

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed On: May 15, 2009

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the notice of proposed amendments to Circuit Rules 25, 36, and 45 to implement the court's Case Management/Electronic Case Files (CM/ECF) system, published on February 12, 2009, with an opportunity for comment; and the absence of any comments on the proposed amendments, it is, by the en banc court,

ORDERED that Circuit Rules 25, 36, and 45 be amended as proposed. It is

FURTHER ORDERED that Circuit Rule 8(a)(2) be amended to read as follows:

(2) Except in extraordinary circumstances, for any motion that is not filed electronically and for any party who has not consented to electronic service, the motion must be served by hand or, in the case of a party located outside the greater Washington metropolitan area, by other form of expedited service. The movant must attempt to notify the opposing side by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify the opposing side.

It is

FURTHER ORDERED that Circuit Rule 12(a) be amended to read as follows:

(a) Timing. As directed by the court, appellant must file a docketing statement and serve a copy on all parties and amici curiae appearing at that time.

It is

FURTHER ORDERED that Circuit Rule 15(c)(1) be amended to read as follows:

(1) Timing. As directed by the court, appellant or petitioner must file a docketing statement and serve a copy on all parties (including intervenors) and amici curiae appearing before this court at that time.

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It is

FURTHER ORDERED that Circuit Rule 18(a)(2) be amended to read as follows:

(2) Except in extraordinary circumstances, for any motion that is not filed electronically and for any party who has not consented to electronic service, the motion must be served by hand or, in the case of a party located outside the greater Washington metropolitan area, by other form of expedited service. The movant must attempt to notify the opposing side by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify the opposing side.

It is

FURTHER ORDERED that Circuit Rule 27(h)(2) be amended to read as follows:

(2) **Consultation.** Before filing a motion to extend the time for filing a pleading or for leave to exceed page limits, the moving party must attempt to obtain the consent of the opposing side. If consent is not obtained, the moving party must attempt to inquire whether an opposition or other form of response will be filed. The opening paragraph of any such motion must recite the position taken by the opposing party in response to these inquiries, or the efforts made to obtain a response.

The following requirements pertain to service (i) on an opposing party who has not consented to electronic service or (ii) for motions to extend the time for filing or for leave to exceed page limits that are not filed electronically. If the opposing side has stated an intention to file an opposition or other response, or has not been reached after reasonable effort, the moving party must serve the motion by personal service or, if personal service is not feasible, give telephone notice of the filing and serve the motion by the most expeditious form of service. If the moving party is unable to effect personal service or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

It is

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FURTHER ORDERED that Circuit Rule 28(e)(3) be amended to read as follows:

(3) Before filing a motion to exceed the limits on length of briefs, or to extend the time for filing, the moving party must attempt to obtain the consent of the opposing side. If consent is not obtained, the moving party must attempt to inquire whether an opposition or other form of response will be filed. The opening paragraph of any such motion must recite the position taken by the opposing party in response to these inquiries, or the efforts made to obtain a response.

The following requirements pertain to service (i) on an opposing party who has not consented to electronic service or (ii) for motions to exceed the limits on length of briefs or to extend the time for filing that are not filed electronically. If the opposing side has stated an intention to file an opposition or other response, or has not been reached after reasonable effort, the moving party must serve the motion by hand, or if such service is not feasible, by giving telephone notice of the filing and serving the motion by the most expeditious form of service. If the moving party is unable to effect service by hand or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

It is

FURTHER ORDERED that Circuit Rule 30(a) be amended to read as follows:

(a) Filing and Form. Except as provided in Circuit Rules 9 or 24, an appendix must be prepared as prescribed by FRAP 30. Appellant or petitioner must file 8 copies of the appendix with the court, and serve one copy on counsel for each separately represented party, at the time the brief for appellant or petitioner is filed, unless filing is to be deferred pursuant to FRAP 30(c). When an appendix is filed electronically, 7 paper copies must be filed in addition to the electronic version, unless filing is to be deferred pursuant to FRAP 30(c). The appendix must be reproduced on light paper by any duplicating or copying process capable of producing a clear black image; such duplication may be made on both sides of each page.

It is

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FURTHER ORDERED that Circuit Rule 31(b) be amended to read as follows:

b) Number of Copies. Except for unrepresented persons proceeding in forma pauperis, the original and 8 copies of every brief must be filed. When the deferred appendix method is used, 6 copies of the initial briefs must be filed (when filed electronically, 5 paper copies in addition to the electronic version), followed by the original and 8 copies in final form. An unrepresented person proceeding in forma pauperis must file with the clerk one original brief, and the clerk will duplicate the necessary copies.

These amendments are effective June 8, 2009.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

/s/ Mark J. Langer

ADDENDUM A

**Amendments to Circuit Rules 25, 36, and 45
(effective June 8, 2009)**

Circuit Rule 25

Filing and Service

[(a), (b), and (c) are new. Current text is contained in (d), which has been revised by adding underlined text and deleting portions marked by strike-outs.]

(a) Filing by Electronic Means. The court will accept for filing documents submitted, signed, or verified by electronic means that comply with procedures established by the court. In cases assigned to the court's Case Management/Electronic Case Files (CM/ECF) system, the clerk is authorized to permit or to require a party to file by electronic means. The clerk also may require paper copies of any document filed electronically.

(b) Exceptions. Upon motion and a showing of good cause, the court may exempt a party from the electronic filing requirements and authorize filing by means other than use of the CM/ECF system.

(c) Service of Documents by Electronic Means. Registration for the court's CM/ECF system constitutes consent to electronic service of all documents as provided in these rules and the Federal Rules of Appellate Procedure. The Notice of Docket Activity that is generated by the court's CM/ECF system constitutes service of the filed document on all parties who have consented to electronic service. For any document that is not filed electronically and for any party who has not consented to electronic service, the document must be served by an alternative method of service, in accordance with the Federal Rules of Appellate Procedure and this court's rules. The Notice of Docket Activity generated by the court's CM/ECF system does not replace the certificate of service required by FRAP 25.

(d) Non-Electronic Filing. When electronic filing is not utilized, a ~~A~~ non-emergency paper may be filed at the United States court house after the regular hours of the clerk's office pursuant to procedures established by the clerk's office. ~~See Circuit Rule 27(f).~~ In emergencies or other compelling circumstances, when electronic filing is not utilized, the clerk may authorize that papers be filed with the court through facsimile transmission. Except when specifically so permitted, such filing is not authorized.

See also Circuit Rule 27(a)(1) (Motions), and Circuit Rule 45(b) (Clerk's Duties, Office Hours).

Circuit Rule 36

**Entry of Judgment; Notice;
Decisions of the Court; ~~Opinions and Abbreviated Dispositions~~**

[(a) and (b) are new, with a corresponding change in the title of the rule to conform more closely with FRAP 36.]

(a) Entry. In cases assigned to the court’s Case Management/Electronic Case Files (CM/ECF) system, all judgments will be filed electronically in accordance with Circuit Rule 25 and the procedures established by the court. That filing constitutes entry of the judgment on the docket as required by FRAP 36(a).

(b) Notice. Upon the entry of the judgment in a case assigned to the CM/ECF system, the clerk will electronically transmit a Notice of Docket Activity to all parties who have consented to electronic service. Electronic transmission of the Notice of Docket Activity constitutes the notice and service required by FRAP 36(b) and 45(c). For any party who has not consented to electronic service, the clerk must serve in paper form a copy of the opinion or the judgment, if no opinion was written, which notes the date the judgment was entered.

(a c) Opinions of the Court.

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(b d) Abbreviated Dispositions.

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(e e) Unpublished Opinions.

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(d f) Motion to Publish.

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Circuit Rule 45

Clerk's Duties; Fees for Services

[(c) and (d) are new. (f) adds "paper" to the last sentence.]

(a) Attendance at Sessions.

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(b) Office Hours.

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(c) Entry of Court-Issued Documents. Except as otherwise provided by these rules or court order, all orders, opinions, judgments, and other documents issued by the court in cases assigned to the court's Case Management/Electronic Case Files (CM/ECF) system will be filed electronically in accordance with Circuit Rule 25 and the procedures established by the court. Any such filing constitutes under FRAP 36 and 45(b) entry on the docket maintained by the clerk. Any order, judgment, or other court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy. Orders also may be issued as "text-only" entries on the docket, without an attached document. Such orders are official and binding.

(d) Notice of Orders and Judgments. Immediately upon the entry of an order or judgment in a case assigned to the CM/ECF system, the clerk will electronically transmit a Notice of Docket Activity to all parties who have consented to electronic service. Electronic transmission of the Notice of Docket Activity constitutes the notice and service required by FRAP 36(b) and 45(c). For any party who has not consented to electronic service, the clerk must immediately serve in paper form a notice of entry with a copy of any opinion.

(e e) Fees for Services.

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(d f) Printed Copies of Opinions. For each printed copy of the decision in a case, including all separate and dissenting opinions, the clerk will charge such sum as the court may from time to time direct, and copies may be supplied without charge or at such reduced charge as the court may from time to time designate. Each party in a case will receive 2 paper copies of the decision without charge.

(e g) Other Fees Not Authorized.

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ADDENDUM B

**Amendments to Circuit Rules 8, 12, 15, 18, 27, 28, 30, and 31
(effective June 8, 2009)**

Circuit Rule 8

**Stay and Emergency Relief Pending Appeal from
a Judgment or Order of the District Court**

(a) Criteria; Service.

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(2) Except in extraordinary circumstances, for any motion that is not filed electronically and for any party who has not consented to electronic service, the motion must be served by hand or, in the case of ~~counsel~~ a party located outside the greater Washington metropolitan area, by other form of expedited service. ~~Counsel~~ The movant must attempt to notify the opposing ~~counsel~~ side by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify the opposing ~~counsel~~ side.

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Circuit Rule 12

**Docketing Statement in Appeal from a Judgment or Order of the District Court;
Statement by Appellee, Intervenor, or Amicus Curiae**

(a) Timing. As directed by the court, appellant must file ~~an original and one copy of a~~ docketing statement and serve a copy on all parties and amici curiae appearing at that time.

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Circuit Rule 15

**Petition for Review or Appeal from
Agency Action; Docketing Statement**

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(c) Docketing Statement.

(1) **Timing.** As directed by the court, appellant or petitioner must file ~~an original and one copy of a~~ docketing statement and serve a copy on all parties (including intervenors) and amici curiae appearing before this court at that time.

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Circuit Rule 18

Stay and Emergency Relief Pending Review of an Agency Order

(a) Criteria; Service.

* * * * *

(2) Except in extraordinary circumstances, for any motion that is not filed electronically and for any party who has not consented to electronic service, the motion must be served by hand or, in the case of ~~counsel~~ a party located outside the greater Washington metropolitan area, by other form of expedited service. ~~Counsel~~ The movant must attempt to notify the opposing ~~counsel~~ side by telephone in advance of the filing of the motion and describe in the motion or accompanying memorandum the efforts made to so notify the opposing ~~counsel~~ side.

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Circuit Rule 27

Motions

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(h) Motions to Extend Time for Filing and to Exceed Page Limits.

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(2) ~~Consultation with Counsel.~~ Before filing a motion to extend the time for filing a pleading or for leave to exceed page limits, ~~counsel~~ for the moving party must attempt to obtain the consent of ~~other counsel~~ the opposing side. If consent is not obtained, ~~counsel~~ for the moving party must attempt to inquire whether an opposition or other form of response will be filed. ~~In the~~ The opening paragraph of any such motion, ~~counsel~~ must recite the position taken by other counsel the opposing party in response to these inquiries, or the efforts made to obtain a responses.

The following requirements pertain to service (i) on an opposing party who has not consented to electronic service or (ii) for motions to extend the time for filing or for leave to exceed page limits that are not filed electronically. If other counsel have the opposing side has stated an intention to file an opposition or other response, or have has not been reached after reasonable effort, counsel for the moving party must serve the motion by personal service or, if personal service is not feasible, give other counsel telephone notice of the filing and serve the motion by the most expeditious form of service. If counsel the moving party is unable to effect personal service or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

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Circuit Rule 28

Briefs

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(e) Request to Exceed the Limits on the Length of Briefs and for Extension of Time for Filing.

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(3) Before filing a motion to exceed the limits on length of briefs, or to extend the time for filing, ~~counsel~~ for the moving party must attempt to obtain the consent of ~~other counsel~~ the opposing side. If consent is not obtained, ~~counsel~~ for the moving party must attempt to inquire whether an opposition or other form of response will be filed. ~~In t~~The opening paragraph of any such motion, ~~counsel~~ must recite the position taken by ~~other counsel~~ the opposing party in response to these inquiries, or the efforts made to obtain a responses.

The following requirements pertain to service (i) on an opposing party who has not consented to electronic service or (ii) for motions to exceed the limits on length of briefs or to extend the time for filing that are not filed electronically. If ~~other counsel~~ have the opposing side has stated an intention to file an opposition or other response, or ~~have~~ has not been reached after reasonable effort, ~~counsel~~ for the moving party must serve the motion by hand, or if such service is not feasible, by giving ~~other counsel~~ telephone notice of the filing and serving the motion by the most expeditious form of service. If ~~counsel~~ the moving party is unable to effect service by hand or telephone notice at the time of filing, the opening paragraph of the motion must recite the efforts made to do so.

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Circuit Rule 30

Appendix to the Briefs

(a) Filing and Form. Except as provided in Circuit Rules 9 or 24, an appendix must be prepared as prescribed by FRAP 30. Appellant or petitioner must file ~~10~~ 8 copies of the appendix with the court, and serve one copy on counsel for each separately represented party, at the time the brief for appellant or petitioner is filed, unless filing is to be deferred pursuant to FRAP 30(c). When an appendix is filed electronically, 7 paper copies must be filed in addition to the electronic version, unless filing is to be deferred pursuant to FRAP 30(c). The appendix must be reproduced on light paper by any duplicating or copying process capable of producing a clear black image; such duplication may be made on both sides of each page.

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Circuit Rule 31

Serving and Filing Briefs

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(b) Number of Copies. Except for unrepresented persons proceeding in forma pauperis, the original and ~~14~~ 8 copies of every brief must be filed. When the deferred appendix method is used, ~~76~~ 7 copies of the initial briefs must be filed (when filed electronically, 5 paper copies in addition to the electronic version), followed by the original and ~~14~~ 8 copies in final form. An unrepresented person proceeding in forma pauperis must file with the clerk one original brief, and the clerk will duplicate the necessary copies.
