shall be retained by the clerk of the district court or, if the district court has

authorized their retention by an attorney or party pursuant to paragraph (a) of this rule, by such attorney or party, but shall be transmitted to the clerk of the court of appeals on the request of that court acting on the motion of any judge thereof or on the motion of a party showing good cause for failure to include any such exhibit in the attorney's designation.

(d) Documents of unusual bulk or weight and physical exhibits other than documents shall remain in the custody of the attorney or party who produced them. The attorney or party retaining custody of the documents shall permit inspection of them by any other party and shall be responsible for having them available at the argument in the court of appeals if they have been designated, and for their later production if subsequently requested by the court of appeals as provided in the last sentence of paragraph (c) of this rule.

(e) This rule does not relieve the parties of their obligation under Rule 30 to reproduce in an appendix to their briefs or in a separate volume, see Rule 30(e), exhibits (other than those described in paragraph (d) of this rule) to which they "wish to direct the particular attention of the court."

Local Rule 15. Application by National Labor Relations Board For Enforcement of Order

In an application for enforcement by the National Labor Relations Board under Rule 15(b), Federal Rules of Appellate Procedure, the respondent(s) shall be considered the petitioner(s), and the National Labor Relations Board considered the respondent, for the purposes of briefing and oral argument, unless the court orders otherwise.

Local Rule 21. Petitions for Writs of Mandamus and Prohibition

(a) **Caption.** A petition for writ of mandamus or writ of prohibition pursuant to Rule 21 shall not bear the name of the district judge, but shall be entitled simply, "In re _____, Petitioner." To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge.

(b) **Number of Copies.** Four copies shall be filed with the original.

Local Rule 22. Certificate of Appealability

(a) **Prompt Application and Contents of Motion.** In cases governed by 28 U.S.C. § 2253 and FRAP Rule 22(b), where an appeal has been taken but no certificate of appealability ("COA") has been issued by the district judge or by this court or a judge thereof, the appellant shall promptly move in this court for such a certificate. Such motion shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing a denial of a constitutional right. When an appeal is filed for which a COA is required and a motion that complies with this rule has not been filed within 30 days after filing the notice of appeal, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that the required motion for a COA must be filed with the court within 21 days and that failure to file the motion may result in denial of a COA. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein. Such an appeal may not proceed unless and until a certificate is granted.

(b) Time for Filing Appellant's Brief. In cases governed by 28 U.S.C. § 2253 and FRAP Rule 22(b), the period of time for the filing of appellant's brief and appendix shall not begin to run until a certificate of appealability has issued or, when counsel has been assigned, the date of such assignment, whichever is later.

Interim Local Rule 25.1. Filing and Service

(a) Documents in Digital Format.

1. **Document Defined.** For the purposes of this rule, document includes every paper submitted to the court, including forms, letters, motions, petitions and briefs but not appendices (which are governed by the requirements set forth in Local Rule 25.2).

2. **Submission Requirement.** Every document filed by a party represented by counsel must be submitted in a Portable Document Format (PDF), in addition to the required number of paper copies, unless counsel certifies that submission of the paper as a PDF document would constitute extreme hardship. A party not represented by counsel is encouraged, but not required, to submit a PDF version of every document, in addition to filing the required number of paper copies.

3. **Submission of Documents.**

(A). The PDF version of a document must be submitted as an email attachment to electronic mailboxes designated according to case type. Case type is determined by the two-letter code found at the end of the docket number assigned to a case. The code, and respective mailboxes, are:

(i) ag, bk, op - <agencycases@ca2.uscourts.gov>. Cases involving an administrative agency, board, commission or office; tax court; bankruptcy; original proceedings; and, cases in which the United States is a party;

(ii) cr - <criminalcases@ca2.uscourts.gov>. Criminal cases; and

(iii) cv - <civilcases@ca2.uscourts.gov>. Counseled civil cases.

(B). Documents in a case that is not yet assigned a docket number must be submitted to <newcases@ca2.uscourts.gov>.

(C). A party who is pro se and a party with counsel in a pro se case may submit documents to an electronic mail box designated exclusively for pro se filers: <prosecases@ca2.uscourts.gov>.

(D). The email in which the document is attached must set forth the following identifying information in the "Subject" or "Re" header box: the docket number; the name of the party on whose behalf the document is filed; that party's designation in the case, i.e., appellant, petitioner; and, the type of document, i.e., form, letter; and the date the document is submitted to the Court. If the document pertains to a case not yet assigned a docket number in this court, the district court docket or agency number should be included in the header box. An example of a subject line: # 01-2345 -cv, ABC Corp, Appellant, Letter.

4. **Content.** The PDF document must contain the entire paper, including exhibits and any supplemental material that is bound with the paper copy filed with the court. The exhibits or supplemental material may be attached to the email as a separate, clearly identified, document. A manual signature need not be included on the PDF copy.

5. **Time for Filing.** The PDF version of a document submitted pursuant to this rule must be emailed no later than the time for filing the required copies of the paper with the clerk.

6. **Virus Protection.** Each party submitting a PDF document must provide a signed certificate which certifies that the PDF document has been scanned for viruses and that no virus has been detected. The signed certificate must be filed along with the paper copies of the document with the clerk. A PDF version of the certificate, which need not include a manual signature, must be attached to the email that includes the PDF document.

7. **Corrections.** If a document is corrected, a new email attachment with the corrected version must be submitted, and the identifying information in the header box shall identify the document as corrected and include the date the corrected version of the document is submitted to the clerk.

8. **Email Service.** The PDF version of a document must be emailed to all parties represented by counsel and to those parties not represented by counsel who elected to submit PDF paper.

(b). Documents in Other Formats.

1. **Filing Requirement.** Any party, whether represented by counsel or not, who does not provide a document in PDF format, must file one unbound copy (papers not stapled or otherwise attached) of each multi-page document with the clerk. The use of paper clips or rubber bands is permitted. When only the original document is filed, the paper that comprises the document must be unbound.

Interim Local Rule 25.2. Appendix on CD-ROM

A party represented by counsel must submit every appendix on a CD-ROM, and serve a CD-ROM version on all opposing counsel, in addition to filing the required number of paper copies, unless counsel certifies that submitting a CD-ROM version of the appendix would constitute extreme hardship. A party not represented by counsel is encouraged, but not required, to submit and serve a CD-ROM version of the appendix, in addition to filing the required number of paper copies.

Local Rule 27. Motions

(a) Form of Motion and Supporting Papers for Motion and Opposition Statement.

(1) **Form of Motion.** A motion must be in writing, unless the court otherwise directs, and must conform to the following requirements:

A. The front page of the motion must follow the form of the Motion Information Statement approved by the Court (T-1080) and contain all information required by the form.

B. The Motion Information Statement must be followed by a memorandum which must (i) indicate the relief sought, (ii) set forth the information and legal argument supporting the motion, and (iii) if emergency relief is sought, explain the reasons for the emergency.

C. Formal requirements of Motion and Opposition Statement.

(i) 8½ by 11 inch paper;

(ii) Text double spaced, except for quotations, headings and footnotes;

(iii) Margins of one inch on all sides;

(iv) Pages sequentially numbered (page numbers may be placed in the margins);

(v) Bound or stapled in a secure manner that does not obscure text;

(vi) Length: no more than 20 pages, not including attachments and the Motion Information Statement;

(vii) Number of copies: original plus four copies;

(viii) Required attachments to motion:

a. An affidavit (containing only statements of fact, not legal argument);

b. If the motion seeks substantive relief, a copy of lower court opinion or agency decision;

c. Any exhibits necessary to determine the motion;

d. Proof of service.

2. **Non-Compliance Sanctions.** If the moving party has not complied with this rule, the motion may be dismissed by the clerk without prejudice to renew upon proper papers. If application is promptly made, the action of the clerk may be reviewed by a single judge. The court may impose costs and an appropriate fine against either party for failure to comply with this rule.

(b) Motions to Be Heard at Regular Sessions of the Court. Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the court. These include, without limitation, motions seeking bail pending appeal (see Rule 9(b)); dismissal or summary affirmance, including summary enforcement of an agency order; stay or injunction pending appeal or review (see Rules 8 and 18); certificates of appealability (see Rule 22); leave to proceed in forma pauperis (see Rule 24) except when a certificate of appealability has been granted by the district court or counsel has been assigned under 18 U.S.C. § 3006A; and assignment of counsel in cases not within subsection (e). Except as provided in subdivision (c) of this Rule, such motions will normally be noticed for a Tuesday when the court is in session, and the court will hear oral argument from any party desiring this. Motions to dismiss appeals of incarcerated prisoners not represented by counsel for

untimeliness or lack of timely prosecution shall not be noticed for a date earlier than fifteen days after the date when prison officials shall certify the motion was received by the prisoner. Any party requesting an expedited hearing must set forth in writing the facts which justify the urgency. Upon appropriate showing of urgency, the clerk may set any motion for a hearing on any day the court is in session. When the clerk thus sets a hearing for a time not later than 24 hours after application to the clerk during the period Monday to Thursday, or for Tuesday morning during the period after Thursday, the clerk may endorse on the motion papers a direction that the parties will be expected to maintain the status quo and such direction shall have the effect of a stay, unless a judge on application shall otherwise direct.

Except as otherwise provided in these rules or by order of the court, all motions noticed for a Tuesday, with supporting papers, must be filed not later than the Monday of the preceding week, with notice by the movant to the adverse party to be served not later than the Thursday preceding the last date for filing, if served in person, and not later than the Monday preceding the last date for filing, if served by mail; any papers in response must be served and filed not later than seven days after service of a motion served in person, or ten days after service of a motion served by mail, but in no event later than 12 noon on the Thursday preceding the Tuesday for which the motion is noticed.

(c) **Motions to Be Heard by a Panel Which Has Rendered a Decision.** Motions addressed to a previous decision or order of the court or for the stay, recall or modification of any mandate or decision of the court or to withdraw or dismiss an appeal argued but not decided shall be referred by the clerk to the judges who heard the appeal, normally without oral argument.

(d) **Pro Se Motions by Incarcerated Prisoners Under 28 U.S.C. §§ 2253 and 2255.** Pro se motions by incarcerated prisoners under 28 U.S.C. §§ 2253 and 2255 for certificates of appealability, leave to proceed in forma pauperis, or assignment of counsel shall be made on seven days' notice to the state or the United States, and will be taken on submission, without being calendared, at such time as the material necessary for the court's consideration shall have been assembled by the deputy clerk designated for the purpose.

(e) **Motions for Leave to Appeal.** Motions for leave to appeal under 28 U.S.C. § 1292(b) or under § 24 of the Bankruptcy Act, 11 U.S.C. § 47 (see Rules 5 and 6), shall be submitted without oral argument.

(f) **Motions to Be Determined by a Single Judge.** (See Rule 27(b) and (c).) Motions for procedural relief will normally be determined by a single judge without oral argument. Notwithstanding the provision of §27(a) in regard to dismissals, a single judge may include in an order granting an appellant an extension of time a provision for dismissal of the appeal by the clerk in the event of a default. These include, without limitation, motions for extension of time to file records, briefs, appendices or other papers, or for permission to make late filing in the absence of stipulation; to dispense with printing; for assignment of counsel or transcription of the record at the expense of the United States in cases governed by 18 U.S.C. § 3006A (which action shall be deemed to constitute the grant of leave to proceed in forma pauperis); for allowance of compensation and expenses under 18 U.S.C. § 3006A; for assignment of counsel when a certificate of appealability (see Rule 22) has been granted by the district court and for leave to proceed in forma pauperis in such cases; for leave to file a brief as amicus curiae (see Rule 29); for substitutions (see Rule 43); for consolidation; to intervene or to add or drop parties; for a preference; or for postponement of the argument of an appeal. When the court is not in session, certain of the motions normally returnable before a panel as provided in subdivision (a) may be heard and decided

by a single judge. Arrangements for such a hearing shall be made through the clerk.

(g) Motions for Permission to File Briefs Exceeding Size Provided by Rule 28(g).

1. A motion for permission to file a brief exceeding the size provided by Rule 28(g) shall be accompanied by a statement of reasons therefor and a copy of the page proofs, and will be disposed of by the clerk or referred by the clerk to a judge as standing directions of the court provide.

2. Such a motion shall be made not later than seven days before the brief is due in criminal cases and not later than two weeks before the brief is due in all other cases.

(h) Other Motions. Any motion not provided for in this rule or in other rules of this court shall be submitted to the clerk, who will assign it for disposition in accordance with standing directions of the court or, if these are inapplicable, as directed by the judge presiding over the panel of the court in session or assigned for the hearing of motions when the court is not in session. The clerk will notify counsel if and when appearance before the court or a judge is required.

(i) Suggestions for In Banc Consideration of a Motion. A suggestion by a party for in banc consideration in the first instance of a motion shall not be accepted for filing by the clerk unless the motion sought to be considered in banc has previously been ruled on by a panel of this court.

(j) Motions by *Pro Se* Appellant in Civil Appeals (including Habeas Corpus). In any civil appeal, including an appeal in a habeas corpus proceeding or other collateral attack on a criminal conviction, a motion filed by a *pro se* appellant (including, but not limited to, a motion for a certificate of appealability ("COA") from the denial of a writ of habeas corpus, a motion for leave to appeal *in forma pauperis*, for appointment of counsel, or for a transcript at public expense) shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing that the issue has likely merit. When a motion filed by a *pro se* appellant does not comply with this rule, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that (1) the required identification of issues and supporting facts and reasons must be filed with the court within 21 days, and (2) if the appellant fails to file the required statement, or if the court determines, on considering the appellant's statement that the appeal is frivolous, the court may dismiss the appeal. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein.

Local Rule 28. Briefs

1. Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this rule may be disregarded and stricken by the court.

2. Appellant's brief shall include, as a preliminary statement, the name of the judge or agency member who rendered the decision appealed from and, if the judge's decision or supporting opinion is reported, the citation thereof.

Interim Local Rule 29. Brief of an Amicus Curiae

The court ordinarily will deny leave to file brief for an amicus curiae where, by reason of a relationship between a judge who would hear the proceeding and the amicus or counsel for the amicus, the filing of the brief would cause the recusal of the judge.

Local Rule 30. Appendix

(a) **Deferred Appendix.** A deferred appendix as provided in Rule 30(c) may be filed in any case where the parties so stipulate or where, on application, a judge of this court so directs.

(b) **Original Record.** The procedure described in Rule 30(f) for hearing appeals on the original record without the necessity of an appendix (other than a copy of an opinion rendered by the district court) is authorized in all appeals conducted under the Criminal Justice Act, 18 U.S.C. § 3006A, in all other proceedings conducted in forma pauperis, and in all appeals involving a social security decision of the Secretary of Health and Human Services. In such cases the appellant shall file along with the appellant's brief five clearly legible copies of the reporter's transcript or of so much thereof as the appellant desires the court to read (or in the case of social security decisions, of the administrative records), and both parties in their briefs shall direct the court's attention to the portions of the transcript or administrative record deemed relevant to each point. If five copies are not available without incurring undue expense, application for leave to proceed with a smaller number of copies may be made.

(c) **Index for Exhibits.** The index for exhibits required by FRAP 30(e) shall include a description of the exhibit sufficient to inform the court of its nature; designation merely by exhibit number or letter is not a suitable index.

(d) **Notice of Appeal.** The notice of appeal shall be included in the appendix.

Local Rule 31. Number of Copies of Brief to be Filed with Clerk

(b) Notwithstanding FRAP Rule 31(b), the number of copies of each brief that must be filed with the clerk is ten.

Local Rule 32. Briefs and Appendix

(a) Form of Brief

1. **Briefs in Digital Format**. The digital format of a brief is governed by Interim Local Rule 25.

2. **Briefs in Paper Format.** Paper Briefs must conform to FRAP Rule 32(a), with a proviso that, if a litigant prefers to file a printed brief in pamphlet format, it must conform to the following specifications:

Size of pages:	6 1/8 by 9 1/4 inches
Sides used:	Both.
Margins:	At least one inch on all sides.
Font size:	12-point type or larger, for text and footnotes
Spacing:	2-points or more leading between lines. 6-points or more

between paragraphs.
Other specifications: Must conform to FRAP Rule 32(a).

(b) Form of Appendix. Appendices must conform to FRAP 32(b).

(1) All appendices must contain:

(A) Sequentially numbered pages beginning with A-1.

(B) A detailed index referring to the sequential page numbers.

(2) Appendices may:

(A) Be printed on both sides of the page.

(B) Employ tabs to identify documents. (Use of tabs does not eliminate the requirements to number pages sequentially.)

(C) Employ the Manuscript form of transcripts.

(c) Covers. The docket number of the case must be printed in type at least one inch high on the cover of each brief and appendix.

(d) Special Appendix.

(1) **Contents of the Special Appendix.** If the application or interpretation of any rule of law, including any constitutional provision, treaty, statute, ordinance, regulation, rule, or sentencing guideline, is significant to the resolution of any issue on appeal, or if the Appendix, exclusive of the orders, opinions, and judgments being appealed, would exceed 300 pages, the parties must provide the court with a Special Appendix, including

(A) the verbatim text, with appropriate citation, of any such rule of law, and

(B) such orders, opinions and judgments being appealed.

The inclusion of such materials in a Special Appendix satisfies the obligations established by FRAP Rules 28(f) and 30(a)(1).

(2) **Form of the Special Appendix.** The Special Appendix may be presented either as an addendum at the end of a brief, or as a separately bound volume (in which case it must be designated "Special Appendix" on its cover). The Special Appendix must conform to the requirements of Local Rule 32(b) relating to the Form of Appendix, with the exception that its pages must be sequentially numbered beginning with SPA-1.

Local Rule 32.1. Dispositions by Summary Order

(a) Use of Summary Orders. The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in

which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders. Rulings by summary order do not have precedential effect.

(c) Citation of Summary Orders.

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Service of Summary Orders on Pro Se Parties: A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend. Summary orders filed after January 1, 2007, shall bear the following legend:

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the

docket number of the case in which the order was entered.

Interim Local Rule 34. Oral Argument and Submission on Briefs

(a) Party's Statement and Submission on Briefs

(1) **Request for Oral Argument.** An opportunity for oral argument will be provided only upon request made pursuant to this subsection (a). This subsection (a) does not apply to appeals placed on the Non-Argument Calendar pursuant to Interim Local Rule 0.29.

(2) **Counseled Appeals.** For an appeal in which all parties are represented by counsel: counsel for all parties must confer (by any convenient means) and must file, within 14 days after the due date of the last brief, a joint statement indicating whether the parties–specifying which, if fewer than all–seek oral argument, or whether the parties agree to submit the case for decision on the briefs. Unless the Court directs otherwise, failure to timely file the joint statement will result in submission of the case for decision on the briefs.

(3) **Pro Se Appeals.** For an appeal in which at least one party appears pro se: after the due date of the last brief, the Clerk of Court will mail to each party a questionnaire asking whether the party would like to have the case decided on the briefs, or whether the party seeks oral argument. All parties must return the questionnaire within 14 days of its date. Failure by a party to timely return the questionnaire will be deemed to mean that the party does not seek oral argument.

(b) Determination by Court Not to Hear Oral Argument. If the court, acting sua sponte, contemplates deciding an appeal without hearing oral argument, each of the parties will be given an opportunity to file a statement setting forth reasons for hearing oral argument. Subject to subsection (a), oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record, shall be of the unanimous view that oral argument is not needed for one of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(c) Number of Counsel. Only one counsel will be heard for each party on the argument of a case, except by leave of the court.

(d) **Time Allotments.** The judge scheduled to preside over the panel will set the time allowed for argument by each party after considering the appellant's brief and each party's request for argument time. Normally, ten or fifteen minutes will be allotted to each side. Parties on the same side of an appeal may be obliged to divide the time allotted to their side. Arguments in pro se appeals are normally five minutes per side. The clerk will notify counsel and pro se parties of all such time allotments.

(e) **Postponement of Argument.** Except in the event of an emergency, such as unforeseen illness of counsel, an application to postpone the date for oral argument will ordinarily not be favorably entertained. Engagement of counsel in courts (other than the Supreme Court of the United States) or administrative hearings will not be considered good cause for postponement. The date for oral argument may not be postponed by stipulation.

Interim Local Rule 35. En Banc Procedure

(a) **Copy of Opinion or Summary Order Required.** Each petition for rehearing en banc shall include a copy of the opinion or summary order to which the petition relates, unless the opinion or summary order is included in a petition for panel rehearing that has been combined with the petition for rehearing en banc.

(b) **Judges Eligible to Request an En Banc Poll.** Any Judge of the Court in regular active service and any senior judge who is a member of the panel is eligible to request a poll of the judges in regular active service to determine whether a hearing or rehearing en banc should be ordered (see 28 U.S.C. § 46(c)).

(c) **Determination of Majority for Ordering En Banc Consideration.** Neither vacancies nor disqualified judges shall be counted in determining the base on which "a majority of the circuit judges of the circuit who are in regular active service" shall be calculated, pursuant to 28 U.S.C. § 46(c), for purposes of ordering a hearing or rehearing en banc.

(d) **Procedure After Amendment of Court Ruling.** If a panel opinion or summary order is amended, a petition for rehearing en banc, or an amended petition, may be filed within the time specified by F.R.A.P. Rule 35(c), counted from the date of the entry of the amendment. A petition for rehearing en banc filed prior to amendment of the court's ruling will continue to be effective and need not be amended.

Local Rule 38. Other Sanctions for Delay

In the event of failure by a party to file the record, a brief, or the appendix within the time limited by the Federal Rules of Appellate Procedure, or a rule or order of this court, the court, on motion of a party or on its own motion, may impose other sanctions, including amounts to reimburse an opposing party for the expense of making motions, upon the defaulting party or the defaulting party's attorney.

Local Rule 39. Costs

The cost of reproducing the necessary copies of appendices or record excerpts shall be taxed at a rate not to exceed $0.20 per page (which figure may be increased from time to time by the clerk of the court to reflect prevailing rates of economical duplicating or copying processes), or at actual cost, whichever shall be less.

Interim Local Rule 40. Panel Rehearing Procedure

(a) **Copy of Opinion or Summary Order Required.** Each petition for rehearing shall include a copy of the opinion or summary order to which the petition relates.

(b) **Procedure After Amendment of Court Ruling.** If a panel opinion or summary order is amended, a petition for panel rehearing, or an amended petition, may be filed within the times specified by F.R.A.P. Rule 40(a)(1), counted from the date of the entry of the amendment. A petition for panel rehearing filed prior to amendment of the court's ruling will continue to be effective and need not be amended.

(c) **Sanctions.** If a petition for rehearing is found to be wholly without merit, vexatious, and for delay, the court may tax a sum not exceeding $250 against petitioner in favor of the petitioner's adversary, to be collected with the costs in the case.

Local Rule 41. Issuance of Mandate

Unless otherwise ordered by the court, the mandate shall issue forthwith in all cases in which (1) an appeal from an order or judgment of a district court or a petition to review or enforce an order of an agency is decided in open court, (2) a petition for a writ of mandamus or other extraordinary writ is adjudicated, or (3) the clerk enters an order dismissing an appeal or a petition to review or enforce an order of an agency for a default in filings, as directed by an order of the court or a judge.

Local Rule 46. Attorneys

(a) (Interim) An applicant shall file with the clerk of the Court of Appeals, in addition to the material required by F.R.A.P. Rule 46, a certificate in writing on a form approved by the court that the applicant has read and is familiar with the Federal Rules of Appellate Procedure (F.R.A.P.) and the local rules of this court.

(b) With the filing required by F.R.A.P. 46 and "(a)" above, a motion for admission may be made in writing, in which event it will be acted upon by a single judge, or orally at the beginning of any session of the Court without presence of the applicant being required. The movant shall represent that the movant has read the certificate filed in accordance with "(a)" above and that it meets the requirements of this Rule.

(c) Each applicant upon admission shall pay to the clerk a fee which shall be set by the court, to be held by the court in an appropriate depository and expended upon order of the chief

judge for the expenses of the Law Library of the court located in the United States Courthouse, Foley Square, New York City, for out-of-pocket expenses incurred by attorneys or counselors assigned by the court to represent indigent persons not reimbursable under 18 U.S.C. §3006A or other applicable statute, or for other extraordinary purposes approved by the court.

(d) Counsel of record for all parties must be admitted to practice before this court. Oral argument may be presented only by attorneys admitted to practice before this court. Under exceptional circumstances an attorney may be admitted to argue an appeal pro hac vice. Such admission will be extended as a matter of course to a member of the Bar of a District Court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken pursuant to 18 U.S.C. §3006A, or who is acting for any party in an appeal taken in forma pauperis.

1. A notice of appearance must be filed in each case by counsel of record and, if different, by counsel who will argue the appeal, not later than the date of filing the appellant's brief on a form to be provided by the clerk.
2. A corporation may not appear pro se. Papers submitted on behalf of a corporation for whom no counsel has entered an appearance will not be filed.

(e) Appearance and Argument by Eligible Law Students.

1. An eligible law student acting under a supervising attorney may appear in this Court on behalf of any indigent person, the United States, or a governmental agency, provided the party on whose behalf the student appears has consented thereto in writing.

2. The supervising attorney shall be a member of the bar of this Court and, with respect to the law student's proposed appearance upon an appeal or other matter before this Court, shall:

   (i) file with this Court the attorney's written consent to supervise the student;

   (ii) assume personal professional responsibility for the student's work;

   (iii) assist the student to the extent necessary;

   (iv) appear with the student in all proceedings before this Court and be prepared to supplement any written or oral statement made by the student to this Court or opposing counsel.

3. In order to be eligible to appear, the student shall:

   (i) be enrolled in a law school approved by the American Bar Association.

The student shall be deemed to continue to meet this requirement as long as, following graduation, the student is preparing to take the first state bar examination, of the state of the student's choice within this circuit, for which the student is eligible or, having taken that examination, the student is awaiting publication of the results or admission to the bar after passing that examination;

(ii) have completed legal studies amounting to at least four semesters, or the equivalent;

(iii) be certified, by either the dean or a faculty member of the student's law school designated by the dean, as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by mailing a notice of withdrawal to the clerk of this court or it may be terminated, by vote of a majority of the panel sitting on a case in which the student is appearing, at any time without notice or hearing and without any showing of cause. The loss of certification by action of this court shall not be considered a reflection on the character or ability of the student. The dean or a faculty member designated by the student may recertify such a student for appearances before other panels;

(iv) be introduced to this court by an attorney admitted to practice before this court;

(v) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the party on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;

(vi) certify in writing that the student is familiar and will comply with the Code of Professional Responsibility of the American Bar Association;

(vii) certify in writing that the student is familiar with the Federal Rules of Appellate Procedure, the Rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

4. Upon filing with the clerk of this court the written consents and certifications required by this rule, an eligible law student supervised in accordance with this rule, may with respect to any appeal or other proceeding for which the student had met the requirements of this rule:

(i) engage in the drafting or preparation of briefs, appendices, motions, or other

documents;

(ii) appear before this court and participate in oral argument.

(f) Suspension or Disbarment. Suspension or disbarment shall be governed by Rule 46, Federal Rules of Appellate Procedure.

1. In all cases in which an order disbarring an attorney or suspending the attorney from practice (whether or not on consent) has been entered in any other court of record, federal or state, and a certified copy thereof has been filed in this court, the clerk shall enter an order for the court, to become effective twenty-four days after the date of service upon the attorney unless sooner modified or stayed, disbarring the attorney or suspending the attorney from practice in this court upon terms and conditions comparable to those set forth by the other court of record. A reasonable effort shall be made to locate the attorney's current address, and, if that effort is unsuccessful, mailing a copy of the order to the last-known address shall be deemed proper service. A copy of the order shall also be mailed to the Committee on Admissions and Grievances of the Court of Appeals to be established under subsection (h) hereof (hereafter "Committee").

2. Within twenty days from the date of service of this court's order, a motion may be filed in this court either by such attorney or the Committee for a modification or revocation of the order of this court. Any such motion shall set forth specifically the facts and principles relied on by applicant as showing cause why a different disposition should be ordered by this court. The timely filing of such a motion will stay the effectiveness of this court's order until further order of this court.

3. A motion to modify or revoke an order that has become effective under (1) will not be entertained unless good cause is shown for failure to file a motion timely under (2).

4. The court in any matter disputed under (2) or (3) may refer the matter to a special master to be appointed by the court for hearing and report.

5. The foregoing paragraphs of this subsection shall apply to any attorney who resigns from the bar of any other court of record, federal or state, while under investigation into allegations of misconduct on the attorney's part. Upon resigning under such conditions the attorney shall promptly inform the clerk of this court of such resignation.

(g) Attorneys Convicted of Crime.

1. Upon the filing with the court of a certificate, duly signed by the clerk of the court in which the conviction has occurred, demonstrating that an attorney has been

convicted of a serious crime as hereinafter defined, the clerk of this court shall immediately enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere, judgment after trial, or otherwise, and regardless of the pendency of an appeal from the conviction, unless the court orders otherwise. A copy of such order shall be served upon the attorney by mail at the attorney's last known address. Such suspension shall remain in effect pending disposition of a disciplinary proceeding to be commenced upon the filing of the certificate of conviction, unless the court orders otherwise.

2. The term "serious crime" shall include any felony, federal or state, and any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction has occurred, is (a) interference with the administration of justice; (b) false swearing; (c) misrepresentation; (d) fraud; (e) willful failure to file income tax returns; (f) deceit; (g) bribery; (h) extortion; (i) misappropriation; (j) theft; or (k) an attempt, or conspiracy, or solicitation of another to commit a serious crime.

3. A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime by such attorney in any disciplinary proceeding instituted against the attorney based upon the conviction.

4. Upon receipt of a certificate of conviction of an attorney for a serious crime and if no order has been entered under subparagraph (f) above, the court may, in addition to suspending the attorney in accordance with the provisions of (1), supra, also direct the institution of a formal presentment against the attorney, without any probable cause hearing, before the Committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. A proceeding under this subparagraph (g)(4) may be terminated if an order is entered under subparagraph (f) above. A disciplinary proceeding so instituted shall not, however, be brought to hearing until all appeals from the conviction are concluded or the time to take such appeal has expired.

5. Upon receipt of a certificate of conviction of an attorney for a crime not constituting a serious crime, other than a traffic offense, the court shall refer the matter to the said Committee for whatever action the Committee may deem warranted. The court may, however, in its discretion, make no such reference with respect to convictions for minor offenses.

6. An attorney suspended under the provisions of (1), shall be reinstated forthwith upon the filing of a clerk's certificate demonstrating that the underlying conviction for a serious crime has been reversed, but the reinstatement will not terminate any proceeding then pending against the attorney, the disposition of which shall be determined by the court or the Committee on the basis of the available evidence.

(h) Committee on Admissions and Grievances.

1. Appointment, members. The court shall appoint a standing committee of nine members of the bar to be known as the Committee on Admissions and Grievances. Three of those first appointed shall serve for the term of one year; three for two years; and the remainder and all thereafter appointed shall serve for the term of three years. Each member shall serve until a member's successor has been appointed. If a member shall hold over after the expiration of the term for which a member was appointed, the period of the member's hold-over shall be treated as part of the term of the member's successor. The court may vacate any such appointment at any time. In the case of any vacancy caused by death, resignation, or otherwise, any successor appointed shall serve the unexpired term of the successor's predecessor. The court shall designate one of the members to serve as chairman whenever it may for any reason be necessary. Five members of the Committee shall constitute a quorum. The court shall appoint a member of the bar as secretary of the Committee, who shall not be entitled to vote on its proceedings.

2. Reference on matters of misconduct. The court may refer to the Committee any accusation or evidence of misconduct in respect to any professional matter before this court that allegedly violates the rules of professional conduct or responsibility in effect in the state or other jurisdiction where the attorney maintains his or her principal office for such investigation, hearing and report as the court deems advisable. Such matters thus referred may include not only acts of affirmative misconduct but negligent conduct of counsel. The Committee may, in its discretion, refer such matters to an appropriate bar association for preliminary investigation.

3. Committee action. In any matter referred to the Committee under the provisions of these Rules it shall provide the attorney with a statement in writing of the charges against him and it shall hold a hearing, on at least ten days' notice to the attorney, making a record of its proceedings; in the event the attorney does not appear, the Committee may take summary action and shall report its recommendation forthwith to the court; in the event that the attorney does appear, the attorney shall be entitled to be represented by counsel, to present witnesses and other evidence on the attorney's behalf, and to confront and cross-examine under oath any witnesses against the attorney. Except as otherwise ordered by the court the Committee shall in its discretion make and be governed by its own rules of procedure.

4. Committee recommendation. The Committee shall file the record of its proceedings, its recommendation and a brief statement of the reasons therefor with the Clerk who shall retain them in camera after furnishing the court with copies thereof, and the Clerk shall mail a copy of the Committee's recommendation and

statement of its reasons to the affected attorney and make the record of the Committee's proceedings available to the attorney. Within twenty days after filing of the record, report and recommendation the attorney may file with the Clerk a statement, not to exceed ten typewritten pages in length, in opposition to or mitigation of the Committee's recommendation. The court, consisting of the active judges thereof, shall act within a reasonable time thereafter by majority vote.

5. Committee expense. The Committee may be reimbursed for its reasonable expenses in the discretion of the court from such sources as may be available to the court for such purposes.