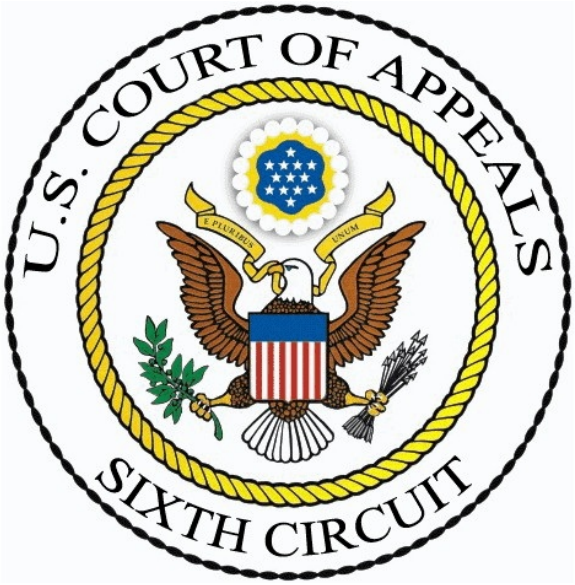

- **FEDERAL RULES OF APPELLATE PROCEDURE** [Last Amended December 1, 2007]

- **SIXTH CIRCUIT RULES**
  [Last Amended January 12, 2009]

- **SIXTH CIRCUIT INTERNAL OPERATING PROCEDURES**
  [Last Amended January 12, 2009]

- **SIXTH CIRCUIT GUIDE TO ELECTRONIC FILING**
  [Last Amended January 12, 2009]

January 12, 2009

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Effective January, 2009

TITLE I. APPLICABILITY OF RULES

FRAP 1 Scope of Rules; Title

(a) **Scope of Rules.**

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) **[Abrogated]**

(c) **Title**. These rules are to be known as the Federal Rules of Appellate Procedure.

6 Cir. R. 1 Scope of Rules and Title

These rules are adopted pursuant to Rule 47 of the Federal Rules of Appellate Procedure (FRAP), are intended to supplement those rules and shall be referred to as the "Sixth Circuit Rules" (6 Cir. R.). To the extent practical, they are numbered and titled to correspond to the FRAP. Rules dealing with subjects for which there are no corresponding FRAP are numbered 101 et seq. If no local rule corresponds to a FRAP, such rule number is noted as [Reserved].

COMMITTEE NOTE: New rule.

6 Cir. I.O.P. 1 Scope and Title

(a) These internal operating procedures describe the responsibilities, functions, organization and procedures in the day-to-day administration of the Court's rules and policies for the processing of appeals. They also set out the work of the judges, bench assignments, calendaring, processing of opinions, and other operating procedures of the Court. They are not rules.

(b) Because the large volume of filings requires that Court procedures increase efficiency for both judges and supporting personnel, new procedures continually are being tested and adopted.

(c) These internal operating procedures shall be referred to as the "Sixth Circuit Internal Operating Procedures" (6 Cir. I.O.P.).

COMMITTEE NOTE: (a)(b)-former I.O.P. Chapter 1; (c)-new I.O.P.

FRAP 2 Suspension of Rules

On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

6 Cir. R. 2 Suspension of Rules

In the interest of expediting decision or for other good cause, the Court may suspend the requirements of these Sixth Circuit Rules.

COMMITTEE NOTE: New rule.

6 Cir. I.O.P. 2 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir I.O.P.

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

FRAP 3 Appeal as of Right — How Taken

(a) **Filing the Notice of Appeal.**

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) **Joint or Consolidated Appeals.**

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) **Contents of the Notice of Appeal.**

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as ‘‘all plaintiffs,’’ ‘‘the defendants,’’ ‘‘the plaintiffs A, B, et al.,’’ or ‘‘all defendants except X’’;

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer’s spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) **Serving the Notice of Appeal.**

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries—and any later docket entries—to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) **Payment of Fees.** Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

6 Cir. R. 3 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 3 Appeal as of Right - Fees

(a) **Appeal Fees.** For amount of fees to be paid to district court, see 6 Cir. I.O.P. 103. Proceedings will be dismissed if the fees are not paid.

(b) **Indigent Litigants.** Payment of fees is not required for those non-prisoner indigent litigants whose in forma pauperis status has been approved by either the district court or this Court, providing that status has not been revoked.

COMMITTEE NOTE: Former I.O.P. 5.1 and 5.5; 28 U.S.C. § 1915.

FRAP 3.1 Appeal from a Judgment of a Magistrate Judge in a Civil Case

[Abrogated]

6 Cir. R. 3.1 Appeal from a Judgment Entered by a Magistrate Judge in a Civil Case - Petitions for Leave to Appeal

[Abrogated]

6 Cir. I.O.P. 3.1 [Abrogated]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 4 Appeal as of Right — When Taken

(a) **Appeal in a Civil Case.**

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) **Effect of a Motion on a Notice of Appeal.**

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B) (i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.**

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision, sentence, or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Effect of a Motion on a Notice of Appeal.**

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order—but before it disposes of any of the motions referred to in Rule 4(b)(3)(A)—becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective—without amendment—to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) **Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) **Jurisdiction.** The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) **Mistaken Filing in the Court of Appeals.** If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

6 Cir. R. 4 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 4 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 5 Appeal by Permission

(a) **Petition for Permission to Appeal.**

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) **Contents of the Petition; Answer or Cross-Petition; Oral Argument.**

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 7 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) **Form of Papers; Number of Copies.** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) **Grant of Permission; Fees; Cost Bond; Filing the Record.**

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

6 Cir. R. 5 Electronic Filing of Documents Subsequent to Petition

A petition for permission to appeal shall be filed in paper. All documents in the proceeding filed after the Petition shall be filed electronically, in accordance with 6 Cir. R. 25 and this court's Guide to Electronic Filing, unless otherwise ordered by the court.

6 Cir. I.O.P. 5 Appeal by Permission under 28 U.S.C. § 1292(b)

(a) **Fees.** No fee is required with a petition for permission to appeal under 28 U.S.C. § 1292(b) unless the petition is granted.

(b) **Expedited Cases.** Interlocutory appeals under 28 U.S.C. § 1292(b) are included in those cases in which the Court issues a routine briefing schedule with an expedited argument or directs submission on briefs. See 6 Cir. I.O.P. 28(c).

COMMITTEE NOTE: (a) - former I.O.P. 5.4; (b) - former I.O.P. Chapter 7.

FRAP 5.1 Appeal by Leave Under 28 U.S.C. § 636(c)(5)

[Abrogated]

6 Cir. R. 5.1 Appeal by Permission under 28 U.S.C. § 636 - Petitions for Leave to Appeal

[Abrogated]

6 Cir. I.O.P. 5.1 Appeal by Permission under 28 U.S.C. § 636 - Petition for Leave to Appeal

[Abrogated]

FRAP 6 Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

(a) **Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case.** An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) **Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.**

(1) **Applicability of Other Rules.** These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13–20, 22–23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to ''Form 1 in the Appendix of Forms'' must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term ''district court,'' as used in any applicable rule, means ''appellate panel.''

(2) **Additional Rules.** In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) **Motion for rehearing.**

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by

Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) **The record on appeal.**

(i) Within 10 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006—and serve on the appellee—a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 10 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

• the redesignated record as provided above;

• the proceedings in the district court or bankruptcy appellate panel; and

• a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) **Forwarding the record.**

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide

by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) **Filing the record.** Upon receiving the record—or a certified copy of the docket entries sent in place of the redesignated record—the circuit clerk must file it and immediately notify all parties of the filing date.

6 Cir. R. 6 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 6 Appeal in Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or of a Bankruptcy Appellate Panel - Fees

See 6 Cir I.O.P. 3(a) and 3(b).

COMMITTEE NOTE: Former I.O.P. 5.1 and 5.5.

FRAP 7 Bond for Costs on Appeal in a Civil Case

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

6 Cir. R. 7 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 7 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 8 Stay or Injunction Pending Appeal

(a) **Motion for Stay.**

(1) **Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) **Motion in the Court of Appeals; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) **Proceeding Against a Surety.** If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) **Stay in a Criminal Case.** Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

6 Cir. R. 8 Stay or Injunction Pending Appeal

[Reserved]

6 Cir. I.O.P. 8 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 9 Release in a Criminal Case

(a) **Release Before Judgment of Conviction.**

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) **Release After Judgment of Conviction.** A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) **Criteria for Release.** The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

6 Cir. R. 9 Release in a Criminal Case

Review of district court orders respecting pretrial release is by way of appeal, rather than motion. These appeals are given expedited treatment and, for that reason, are heard without the necessity of briefs; see FRAP 9(a). As with other appeals, however, there must be a timely notice of appeal and a resolution of the docketing fee status before any action will be taken.

Application for post-conviction release is made by motion pursuant to FRAP 9(b), which requires that applications for post-conviction release first be presented to the district court. Where that has been done and no relief has been forthcoming, a motion for release can be made to this Court. These motions are treated as single-judge, expedited matters. Such motions shall be accompanied by a copy of the notice of appeal, a copy of the district court's order denying or imposing conditions on release and, wherever possible, a transcript of the bail hearing.

Unless a timely notice of appeal from the judgment of conviction has been filed in the district court, thus transferring jurisdiction to the Court of Appeals, this Court cannot act on motions for release pending appeal.

COMMITTEE NOTE: Former I.O.P. 17.6.

6 Cir. I.O.P. 9 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 10 The Record on Appeal

(a) **Composition of the Record on Appeal.** The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) **The Transcript of Proceedings.**

(1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A),whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) **Partial Transcript.** Unless the entire transcript is ordered:

(A) the appellant must—within the 10 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) **Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.** If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) **Agreed Statement as the Record on Appeal.** In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the courts resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal— must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) **Correction or Modification of the Record.**

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

6 Cir. R. 10 The Record On Appeal

(a) **The Record on Appeal.** The record on appeal is comprised of the items specified in FRAP 10.

(b) **Ordering Transcript.** It is the responsibility of the parties to use Form 6CA-30, available on the court's website, to order and to make satisfactory financial arrangements for the production of a transcript necessary for resolution of those issues to be raised on appeal. Only those parts of a transcript shall be ordered that relate to issues to be raised on appeal. If a transcript is unnecessary for the appeal, the appellant must certify that on form 6CA-30. Where the appellant is represented by counsel, counsel must complete form 6CA-30 electronically on the court's website, download it, and file it electronically. The appellant is responsible for serving copies of form 6CA-30 on the appellee(s), the district court, and other persons and offices indicated on the form.

Failure to order a transcript, to make financial arrangements with the reporter(s) or to inform the court that a transcript is unnecessary, within the time specified in FRAP 10, may result in dismissal of the appeal.

(c) **Exhibits.** All exhibits filed with the district court are part of the record on appeal, as provided by FRAP 10(a). As a general matter, the district court does not send non-electronic records to the court of appeals unless and until the circuit clerk requests them. See 6 Cir. I.O.P. 11(a)(2). This sub-rule (c) applies to non-electronic exhibits that a party wishes to draw particular attention to by assuring that the court has actual possession of the exhibits or copies of them.

(1) **Manageable Paper Exhibits.** If the district court has not made all paper exhibits part of its electronic record, a party may file manageable paper exhibits and excerpts from bulky paper exhibits with the court of appeals in an appendix to the party's brief as provided in 6 Cir. R. 30(f)(1). The filing should include only those exhibits or parts of exhibits necessary for effective understanding of the issues raised in the briefs.

(2) **Physical and Bulky Paper Exhibits.** Counsel is responsible for arranging with the district court for the transmission of physical and bulky paper exhibits to this court when it is necessary for the court of appeals to have such exhibits in order to decide the appeal. The district court will not automatically include these exhibits with the record transmitted to the court of appeals. Therefore, they must be designated and a request made for their transmittal. Physical and bulky paper exhibits may not be transmitted to the court of appeals without the circuit clerk's express written permission. FRAP 34 sets forth the procedures for use of physical exhibits at oral argument.

COMMITTEE NOTE: (b) - former 6 Cir. R. 13(a) and former I.O.P. 8; (c) - former I.O.P. 14.1. See also 6 Cir. R. 11 and 6 Cir. R. 30.

Comments

The title is changed because the scope of the rule is expanded.

Rule 10(b) specifies that the transcript order form must be filed electronically.

Rule 10(c) specifies how physical exhibits are handled when there is an electronic record on appeal and when there is not.

6 Cir. I.O.P. 10 The Record on Appeal

6 Cir. R. 10(c) distinguishes between "manageable" and "bulky" paper exhibits. The intent is (1) to allow parties to include in an appendix copies of exhibits or excerpts of exhibits without burdening the court with extremely voluminous exhibits and (2) to provide for physical transmission of voluminous exhibits to the court as part of the record on appeal when immediate availability to the court of such exhibits is important to the appeal. If a party is uncertain as to how certain exhibits should be handled, the party should contact the case manager.

FRAP 11 Forwarding the Record

(a) **Appellant's Duty.** An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) **Duties of Reporter and District Clerk.**

(1) **Reporter's Duty to Prepare and File a Transcript**. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporters receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) **Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal.** The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) **[Abrogated]**

(e) **Retaining the Record by Court Order.**

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) **Retaining Parts of the Record in the District Court by Stipulation of the Parties.** The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) **Record for a Preliminary Motion in the Court of Appeals.** If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a supersedeas bond; or
- for any other intermediate order

the district clerk must send the court of appeals any parts of the record designated by any party.

6 Cir. R. 11 Transmission of the Record - Court Reporter's Obligation to Prepare Transcripts; Extension of Time

(a) **Court Reporter's Obligation.** Court reporters shall give priority to preparation of transcripts in connection with appeals in criminal cases over every other duty except those they perform in proceedings in their assigned courtroom. The word "transcript" as used

herein refers to those portions of the district court proceedings which have been ordered or directed to be transcribed for purposes of appeal.

(b) **Extension of Time.** Any request for extension of time to prepare the transcript pursuant to FRAP 11(b) must include, where applicable, the following:

(1) the reasons for the delay;

(2) the date the transcript was ordered and the date satisfactory financial arrangements were made with the court reporter;

(3) the number of transcript pages estimated for preparation and the number of pages completed to date;

(4) the estimated completion date; and

(5) the date of conviction, the date of sentencing, and the date the notice of appeal was filed.

COMMITTEE NOTE: Former 6th Cir. R. 13(b).

6 Cir. I.O.P. 11 Transmission of the Record on Appeal

(a) **Obligations of District Court Clerk.**

(1) **Electronic Record.** When there is an electronic record, the district clerk will not transmit the portions of the record that are filed electronically to the court of appeals. The court of appeals will electronically access the district court record.

(2) **Non-electronic Record.** The district clerk will transmit the non-electronic part(s) of the record on appeal when requested to do so by the circuit clerk.

(b) **Pre-Sentence Reports**

The circuit clerk will obtain the pre-sentence report and any objections thereto. The court will keep these materials confidential.

(c) **Duties of Court Reporters; Extension of Time; Reduction of Fees.** If the reporter cannot prepare the transcript within 30 days of the purchase order date, the reporter will be required to make a written request to the clerk of this Court for an extension of time. The clerk's office will monitor all outstanding transcripts and all situations in which there is a delay in

transcript preparation. Counsel will be kept informed when extensions of time are allowed on request by the court reporters.

If the transcript cannot be completed within 45 days from the date of order, the reporter is obliged to reduce the transcript preparation fee by 10%; if transcript is not completed by the 60th day from the date of the order, a 20% reduction is to be applied by the reporter, who shall remove himself or herself from the courtroom until such time as the transcript has been completed and filed with the district court. These fee reductions may be waived by the clerk upon a showing of good cause by the court reporter.

Where necessary to ensure the timely resolution of an appeal in a criminal proceeding, this Court may direct the preparation of transcript out of the order otherwise prescribed by rule.

Requests by counsel that a court reporter suspend preparation of transcript which has been ordered cannot be given effect. Unless this Court directs otherwise, reporters will be expected to prepare transcript without interruption and will be held to the standards of timeliness outlined above.

(d) **Sealed Records.** Where a record has been transmitted to this Court which has been sealed, in whole or in part, by order or other direction of the district court, this Court will accord the record the same confidential treatment during the pendency of the appeal. The sealed item(s) will be unsealed and made a part of the public record only upon the order of the district court or this Court.

COMMITTEE NOTE: (a)(1) - former I.O.P. 14; (a)(2) - former I.O.P. 11; (c) - former I.O.P. 9; (d) - former I.O.P. 14.1.

FRAP 12 Docketing the Appeal; Filing a Representation Statement; Filing the Record

(a) **Docketing the Appeal.** Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) **Filing a Representation Statement.** Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) **Filing the Record, Partial Record, or Certificate.** Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

6 Cir. R. 12 Filing a Representation Statement (Appearance of Counsel)

An attorney who wishes to file documents or argue on behalf of a party to an appeal must complete and return a Form for Appearance of Counsel, 6CA-68. An attorney must be a member in good standing of the bar of the Sixth Circuit to register an appearance. In exigent circumstances that require filing or argument before admission to the bar of the sixth circuit, counsel should contact the clerk for directions. Only those attorneys for whom this court has this appearance form on file will receive notice of any hearings, orders, or other court action involving their case. Failure to file the form may result in dismissal of the case. It is counsel's obligation to inform the clerk's office of any change in address, telephone, fax number, and e-mail address.

COMMITTEE NOTE: Former I.O.P. Chapter 3.

Comments

The title is changed because the rule deals only with filing an appearance.

Registration for electronic filing requires that an attorney be admitted to practice in the sixth circuit. All filings, except those set out in 6 Cir. R. 25(b), must be electronic. Thus, an appearance must be filed electronically. Therefore, this rule states that an attorney filing an appearance must be admitted to practice. There may, however, be instances where an emergency requires action before an attorney is admitted to practice. The clerk will provide directions in those instances.

6 Cir. I.O.P. 12 Docketing the Appeal; Filing a Representation Statement (Appearance of Counsel)

(a) **Docketing an Appeal.** Appeals are immediately docketed upon receipt of the notice of appeal and the docket entries from the district court. A general docket number is assigned and all counsel and pro se parties are so advised. Failure to pay the docket fee does not prevent the appeal from being docketed but is grounds for dismissal of the appeal by the clerk.

(b) **Appearance of Counsel.** In order to facilitate communications between this Court and counsel, it is the practice of this Court to look to one counsel for appellant(s)/petitioner(s) and one for appellee(s)/respondent(s), who shall relay all pertinent information to all other counsel for that side. In cases where there is more than one appellant or petitioner or more than one appellee or respondent, counsel for those parties may be asked to designate one of their number to serve as "lead" counsel for the purpose of receiving notices from the clerk's office. In the absence of such a designation, the clerk will assign an attorney to act as lead counsel, and inform the other counsel of that designation.

COMMITTEE NOTE: (a) - former I.O.P. 6.1; (b) former I.O.P. Chapter 3.

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

FRAP 13 Review of a Decision of the Tax Court

(a) **How Obtained; Time for Filing Notice of Appeal.**

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) **Notice of Appeal; How Filed.** The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) **Contents of the Notice of Appeal; Service; Effect of Filing and Service.** Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) **The Record on Appeal; Forwarding; Filing.**

(1) An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

6 Cir. R. 13 Review of a Decision of the Tax Court

The provisions in these rules for appeal from a judgment or order of a district court apply to appeals from the United States Tax Court, except as provided for appendices in 6 Cir. R. 30.

Comments

This rule is added to make clear that Tax Court appeals will generally be handled the same as district court appeals. However, the Tax Court's electronic records are not easily transferable to the court of appeals. Therefore, as set out in 6 Cir. R. 30, in Tax Court appeals there will be appendices instead of an electronic record on appeal.

6 Cir. I.O.P. 13 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 14 Applicability of Other Rules to the Review of a Tax Court Decision

All provisions of these rules, except Rules 4–9, 15–20, and 22–23, apply to the review of a Tax Court decision.

6 Cir. R. 14 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 14 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

FRAP 15 Review or Enforcement of an Agency Order — How Obtained; Intervention

(a) **Petition for Review; Joint Petition.**

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition—using such terms as ''et al.,'' ''petitioners,'' or ''respondents'' does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule ''agency'' includes an agency, board, commission, or officer; ''petition for review'' includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) **Application or Cross-Application to Enforce an Order; Answer; Default.**

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 20 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) **Service of the Petition or Application.** The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) **Intervention.** Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) **Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

6 Cir. R. 15 Electronic Filing of Documents Subsequent to Petition

A petition for review of an agency order shall be filed in paper with the clerk's office. Except as provided in 6 Cir. R. 18, all documents in the proceeding filed after the petition for review shall be filed electronically, in accordance with 6 Cir. R. 25 and this court's Guide to Electronic Filing, unless otherwise ordered by the court.

6 Cir. I.O.P. 15 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 15.1 Briefs and Oral Argument in a National Labor Relations Board Proceeding

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

6 Cir. R. 15.1 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 15.1 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 16 The Record on Review or Enforcement

(a) **Composition of the Record.** The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) **Omissions From or Misstatements in the Record.** The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

6 Cir. R. 16 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 16 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 17 Filing the Record

(a) **Agency to File; Time for Filing; Notice of Filing.** The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court

may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) **Filing—What Constitutes.**

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

FRAP 18 Stay Pending Review

(a) **Motion for a Stay.**

(1) **Initial Motion Before the Agency.** A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) **Motion in the Court of Appeals.** A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) **Bond.** The court may condition relief on the filing of a bond or other appropriate security.

6 Cir. R. 18 Filing of Stay Pending Review of Agency Decision

A motion for stay made in the court of appeals may be filed in paper with the clerk's office when the motion accompanies the petition for review filed under Fed. R. App. P. 15.

6 Cir. I.O.P. 18 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 19 Settlement of a Judgment Enforcing an Agency Order in Part

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 7 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

6 Cir. R. 19 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R. See 6 Cir. I.O.P. 19.

6 Cir. I.O.P. 19 Amendment, Correction or Settlement of a Judgment

Motions to amend, correct or settle a judgment are referred to the panel that decided the case.

COMMITTEE NOTE: Former I.O.P. 17.11.4.

FRAP 20 Applicability of Rules to the Review or Enforcement of an Agency Order

All provisions of these rules, except Rules 3–14 and 22–23, apply to the review or enforcement of an agency order. In these rules, ''appellant'' includes a petitioner or applicant, and ''appellee'' includes a respondent.

6 Cir. R. 20 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 20 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

TITLE V. EXTRAORDINARY WRITS

FRAP 21 Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) **Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.**

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled ''In re [name of petitioner].''

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) **Denial; Order Directing Answer; Briefs; Precedence.**

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) **Other Extraordinary Writs.** An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) **Form of Papers; Number of Copies.** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule

21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

6 Cir. R. 21 Writs of Mandamus and Prohibition, and Other Extraordinary Writs - Number of Copies - Filing Fee - Electronic Filing

(a) A signed original and four copies of a petition for any extraordinary writ are required to be filed, although this court may request additional copies.

(b) For amount of fee to be paid to this court see 6 Cir. I.O.P. 103. The proceeding will be dismissed if the fee is not paid.

(c) A petition for any extraordinary writ shall be filed in paper format with the clerk's office. All documents in the proceeding filed after the petition shall be filed electronically, in accordance with 6 Cir. R. 25 and this court's Guide to Electronic Filing, unless otherwise ordered by the court.

COMMITTEE NOTE: Former 6th Cir. R. 23(a); former I.O.P. 5.3.

6 Cir. I.O.P. 21 Writ of Mandamus and Prohibition, and Other Extraordinary Writs

Where a petitioner seeks an extraordinary writ to expedite the district court case, this Court will request a status report from the respondent. Where the petition also raises substantive legal issues, this Court will invite a preliminary response from respondent. In each case, the petitioner will receive a copy of this Court's correspondence with the respondent.

COMMITTEE NOTE: Former I.O.P. 6.3.

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22 Habeas Corpus and Section 2255 Proceedings

(a) **Application for the Original Writ.** An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) **Certificate of Appealability.**

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

6 Cir. R. 22 Habeas Corpus and Section 2255 Proceedings -- Second or Successive Applications -- Death Penalty Cases.

(a) **Certificates of Appealability.** Applications for a certificate of appealability, once denied by the district court, are to be filed in this Court as soon as possible following filing of the notice of appeal.

(b) **Motions to File a Second or Successive Application Under 28 U.S.C. § 2254 or § 2255**

(1) The clerk's office shall provide an informational form for the use of any applicant who advises that he or she will be seeking relief under this rule.

(2) Any individual seeking to file in the district court a second or successive application for relief pursuant to 28 U.S.C. § 2254 or § 2255, including those under a sentence of death, shall first file a motion with this Court for authorization as required by 28 U.S.C. § 2244 and § 2255, on the form provided by the clerk for such motions. Applications made by petitioners under sentence of death must comply with the requirements of section (c) of this rule.

(A) Motions seeking authorization to file a second or successive application under § 2254 shall state a new ground for relief and specify the reasons why the application for relief should be permitted to be filed in the district court under 28 U.S.C. § 2244(b)(2)(A) or (B).

(B) Motions seeking authorization to file a second or successive application under § 2255 shall state the grounds for relief and specify the reasons why the application for relief should be permitted to be filed in the district court under the relevant standards specified in the final paragraphs of § 2255.

(3) The petitioner shall provide along with the motion copies of the report of the magistrate judge and the opinion of the district court issued in any prior § 2254 or § 2255 proceeding, if such copies are reasonably available. Where appropriate, this Court will request the respondent to provide the necessary copies of these documents.

(4) No filing fee is required for a motion seeking authorization to file a second or successive application.

(5) The applicant shall serve a copy of the motion and any accompanying documentation on the respondent, and shall attach a certificate of service to the motion. The respondent may file a response within ten calendar days of the filing of the motion or the later filing by the respondent of supporting documentation, unless a shorter period is ordered. Any response received after such time may be considered, in the discretion of this Court. In death penalty cases in which execution is imminent, this Court need not wait for a response.

(6) The motion will be referred to a three-judge panel for decision. Once the panel has decided the motion, the clerk will forward a copy of the order to the clerk of the appropriate district court. If the motion is granted, the filing of the application in the district court will be subject to the requirements of 28 U.S.C. § 1915(a). No motion or request for reconsideration, petition for rehearing, or any other paper seeking review of the granting or denial of authorization will be allowed. See 28 U.S.C. § 2244(b)(3)(E).

(c) **Death Penalty Cases.**

(1) **Application of Rule.** This rule applies to all applications for relief under § 2254 or § 2255 by persons under sentence of death.

(2) **Petitioner's Statement.** Whenever such a case is filed in this Court, petitioner should file a statement certifying the existence of a sentence of death and the emergency nature of the proceedings and listing the proposed date of execution, any previous cases filed by petitioner in federal court, and any cases filed by petitioner pending in any other court. Petitioner may use form 6CA-99 or the equivalent thereof for the statement.

(3) **Original Applications.** All original applications for habeas corpus relief are to be filed in the clerk's office and will be referred to a panel of this Court in accordance

with approved operating procedures of this Court. See I.O.P. 22(a)(1). Applications addressed to this Court or to any judge of this Court will ordinarily be transferred to the appropriate district court.

(4) **Stay of Execution.** A stay of execution is granted automatically in some state cases by 28 U.S.C. § 2262(a). A stay of execution is forbidden in some state cases by 28 U.S.C. § 2262(b) and (c). All requests with respect to stays of execution over which the district court possesses discretion, or in which any party contends that § 2262 has not been followed, first must be presented to the district court by motion pursuant to FRAP 8(a). Motions for stay, once denied by the district court, are to be filed in this Court as soon as possible after filing the notice of appeal.

(5) **Emergency Motions.** Counsel having emergency motions or applications, whether addressed to this Court or to an individual judge, ordinarily shall file such petitions with the clerk of this Court rather than with an individual judge. Counsel is encouraged to communicate with the clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court.

(6) **Documents to be Filed With Motion.** An original and four copies of any motion for stay of execution and application for a certificate of appealability shall be filed with the clerk of this Court, together with the following documents:

(A) the complaint or petition to the district court;

(B) each brief or memorandum of authority filed by any party in the district court;

(C) any available transcripts of proceedings before the district court;

(D) the memorandum opinion giving the reasons advanced by the district court for denying relief;

(E) the district court's judgment denying relief;

(F) the application to the district court for a certificate of appealability;

(G) the application to the district court for stay;

(H) the certificate of appealability or order denying a certificate of appealability;

(I) the district court's order granting or denying a stay and its statement of reasons for this action;

(J) a copy of the docket entries of the district court in the case;

(K) a copy of each state or federal court opinion or judgment involving any issue presented to this Court or, if the ruling was not made in a written opinion or judgment, a copy of the relevant portions of the transcript.

(7) **Review of the Merits of the Case.** The panel handling the case will allow the ordinary schedule for filing briefs on the merits of the case unless good cause for expedited briefing is demonstrated. However, in considering a motion for stay, the panel may conclude it appropriately can address the merits of the case in addition to the motion to stay. In such a situation, counsel will be given notice to address the merits in briefs to be filed on an expedited basis. The panel may grant a temporary stay pending consideration of the merits if necessary to prevent mooting the case. Any oral argument of the merits will be scheduled as soon as practicable after briefs are filed.

(8) **Filing of the Briefs.** The appellant shall serve and file a brief within 60 days after the date on which the record is filed. The appellee shall serve and file a brief within 60 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee but, except for good cause shown, a reply brief must be filed at least three days before argument.

The briefs of the parties shall not exceed one and one-half times the length allowed by FRAP 32(a)(7) for principal and reply briefs.

Requests for extensions of time or expansion of page limits will be referred to the panel to which the case has been assigned.

(9) **Petitions for Rehearing.** Because of the difficulty of delivering petitions for rehearing with or without a suggestion for rehearing en banc to judges of this Court where a panel of this Court has denied a request to stay an execution scheduled for a time within 24 hours of the filing of the petition for rehearing, parties are hereby notified that such petitions will not ordinarily be able to be delivered to the judges of this Court in sufficient time for consideration prior to the time of the scheduled execution. Petitions for rehearing filed within 24 hours of the scheduled execution shall be processed and distributed by the most expeditious service normally provided by the United States Postal Service unless the panel handling the case gives specific direction for some other method of delivery.

(10) **Mandate.** Issuance of the mandate will be governed by the standards of FRAP 41 and 6 Cir. R. 41.

COMMITTEE NOTE: (a) - new rule. (b) - former 6th Cir. R. 33. (c) - former 6th Cir. R. 28. Direct appeals in federal criminal cases are addressed in these rules at 6 Cir. R. 101.

6 Cir. I.O.P. 22 Habeas Corpus and Section 2255 Proceedings

(a) **Death Penalty Cases**

(1) Pursuant to 6 Cir. R. 22(c), an independent roster of active judges and those senior judges who so elect will be maintained for the exclusive purpose of making panel assignments in death penalty cases as soon as the case is docketed. An active judge so assigned shall continue as a member of the panel after that judge's assumption of senior status. The clerk of this Court shall docket the case upon receipt of the notice of appeal and both the application and motion for stay shall be immediately assigned to a panel of this Court in accordance with approved operating procedures of this Court. The panel shall be assigned the case and all matters pertaining to the motion to stay, application for certificate of appealability, the merits, second or successive petitions, remands from the Supreme Court of the United States, and all incidental and collateral matters, including any separate proceedings questioning the conviction or sentence.

(2) Special attention should be given to the necessity of filing the certificate of appealability required by 6 Cir. R. 22(a) when the notice of appeal is filed in the district court. Counsel is encouraged to contact the clerk's office by telephone at the earliest possible time, before the filing of the notice of appeal, if possible, to apprise the clerk's office of the progress of the case and to determine the procedures applicable to it.

(b) **Appointment of Counsel.** When a pro se petitioner is the appellee in a 28 U.S.C. § 2241, § 2254 or § 2255 case, the clerk shall appoint counsel if the petitioner is a pauper.

(c) **Expedited Cases.** Cases filed pursuant to 28 U.S.C. §§ 2241, 2254 and 2255 are included in those cases in which the Court issues a routine briefing schedule with an expedited argument or directs submission on briefs. See 6 Cir. I.O.P. 28(c).

(d) **Issuance of Stay by Single Judge.** Although the decision of the panel represents the judgment of the court unless and until changed by the action of the en banc court, it is the policy of the court that any active judge, whether or not a member of the panel assigned to the case, or any senior judge who is a member of the panel, may issue a stay of limited duration for no longer than is necessary to allow the court to consider and rule on any petition for en banc review filed by a party, or any sua sponte request of a judge for en banc review. This policy is consistent with the authority granted a single judge by Rule 8 of the Federal Rules of Appellate Procedure to rule on motions in exceptional circumstances.

COMMITTEE NOTE: (a) - former I.O.P. 19.3.23, former 6th Cir. R. 28(f), former I.O.P. Chapter 28, former I.O.P.25.2; (b) - former I.O.P. 25.2; 22(c) - former I.O.P. Chapter 7. Direct appeals of death penalty cases are addressed at 6 Cir. I.O.P. 101.

FRAP 23 Custody or Release of a Prisoner in a Habeas Corpus Proceeding

(a) **Transfer of Custody Pending Review.** Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) **Detention or Release Pending Review of Decision Not to Release.** While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) **Release Pending Review of Decision Ordering Release.** While a decision ordering the release of a prisoner is under review, the prisoner must—unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise—be released on personal recognizance, with or without surety.

(d) **Modification of the Initial Order on Custody.** An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

6 Cir. R. 23 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 23 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 24 Proceeding in Forma Pauperis

(a) **Leave to Proceed in Forma Pauperis.**

(1) **Motion in the District Court.** Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) **Action on the Motion.** If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) **Prior Approval.** A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) **Notice of District Court's Denial.** The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) **Motion in the Court of Appeals.** A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice

prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) **Leave to Proceed in Forma Pauperis on Appeal or Review of an Administrative-Agency Proceeding.** When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

6 Cir. R. 24 Proceedings in Forma Pauperis - Application for Pauper Status on Appeal - Criminal

If a convicted defendant did not qualify to proceed in forma pauperis in the district court, but appears to qualify on appeal, trial counsel must see that the defendant receives and completes the appropriate affidavit form (CJA Form 23), which is available in the district court clerk's office. Pursuant to FRAP 24, the application must be first directed to the district court.

COMMITTEE NOTE: Former 6th Cir. R. 12(c). See also 6 Cir. R. 101.

6 Cir. I.O.P. 24 Proceedings in Forma Pauperis -Application for Pauper Status on Appeal - Criminal

See 6 Cir. I.O.P. 22(b).

COMMITTEE NOTE: Former I.O.P. 25.2.

TITLE VII. GENERAL PROVISIONS

FRAP 25 Filing and Service

(a) **Filing.**

(1) **Filing with the Clerk.** A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) **Filing: Method and Timeliness.**

(A) **In general.** Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) **A brief or appendix.** A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.

(C) **Inmate filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) **Electronic filing.** A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) **Filing a Motion with a Judge.** If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) **Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) **Privacy Protection.** An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) **Service of All Papers Required.** Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) **Manner of Service.**

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 calendar days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) **Proof of Service.**

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) **Number of Copies.** When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

6 Cir. R. 25 Filing, Proof of Filing, Service, and Proof of Service - Acknowledgment of Filing; Electronic Case Filing

(a) Unless otherwise required by the Sixth Circuit Rules or by order of the court, all documents submitted in cases filed with the Sixth Circuit on or after June 1, 2008, shall be filed electronically, using the Electronic Case Filing (ECF) system. Electronic filings shall be governed by the Sixth Circuit Rules and by the Sixth Circuit Guide to Electronic Filing.

(b) **Exceptions to Electronic Filing.** The following documents shall not be filed electronically, but shall be filed in paper format:

(1) Any document filed by a party that is unrepresented by counsel;
(2) Petitions for permission to appeal under Fed. R. App. P. 5;
(3) Petitions for review of an agency order under Fed. R. App. P. 15;
(4) Petitions for a writ of mandamus or writ of prohibition under Fed. R. App. P. 21;

(5) Applications for any other extraordinary writ under Fed. R. App. P. 21;
(6) Any other document initiating an original action in the court of appeals;
(7) Motions to authorize the filing in the district court of a second or successive petition for a writ of habeas corpus under 6 Cir. R. 22;
(8) Documents filed under seal;
(9) Documents relating to complaints of attorney misconduct;
(10) Vouchers or other documents relating to claims for compensation and reimbursement of expenses incurred with regard to representation afforded under the Criminal Justice Act; and
(11) Documents that exceed any limit that the court may set for the size of electronic filings.

(c) **ECF Registration and Passwords.**

(1) To participate in the ECF system, an attorney must register to file and serve documents electronically. An attorney's registration constitutes consent to receive electronic service of all documents as provided by the Federal Rules of Appellate Procedure and the Sixth Circuit Rules, as well as to receive notice of correspondence, orders, and opinions issued by the court.

(2) To register as a user of the ECF system, an attorney must be admitted to practice in this court, be a member in good standing, and have submitted to the Public Access to Court Electronic Records (PACER) Service Center a completed ECF Attorney Registration form. In addition, the attorney or the attorney's firm must have a valid PACER account and e-mail address.

(3) The clerk shall issue a login name and user password to an attorney who registers. The attorney may thereafter change the password as he or she wishes. A registered attorney shall inform the clerk immediately of any change in the attorney's e-mail address. Service on an obsolete e-mail address will still constitute valid service on a registered attorney if the attorney has failed to notify the clerk of a new address.

(4) An attorney whose e-mail address, mailing address, telephone number, or fax number has changed from that disclosed on the attorney's original Attorney Registration Form shall file a notice of such change and serve the notice of such change on all parties in all cases in which the attorney has entered an appearance.

(5) The use of an attorney's login name and password by another, with the authorization of the attorney, is deemed to be the act of the attorney. If a login name and/or password should become compromised, the attorney is

responsible for notifying the court, as provided in the Sixth Circuit Guide to Electronic Filing.

(d) **Signatures.**

(1) **Attorney Signature.** A registered attorney's use of the attorney's assigned login name and password to submit a document electronically serves as that attorney's signature on that document for all purposes. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/[attorney's name]" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address. Graphic and other electronic signatures are discouraged. The correct format for an attorney signature block on an electronically filed document is as follows:

/s/ Attorney Name
Attorney Name
ABC Law Firm
1234 First Street
Cincinnati, Ohio 45202
Telephone: (513) 987-6543
Facsimile: (513) 987-3456
E-mail: AttorneyName@abclawfirm.com
Attorney for _____.

(2) **Multiple Attorney Signatures.** The filer of any electronically filed document requiring multiple signatures (e.g., stipulations) must list thereon all the names of other attorney signatories by means of an "s/ [attorney's name]" block for each. By submitting such a document, the filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the filer has each attorney's authority to submit the document electronically. In the alternative, the filer may submit a scanned document containing all necessary signatures.

(3) **Clerk of Court or Deputy Clerks.** The electronic filing of any document by the clerk or a deputy clerk of this court by use of that individual's login and password shall be deemed the filing of a signed original document for all purposes.

(e) **Entry onto Docket; Official Court Record.**

(1) The electronic transmission of a document, together with transmission of the Notice of Docket Activity (NDA) from the court, in accordance with the

policies, procedures, and rules adopted by the court, constitutes the filing of the document under the Federal Rules of Appellate Procedure and constitutes the entry of that document onto the official docket of the court maintained by the clerk pursuant to Fed. R. App. P. 45(b)(1). All orders, decrees, notices, opinions and judgments of the court will be filed and maintained by the ECF system and constitute entry on the docket kept by the clerk for purposes of Rules 36 and 45(b)(1) and (c) of the Federal Rules of Appellate Procedure.

(2) The electronic version of filed documents, whether filed electronically in the first instance or received by the clerk in paper format and subsequently scanned into electronic format, constitutes the official record in the case. Later modification of a filed document or docket entry is not permitted except as authorized by the court. A document submitted electronically is deemed to have been filed on the date and at the time indicated in the system-generated Notice of Docket Activity.

(3) The office of the clerk will discard all paper documents once they have been scanned and made a part of the official record, unless the electronic file thereby produced is incomplete or of questionable quality, or unless otherwise ordered by the court.

(f) **Service of Documents Filed Electronically.**

(1) All documents presented for filing with the court must contain a certificate of service that complies with Fed. R. App. P. 25(d). For documents filed electronically, the ECF system will automatically generate and send by e-mail a Notice of Docket Activity (NDA) to all registered attorneys participating in any case. This notice constitutes service on those registered attorneys. Registration for electronic filing by the ECF system constitutes consent to service through the NDA. Independent service, either by paper or otherwise, need not be made on any registered attorney. Parties that are unrepresented by counsel and attorneys who are not registered for electronic filing must be served by the filing party through other means of service set forth in Fed. R. App. P. 25. The NDA generated by the ECF system does not replace the certificate of service required by Fed. R. App. P. 25(d), which is still required to be included in all documents.

(2) Except as otherwise provided by the Sixth Circuit Rules or by order of the court, all orders, opinions, judgments, and other documents issued by the court in cases maintained in the ECF system will be filed electronically. The electronic filing of all orders, opinions, judgments, and other court-issued documents will constitute entry on the docket maintained by the clerk under Fed. R. App. P. 36 and 45(b).

(3) Any order, opinion, judgment, or other court-issued document filed electronically without the signature of the judge, clerk, or authorized deputy clerk, has the same effect as if the judge or clerk had signed a paper copy of the filing.

(g) **Redaction of Certain Information Contained in Documents Filed with the Court.** All documents filed with the court must comply with the privacy protection requirements set forth in Fed. R. App. P. 25(a)(5), regardless of whether a document is filed electronically or in paper. It is the responsibility of the filer to redact documents in the manner required by Fed. R. App. P. 25(a)(5).

(h) **Filing Deadlines; ECF Technical Failures.**

(1) The electronic filing of a document does not in any way alter the filing deadline for the document. Where a specific time of day deadline is set by court order or stipulation, the electronic filing must be completed by that time. An electronically filed document is deemed filed upon completion of the transmission and issuance by the court's system of a Notice of Docket Activity.

(2) The clerk shall deem the court's website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for anyone experiencing difficulty filing a document electronically shall be the court's ECF Help Desk, which may be contacted as set forth at the court's website or in the Sixth Circuit Guide to Electronic Filing.

(i) **Attachments to Documents.**

Notwithstanding any provision of this rule with respect to exhibits or attachments to documents, items that are contained in the record on appeal or in an appendix permitted to be filed under 6 Cir. R. 30 shall not be submitted as attachments or exhibits to a brief filed electronically.

(j) **Documents Filed Under Seal.**

(1) A motion to file documents under seal may be filed electronically unless prohibited by law, local rule, or court order. If the court grants the motion, the order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. Documents ordered placed under seal must be filed in paper format in a sealed envelope. The face of the envelope containing such documents shall contain a conspicuous notation that it contains "DOCUMENTS UNDER SEAL," or substantially similar language, and shall have attached to it a paper copy of the order authorizing the filing of the documents under seal.

(2) Documents filed under seal in the court from which an appeal is taken shall continue to be filed under seal on appeal to this court. Documents filed under seal shall be filed in paper format and shall comply with all filing requirements of the court that originally ordered or otherwise authorized the documents to be filed under seal.

(k) When the court allows or requires a party to file a document in paper, the party may obtain a file stamped copy of the document by providing the clerk with a pre-addressed stamped envelope and an extra copy of the document.

6 Cir. I.O.P. 25 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir I.O.P.

FRAP 26 Computing and Extending Time

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act to be done is filing a paper in court—a day on which the weather or other conditions make the clerk's office inaccessible.

(4) As used in this rule, ''legal holiday'' means New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any

other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) **Extending Time.** For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) **Additional Time after Service.** When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

6 Cir. R. 26 Computation and Extension of Time

(a) **How Sought.** Extensions of time must be sought by written motion, not by stipulation of counsel or telephone request. The fact that the opposing party does not oppose the request for extension or that the opposing party previously has received an extension is not dispositive. Failure of the appellant to process appeals timely, including failure to file the joint appendix, may result in prompt dismissal for want of prosecution, imposition of sanctions, or both.

(b) **Extension of Time to File Brief.** This Court does not favor applications for extensions of time for the filing of briefs. Applications for extensions of time for the filing of briefs in criminal and other expedited cases will not be granted except in the most extraordinary circumstances. Motions for extensions of time in criminal appeals shall state whether the appellant is incarcerated or released on bail.

(c) **Late Documents.** Any documents for which there is a submission deadline and which are tendered after that deadline has passed, shall be accompanied by a motion for leave to file out-of-time and a memorandum explaining the circumstances. Absent the grant of such a motion, the documents will not be acted on.

COMMITTEE NOTE: Former 6th Cir. R. 10(k) and former I.O.P. 15.8, 16.10, and 17.10.

6 Cir. I.O.P. 26 Extensions of Time

Parties filing motions for extensions should assume that their brief, appendix or response is due at the time originally called for unless and until they are advised otherwise by the clerk's office.

COMMITTEE NOTE: Former I.O.P. 17.10.

FRAP 26.1 Corporate Disclosure Statement

(a) **Who Must File.** Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) **Time for Filing; Supplemental Filing.** A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) **Number of Copies.** If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

6 Cir. R. 26.1 Corporate Disclosure Statement

(a) **Parties Required to Make Disclosure.** With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed.**

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a

party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) **Form and Time of Disclosure.** The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

COMMITTEE NOTE: Former 6th Cir. R. 25.

6 Cir. I.O.P. 26.1 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir I.O.P.

FRAP 27 Motions

(a) **In General.**

(1) **Application for Relief.** An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) **Contents of a Motion.**

(A) **Grounds and relief sought.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) **Accompanying documents.**

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) **Documents barred or not required.**

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) **Response.**

(A) **Time to file.** Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 8 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 8-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) **Request for affirmative relief.** A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) **Reply to Response.** Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(b) **Disposition of a Motion for a Procedural Order.** The court may act on a motion for a procedural order—including a motion under Rule 26(b)—at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) **Power of a Single Judge to Entertain a Motion.** A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court

of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) **Form of Papers; Page Limits; and Number of Copies.**

(1) **Format.**

(A) **Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) **Cover.** A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) **Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) **Paper size, line spacing, and margins.** The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) **Typeface and type styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) **Page Limits.** A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) **Number of Copies.** An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) **Oral Argument.** A motion will be decided without oral argument unless the court orders otherwise.

6 Cir. R. 27 Motions

(a) **Place of Filing.** All motions, including emergency motions, must be filed with the office of the clerk in Cincinnati.

(b) **Filing and Service.** When a party is required to file a motion electronically, the clerk will not accept a paper copy for filing. FRAP 25(c) and 6 Cir. R. 25(f) govern service of a motion filed electronically. A party filing a paper motion must file only a signed original and serve one copy on each opposing party.

(c) **Emergency Motion Procedure.** In matters where time does not permit the filing of an emergency motion or application at the clerk's office in Cincinnati, counsel should contact the clerk's office by telephone to explain the situation and to seek guidance. Emergency motions filed electronically must have as attachments and motions filed in paper must be accompanied by:

- a copy of the notice of appeal,
- a copy of the order appealed from, and
- copies of any other portions of the record necessary to the disposition of the motion.

(d) **Motion to Dismiss.**

(1) **For Lack of Jurisdiction.** At any time after a notice of appeal is filed a party may file a motion to dismiss on the ground that the appeal is not within the jurisdiction of this court. Motions to dismiss ordinarily may not be filed on grounds other than lack of jurisdiction.

(2) **Time to Respond.** A party may file a response to a motion to dismiss within 8 days from the date of service of the motion.

(3) **Motions to Affirm Prohibited.** No motion to affirm the judgment appealed from may be filed.

(e) **Motion to Expedite Appeal.** At any time after a notice of appeal is filed, a party may file a motion to expedite. Such motion shall demonstrate good cause why a case should receive expedited review.

(f) **Motion for Reconsideration.** A party may seek rehearing of a judgment of this Court pursuant to FRAP 40. A party may file a motion for reconsideration of any other action of a panel, of a single judge or of the clerk. See 6 Cir. R. 45(b). A panel may reconsider its own action or may review the action of a single judge or of the clerk, but the panel reviewing a single judge's action shall not include that judge.

Comments

The title is changed to conform with FRAP 27. The rule deals with matters other than motions to dismiss and procedural orders.

6 Cir. I.O.P. 27 Motions

(a) **Motions Panels.** Substantive motions filed with this Court in cases not yet assigned to a panel are assigned to motions panels. The motions panels will be regular weekly hearing panels which hear oral arguments in cases submitted for decision. Motions to be presented will be divided as equitably as possible among the hearing panels sitting during the week. During weeks when no panels are sitting, motions will be divided among the next hearing panels to sit. One active judge of each panel will be designated as lead judge in accordance with a rotation schedule to be devised by the clerk. Each member of the panel receives a complete set of papers for those motions requiring panel action.

(b) **Emergency Motions.** It is recognized that in some cases counsel will have advance indications that a situation may arise which will cause the filing of an emergency motion. It is expected that the moving party will make every reasonable effort to notify the clerk at the earliest possible time that such an emergency motion may be filed, the nature of the motion and the relief to be sought.

Hearings on emergency motions, as with other motions, are extremely unusual. Movants ought not expect that a hearing will be granted and need not move for such a hearing. Should this Court feel it necessary to hold a hearing, the clerk will inform counsel of the date and time.

(c) **Motions After Assignment to Calendar.** Motions in cases assigned to the oral argument calendar are circulated to the hearing panel rather than to the motions panel. The senior active judge on the panel will initiate the action taken by the panel.

COMMITTEE NOTE: (a) - former I.O.P. 17.4.; (b) - former I.O.P. 17.5; (c) - former I.O.P. 17.9.

FRAP 28 Briefs

(a) **Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(10) a short conclusion stating the precise relief sought; and

(11) the certificate of compliance, if required by Rule 32(a)(7).

(b) **Appellee's Brief.** The appellee's brief must conform to the requirements of Rule 28(a)(1)–(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement of the standard of review.

(c) **Reply Brief.** The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) **References to Parties.** In briefs and at oral argument, counsel should minimize use of the terms ''appellant'' and ''appellee.'' To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as ''the employee,'' ''the injured person,'' ''the taxpayer,'' ''the ship,'' ''the stevedore.''

(e) **References to the Record.** References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) **Reproduction of Statutes, Rules, Regulations, etc.** If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) **[Reserved]**

(h) **[Reserved]**

(i) **Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) **Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

6 Cir. R. 28 Briefs

(a) **References to the Record.** A brief must direct the court to those parts of the record to which the brief refers. It must refer to the particular item in the record and the specific pages by reference to the record entry number or particular transcript or exhibits. For example, if the reference is to defendant's motion for summary judgment, the brief should refer to "Record Entry No. 15, defendant's motion for summary judgment, pp. 2-3." For cases where there is an appendix, a brief referring to material in the appendix must also refer to the page of the appendix. For example, if the reference is to defendant's motion for summary judgment, the brief should refer to "Record Entry No. 15, defendant's motion for summary judgment, pp. 9-10; Appendix, pp. 69-70." Suitable abbreviations in these references are acceptable.

(b) **Length of Briefs.** The documents required or permitted to be filed with a brief under 6 Cir. R. 28 (c), (d) and (f) are not counted for purposes of the length limitations for briefs in FRAP 32(a)(7)(A) and (B). When the appeal is from a sentence of death, the page limitations of 6 Cir. R. 22(c)(8) apply.

(c) **Designation of Relevant District Court Documents.** Each principal brief must contain a designation of relevant district court documents at the end of the brief as an addendum when required by 6 Cir. R. 30(b).

(d) **Additional Contents.** Each principal brief must also contain the disclosure of corporate affiliations and financial interest required by 6 Cir. R. 26.1 (see form 6CA-1) and may include a statement of reasons why oral argument should be heard under 6 Cir. R. 34(a).

(e) **Briefs in Cases Involving Cross-Appeals.** See FRAP 28.1(c).

(f) **Citation of Unpublished Decisions.** Citation of unpublished opinions is permitted. FRAP 32.1(b) applies to all such citations.

(g) **Briefs as Public Record.** Briefs filed with this court are a matter of public record. If counsel finds it necessary to refer in a brief to information that has been placed under seal, counsel should not assume that the brief itself also will be placed under seal. In order to have all or part of a brief sealed, counsel must file a specific and timely motion seeking such relief.

Comments

The rule is revised to delete reference to proof briefs, which are eliminated. Rule 28(a) specifies how briefs should refer to items in the record both in an electronic record on appeal and in an appendix.

6 Cir. I.O.P. 28 Briefs

(a) **Length.** Briefs in excess of the lengths provided by the rules are seldom permitted.

(b) **Sample Briefs.** The clerk's office will not distribute sample briefs. However, copies are available for inspection in the clerk's office.

(c) **Expedited Cases.** In the following cases, this court directs the parties to file briefs on an expedited basis and then schedules an oral hearing or submission on briefs as soon as possible: recalcitrant witnesses under 28 U.S.C. § 1826 and grand jury contempt appeals. Issuance of a routine briefing schedule and expedited argument or submission on briefs is directed in the following cases: appeals from orders denying or granting preliminary or temporary injunctions; interlocutory appeals under 28 U.S.C. § 1292(b); direct criminal appeals; and appeals in cases filed pursuant to 28 U.S.C. §§ 2241, 2254 and 2255. See also FRAP 45(b).

Any other case may be expedited upon this court's granting of a motion under 6 Cir. R. 27(e). If an appeal is ordered expedited, the clerk will fix a briefing schedule which will permit the appeal to be set for oral argument at an early date, unless an earlier hearing date is directed by a judge. The clerk will usually have some idea of the approximate date of the hearing and will so advise counsel when the order is issued.

Comment

The cross-reference to 6 Cir. R. 27(f) is changed to conform to the revision of that rule.

FRAP 28.1 Cross-Appeals

(a) **Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7(A)–(B) do not apply to such a case, except as otherwise provided in this rule.

(b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) **Briefs.** In a case involving a cross-appeal:

(1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisified with the appellant's statement.

(3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the crossappeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case;

(D) the statement of the facts; and

(E) the statement of the standard of review.

(4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (11) and must be limited to the issues presented by the cross-appeal.

(5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) **Length.**

(1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) **Type-Volume Limitation.**

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) **Certificate of Compliance.** A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

(f) **Time to Serve and File a Brief.** Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.

FRAP 29 Brief of an Amicus Curiae

(a) **When Permitted.** The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) **Motion for Leave to File.** The motion must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:

(1) a table of contents, with page references;

(2) a table of authorities—cases (alphabetically arranged), statutes and other authorities—with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(5) a certificate of compliance, if required by Rule 32(a)(7).

(d) **Length.** Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) **Time for Filing.** An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) **Reply Brief.** Except by the court's permission, an amicus curiae may not file a reply brief.

(g) **Oral Argument.** An amicus curiae may participate in oral argument only with the court's permission.

6 Cir. R. 29 Motion to Participate in Oral Argument.

Any request of amicus curiae to participate in oral argument shall be by written motion stating the reason oral argument will aid the court.

6 Cir. I.O.P. 29 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 30 Appendix to the Briefs

(a) **Appellant's Responsibility.**

(1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) **Excluded Material.** Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) **All Parties' Responsibilities.**

(1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) **Costs of Appendix.** Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) **Deferred Appendix.**

(1) **Deferral Until After Briefs Are Filed.** The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21

days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) **References to the Record.**

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) **Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) **Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district- court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) **Appeal on the Original Record Without an Appendix.** The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

6 Cir. R. 30 Appendix to the Briefs; Designation of Relevant District Court Documents

(a) **When an Appendix is Required.** Unless the court specifically directs, an appendix is required only in the following cases:

(1) Appeals from a district court where there are documents that are not part of the district court's electronic record that must be included in an appendix as provided in 6 Cir. R. 30(f)(1).

(2) Appeals in cases under 28 U.S.C. §2254.

(3) Appeals from the United States Tax Court.

(4) Petitions to review or enforce the decision of a federal administrative agency, except social security cases (see 6 Cir. R. 30(l)).

Otherwise, because the court will have the electronic record of district court proceedings available, an appendix is not necessary and is not to be filed.

(b) **Designation of Relevant District Court Documents in Certain Cases.** In appeals from the district court where there is an electronic record in the district court, documents in the electronic record must not be included in an appendix. To facilitate the court's reference to the electronic record in such cases, each party must include in its principal brief a designation of relevant district court documents; see 6 Cir. R. 30(f)(1). The designation must appear at the end of the brief as an addendum and include for each document the record entry number from the district court docket and a description of the document.

(c) **Responsibility and Time for Filing the Appendix.**

(1) **Appellant.** Where an appendix is required, the appellant must prepare an appendix, file it simultaneously with its principal brief, and serve it, except as provided in 6 Cir. R. 30 (m) and (n).

(2) **Appellee.** If the appellee determines that the appellant did not include a necessary part of the record in the appendix, the appellee may prepare a separate appendix including the omitted part(s) and file and serve it when the appellee files its brief. The pagination of the appellee's appendix must be consecutive, beginning with the next page number after the last page of the appellant's appendix.

(d) **Items Not Included in the Appendix.** Counsel should consult the contents requirements in 6 Cir. R. 30(f). The parties and the court may rely on parts of the record not included in the appendix.

In determining the contents of the appendix, counsel should be mindful that inclusion of parts of the record unnecessary to disposition of the case, or omission of parts of the record necessary to disposition of the case, imposes a burden on the court and may result in sanctions under 6 Cir. R. 30(o).

(e) **Manner of Filing.**

(1) **Generally.** Except as provided in sub-rule (e)(2), the appendix must be filed as an electronic document in PDF format. A paper appendix may not be filed without leave of court.

(2) **Death Penalty Cases.** In cases involving a state prisoner under sentence of death where the district court record includes portions of the state court record, five copies of the appendix must be filed in paper format.

(f) **Contents of the Appendix.**

(1) **Appeals from the District Court.** In appeals from a district court where all items listed in this sub-rule (f)(1) are in the district court's electronic record, no appendix may be filed. In all other appeals from a district court, the appendix must include the current district court docket sheet and those items listed below that are not part of the district court's electronic record:

(A) the complaint or indictment;

(B) all other pleadings or motions relevant to the arguments presented on appeal;

(C) the judgment from which the appeal is taken;

(D) all memorandum opinions or opinions from the bench, findings of fact and conclusions of law, and reports and recommendations of a magistrate judge and objections to the reports and recommendations;

(E) the notice of appeal;

(F) any other parts of the record, including all or part of any exhibit or transcript pages necessary for effective understanding of the issues raised in the briefs, in chronological order; and

(G) counsel's certification that all documents included in the appendix are copies of documents properly made a part of the record.

(2) **Appeals from the Tax Court.** In appeals from the Tax Court, the appendix must include--

(A) the current Tax Court docket sheet;

(B) the complaint;

(C) all other pleadings or motions relevant to the arguments presented on appeal;

(D) the judgment from which the appeal is taken;

(E) all memorandum opinions or opinions from the bench and findings of fact and conclusions of law;

(F) the notice of appeal;

(G) any other parts of the record, including all or part of any exhibit or transcript pages necessary for effective understanding of the issues raised in the briefs, in chronological order; and

(H) counsel's certification that all documents included in the appendix are copies of documents properly made a part of the record.

(3) **Agency Proceedings.** The appendix in agency proceedings must includ--

(A) the order sought to be reviewed or enforced;

(B) all supporting opinions, findings of fact or conclusions of law; and

(C) the petition for review or application for enforcement.

(4) **Habeas Corpus Cases where there is no Written State Court Record.**

(A) The appendix in an appeal from the grant or denial of a writ of habeas corpus in a case in which the record of the proceedings in state court is in other than written form must include a written transcript of all portions of the state court record that any party deems relevant to this court's resolution of the issues raised on appeal. Notwithstanding the provision of 6 Cir. R. 30(d), a party may not rely on a part of the state court record not reduced to written form.

(B) Appellant must provide to this court and appellee a transcript of the necessary portions from the official state court record within 30 days of filing the notice of appeal. The circuit clerk may grant an additional 30 days. Where, by

reason of the length of the necessary portions of the state court record, more than 60 days are required, appellant must request additional time by written motion within the 60-day period.

(C) An appellee who believes that a transcript of other portions of the state court record is necessary must provide that transcript to this court and appellant within 30 days of the appellant's filing of the transcript, with extensions of time as provided in sub-rule (f)(4)(B).

(D) the transcript may be prepared by any method that provides an adequate typewritten record.

(E) Upon filing of a transcript in this court, a party has 15 days to notify the court of objections to the accuracy of the transcript. If any difference arises as to whether the transcript accurately reports the proceedings in the trial court, the difference must be resolved by the procedure in FRAP 10(e).

(5) **Inclusion of Sealed Record Items.** If in counsel's opinion it is necessary to include sealed items, a copy of the sealed item(s) must be placed in a separate sealed envelope and filed with the clerk. An appropriate notation on the cover of the envelope should specify the nature of the sealed enclosure. The balance of the appendix will be treated as part of the public record. The sealed item will not.

Counsel is cautioned against attempting to use this procedure to hold out of public view items not previously sealed by order of either the district court or this court. That relief can be had only by way of a timely motion specifically requesting that relief.

(g) **Certificate of Service.** The appendix will not be deemed to have been filed unless the certificate of service required by FRAP 25(d) is included with it.

(h) **Table of Contents.** The appendix must be paginated. The appendix must have a table of contents that, for each document--

(1) describes the document in the appendix;

(2) includes the record entry number from the docket of the court below, where available; and

(3) shows the page in the appendix where the document first appears.

(i) **Index.** Following the table of contents, the appendix must contain an alphabetical list of witnesses whose testimony is included in the appendix, with the date and proceeding, if other than trial, where the testimony begins and the page(s) in the appendix.

(j) **Multi-Volume Appendix.** Where the appendix has more than one volume, each volume must be consecutively paginated and must contain the full table of contents and index required by 6 Cir. R. 30(h) and (i). The table of contents and index in each volume must include the contents of all volumes of the appendix.

(k) **Format.** Following the table of contents and index, the appendix must contain the items in the order set out in 6 Cir. R. 30(f). Portions of the transcript or exhibits that have been properly made a part of the record may appear at the end of the appendix or in a separate volume or volumes. The original pagination of each part of the transcript must be placed in brackets in the margin of the appendix. The name of each witness must appear on each page of the appendix where the testimony of that witness begins.

(l) **Social Security Cases - No Appendix Required.** In appeals from a district court involving review of a decision of the Commissioner of Social Security, the attorney representing the Commissioner must file with the brief four paginated copies of the administrative record. No appendix is required.

(m) **Duty to File in State Habeas Cases.**

(A) **Appendix.** In state habeas corpus cases filed pro se and in forma pauperis, the state attorney general must file an adequate appendix that includes copies of the opinion and order from which the appeal is taken and any magistrate judge's report and objections to the report.

(B) **Other Material.** In state habeas corpus cases the state attorney general must file, with the government's brief, copies of all unpublished decisions of state courts involving previous hearings relating to the petition and a copy of the transcript of the trial and any post-conviction hearing of petitioner in the state trial court, if previously transcribed and available.

(n) **Duty to File Appendix in Black Lung Cases.** Where a pro se in forma pauperis litigant seeks review of an administrative decision regarding a claim for black lung benefits, counsel for the Director must file, with the Director's brief, an adequate appendix that includes the decision to be reviewed and any other items of record necessary for this court's informed review.

(o) **Sanctions.** Failure to file an appendix when required, or filing an appendix substantially out of compliance with the requirements of this rule, may result in dismissal of the appeal or other sanctions. The court may require counsel who so complicates the proceedings in a case

by unreasonably and vexatiously failing to comply with the requirements of this rule to satisfy personally any excess costs, under 28 U.S.C. § 1927, and may subject counsel to disciplinary sanctions.

6 Cir. I.O.P. 30 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 31 Serving and Filing Briefs

(a) **Time to Serve and File a Brief.**

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) **Number of Copies.** Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) **Consequence of Failure to File.** If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

6 Cir. R. 31 Serving and Filing Briefs

(a) **Electronic Briefs.** When a party is required to file a brief electronically, the clerk will not accept a paper copy for filing. FRAP 25(c) and 6 Cir. R. 25(f) govern service of a brief filed electronically.

(b) **Paper Briefs.** A party filing a paper brief must file only a signed original and serve two copies of the brief on each opposing party.

(c) **Time for Filing.** Briefing schedules will be set in each individual case in accordance with FRAP 26 and 31. These schedules will identify the date by which the briefs must be filed. When the appeal is from a sentence of death, the time requirements of 6 Cir. R. 22(c)(8) apply.

Comments

The title is changed to conform to the title of FRAP 31.

New (b) and (c) specify the requirements for filing and serving electronic and paper briefs.

Former 6 Cir. R. 31(c), regarding CD-ROM briefs, is deleted.

6 Cir. I.O.P. 31 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 32 Form of Briefs, Appendices, and Other Papers

(a) **Form of a Brief.**

(1) **Reproduction.**

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) **Binding.** The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) **Paper Size, Line Spacing, and Margins.** The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single- spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) **Typeface.** Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 ½ characters per inch.

(6) **Type Styles.** A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) **Length.**

(A) **Page limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) **Type-volume limitation.**

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) **Certificate of compliance.**

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).

(b) **Form of an Appendix.** An appendix must comply with rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) **Form of Other Papers.**

(1) **Motion.** The form of a motion is governed by Rule 27(d).

(2) **Other Papers.** Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) **Signature.** Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) **Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

6 Cir. R. 32 Certification of Counsel; Form of Briefs and the Appendix

(a) **Certification of Counsel.** The certification of compliance required by FRAP 32(a)(7)(C) must follow immediately after the signature of counsel at the end of the brief.

(b) **Legibility and Binding.** When paper filings are permitted, the court encourages inexpensive forms of reproduction to minimize cost. However, counsel must inspect each copy of the brief and appendix to insure legibility, completeness and proper binding.

Comments

A title is added to (a) to be consistent with the general form of the local rules.

6 Cir. I.O.P. 32 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 32.1 Citing Judicial Dispositions

(a) **Citation Permitted.** A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as ''unpublished,'' ''not for publication,'' ''nonprecedential,'' ''not precedent,'' or the like; and

(ii) issued on or after January 1, 2007.

(b) **Copies Required.** If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

FRAP 33 Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

6 Cir. R. 33 Appeal Conferences - Mediation

(a) **Transmission of Documents From District Courts.** To facilitate the pre-argument conference process, the clerk of the district court shall append to each notice of appeal transmitted to the clerk of this Court a copy of:

(1) the docket sheet of the court or agency from which the appeal is taken;

(2) the judgment or order sought to be reviewed;

(3) any opinion or findings; and

(4) any report and recommendation prepared by the magistrate judge.

(b) **Filing Pre-argument Statement.**

(1) **Civil Appeals From United States District Courts and the Tax Court.** After the appeal has been docketed, the appellant shall file, with service on all other parties, an original and two copies of a pre-argument statement on the form provided by this Court, setting forth information necessary for an understanding of the nature of the appeal (see form 6CA-53). An appellant proceeding without the assistance of counsel or an incarcerated appellant is not required to file the statement. A response to a pre-argument statement is neither required nor authorized.

(2) **Review of Administrative Agency Orders; Applications for Enforcement.** After the order of an administrative agency, board, commission or officer, or an application for enforcement of an order of an agency has been docketed, the petitioner or applicant shall file, with service on all parties, an original and two copies of a pre-argument statement, on the form provided by this Court, setting forth information necessary for an understanding of the nature of the petition or application (see form 6CA-54). A petitioner proceeding without the assistance of counsel is not required to file the statement. A response to a pre-argument statement is neither required nor authorized.

(c) **Pre-argument Conference.**

(1) All civil cases shall be reviewed by a mediation attorney to determine if a pre-argument conference, pursuant to FRAP 33, would be of assistance to this Court or the parties. Such a conference may be conducted by a circuit judge or a staff attorney of this Court known as the mediation attorney. An attorney may request a pre-argument conference if that attorney thinks it would be helpful.

(2) A circuit judge or mediation attorney may direct the attorneys for all parties, and in appropriate cases the parties themselves, to attend a pre-argument conference, in person or by telephone. Such conference shall be conducted by the mediation attorney or a circuit judge designated by the chief judge, to consider the possibility of settlement, the simplification of the issues, and any other matters which the circuit judge or mediation attorney determines may aid in the handling of the disposition of the proceedings.

(3) A judge who participates in a pre-argument conference or becomes involved in settlement discussions pursuant to this rule will not sit on a judicial panel that considers any aspect of the case, except that participation in a pre-argument conference shall not preclude a judge from participating in any en banc consideration of the case.

(4) The statements and comments made during the pre-argument mediation process are confidential, except to the extent disclosed by the pre-argument conference order entered pursuant to 6 Cir. R. 33(d), and shall not be disclosed by the conference judge or mediation attorney nor by counsel in briefs or argument.

(d) **Pre-argument Conference Order.** To effectuate the purposes and results of the pre-argument conference, the circuit judge or the clerk of this Court at the behest of the mediation attorney may enter an order or orders controlling the course of the proceedings or implementing any settlement agreement.

(e) **Non-compliance Sanctions.**

(1) If the appellant, petitioner or applicant has not taken the action specified in paragraph (b) of this procedure within the time specified, the appeal, petition or application may be dismissed by the clerk without further notice.

(2) Upon failure of a party or attorney to comply with the provisions of this rule or a pre-argument conference order, this Court may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; or dismiss the appeal.

COMMITTEE NOTE: Former 6th Cir. R. 18; (b)(1), (2), last sentence - former I.O.P. 33(b).

6 Cir. I.O.P. 33 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 34 Oral Argument

(a) **In General.**

(1) **Party's Statement.** Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) **Standards.** Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) 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.

(b) **Notice of Argument; Postponement.** The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) **Order and Contents of Argument.** The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) **Nonappearance of a Party.** If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) **Submission on Briefs.** The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) **Use of Physical Exhibits at Argument; Removal.** Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

6 Cir. R. 34 Oral Argument

(a) **Requesting Oral Argument.** A party desiring oral argument must include a statement in the brief, not to exceed one page in length, setting forth the reason(s) why oral argument should be heard. A party's failure to include such a statement maybe deemed by this Court a waiver of oral argument.

(b) **Advancement of Hearing.** This Court may, on its own motion or for good cause shown on motion of a party, advance any case to be heard at any session, though the time permitted under the rules for filing briefs may not have expired at the day set for hearing.

(c) **Postponement of Hearing.** After a case has been set for hearing, it may be continued only by an order of this Court for good cause shown, not by stipulation. Engagement of counsel in other courts will not necessarily be considered good cause.

(d) **Updating Citations.** The Court encourages the submission of a list of citations updating the briefs. Four copies of this list should be filed no later than three weeks prior to oral argument. Each citation should include a one-line statement of the subject matter of the case and a reference to the issue number to which the citation relates.

(e) **Argument by Intervening Party.** An intervening party wishing to participate in oral argument shall make a request in writing stating whether the named party[ies] have consented and the reason why separate argument is needed.

(f) **Time for Oral Argument.** The time for oral argument will be 15 minutes for each side unless otherwise indicated on the notice of oral argument sent to counsel.

(g) **Additional Time for Oral Argument.** Requests for additional time for oral argument may be sought by filing a motion well in advance of the date set for oral argument. Additional time for oral argument is rarely permitted.

(h) **Presentation of Argument.**

(1) Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs. This Court looks with disfavor on any oral argument that is read from a prepared text.

(2) Without leave of Court and absent exceptional circumstances, this Court will not permit divided arguments.

(3) Oral argument will not be heard on behalf of any party for whom a brief has not been filed unless otherwise directed by this Court.

(4) This Court may conduct oral argument via teleconference in appropriate cases.

(5) For cross appeals, see 6 Cir. R. 102.

(i) **Recording of Proceedings.** An audio recording of the proceedings may be requested in writing from the clerk's office. If the request is granted, a fee will be required. See I.O.P. 103.

(j) **Disposition without Oral Argument.**

(1) Oral argument shall not be heard when a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed.

(2) Oral argument ordinarily will be allowed unless:.

(A) The appeal is frivolous; or

(B) The dispositive issue or set of issues has been recently authoritatively decided; or

(C) 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.

(3) Oral argument may be waived upon written stipulation of the parties, but only with the specific consent of the Court.

COMMITTEE NOTE: Former 6th Cir. R. 7, 9 and 30(c); former I.O.P. 19.3.4, 19.4.1, 19.4.2, 22.7. See also 6 Cir. R. 29, regarding oral argument by amici curiae.

Comment

The cross-reference to Rule 102(d) is changed to conform to the revision of that rule.

6 Cir. I.O.P. 34 Oral Argument - Calendaring - Panel Selection - Notice and Presentation - Screening and Summary Decision

(a) **Calendaring.**

(1) **Annual Schedule.** This Court has divided itself into divisions for hearing purposes. Every six months the individual judges are reassigned to the divisions with a view toward giving every judge the opportunity to sit with as many different colleagues as possible.

(2) **Argument Calendars.** Calendars of cases to be argued orally before this Court are prepared by the clerk. Calendars for oral argument sessions are drafted prior to the time the clerk is advised of the composition of the panel to be assigned for a given session.

(3) **Case Typing.** The clerk balances the calendars by dividing the cases as evenly as possible among the panels according to case type. This results in each panel for a

particular month considering a reasonably equal number of different types of litigation.

(4) **Number of Cases Assigned.** Unless special provision is made, each judge participating in a week of hearings will sit four days during that week. On those days the judge will ordinarily hear oral arguments in six cases and consider five additional cases which have been recommended by this Court's central legal staff for disposition under 6 Cir. R. 34(j).

(b) **Panel Selection.**

(1) **Schedule of Panels.** The circuit executive, at the direction of the Chief Judge, makes up the schedule of panels. The schedules provide for panels within a division to be scrambled and structured so that every judge sits with each of the judge's colleagues in that division at least once in six months.

(2) **Subsequent Appeals Returned to Original Panel.** In appeals brought to this Court after an earlier appeal has returned a case to the district court for further proceedings, the original panel will determine whether the second appeal should be submitted to it for decision, or assigned to a panel at random. Where it becomes necessary to bring in a new third judge to complete a panel, the clerk will draw a name from among the active judges not already on the panel, and the judge whose name is drawn will be the third judge of the panel regardless of whether or not he or she is scheduled to sit during the same weeks as the other two members of the panel.

(3) **Remands with Jurisdiction Retained.** Where the disposition of an appeal contains an order retaining jurisdiction after remand to the district court or agency, the case will be assigned to that panel which ordered the retention of the jurisdiction, or to any other panel if ordered by the cief jdge.

(4) **Death Penalty Cases.** Pursuant to 6 Cir. I.O.P. 22, an independent roster of active judges, including the chief judge and senior judges who have elected to hear death penalty cases, will be maintained for the exclusive purpose of making panel assignments in death penalty cases as soon as the case is docketed. The panel will be assigned the case and its related motions. An active judge so assigned shall continue as a member of the panel after that judge's assumption of senior status.

(5) **Judicial Review of Briefs.** The clerk forwards to the panel members copies of the briefs for the cases set on the calendar about six to eight weeks in advance of hearing.

(c) **Notice and Presentation.**

(1) **Notice of Hearing and Request for Postponement.** This Court seeks to give approximately six weeks' advance notice to counsel of assignment of cases for oral argument. A request for postponement must be made immediately and with notice to all counsel, and should indicate where possible the consent or objection of other counsel. The notice of hearing also will remind counsel that 6 Cir. R. 36 allows this Court to announce its disposition of a case in open court following oral argument, where the decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion.

(2) **Identity of Panels.** Two weeks before the date of oral argument, the names of the judges who will hear the case may be learned by contacting the clerk's office.

(3) **Checking in with Clerk's Office on Date of Hearing.** Counsel should check in with the clerk's office at least 15 minutes in advance of the convening of court. For the purposes of check-in, the clerk's office is open at 8:00 a.m.

(4) **Presenting Oral Argument.** Counsel should prepare for oral argument with the knowledge that the judges have already studied the briefs. Reading from briefs, decisions or the record is not permitted except in unusual circumstances. Counsel should be prepared to answer questions raised by this Court.

(d) **Expedited Cases.** See 6 Cir. I.O.P. 28(c).

(e) **Screening and Summary Decisions.**

The staff attorney section reviews this Court's docket to identify cases which offer the possibility of decision without oral argument pursuant to FRAP 34 and 6 Cir. R. 34(i). The staff attorneys prepare brief legal research memoranda for any cases so identified and submit them, together with all briefs filed by the parties, to a hearing panel. Every hearing panel receives three or more cases recommended for 6 Cir. R. 34(i) disposition. The briefs and memoranda are received by the panel several weeks in advance of the date that panel is to convene. Following oral argument of the other cases before this Court, the panel discusses these cases and makes an appropriate decision. Unless there is a unanimous agreement of the panel to decide a case without oral argument, the case will be returned to the clerk for scheduling on the oral argument calendar.

COMMITTEE NOTE: (a) through (c) - former I.O.P. Chapter 19; (e) - 6th Cir. R. 9.

FRAP 35 En Banc Determination

(a) **When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) **Petition for Hearing or Rehearing En Banc.** A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) **Time for Petition for Hearing or Rehearing En Banc.** A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) **Number of Copies.** The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) **Response.** No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) **Call for a Vote.** A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

6 Cir. R. 35 En Banc Determination

(a) **Petition for Hearing or Rehearing En Banc.** A petition for a hearing or rehearing en banc may be made as provided in FRAP 35 or by any member of the en banc court. The grant of a rehearing en banc vacates the previous opinion and judgment of this court, stays the mandate and restores the case on the docket as a pending appeal. A petition for rehearing containing a petition for rehearing en banc must so state plainly on the cover and in the title of the document. A petition for rehearing en banc will also be treated as a petition for rehearing before the original panel. 6 Cir. R. 27(b) governs filing and service. A copy of the opinion or final order sought to be reviewed must accompany the petition for en banc review. The court ordinarily will not consider a petition that does not conform to this rule.

(b) **Counsel Not Obligated to File.** En banc consideration of a case is an extraordinary measure. In every case the duty of counsel is fully discharged without filing a petition for rehearing en banc unless the case meets the rigid standards of FRAP 35(a). Filing a petition for rehearing, with or without a petition for rehearing en banc, is not a prerequisite to the filing of a petition for writ of certiorari.

(c) **Extraordinary Nature of Petition for Rehearing En Banc.** A petition for rehearing en banc is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion that directly conflicts with Supreme Court or Sixth Circuit precedent. Alleged errors in the determination of state law or in the facts of the case (including sufficient evidence), or errors in the application of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.

COMMITTEE NOTE: Former 6th Cir. R. 14; former I.O.P. 20.8.

Comments

The title is changed to conform to FRAP 35.

The term “suggestion” is changed to “petition” to conform to the 1998 style amendments of FRAP 35. There are also other stylistic changes.

Rule 35(a) incorporates the provisions of 6 Cir. R. 27(b) regarding the number of copies filed and served.

6 Cir. I.O.P. 35 Determination of Cases by the Court En Banc--Rehearing En Banc

(a) **Composition of En Banc Court.** The en banc Court is composed of all judges in regular active service at the time of a rehearing, any senior judge of the court who sat on the original panel, and, if no oral argument en banc were held, any judge who was in regular active service at the time that the en banc court agreed to decide the case without oral argument. Only Sixth Circuit judges in regular active service and who have not recused themselves from the particular case may cast votes on a poll on the en banc petition itself. See 28 U.S.C. § 46(c).

(b) **General Scheme.** If a party files a petition for rehearing with a suggestion for en banc review, the petition shall first be circulated only to the panel that issued the decision under review. The panel shall have 14 days to comment upon the petition to the en banc coordinator in the clerk's office. If the panel substantially modifies its decision, it will provide the en banc coordinator with its modified decision. The modified decision will be filed and counsel notified. Counsel will then have 14 days in which to withdraw, modify, or maintain the pending petition for rehearing en banc, or to file a new petition.

If the panel does not substantially modify its decision, the coordinator shall then circulate the petition and the panel's comments to the en banc Court. Any active judge of this Court and any senior or visiting judge sitting on the panel whose decision is the subject of the rehearing is entitled to request a poll within 14 days from the date of circulation of the petition and the panel's comments. If a poll is requested, 14 days shall be allowed for voting.

(c) **When Can a Poll Be Requested.** A poll may be requested by any active judge of this Court or any member of the original hearing panel whose decision is under review. Usually a poll is requested after a petition for rehearing with a suggestion for en banc review has been filed by a party. However, any member of the en banc Court may sua sponte request a poll for hearing or rehearing en banc prior to the filing of an en banc petition by a party. If the request for a poll is sua sponte and not based on a party's suggestion, the clerk's office will immediately circulate voting forms to the en banc court.

(d) **Response to Petition.** When a poll is requested, the clerk will ask for a response to the petition if none has been previously requested.

(e) **Rehearing of Motions Panel Decisions.** Petitions seeking rehearing en banc from an order of the court that disposes of the case on the merits or on jurisdictional grounds will be circulated to the whole court. Petitions seeking rehearing en banc from an order of the court that does not dispose of the case either on the merits or on jurisdictional grounds will be

treated in the same manner as a petition for panel rehearing, i.e., they will be circulated only to the panel judges. The court will, however, circulate among all active judges, for a determination of whether or not the matter should be reheard by the en banc court, petitions for en banc review of:

(i) Orders entered in death penalty cases in which a scheduled execution is imminent;
(ii) Orders allowing or disallowing appellate review pursuant to Fed.R.Civ.P. 23(f) of interlocutory grants or denials of class certification made by a district court;
(iii) Orders denying in full or in part an application for a certificate of appealability under 28 U.S.C. § 2253(c); and
(iv) Orders allowing or disallowing appellate review of interlocutory orders that the district court has certified as appealable under 28 U.S.C. § 1292(b).

COMMITTEE NOTE: Former I.O.P. 20.4 through 20.6.

FRAP 36 Entry of Judgment; Notice

(a) **Entry.** A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion—but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) **Notice.** On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion—or the judgment, if no opinion was written—and a notice of the date when the judgment was entered.

6 Cir. R. 36 Entry of Judgment - Dispositions in Open Court

In those cases in which the decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition of the case may be made in open court following oral argument. A written judgment shall be signed and entered by the clerk in accordance with the decision of the panel from the bench. Counsel may obtain from the clerk a copy of the transcript of the decision as it was announced from the bench.

COMMITTEE NOTE: Former 6th Cir. R. 19.

6 Cir I.O.P. 36 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 37 Interest on Judgment

(a) **When the Court Affirms.** Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) **When the Court Reverses.** If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

6 Cir. R. 37 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 37 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 38 Frivolous Appeals — Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

6 Cir. R. 38 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R. For rules regarding attorney discipline generally, see FRAP 46 and 6 Cir. R. 46.

6 Cir. I.O.P. 38 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 39 Costs

(a) **Against Whom Assessed.** The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) **Costs For and Against the United States.** Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) **Costs of Copies.** Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) **Bill of Costs: Objections; Insertion in Mandate.**

(1) A party who wants costs taxed must—within 14 days after entry of judgment—file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 10 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must—upon the circuit clerk's request—add the statement of costs, or any amendment of it, to the mandate.

(e) **Costs on Appeal Taxable in the District Court.** The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal.

6 Cir. R. 39 Costs - Costs Recoverable for Filing of Required Paper Briefs

(a) **Reproduction Costs.** Costs shall be taxed at the lesser of the actual cost or a cost of 25 cents per page, including covers, index, and table of authorities, regardless of the reproduction process used.

(b) **Number of Briefs and Appendices.** When the court allows paper briefs to be filed, costs may be taxed for two copies for each party required to be served. When the court allows a paper appendix, costs may be taxed for one copy for each party required to be served.

(c) **How Recovered.** An itemized and verified bill of costs must be filed within 14 days of the entry of judgment (unless time is enlarged by motion granted). An affidavit of counsel with bills attached as exhibits will usually suffice to prove costs.

Comment

Rule 39(b) is revised to account for the reduced number of copies required when there are paper filings.

6 Cir. I.O.P. 39 Costs - Bill of Costs - Motion to Extend Time

(a) **Bills of Costs.** Costs in this Court include the Court of Appeals docket fee (where applicable) and production of the briefs and appendix, as limited by 6 Cir. R.39. This Court does not look favorably upon commercial printing or other expensive methods of producing the briefs and appendix. Therefore, 6 Cir. R. 39 limits the costs which are recoverable for the production or reproduction of those documents. Attorney fees are generally not considered costs of appeal.

(b) **Motion to Extend Time to File Bill of Costs.** Uncontested motions for extensions of time to file a bill of costs are decided by the clerk. Contested motions are decided by a single judge.

COMMITTEE NOTE: (a) - former I.O.P. Chapter 24; (b) - former I.O.P. 17.11.3.

FRAP 40 Petition for Panel Rehearing

(a) **Time to File; Contents; Answer; Action by the Court if Granted.**

(1) **Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.

(2) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) **Answer.** Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) **Action by the Court.** If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) **Form of Petition; Length.** The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

6 Cir. R. 40 Petition for Rehearing - Extension of Time to File

Counsel should not file motions for extension of time to file a petition for rehearing except for the most compelling reasons. If an untimely petition is not accompanied by a motion for an extension of the filing time, the petition will be returned, unfiled, to the sending party.

COMMITTEE NOTE: New rule. Former I.O.P. 20.1. For petitions for rehearing in death penalty cases, see 6 Cir. R. 22(c)(9). For rehearing en banc, see FRAP 35 and 6 Cir. R. 35.

6 Cir. I.O.P. 40 Petitions for Rehearing - When Necessary - Extension of Time

(a) **When Necessary.** It is not necessary to file a petition for rehearing, with or without a suggestion for rehearing en banc, in this Court as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States. A petition for rehearing is intended to bring to the attention of the panel claimed error of fact or law in the opinion. It is not to be used for reargument of the issues previously presented.

(b) **Review and Disposition.** Petitions for rehearing unaccompanied by a suggestion for rehearing en banc are reviewed by panel members only. If rehearing is granted, this Court will usually reconsider a case without additional briefing or argument. It may occasionally allow supplemental briefing and reargument. If a petition for rehearing is granted, this Court may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(c) **Extension of Time or Leave to File Out-of-Time.** A motion for additional time to file a petition for rehearing or for permission to file out of time is referred, as a single-judge matter, to the judge who authored the opinion. In either case, counsel should not assume that the request for additional time will be granted.

COMMITTEE NOTE: (a), (b) - former I.O.P. 20.1, 20.2; (c) - former I.O.P. 17.11.1. For rehearing en banc, see 6 Cir. I.O.P. 35.

FRAP 41 Mandate: Contents; Issuance and Effective Date; Stay

(a) **Contents.** Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) **When Issued.** The court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) **Effective Date.** The mandate is effective when issued.

(d) **Staying the Mandate.**

(1) **On Petition for Rehearing or Motion.** The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) **Pending Petition for Certiorari.**

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

6 Cir. R. 41 Issuance of Mandate; Stay of Mandate

(a) **Stay of Mandate.** In the interest of minimizing unnecessary delay in the administration of justice, the issuance of the mandate will not be stayed simply upon request beyond the time necessary for disposition of a motion seeking a stay. The mandate ordinarily will issue pursuant to FRAP 41(b) unless there is a showing, or an independent determination by this Court, that a petition for writ of certiorari would present a substantial question and that there is good cause for a stay.

(b) **Time for Filing Motion to Stay.** A motion to stay the mandate must be received in the clerk's office within 7 days after the time to file a petition for rehearing expires or seven days from entry of an order on petition for rehearing.

(c) **Duration of Stay Pending Application for Certiorari.** A stay of the mandate pending application to the Supreme Court for a writ of certiorari shall not be effective later than the date on which the movant's application for a writ of certiorari must be filed pursuant to 28 U.S.C. § 2101 or Rule 13 of the Supreme Court Rules, as applicable. If during the period of the stay there is filed with the clerk a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that Court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the mandate shall issue immediately.

COMMITTEE NOTE: Former 6th Cir. R. 15.

6 Cir. I.O.P. 41 Issuance of Mandate; Stay of Mandate - Motion for Stay

(a) **Issuance of Mandate.** The mandate is the document by which this Court relinquishes jurisdiction and authorizes the originating district court or agency to enforce the judgment of this Court. The mandate issues 21 days after the entry of judgment or, in a civil case in which the United States or its officer or agency is a party, within 52 days after the entry of judgment, or seven days from entry of an order denying rehearing and consists of a certified copy of the original judgment, a copy of any opinion and any directions concerning costs. Copies of the mandate are distributed to all parties and the district court clerk's office. The record is then returned to the district court. In agency cases, the mandate may be enlarged or shortened by Court order.

(b) **Timely Petition for Rehearing; Stay of Mandate.** The timely filing of a petition for rehearing will stay the issuance of the mandate until seven days after the denial of the petition. If the petition is granted, the mandate will issue 21 days after the new ruling.

(c) **Stay of Mandate Pending Application for Certiorari.** The filing of a petition for a writ of certiorari does not automatically stay the issuance of the mandate. A separate application for stay of mandate must be made in the form of a motion to this Court; however, that application will not be granted automatically. Pursuant to 6 Cir. R. 41(c), if a petition for a writ of certiorari is filed during the pendency of a stay, the stay of mandate shall continue until the Supreme Court acts on the petition. The issuance of the mandate does not affect a party's right to seek a writ of certiorari or the power of the Supreme Court to grant the writ.

(d) **Stay or Recall of the Mandate.** A motion for stay or recall of the mandate is referred, as a single-judge matter, to the judge who authored the opinion.

COMMITTEE NOTE: (a) - former I.O.P. 23.1; (b) - former I.O.P. 23.2; (c) - former I.O.P. 23.3; (d) - former I.O.P. 17.11.2.

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 42 Voluntary Dismissal

(a) **Dismissal in the District Court.** Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) **Dismissal in the Court of Appeals.** The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal

may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

6 Cir. R. 42 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 42 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 43 Substitution of Parties

(a) **Death of a Party.**

(1) **After Notice of Appeal Is Filed.** If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) **Before Notice of Appeal Is Filed—Potential Appellant.** If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative—or, if there is no personal representative, the decedent's attorney of record—may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) **Before Notice of Appeal Is Filed—Potential Appellee.** If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) **Substitution for a Reason Other Than Death.** If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) **Public Officer: Identification; Substitution.**

(1) **Identification of Party.** A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) **Automatic Substitution of Officeholder.** When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

6 Cir. R. 43 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 43 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 44 Cases Involving a Constitutional Question When the United States or the Relevant State Is Not a Party

(a) **Constitutional Challenge to Federal Statute.** If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) **Constitutional Challenge to State Statute.** If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

6 Cir. R. 44 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 44 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 45 Clerk's Duties

(a) **General Provisions.**

(1) **Qualifications.** The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) **Records.**

(1) **The Docket.** The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) **Calendar.** Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) **Other Records.** The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) **Notice of an Order or Judgment.** Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) **Custody of Records and Papers.** The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

6 Cir. R. 45 Duties of Clerks - Procedural Orders

(a) **Orders That May be Entered by Clerk.** The clerk may prepare, sign and enter orders or otherwise dispose of the following matters without submission to this Court or a judge, unless otherwise directed:

(1) Motions and applications for orders that are procedural or relate to the production or filing of the appendix or briefs on appeal;

(2) Orders for voluntary dismissal of appeals or petitions, or for consent judgments in National Labor Relations Board cases;

(3) Orders for dismissal for want of prosecution of appeals or petitions;

(4) Orders appointing counsel under the Criminal Justice Act of 1984, as amended, in criminal cases in which the appellant is entitled to the appointment of counsel under the Sixth Circuit Plan for the Implementation of the Criminal Justice Act and in any other case in which an order directing the clerk to appoint counsel has been entered;

(5) Bills of cost filed pursuant to FRAP 39(d);

(6) Fourteen day extensions of time in which to file a petition for rehearing or rehearing en banc;

(7) Orders granting remands and limited remands for the purpose of allowing the district court to grant a particular relief requested by a party and to which no other party has objected, or where the parties have moved jointly, where such motion is accompanied by the certification of the district court pursuant to *First National Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343 (6th Cir. 1976).

(8) Orders dismissing as duplicative a second appeal filed by or on behalf of a party, where there has been docketed in this Court a jurisdictionally sound appeal from the same judgment or final order sought to be reviewed in the first appeal.

Orders by the clerk disposing of such motions shall show that they were entered by the clerk pursuant to 6 Cir. R. 45(a).

(b) **Reconsideration.** Any party adversely affected by an order entered by the clerk shall be entitled to a reconsideration thereof by a judge or judges of this Court if, within 10 days of service of notice of the entry of such order, such party files a motion for reconsideration giving the grounds therefor.

COMMITTEE NOTE: Former 6th Cir. R 8.

6 Cir. I.O.P. 45 Duties of Clerks - Clerk's Office

(a) **Location, Hours, Function.** The clerk's office is the public business office for this court; it is located at 100 E. Fifth Street, Cincinnati, Ohio, 45202. The business office of the clerk (Room 540 of the Potter Stewart U.S. Courthouse) is open Monday through Friday, 8:30 a.m. to 5:00 p.m. On days when this court is sitting to hear oral argument, the clerk's office will open at 8:00 a.m. to allow counsel to check in. All filings of documents and entry of decisions or other rulings of this court are made at this office. Questions regarding practice in this court or case status information can be directed to the clerk's office by telephone, (513) 564-7000, or letter.

(b) **Telephone Inquiries.** The clerk's office welcomes telephone inquiries from counsel regarding rules and procedures. The clerk, Leonard Green, and the chief deputy, Janice E. Yates, are available to confer with counsel on special problems and matters of rule interpretation. They can be reached at (513) 564-7000.

(c) **Electronically-Accessed Docket Information.** This court maintains an Internet web site for access to docket information, Sixth Circuit Rules, Internal Operating Procedures, recently issued opinions, and other items of interest including the Sixth Circuit Guide to Electronic filing and other related information. The address of the web site is *http://www.ca6.uscourts.gov.* There is a fee charged for access to docket information.

FRAP 46 Attorneys

(a) **Admission to the Bar.**

(1) **Eligibility.** An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) **Application.** An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

> ''I, _____, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.''

(3) **Admission Procedures.** On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) **Suspension or Disbarment.**

(1) **Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) **Procedure.** The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) **Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) **Discipline.** A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

6 Cir. R. 46 Attorneys - Admission of Attorneys and Attorney Discipline

(a) **Admission of Attorneys.**

(1) **Admission as a Prerequisite to Practice.** In order to file pleadings or briefs on behalf of a party or participate in oral argument, attorneys must be admitted to the bar of this Court and file an appearance form (see form 6CA-68). If counsel for the appellant fails to secure admission and file a notice of appearance within the time specified by the clerk, the appeal may be dismissed. Any attorney representing the United States or any officer or agency thereof in an appeal will be permitted to participate in the case without the necessity of being admitted to the bar of this Court.

(2) **Admission Fee.** Applicants for admission to the bar of this Court shall pay a fee which shall be used for the library fund of this Court and for such other purposes as may be determined by the Judicial Council of the Sixth Circuit. Attorneys who are appointed by this Court to represent a party in forma pauperis and who qualify under the standards of FRAP 46, attorneys employed by federal defender organization created pursuant to 18 U.S.C. § 3006A and attorneys presently employed by a United States court shall be admitted to practice in this Court without payment of the admission fee. For amount of fee to be paid, see 6 Cir. I.O.P. 103.

(3) **Application Procedures.** Admissions are made upon the motion of a member of the bar of this Court. Application for admission is made by filing the form prescribed by the clerk.

(b) **Attorney Discipline.**

(1) **Scope.** Disciplinary matters that involve members of the bar of this Court shall be governed by FRAP 46 and this rule.

(2) **Conduct Subject to Discipline.** This Court may impose discipline on any member who engages in conduct violating the Canons of Ethics or the Model Rules of Professional Conduct, whichever applies, or who fails to comply with the rules or orders of this Court. It may also discipline any member who has been disciplined by the state in which he or she is a member. Discipline which may be imposed pursuant to this rule includes disbarment, suspension, reprimand or such other further disciplinary action as this Court may deem appropriate and just. Nothing in this rule

shall be construed as limiting in any way the exercise by this Court of its inherent contempt power or its authority under 28 U.S.C. §§ 1912 or 1927.

(3) **Initiation of Disciplinary Proceedings.** Formal disciplinary proceedings pursuant to this rule shall be initiated by the issuance of an order to show cause, signed by the Chief Judge or the clerk of this Court, acting at the direction of the chief judge.

(A) An order to show cause may be issued by this Court on its own initiative or upon complaint filed by any member of the bar of this Court, or any party before the Court. When such order is issued on the Court's initiative, no separate complaint need be filed.

(B) All complaints of attorney misconduct shall include:

(i) The name, address and telephone number of the complainant;

(ii) The specific facts that require discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved;

(iii) Copies of all documents or other evidence that support the factual allegations contained in subsection (ii), including a copy of any rule or order of this Court that is alleged to have been violated; and

(iv) At the end of the complaint, a statement made under the penalty of perjury, indicating that the complainant has read the complaint and that the factual allegations contained therein are correct to the best of the complainant's knowledge.

(C) All complaints relating to disciplinary matters under this rule shall be filed under seal in the clerk’s office. All records pertaining to disciplinary proceedings before the Court also shall be kept under seal with the clerk, unless otherwise ordered by the chief judge.

(D) Upon filing, the complaint shall be sent to the Chief Judge for initial review.

(i) If the chief judge determines that the complaint on its face or after investigation is without merit or does not warrant action by this Court, the complaint shall be dismissed by order of the chief judge.

(ii) If, following review, it is determined that reasonable grounds exist for further investigation, the chief judge may order such investigation or may issue an order to show cause if the complaint appears to be

meritorious. A copy of the order to show cause, the complaint, and documents shall be mailed to the member who is the subject of the complaint. The member shall also receive in the same mailing a copy of FRAP 46, a copy of this rule, and a written statement that the member shall have 20 days from the date of entry of the order to show cause in which to respond.

(iii) Alternatively, the chief judge may refer the matter to a state disciplinary board for such action as it determines is appropriate.

(4) **Response.** A member against whom an order to show cause is issued shall have 20 days from the date of the entry of the order in which to file a response. The response shall be filed, under seal, with the clerk, and shall contain the following:

(A) The name, address and telephone number of the respondent;

(B) A specific admission or denial of each of the factual allegations contained in the complaint and order to show cause and, in addition, a specific statement of any facts on which respondent relies, including all other material dates, places, persons and conduct relevant to the allegations of the order;

(C) All documents or other supporting evidence not previously filed with the complaint or order that are relevant to the charges of misconduct alleged;

(D) A specific request for a hearing or a statement specifically declining a hearing; and

(E) A statement made under the penalty of perjury indicating that the respondent has read the response and that, to the best of respondent's knowledge, the facts alleged therein are correct.

(5) **Summary Dismissal.** If the response discloses that the complaint is without merit, it may be dismissed by the chief judge.

(6) **Conformity with State Discipline.** When the respondent has been disbarred or suspended from the practice of law by a state in which the respondent practices, and the respondent admits the action complained of, or does not respond to the order to show cause, the chief judge may enter a final order of this Court imposing similar discipline.

(7) **Judicial Officer.** Upon filing of the response, the Chief Judge may appoint a circuit judge, a district judge, or other judicial officer from within the Circuit to investigate the allegations of the complaint and the response. The judicial officer shall review

all sealed documents related to the disciplinary charges, conduct hearings if necessary, and issue a written recommendation.

(8) **Hearings on Disciplinary Charges.** A disciplinary hearing shall be held only when the member under investigation has requested such a hearing in a timely response, and the judge or the judicial officer has determined that such a hearing is necessary for the proper disposition of the charges.

(A) **Notice.** When it has been determined that a hearing is necessary, the judicial officer shall provide the member with written notice of the hearing a minimum of 20 days before its scheduled date. The notice shall contain the date and location of the hearing and a statement that the member is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.

(B) **Procedure.** The hearing shall be conducted by the judicial officer, who shall have the authority to resolve all disputes on matters of procedure and evidence which arise during the course of the hearing. All witnesses shall testify under penalty of perjury. Such hearings shall be confidential and shall be recorded. The record of the hearing shall be kept on file with the clerk, under seal.

(C) **Rights of the Complainant and the Respondent.** During the hearing, the respondent shall be entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine any adverse witnesses. The judicial officer may permit the complainant to participate in the proceedings also, through counsel.

(D) **Burden of Proof.** The respondent's violation of the Canons of Ethics, the Model Rules of Professional Conduct, or rules or orders of this Court, shall be proven by clear and convincing evidence. A certified copy of a final order of disbarment or judgment of conviction for a felony offense, entered in any state or federal court, shall be considered clear and convincing evidence.

(E) **Failure to Appear.** The failure of the respondent to appear at the hearing shall be grounds for discipline.

(9) **Recommendation.** The judicial officer shall prepare a written recommendation which includes a proposed disposition of the disciplinary charges.

(A) **Filing of the Recommendation.** The recommendation shall be filed, under seal, with the clerk and copies distributed to this Court and the respondent.

(B) **Response to the Recommendation.** The respondent shall have 10 days from the date of service of the recommendation in which to file with the clerk a written response to the recommendation. The response shall not exceed 25 typewritten pages and shall state concisely any inaccuracies, errors or omissions which warrant a disposition other than that recommended.

(10) **Final Action on the Recommendation.** Within 30 days of the filing of a response to the recommendation, this Court shall enter a final order of disposition. Notice of the final order shall be sent to the respondent and the complainant.

(11) **Reinstatement.** Reinstatement shall be had only upon petition by the disciplined attorney. The petition shall be filed, under seal, with the clerk and shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by this Court and the grounds that justify reinstatement of the disbarred or suspended member.

(A) **Automatic Reinstatement.** An attorney who is suspended for a definite term shall be automatically reinstated at the end of the period of suspension, upon filing with this Court a petition for reinstatement, accompanied by an affidavit showing compliance with the provisions of the order of suspension.

(B) **Petition for Reinstatement.** Reinstatement of disbarred or indefinitely suspended attorneys shall not be automatic. Reinstatement of these members shall be had only upon petition for reinstatement for good cause shown. Upon the filing of such petition for reinstatement with the clerk, the chief judge shall review the petition for reinstatement for clear and convincing evidence that the member has the moral qualifications, competency and learning in the law required for readmission to practice before this Court, and make a recommendation to this Court.

(C) **Successive Petitions for Reinstatement.** No petition for reinstatement under this Rule shall be filed within one year following an adverse determination upon a prior petition for reinstatement filed by the attorney.

(12) **Designated Judge(s).** The Chief Judge shall have the authority to designate a judge, or judges, of the Circuit to perform all duties imposed upon the chief judge by this rule. All references to "chief judge" in this rule shall be deemed to include such designated judge(s).

(c) **Legal Assistance to Indigents by Law Students.** An eligible law student with the written consent of an indigent and the attorney of record may appear in this court on behalf of that indigent in any case. An eligible law student with the written consent of the United States Attorney or authorized representative may also appear in this court on behalf of the United

States in any case. An eligible law student with the written consent of the State Attorney General or authorized representative may also appear in this court on behalf of that state in any case. In each case, the written consent shall be filed with the clerk.

An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or other documents must also be signed by the attorney of record. The student may also participate in oral argument with leave of the court in the particular case, but only in the presence of the attorney of record. The student shall be introduced to the court by an attorney admitted to practice before it. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of that work. The attorney should be familiar with the case and prepared to supplement any written or oral statement made by the student.

In order to make an appearance pursuant to this rule, the law student must:

1. Be duly enrolled in a law school approved by the American Bar Association;

2. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis;

3. Be certified by the dean of the student's law school or authorized representative as being of good character and competent legal ability, which certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time by mailing notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

4. Neither ask for nor receive any compensation nor remuneration of any kind from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require;

5. Certify in writing that he or she has read and is familiar with the Code of Professional Responsibility or Rules of Professional Conduct in force in the state in which the student's law school is located."

COMMITTEE NOTE: (a)(1), (2) - former 6th Cir. R. 6; (a)(3) - former 6th Circuit I.O.P. 4.3; (b) - former 6th Cir. R. 32.

6 Cir. I.O.P. 46 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 47 Local Rules by Court of Appeals

(a) **Local Rules.**

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in local rule rather than an internal operating procedure or standing order. A local rule must be consistent with—but not duplicative of—Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) **Procedure When There Is No Controlling Law.** A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

6 Cir. R. 47 Rules by Court of Appeals - Amendments; Advisory Committee On Rules

(a) **Amendments.** Notice of any proposed changes or additions shall be given by the clerk and shall provide for a comment period of 90 days unless modified by the Court. The notice shall be given to the state bar associations in each state in the Circuit and to the distribution lists maintained by the clerk. Any interested publisher, bar association, or law related association may be included in this list upon request. All comments should be filed in writing with the clerk.

The Court may adopt the proposed amendment any time after the close of the comment period.

Upon determination that an immediate need exists, this Court may amend the rules without prior public notice and comment. This Court shall, however, promptly thereafter give the notice and afford the opportunity for comment provided in this rule.

(b) **Advisory Committee on Rules.**

(1) **Purpose.** Pursuant to 28 U.S.C. § 2077(b) there is hereby created an advisory committee on rules for the United States Court of Appeals for the Sixth Circuit. It is the policy of this Court that the members of the Court's rules committee and its administrative staff shall cooperate with the advisory committee to the end that the advisory committee is well and fully informed upon the existing procedures and rules and practices of this Court as they affect the practice of law before the Court, but nothing herein shall confer upon the committee any powers other than those which are advisory in nature.

(2) **Membership.** The advisory committee shall consist of 12 members appointed by the chief judge. Three members shall be appointed from each state in the Circuit. At least one member shall be appointed from each district in the Circuit. Members shall be selected by the chief judge in such a manner as shall in the chief judge's judgment assure broad representation of all aspects of litigation practiced before the Court and the individual members shall, in the discretion of the chief judge, be selected from among those attorneys who are currently active practitioners before the Court, except that in the discretion of the chief judge, in lieu thereof, the chief judge may appoint a representative from an accredited law school in the Circuit and a public member who is not a lawyer.

(3) **Terms of Office.** Terms of appointment to the committee shall be for a period of three years. Terms shall be staggered. No person shall be appointed to serve more than two successive three-year terms. An interim appointment of less than 2 years shall not constitute a term.

(4) **Meetings.**

(A) The committee shall meet annually, at the time of and concurrent with the Judicial Conference in any year in which such a conference is convened. In years in which no conference is held, the annual meeting shall be called by the chair. In addition, the committee may meet at such other times as the chief judge or the chair may direct.

(B) When possible, the meeting of the advisory committee shall be coordinated with the meeting of the Sixth Circuit Rules Committee.

(C) Members shall serve without compensation, but travel and transportation expenses may be paid as authorized by the director of the Administrative Office of the United States Courts in accordance with 5 U.S.C. § 5703.

(5) **Recommendations.** Any recommendations for changes in the rules and procedures of the Court may be made by resolution of the advisory committee and transmitted to the chief judge with copy thereof to be transmitted to the chair of the Sixth Circuit Rules Committee. Conversely, except where the committee expressly deems it impracticable because of time or other circumstances, any proposals for change in the existing rules of this Court by the rules committee shall first be transmitted for comment to the advisory committee.

COMMITTEE NOTE: (a) - former 6th Cir. R. 31; (b) - former 6th Cir. R. 27.

6 Cir. I.O.P. 47 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

FRAP 48 Masters

(a) **Appointment; Powers.** A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) **Compensation.** If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

6 Cir. R. 48 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. R.

6 Cir. I.O.P. 48 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

6 Cir. R. 100 - Supplemental Procedural Rules

6 Cir. R. 101 Appeals in Criminal Cases

(a) **Continued Representation on Appeal.** Trial counsel in criminal cases, whether retained or appointed by the district court, is responsible for the continued representation of the client on appeal until specifically relieved by this Court.

(b) **Appointment of Trial Counsel as Appellate Counsel.** If trial counsel was appointed by the district court and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the defendant's indigency.

(c) **Appearance of Counsel.** See 6 Cir. R. 12.

(d) **Application for Pauper Status on Appeal.** See 6 Cir. R. 24.

(e) **Presentence Investigation Report.** See 6 Cir. I.O.P. 11(b).

(f) **Withdrawal of Appellate Counsel.** A motion to withdraw as counsel on appeal in a criminal ease must state the reasons for such relief and be accompanied by one of the following:

(1) a showing that new counsel has been retained to represent defendant, together with a signed appearance by new counsel; or,

(2) 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 elected to withdraw the appeal; or,

(3) a brief following the procedure described in *Anders v. California,* 386 U.S. 738 (1967). In addition to the service otherwise required, counsel shall serve a copy of the brief and motion on the defendant and advise the defendant that the defendant has 21 days from the date of service in which to file a brief in support of reversal of the conviction. Such a motion must be accompanied by proof of service on the defendant; or,

(4) a detailed statement setting forth reasons why it would be unethical, unfair or unreasonable to require counsel to continue to represent defendant. In addition to the service otherwise required, counsel shall serve a copy of the motion, including this statement, on the defendant and advise the defendant that the defendant has ten days from the service of the motion to file a response with this Court. Such a motion must be accompanied by proof of service on the defendant.

(g) **Petition for Writ of Certiorari.** Counsel appointed by the Court is obligated to file a petition for a writ of certiorari in the Supreme Court of the United States if the client requests that such a review be sought and, in counsel's considered judgment, there are grounds for seeking Supreme Court review.

(h) **Direct Appeals of Federal Convictions in Which the Sentence Is Death.** The page limitations and time requirements of 6 Cir. R. 22(c)(5), (7), (8), (9), and (10) are also applicable to direct appeals of federal convictions which result in a sentence of death.

(i) **Motions for Extension of Time.** See 6 Cir. R. 26(b).

COMMITTEE NOTE: (a),(b), (d), (e) and (g) - former 6th Cir. R. 12 (a), (b), (c), (d), (e), and (f); (c) - former I.O.P. Chapter 3; (f) - except for (f)(4), former 6th Cir. R. 12(e); (f)(4) - new; (h) - new; (i) - former I.O.P. 17.10.

6 Cir. I.O.P. 101

(a) **Appointment of Appellant's Counsel Under CJA.** Where the Court directs the appointment of counsel for an appellant in a case where the appointment can be made pursuant to the Criminal Justice Act, the clerk shall see that appropriate counsel is appointed.

(b) **Expedited Cases.** Direct criminal appeals are included in those cases in which this Court issues a routine briefing schedule with an expedited argument or directs submission on briefs. See 6 Cir. I.O.P. 28(c).

COMMITTEE NOTE: (a) - former I.O.P. 25.1; (b) - former I.O.P. Chapter 7.

6 Cir. R. 102 Cross-Appeals - Oral Argument

The appeal and the cross-appeal will be argued together as one case and in the time allotted for one case.

Comments

Former 6 Cir. R. 102(a) is deleted because it duplicates FRAP 28.1(c).

The title is changed to reflect the limited scope of the rule.

6 Cir. I.O.P. 102 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

6 Cir. I.O.P. 103 Fees

The table of fees authorized by the Judicial Conference of the United States includes:

(1) For docketing a case on appeal or review, or docketing any other proceeding, $450. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed. A docketing fee shall not be charged for the docketing of a direct bankruptcy appeal or a direct bankruptcy cross appeal when the fee has been collected by the bankruptcy court in accordance with Item 15 or Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule.

(2) For every search of the records of the court and certifying the results thereof, $26. This fee shall apply to services rendered on behalf of the Untied States if the information requested is available through electronic access.

(3) For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $9.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; (2) or microfiche or microfilm reproductions of the original record. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of recordings of proceedings, regardless of the medium, $26, including the cost of materials. This fee shall apply to services rendered on behalf of the United States if the reproduction of the recording is available electronically.

(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), F.R.A.P., a flat fee of $71.

(7) For each microfiche or microfilm copy of any court record, where available, $5.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.

(9) For a check paid into the court which is returned for insufficient funds, $45.

(10) For copies of slip opinions, $2.

(11) For admission to the Bar of the Sixth Circuit, $200.

(12) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(13) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the Untied States Courts.

(14) Upon the filing of any separate or joint notice of appeal or application for appeal from the Bankruptcy Appellate Panel, or notice of the allowance of an appeal from the Bankruptcy Appellate Panel, or of a writ of certiorari, $5 shall be paid by the appellant or petitioner.

COMMITTEE NOTE: New rule.

6 Cir. I.O.P. 104 Remand from Supreme Court of the United States

Once a certified copy of a judgment is received in the clerk's office, remands from the Supreme Court of the United States are referred for disposition to the panel that decided the case. It is unnecessary for counsel to file a formal motion concerning the remand.

COMMITTEE NOTE: Former I.O.P. 17.11.5.

6 Cir. I.O.P. 105 Complaints of Judicial Misconduct

Any complaint of judicial misconduct filed with the clerk of the court of appeals shall be referred to the circuit executive. See 28 U.S.C. § 372.

COMMITTEE NOTE: Former I.O.P. Chapter 27.

6 Cir. R. 200 - Administrative Rules

6 Cir. R. 201 Name and Seal

(a) **Name.** The name of this Court is "United States Court of Appeals for the Sixth Circuit."

(b) **Seal.** The seal 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 "For the Sixth Circuit" in three lines in the center, with a dash between.

COMMITTEE NOTE: Former 6th Cir. R. 1.

6 Cir. I.O.P. 201 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

6 Cir. R. 202 Sessions of Court

(a) **Time and Place.** Sessions of this Court shall be held at such dates as the Court may deem advisable. All sessions shall be held at the Potter Stewart U.S. Courthouse in Cincinnati, Ohio unless otherwise ordered by the Court.

(b) **Clerk's Office.** The clerk's office shall be located at the Potter Stewart U.S. Courthouse in Cincinnati, Ohio; the address is 100 E. Fifth Street, 45202.

(c) **Order of Business.** Before the call of the calendar, the Court will entertain motions to admit attorneys to the bar of the Court. The calendar for the day will then be called, and the cases listed thereon will be heard in the order in which they appear upon the calendar unless otherwise directed by the Court.

(d) **Courtroom Deputies.** Courtroom deputies shall be provided by the clerk's office.

COMMITTEE NOTE: Former 6th Cir. R. 2.

6 Cir. I.O.P. 202 Sessions - Court Facilities and Personnel

(a) **Physical Facilities.** The headquarters of this court is located in the Potter Stewart U.S. Courthouse at Fifth and Walnut Streets in Cincinnati, Ohio 45202. This building contains

three courtrooms for the Sixth Circuit and chambers for each active circuit judge and each senior circuit judge. Additionally, the building contains the circuit executive's office, the clerk's office, the staff attorneys' office and the library.

(b) **Judges and Other Supporting Personnel.**

(1) **Judges.** The Sixth Circuit is authorized to have sixteen active judges. Each active judge is authorized to have three law clerks and two judicial assistants or, at his or her preference, four law clerks and one judicial assistant. The Chief Judge is authorized one additional law clerk and judicial assistant. This court is also served by a number of senior circuit and visiting judges who sit with panels of the court.

(2) **Circuit Executive.** The circuit executive, assisted by a staff, operates as an arm of the Judicial Council of the Circuit and provides administrative support to the court. The Circuit Executive's services are designed to assist judges, particularly the Chief Judge, with administrative duties in order to free them for their primary duty of adjudication.

(3) **Staff Attorneys.** The staff attorneys' office is responsible for providing legal support to the court as a whole, rather than to individual judges. A senior staff attorney and two supervisory staff attorneys are appointed by the court to supervise the office. The office reviews the docket to make recommendations for dispositions without oral argument pursuant to 6 Cir. R. 34(j).

COMMITTEE NOTE: Former I.O.P. 2.1, 2.3.1-2.3.3.

Comment

The statement of the number of staff attorneys in (b)(3) is deleted so that the rule need not be amended when the number changes.

6 Cir. R. 203 Assignment of Judges; Quorum

(a) **Assignment of Judges; Quorum.** As provided in 28 U.S.C. § 46, the judges of this Court shall be assigned to sit upon the Court and its panels in such order, at such sessions, and for the hearing of such cases, as the Court directs. Cases and controversies shall be heard and determined by a panel of three judges, unless a hearing or rehearing before the Court en banc is ordered as provided by FRAP 35. A majority of the number of judges authorized to constitute the Court or a panel thereof shall constitute a quorum.

(b) **Absence of Quorum; Adjournment.** If on any day less than a quorum is present, any judge in attendance may adjourn the Court until a later time or, if no judge is present, the clerk may adjourn the Court from day to day.

COMMITTEE NOTE: Former 6th Cir. R. 3.

6 Cir. I.O.P. 203 [Reserved]

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

6 Cir. R. 204 Court Library

(a) **To Whom Available.** The law libraries of this Court are open for use by all federal court personnel. When library staff is present, other federal personnel and attorneys admitted to federal practice may use the libraries during regular library hours. Other library users may be admitted at the discretion of the Librarian-in-charge. Library materials may not be removed from local courthouses or federal buildings.

(b) **Librarian; Duties.** This Court shall appoint a suitable person as librarian of the Court who shall have charge and custody of the Court library.

(c) **Library Fund.** All sums received by the clerk pursuant to 6 Cir. R. 46(a)(2) shall constitute a fund to be expended by the circuit executive, with the approval of this Court or a judge thereof. The circuit executive shall keep an account of the receipts and disbursements for examination and approval of the Court.

COMMITTEE NOTE: Former 6th Cir. R. 5. Paragraph (a) amended to conform with October 17, 1995 resolution of the Sixth Circuit Judicial Council.

6 Cir. I.O.P. 204 Court Library

Hours of operation for the Cincinnati library are from 8:00 a.m. to 5:00 p.m., Monday through Friday. Satellite libraries are maintained in Chattanooga, Cleveland, Columbus, Detroit, Grand Rapids, Louisville, Memphis, Nashville, and Toledo with varying hours of operation according to established local practice.

COMMITTEE NOTE: Former I.O.P. 2.3.4.

6 Cir. R. 205 Judicial Conference of the Sixth Circuit

(a) **Purpose.** Unless otherwise determined by the United States Court of Appeals for the Sixth Circuit, 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, bankruptcy and magistrate judges of the Circuit for the purpose of considering the state of business of the courts and advising ways and means of improving the administration of justice within the Circuit. The Chief Judge shall preside at the conference.

(b) **Types of Conferences; Who Shall Attend.** Unless otherwise determined by the United States Court of Appeals for the Sixth Circuit, there shall be two types of conferences, denominated as "open" conferences and "judges only" conferences.

(1) Open Conferences. Beginning with the conference held in 2000, conferences held in even-numbered years shall be for the circuit, district, bankruptcy and magistrate judges of this circuit and members of the bar who are eligible to attend pursuant to the provisions of sections (c) and (d) of this rule.

(2) Judges Only Conferences. Beginning with the conference held in 2001, conferences held in odd-numbered years shall be for the circuit, district, bankruptcy and magistrate judges of this circuit. Attorneys generally will not participate in such conferences.

(c) **Members of Bar; How Chosen.** Members of the conference from the bar shall be composed of the following:

(1) The presidents and presidents-elect of the state bar associations of the states of the Circuit.

(2) The vice presidents for the Sixth Circuit of the Federal Bar Association and any members of the Executive Committee of the Federal Bar Association who reside in the Sixth Circuit.

(3) The dean or designated member of the faculty of each accredited law school within the Circuit.

(4) The members of the Advisory Committee on Rules of the United States Court of Appeals for the Sixth Circuit.

(5) The United States Attorney for each judicial district in the Sixth Circuit.

(6) The Federal Public Defender or Executive Director of the Community Defender Organization for the judicial districts in the Sixth Circuit that have established such defender organizations.

(7) Delegates to the conference consisting of two or more lawyers who meet the eligibility criteria set forth in Section (c)(7)(i) to be appointed annually by the chief judge of the Circuit and two such qualified lawyers to be appointed annually by each other circuit judge and one such qualified lawyer to be appointed by each district judge as members of the conference for open conferences. In naming delegates, judges are encouraged to give due regard to the composition of the bar of their court with respect to areas of practice, race, sex, national origin and level of experience. Appointment as a delegate for a particular conference in no way implies appointment as a delegate to succeeding conferences.

(i) **Eligibility to be a delegate.** To be eligible to be selected as a delegate by a circuit or district judge, an attorney must have practiced actively in one or more federal courts of this Circuit in a manner that reflects integrity, honesty, capability and civility for at least five years prior to selection and invitation. Such attorney should be known to the judge making the appointment and should have demonstrated a willingness to work to improve the judicial system.

(8) Any attorney admitted to practice in one or more federal courts of this Circuit.

(d) **Life Members.** An attorney who meets the eligibility requirements set forth in Sections (d)(1) through (d)(5) shall be a Life Member of the Sixth Circuit Judicial Conference and shall be eligible to attend all open conferences of this Circuit. The Life Members, acting through the Life Member Committee established in Section (e)(2) shall be responsible for the organization and presentation of the Life Member participation in the programs and collegial activities of open circuit conferences.

(1) **Delegates.** An attorney who has attended three conferences as a delegate named by a circuit or district judge shall be a Life Member of the conference.

(2) **Other Members.** An attorney who has attended three conferences as a member of the conference under one or more of the provisions of Sections (c)(1) through (c)(6) shall be a Life Member of the conference.

(3) **Attendees.** An attorney who has attended three conferences, beginning with the conference held in 2000, may petition the chief judge of the Circuit to become a Life Member of the conference. Such petition shall show that the attendee meets the eligibility requirements of a delegate to the conference as set forth in Section (c)(7)(i), and, in particular, must show that the attendee attended at least three open

conferences after having been engaged in active practice in one or more federal courts of this Circuit for five years. The petition shall contain the favorable recommendation of a circuit or district judge of this Circuit. The Chief Judge of the Circuit shall grant the petition if the attendee satisfies the requirements in this section as well as Section (c)(7)(i). The Chief Judge's decision is final unless a majority of active circuit judges determines that the chief judge has clearly erred in granting or denying the petition.

(4) **Retired or Former Judges.** Any circuit or district judge who has retired from his or her judicial office under honorable circumstances pursuant to 28 U.S.C. § 371(a) or who has resigned from his or her judicial office under honorable circumstances after having served at least three years, shall be a Life Member of the conference. Any bankruptcy or magistrate judge who has retired from his or her judicial office under honorable circumstances pursuant to 28 U.S.C. § 377(a) or who has resigned from his or her judicial office under honorable circumstances after having served for a least ten years, shall be a Life Member of the conference, upon the recommendation of the majority of the district judges of the district in which such bankruptcy or magistrate judge served.

(5) **Aggregation of Years of Attendance.** For purposes of determining eligibility for Life Member status, an attorney may aggregate years of attendance at conferences pursuant to Sections (c)(1) through (c)(8).

(6) **Maintenance of Life Member Status.** In order to maintain active Life Member status, a Life Member must attend three open conferences each decade, starting from the year 2000 open conference, and pay annual dues as set forth in Section (d)(7). If these requirements are not met, the Life Member shall be assigned to inactive status, subject to qualification as a senior Life Member. Inactive Life Members shall not receive a letter of invitation or the conference registration information for open conferences nor be responsible for the payment of dues.

(i) **Reinstatement to Active Life Member Status.** An inactive Life Member may request to be restored to active status upon a showing of reasonable cause. Such requests shall be decided by the chief judge of the Circuit who shall give due consideration to the recommendation of the Life Member Committee.

(ii) **Senior Life Members Status.** Upon reaching the age of 70, a Life Member may elect senior status. A senior Life Member shall continue to receive a letter of invitation and conference registration materials, but shall be exempt from the requirement of attendance. A senior Life Member shall have the option to pay the annual dues but shall not be required to pay.

(7) **Dues.** Active Life Members shall pay dues of $100 annually or such other amount as may be determined by the Life Member Committee. Funds collected by the Life Member Committee will be turned over to the Circuit Executive for deposit and expenditure as directed by the Chair of the Life Member Committee.

(e) **Committees.** The Chief Judge of the Circuit shall from time to time appoint the following committees to assist in the planning and execution of the conferences.

(1) **Standing Committee on Judicial Conference Planning.** The Standing Committee on Judicial Conference Planning shall consist of a representative number of circuit, district, bankruptcy and magistrate judges of this Circuit and members of the bar who shall serve for a five-year term unless extended at the discretion of the chief judge. Terms shall rotate so that approximately one-fifth of the Standing Committee's members' terms end each year. The Standing Committee on Judicial Conference Planning shall have the responsibility of planning and organizing the programs and arrangements for the annual circuit conferences. The Standing Committee may be supplemented by ad hoc committees to arrange particular aspects of any annual conference. Such ad hoc committees may be appointed by the Chair of the Standing Committee.

(2) **Life Member Committee.** The Life Member Committee shall consist of three Life Members from each of the four states in the Circuit, with at least one member being from each district. Life Member Committee members shall serve for a three-year term, with possible reappointment by the chief judge for one additional term, provided, however, that the chief judge is authorized to fix the length of terms so that approximately one-third of the terms expire each year. The chief judge of the Circuit shall designate the Chair of the Life Member Committee. The Life Member Committee shall be responsible for all of the organization and activities of the Life Members, including, in consultation with the chief judge and the Chair of the Standing Committee on Judicial Conference Planning, the organization and presentation of the Life Members' participation in open conferences and the collection of annual dues.

(3) **Senior Counselors.** The members of the Life Member Committee and the Life Members serving on the Standing Committee on Judicial Conference Planning, shall further be recognized as Senior Counselors to the Sixth Circuit, with responsibility to provide advice, at the request of the Court, on issues, policies and such other matters of significant concern to the Court.

6 Cir. I.O.P. 205 [Reserved]

6 Cir. R. 206 Publication of Decisions

(a) **Criteria for Publication.**

The following criteria shall be considered by panels in determining whether a decision will be designated for publication in the Federal Reporter:

(1) whether it establishes a new rule of law, or alters or modifies an existing rule of law, or applies an established rule to a novel fact situation;

(2) whether it creates or resolves a conflict or authority either within the circuit or between this circuit and another;

(3) whether it discusses a legal or factual issue of continuing public interest;

(4) whether it is accompanied by a concurring or dissenting opinion;

(5) whether it reverses the decision below, unless:

(A) the reversal is caused by an intervening change in law or fact, or,

(B) the reversal is a remand (without further comment) to the district court of a case reversed or remanded by the Supreme Court;

(6) whether it addresses a lower court or administrative agency decision that has been published; or,

(7) whether it is a decision that has been reviewed by the United States Supreme Court.

(b) **Designation for Publication.** An opinion or order shall be designated for publication upon the request of any member of the panel.

(c) **Published Opinions Binding.** Reported panel opinions are binding on subsequent panels. Thus, no subsequent panel overrules a published opinion of a previous panel. Court en banc consideration is required to overrule a published opinion of the court.

COMMITTEE NOTE: (a), (b) - former 6th Cir. R. 24(a), (b); (c) - former I.O.P. 22.4.1.

6 Cir. I.O.P. 206 Publication of Decisions - Opinions

(a) **Case Conferences and Designation of Writing Judge.** At the conclusion of each day's arguments, the panel usually holds a conference concerning the cases submitted that day. A

tentative decision is discussed, and opinion writing is assigned by the presiding judge of the panel. A conference report detailing the issues before the panel and giving the tentative views of the panel members is prepared in certain cases and circulated to all judges, for their information.

(b) **Processing of Opinions.** After the draft opinion has been prepared, the opinion writing judge circulates the proposed opinion to each of the other two judges on the panel for the purpose of obtaining their concurrence, dissent or special concurrence. Under the Court's policy, the review of a judge's proposed opinion is given high priority by the other members of the panel.

(c) **Circulation to Non-panel Members.** All judges receive copies of any proposed published opinions.

(d) **Decisions Not Published.** All decisions which are not designated for full-text publication according to the provisions of 6 Cir. R. 206 are listed in table form in the Federal Reporter.

(e) **Release of Decisions.** All decisions are filed in and released by the clerk's office. The clerk's office is not given advance notice of when a decision will be rendered and, therefore, cannot make this information available to counsel. Copies are sent to all counsel and made available to the public on the date of filing.

(f) **Subscriptions to Decisions.** Subscriptions for published decisions are available to the general public for an annual fee. Subscribers receive copies of all published decisions issued on a weekly basis. Information on subscription rates can be obtained by contacting the clerk's office.

COMMITTEE NOTE: Former I.O.P. 22.1-22.6.

SIXTH CIRCUIT GUIDE TO ELECTRONIC FILING

Introduction

The United States Court of Appeals for the Sixth Circuit requires attorneys to file documents electronically, subject to exceptions set forth in the Sixth Circuit Rules and this Guide, using the Electronic Case File (ECF) system.

Table of Contents

1. Definitions

1.1. **ECF (Electronic Case Filing)** means the system maintained by the court for receiving and storing documents in electronic format.

1.2. **PACER (Public Access to Court Electronic Records)** is an electronic system that allows the user to view, print, and download electronically maintained docket information and court documents from the federal courts over the Internet.

1.3. **PDF (Portable Document Format)** means a non-modifiable electronic file containing the ".pdf" file extension. **Native PDF** form means a text-searchable PDF file generated from an original word-processing file.

1.4. **Registered Attorney** means an attorney who has registered under section 2 below and is therefore authorized to file documents electronically and to receive service on the ECF system.

1.5. **Initiating Filing** means the motion, petition, or other document initiating an original proceeding in this court, including those filed under Rules 5, 15 or 21 of the Federal Rules of Appellate Procedure.

1.6. **Document** means any order, opinion, judgment, petition, application, notice, transcript, motion, brief or other document filed in the court of appeals.

1.7. **Traditionally filed document** means a document submitted to the clerk in paper form for filing.

1.8. **NDA (Notice of Docket Activity)** is a notice generated automatically by the ECF system at the time a document is filed and a docket entry results. This notice sets forth the time of filing, the text of the docket entry, and the name of the attorney(s) required to receive notice of the filing. If a PDF document is attached to the docket entry, the NDA will also identify the person filing the document, the type of document, and a hyperlink to the filed document. Any document filed by the court will similarly list those to whom electronic notice of the filing is being sent.

2. Registration; Passwords

2.1. To participate in the ECF system, an attorney must register to file and serve documents electronically. Registration constitutes consent to receive electronic service of all documents as provided by the Federal Rules of Appellate Procedure and the Rules of the Sixth Circuit, as well as to receive electronic notice of correspondence, orders, and opinions issued by the court.

2.2. To be eligible to register as a user of the ECF system, an attorney must be admitted to practice in this court, be a member in good standing, and have submitted to the PACER Service Center a completed ECF Attorney Registration form. Registration forms may be obtained from:

PACER Service Center
P.O. Box 780549
San Antonio, TX 78278
Tel. (800)676-6856 or (210)301-6440
http://pacer.psc.uscourts.gov

In addition, the attorney or the attorney's firm must have a PACER account and an e-mail address.

2.3. Upon receipt of the attorney's registration information from the PACER Service Center, the clerk will issue a login name and user password to the attorney, who may thereafter change the password as he or she wishes. All registered attorneys have an affirmative duty to inform the clerk immediately of any change in their e-mail address. Service on an obsolete e-mail address will still constitute valid service on a registered attorney if the attorney has failed to notify the clerk of a new address. Authorized use of an attorney's login name and password by another is deemed to be the act of the attorney. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately at (513) 564-7000 or ca06-ecf-help@ca6.uscourts.gov.

2.4. An attorney whose e-mail address, mailing address, telephone number, or fax number has changed from that disclosed on the attorney's original Attorney Registration Form shall file a notice of such change and serve the notice of such change on all parties in all cases in which the attorney has entered an appearance.

3. Mandatory Electronic Filing; Exceptions

3.1. Except as otherwise required by the Sixth Circuit Rules or by order of the court, all documents submitted by attorneys in cases filed with the Sixth Circuit must be filed electronically, using the Electronic Case Filing (ECF) system. The Sixth Circuit Rules and this Guide govern electronic filings. If the Sixth Circuit Rules and this Guide are inconsistent, the Sixth Circuit Rules control.

3.2. All electronically filed documents must be in PDF form and must conform to all technical requirements established by the Judicial Conference or the court. Whenever possible, documents must be in Native PDF form and not created by scanning. The following documents are exempted from the electronic filing requirement and are to be filed in paper format:

(1) Any document filed by a party that is unrepresented by counsel;
(2) Petitions for permission to appeal under Fed. R. App. P. 5;
(3) Petitions for review of an agency order under Fed. R. App. P. 15;
(4) Petitions for a writ of mandamus or writ of prohibition under Fed. R. App. P. 21;
(5) Applications for any other extraordinary writ under Fed. R. App. P. 21;
(6) Any other document initiating an original action in the court of appeals;
(7) Motions to authorize the filing in the district court of a second or successive petition for a writ of habeas corpus under 6 Cir. R. 22;
(8) Documents filed under seal;
(9) Documents relating to complaints of attorney misconduct;
(10) Vouchers or other documents relating to claims for compensation and reimbursement of expenses incurred with regard to representation afforded under the Criminal Justice Act; and
(11) Documents that exceed any limit that the court may set for the size of electronic filings

3.3. No unrepresented party may file electronically; unrepresented parties must submit documents in paper format. The clerk will scan such documents into the ECF system, and the electronic version scanned in by the clerk will constitute the appeal record of the court as reflected on its docket.

4. [Reserved]

5. Record on Appeal and Appendices

5.1. In an appeal in which the entire record of the lower court or administrative agency is available to this court in electronic form, no paper record on appeal will be transmitted to the clerk. If part of the record below is maintained in paper form, only that part must be transmitted to the circuit clerk when the court of appeals requests that the record be transmitted.

5.2. Except as provided in 6 Cir. R. 30(a), appendices to briefs are no longer required. The clerk will not accept an appendix for filing in cases where it is not required.

5.3. In appeals from the district court where there is an electronic record in the district court, documents in the electronic record must not be included in an appendix. To facilitate the court's reference to the electronic record in such cases, each party must include in its principal brief a designation of relevant district court documents; see 6 Cir. R. 30(f)(1). The designation must include for each document the record entry number from the district court docket and a description of the document.

5.4. In some instances the court's electronic filing system may not be able to accept large scanned documents that may be necessary for an appendix. A filer encountering such a problem should contact the ECF Help Desk, available by phone at (513) 564-7000 during the hours 8:00 A.M. to 5:00 P.M. Eastern time, Monday through Friday, or by e-mail at ca06-ecfhelp@ca6.uscourts.gov. The court will work with the filer to resolve technical problems with filing large documents. If necessary, the court will extend the deadline for filing an appendix when such problems are encountered.

6. Briefs on Appeal - Proof Briefs Eliminated

6.1. Proof briefs are no longer required to be filed. The clerk will not accept a proof brief for filing.

6.2. Only one version of each brief is to be filed. Each brief will cite with specificity those parts of the record to which reference is made. Citation shall be to the record item being referred to and to the page of the appendix, if there is an appendix. See 6 Cir. R. 28(a).

7. Documents Filed Under Seal

7.1. A motion to file documents under seal may be filed electronically unless prohibited by law, local rule, or court order. If the court grants the motion, the order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. Documents ordered placed under seal must be filed in paper format in a sealed envelope. The face of the envelope containing such documents shall contain a conspicuous notation that it contains "DOCUMENTS UNDER SEAL," or substantially similar language, and shall have attached to it a paper copy of the order authorizing the filing of the documents under seal.

7.2. Documents filed under seal in the court from which an appeal is taken shall continue to be filed under seal on appeal to this court. Documents filed under seal shall be filed in paper format and shall comply with all filing requirements of the court that originally ordered or otherwise authorized the documents to be filed under seal.

8. Signatures

8.1. Attorneys - A registered attorney's use of the assigned login name and password to submit a document electronically serves as that attorney's signature on that document for all purposes. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/[attorney's name]" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address. Graphic and other electronic signatures are discouraged.

8.2. Multiple attorney signatures - The filer of any electronically filed document requiring multiple signatures (e.g., stipulations) must list thereon all the names of other attorney signatories by means of an "s/ [attorney's name]" block for each. By submitting such a document, the filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the filer has their authority to submit the document electronically. In the alternative, the filer *may* submit a scanned document containing all necessary signatures.

8.3. Clerk of Court or Deputy Clerks - The electronic filing of any document by the clerk or a deputy clerk of this court by use of that individual's login and password shall be deemed the filing of a signed original document for all purposes.

9. Entry onto the Docket; Official Court Record

9.1. The electronic transmission of a document, together with transmission of the NDA from the court, in accordance with the policies, procedures, and rules adopted by the court, constitutes the filing of the document under the Federal Rules of Appellate Procedure and constitutes the entry of that document onto the official docket of the court maintained by the clerk pursuant to Fed. R. App. P. 45(b)(1). All orders, decrees, notices, opinions and judgments of the court will be filed and maintained by the ECF system and constitute entry on the docket kept by the clerk for purposes of Rules 36 and 45(b)(1) and (c) of the Federal Rules of Appellate Procedure.

9.2. The electronic version of filed documents, whether filed electronically in the first instance or received by the clerk in paper format and subsequently scanned into electronic format, constitutes the official record in the case. Later modification of a filed document or docket entry is not permitted except as authorized by the court. A document submitted electronically is deemed to have been filed on the date and at the time indicated in the system-generated NDA.

9.3. The clerk's office will discard all paper documents once they have been scanned and made a part of the official record, unless the electronic file thereby produced is incomplete or of questionable quality.

10. Service of Documents

10.1. A certificate of service is required for all documents, and registered attorneys must comply with Fed. R. App. P. 25 when filing electronically. The ECF system will automatically generate and send by e-mail an NDA to all registered attorneys participating in any case. This notice constitutes service on those registered attorneys. Registration for electronic filing by the ECF system constitutes consent to service through the NDA. Independent service, either by paper or otherwise, need not be made on any registered attorney. *Pro se* litigants and attorneys who are not

registered for electronic filing must be served by the filing party through the conventional means of service set forth in Fed. R. App. P. 25. The Notice of Docket Activity generated by the ECF system does not replace the certificate of service required by FRAP 25.

10.2. Except as may be otherwise provided by local rule or order of the court, all orders, opinions, judgments and other court-issued documents in cases maintained in the ECF system will be filed electronically, which filing will constitute entry on the docket maintained by the clerk under FRAP 36 and 45(b).

Any order, opinion, judgment, or other court-issued document filed electronically without the signature of the judge, clerk, or authorized deputy clerk has the same effect as if the judge or clerk had signed a paper copy of the filing.

11. Access to Documents

11.1. Access to all documents maintained electronically, except those filed under seal, is available to any person through the PACER system. PACER accounts can be established through the PACER Service Center at: http://pacer.psc.uscourts.gov, or by contacting the PACER Service Center, P.O. Box 780549, San Antonio, Texas 78278, or by telephone at (800) 676-6856 or (210) 301-6440.

11.2. Under the PACER system, parties and counsel of record are entitled to one free copy of each document filed in their cases, within fifteen days of filing. Parties are encouraged to download a copy of the document and save it to their hard drives during this period, as subsequent access to those documents is subject to billing fees as set forth on the PACER website.

12. Privacy Protection and Redactions

In accordance with Fed. R. App. P. 25(a)(5), registered attorneys must redact all documents, including briefs, consistent with the privacy policy of the Judicial Conference of the United States. Required redactions include social security numbers and taxpayer identification numbers (the filer shall include only the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the responsibility of the filer to redact pleadings appropriately. Pursuant to the privacy policy of the Judicial Conference and applicable statutory provisions, remote electronic access to immigration and social security dockets is limited to the attorneys in the case who are registered in ECF. In this regard, the clerk will restrict electronic public access in these cases to judges, court staff, and the parties and attorneys in the appeal or agency proceeding. The court will not restrict access to orders and

opinions in these cases. Parties seeking to restrict access to orders and opinions must file a motion explaining why that relief is required in a given case.

13. Filing Deadlines; Technical Failures

13.1. Filing documents electronically does not in any way alter any filing deadlines. Where a specific time of day deadline is set by court order or stipulation, the electronic filing must be completed by that time. An electronically filed document is deemed filed upon completion of the transmission and issuance by the court's system of an NDA.

13.2. The clerk shall deem the court's website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available by phone at (513) 564-7000 during the hours 8:00 A.M. to 5:00 P.M. Eastern time, Monday though Friday, or by e-mail at ca06-ecf-help@ca6.uscourts.gov.

14. Training

14.1. The clerk shall post and maintain on the court's website instructions for counsel on how to use the ECF system, and shall update the website as necessary when changes are made to the procedures for using ECF. These instructions, in such form as the clerk determines most effective, shall be clear and concise, giving the prospective user the information necessary to successfully file documents.

14.2. The court shall also staff and maintain an ECF Help Desk to which users can turn to for direction in accessing the ECF system successfully. In addition, the clerk shall offer whatever other assistance is practicable to ensure that attorneys become proficient in the use of the ECF system.