

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**September Term, 2023**

**Filed On:** March 25, 2024

**BEFORE:** Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

**ORDER**

It is **ORDERED** by the en banc court that Circuit Rules 5, 8, 17, 18, 21, 22, 25, 26.1, 27, 28, 42, 47.2, 47.3, 47.6, and the Appendix be amended as set out in the attachment to this order, effective April 1, 2024.

**Per Curiam**

**FOR THE COURT:**

BY:



Mark J. Langer, Clerk

## Circuit Rule 5

### Appeal by Permission

- (a) **Certificate of Parties and Disclosure Statement to be Attached.** A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in FRAP 26.1 and Circuit Rule 26.1, must be attached as an addendum to the petition. Any required disclosure statement must also be attached to any answer to the petition.
- (b) **Reply.** A party may file a reply to an answer within 7 days after the answer is served. A reply may not exceed 2,600 words if produced using a computer, and may not exceed 10 pages if handwritten or typewritten.
- (c) **Number of Copies.** Unless the court directs otherwise, the original and 4 copies of every petition, cross-petition, answer, and reply must be filed with the clerk.
- (d) **Motions to Extend Time or Exceed Length Limits.** Motions to extend time for filing answers or replies and motions to exceed length limits for petitions, answers, and replies are governed by Circuit Rule 27(g)-(h).

## Circuit Rule 8

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

**(a) Criteria; Service.**

(1) A motion for a stay of a judgment or of an order of the district court or any other motion seeking emergency relief must state whether such relief was previously requested from the district court and the ruling on that request. The motion must state the reasons for granting the stay or other emergency relief sought and discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(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 the efforts made to so notify the opposing side.

(3) There must be attached to each copy of the motion a copy of the judgment or order involved, and of any pertinent decision, memorandum, opinion, or findings issued by the district court. If the district court's reasons were given orally, the pertinent extract from the reporter's transcript must be attached, if available.

(4) A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in FRAP 26.1 and Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

**(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto.** A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the appeal in its entirety. A response to a motion for a stay or other emergency relief that is combined with a dispositive motion, the combined reply and response thereto, and the reply in support of the dispositive motion are governed by Circuit Rule 27(c).

See also Circuit Rule 18 (Stay Pending Review of an Agency Order), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions).

## **Circuit Rule 17**

### **Filing the Record for Review or Enforcement of an Agency Order**

- (a) **Immigration Case.** On petition for review in immigration matters, the Executive Office for Immigration Review must transmit the record to this court within 40 days after the filing of the petition for review.
- (b) **Other Agency Case.** On petition for review or on direct appeal of any other agency action, the agency must transmit a certified list of the contents of the administrative record to the court within 40 days after the filing of the petition for review or direct appeal, unless the court issues a scheduling order establishing a different deadline; and should not transmit any other portion of the record to this court unless the court so requests.

See also Circuit Rule 47.1 (Matters Under Seal).

## **Circuit Rule 18**

### **Stay and Emergency Relief Pending Review of an Agency Order**

**(a) Criteria; Service.**

(1) A motion for a stay of an order of an agency or any other motion seeking emergency relief must state whether such relief was previously requested from the agency and the ruling on that request. The motion must state the reasons for granting the stay or other emergency relief sought and discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(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 the efforts made to so notify the opposing side.

(3) There must be attached to each copy of the motion a copy of the order involved, and of any pertinent rule, decision, memorandum, opinion, or findings issued by the agency.

(4) A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

**(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto.** A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the petition for review or direct appeal in its entirety. A response to a motion for a stay or other emergency relief that is combined with a dispositive motion, the combined reply and response thereto, and the reply in support of the dispositive motion are governed by Circuit Rule 27(c).

See also Circuit Rule 8 (Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions).

## **Circuit Rule 21**

### **Writs of Mandamus and Prohibition and Other Extraordinary Writs and Complaints of Unreasonable Delay**

- (a)** No responsive pleading to a petition for an extraordinary writ to the district court or an administrative agency, including a petition seeking relief from unreasonable agency delay, is permitted unless requested by the court. No such petition will be granted in the absence of such a request.
- (b)** A petition for a writ of mandamus or a writ of prohibition to the district court must not bear the name of the district judge, but instead be titled, "In re \_\_\_\_\_, Petitioner." Unless otherwise ordered, the district judge will be represented pro forma by counsel for the party opposing the relief, who will appear in the name of such party and not that of the judge.
- (c)** Unless the court directs otherwise, the original and 4 copies of a petition for an extraordinary writ, and of any responsive pleading or reply authorized by the court, must be filed with the clerk.
- (d)** A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in FRAP 26.1 and Circuit Rule 26.1, must be attached as an addendum to the petition, unless such documents have been filed previously with the court. Any required disclosure statement must also be attached to any answer to the petition.
- (e)** Motions to extend time for filing and to exceed length limits for petitions, answers, and replies are governed by Circuit Rule 27(g)-(h).

## **Circuit Rule 22**

### **Habeas Corpus and Section 2255 Proceedings**

A petition for leave to file a second or successive application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 or to file a second or successive motion pursuant to 28 U.S.C. § 2255, and any response or reply, must comply with the length limits set forth in FRAP 27(d)(2).

See also Circuit Rule 47.2(a) (Appeal Expedited by Statute and Habeas Corpus Proceeding).

## **Circuit Rule 25**

### **Filing and Service**

**(a) Filing by Electronic Means.** Pursuant to Federal Rule of Appellate Procedure 25, the court has authorized the filing and service of documents by electronic means. Except as otherwise prescribed by Circuit rule or order of the court, all cases will be assigned to the court's Case Management/ Electronic Case Files (CM/ECF) system, and all documents must be filed electronically in accordance with procedures established by the court. The clerk also may require paper copies of any document filed electronically. Electronic transmission of a document to the CM/ECF system, together with the transmission of a Notice of Docket Activity from the court, constitute filing of the document under the Federal Rules of Appellate Procedure and the rules of this court, and constitute under FRAP 36 and 45(b) entry of the document on the docket maintained by the clerk. If the court requires a party to file a motion for leave to file, both the motion and document at issue should be submitted electronically. If leave is granted, the underlying document will remain on the docket; if leave is denied, the docket will so reflect.

**(b) Registration for the CM/ECF System.**

(1) Attorneys who appear before this court must register for the court's CM/ECF system in accordance with procedures established by the court. Every attorney representing a party or an amicus curiae in a case must individually enter an appearance and register for the court's CM/ECF system if the attorney wishes to file or to receive notice of filings in that case.

(2) At the discretion of the court, a party to a pending case who is not represented by an attorney may be permitted to register as an ECF filer. A pro se party who desires to register as an ECF filer must file a motion in this court and if the motion is granted, the party may participate as a pro se ECF filer in that case and any other pending and future cases unless the court revokes permission. If a pro se party retains an attorney, the attorney must enter an appearance.

(3) ECF filers must immediately report any change in their postal or e-mail address by updating their appellate filer account. ECF filers must agree to protect the security of their passwords and to notify the PACER Service Center and the clerk immediately if they learn that their password has been compromised. See Circuit Rule 32(a)(1). ECF filers may be sanctioned for failure to comply with this provision.

**(c) Exceptions to Requirement of Electronic Filing and Service.**

(1) A party proceeding pro se must file documents in paper form with the clerk and must be served with documents in paper form unless the pro se party has been permitted to register as an ECF filer.

(2) 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.

(3) Case-initiating documents, including petitions for permission to appeal, petitions for review or notices of appeal from agency action, and petitions for writ of mandamus and other original proceedings in this court, may be filed either electronically or in paper form. If filed in paper form,



an ECF filer must promptly provide the clerk an electronic version of the filing upon the court's request.

(4) Any document containing material under seal or containing material that a party is seeking to place under seal, and any document filed in a sealed case, may not be filed using the CM/ECF system. Such documents must be filed in paper form or in a nonpublic electronic format as set forth on the court's website. Matters under seal are governed by Circuit Rule 47.1. Upon the court's request, an ECF filer must promptly provide the clerk an electronic version of any sealed filing that was filed in paper form.

(5) Exhibits, attachments, or appendix items that (i) exceed the size limitation set by the court; (ii) are not in a format that readily permits electronic filing, such as odd-sized documents; or (iii) are illegible when scanned into electronic format may be filed in paper form. Documents filed pursuant to this subsection must be served by an alternative method of service authorized by FRAP 25, and the filer must file electronically a notice of paper filing.

**(d) Paper Copies of Electronic Filings.** Except for documents listed in Circuit Rule 32(d) or unless the court directs otherwise, documents filed electronically are not to be submitted to the court in paper form. In those instances when paper copies of electronic filings are required, the filing of copies of non-emergency documents may be accomplished by First-Class Mail addressed to the clerk, or other class of mail that is at least as expeditious, postage prepaid, within two business days of the electronic filing, unless the court has ordered filing by hand or other means. The number of paper copies is governed by the rules pertaining to that document or by order in a particular case; the "original" is the electronic filing.

**(e) Privacy Protection.** Unless the court orders otherwise, parties must refrain from including or must redact the following personal data identifiers from documents filed with the court to the extent required by FRAP 25(a)(5):

- Social Security numbers. If an individual's Social Security number must be included, use the last four digits only.
- Financial account numbers. If financial account numbers are relevant, use the last four digits only.
- Names of minors. If the involvement of an individual known to be a minor must be mentioned, use the minor's initials only.
- Dates of birth. If an individual's date of birth must be included, use the year only.
- Home addresses. In criminal cases, if a home address must be included, use the city and state only.

The filer bears sole responsibility for ensuring a document complies with these requirements.

**(f) 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.

**(g) Non-Electronic Filing.** When electronic filing is not utilized, a non-emergency paper may be filed at the United States courthouse after the regular hours of the clerk's office pursuant to procedures established by the clerk's office. 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 or email. Except when specifically so permitted, such filing is not authorized.

See also Circuit Rule 32(a) (Electronic Signatures) and Circuit Rule 32(d) (Paper Copies of Electronic Filings).

## **Circuit Rule 26.1**

### **Disclosure Statement**

**(a)** A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or amicus curiae in any proceeding must file a disclosure statement, at the time specified in FRAP 26.1; Circuit Rules 5, 8, 12, 15, 18, 21, 27, and 35(c); or as otherwise ordered by the court, identifying all parent companies and any publicly-held company that has a 10% or greater ownership interest (such as stock or partnership shares) in the entity. A revised corporate disclosure statement must be filed any time there is a change in corporate ownership interests that would affect the disclosures required by this rule. For the purposes of this rule, "parent companies" include all companies controlling the specified entity directly, or indirectly through intermediaries.

**(b)** The statement must identify the represented entity's general nature and purpose, insofar as relevant to the litigation. If the entity is an unincorporated entity whose members have no ownership interests, the statement must include the names of any members of the entity that have issued shares or debt securities to the public. No such listing need be made, however, of the names of members of a trade association or professional association. For purposes of this rule, a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

See also Circuit Rule 5 (Appeal by Permission), Circuit Rule 8 (Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court), Circuit Rule 9 (Release in a Criminal Case), Circuit Rule 12(f) (Docketing Statement in Appeal from a Judgment or Order of the District Court; Statement by Appellee, Intervenor, or Amicus Curiae), Circuit Rule 15(c)(6) (Petition for Review or Appeal from Agency Action; Docketing Statement), Circuit Rule 18 (Stay Pending Review), Circuit Rule 21 (Extraordinary Writs), Circuit Rule 27 (Motions), Circuit Rule 35(c) (Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc), and Circuit Rule 47.2(b) (Sentencing Appeal; Compassionate Release Appeal).

## Circuit Rule 27

### Motions

#### **(a) Form of Pleadings.**

(1) **In Writing; Service.** Every motion must be in writing, signed by counsel of record or by the movant if not represented by counsel, and served on all other parties to the proceeding before this court, unless the motion is made in open court in opposing counsel's or movant's presence or this court provides otherwise.

(2) **Format.** Motions, responses thereto, and replies to responses must comply with FRAP 27(d)(1)-(2).

(3) **Reference to Oral Argument and Submission Without Oral Argument.** If a case has been scheduled for oral argument, has already been argued, or is being submitted without oral argument, a motion, and any response or reply, must so state in capital letters at the top of the first page and, where applicable, include the date of argument.

(4) **Certificate of Parties and Disclosure Statement to be Attached.** A certificate of parties and amici curiae, as described in Circuit Rule 28(a)(1)(A), and a disclosure statement, as described in FRAP 26.1 and Circuit Rule 26.1, must be attached as an addendum to the motion, and any required disclosure statement must also be attached to any response to the motion, unless such documents have been filed previously with the court.

**(b) Number of Copies.** Unless the court directs otherwise, the original and 4 copies of every motion, response, and reply must be filed with the clerk.

**(c) Response That Also Seeks Affirmative Relief.** A party responding to a motion may combine with the response a motion for affirmative relief. Such a combined response and motion may not exceed 7,800 words if produced using a computer and 30 pages if handwritten or typewritten. A response to such a combined filing must include any reply in support of the original motion, must be filed within 10 days of service of the combined response and motion, and may not exceed 5,200 words if produced using a computer and 20 pages if handwritten or typewritten. Any reply in support of the motion for affirmative relief may not exceed 2,600 words if produced using a computer and 10 pages if handwritten or typewritten.

#### **(d) Clerk May Dispose of Certain Motions.**

(1) **Procedural Motions.** The clerk may dispose of procedural motions, in accordance with the court's instructions. Instead of granting or denying a motion under the authority afforded by this subparagraph, the clerk may submit it to a panel or to an individual judge of the court.

(2) **Reconsideration of Clerk's Orders on Procedural Motions.** Any interested party adversely affected by an order of the clerk disposing of a motion may move for reconsideration thereof within 10 days after entry of the order. The clerk will submit the motion for reconsideration to a panel or an individual judge of the court.

**(e) Requests for Expedient Consideration.** Any party may request expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would ordinarily be required for this court to receive and consider a response. The motion on which expedited action is sought must be labeled an "Emergency Motion" and the request for expedition must state the nature of the emergency and the date by which court action is necessary. The motion must be filed at least 7 days before the date by which court action is necessary or counsel must explain why it was not so filed. Counsel for the party seeking expedition must communicate the request and the reasons therefor in person or by telephone to the clerk's office and to opposing counsel.

**(f) Dispositive Motions.**

(1) **Timing.** Any motion which, if granted, would dispose of the appeal or petition for review in its entirety, or transfer the case to another court, must be filed within 45 days of the docketing of the case in this court, unless the court issues a scheduling order establishing a different deadline. This requirement does not apply to a motion by an appellant to dismiss its own appeal, or by a petitioner to dismiss its own petition, either of which may be filed at any time.

(2) **Required Attachments.** There must be attached to each copy of a dispositive motion a copy of any pertinent opinion or findings issued by the district court or agency or, if the reasons were given orally, the pertinent extract from the reporter's transcript must be attached, if available.

(3) **Deferral of Briefing Pending Resolution of Dispositive Motion.** Unless otherwise ordered by the court, briefing, if scheduled, will be deferred pending resolution of any timely filed dispositive motion. If such a motion is not timely filed, briefing will be deferred only if ordered by the court.

**(g) Motions to Extend Time for Filing and to Exceed Length Limits.**

(1) **Timeliness of Request.** A motion to extend the time for filing motions, responses, and replies, or to exceed the length limits for such pleadings, must be filed at least 5 days before the pleading is due. Motions filed less than 5 days before the due date will be denied absent exceptional circumstances, except that the clerk may grant unopposed late filed motions for extension of time for good cause shown.

(2) **Consultation.** Before filing a motion to extend the time for filing a pleading or for leave to exceed length 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 length 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.

**(3) Pleadings in Excess of Length Limits.** The court disfavors motions to exceed length limits; such motions will be granted only for extraordinarily compelling reasons.

**(4) Automatic Extensions for Timely Filed Motions.** If a motion is filed in accordance with the requirements of subparagraphs (1) and (2) above and the court does not act on the motion by the end of the second business day before the filing deadline, the time for filing the pleading is automatically extended until the court rules on the motion. If the motion is denied by the court under these circumstances, the time for filing will be extended automatically for 7 days after the date of the order denying the motion. If a timely filed motion to exceed length limits is not acted upon by the filing date for the document, the overlong document may be filed; if the motion is subsequently denied, the movant will be given a short period in which to file a document that conforms to the rules. This rule does not apply to the filing of briefs. See Circuit Rule 28.

**(h) Response to a Nonconforming Motion or Response.** When an untimely, overlength, or otherwise nonconforming motion or response is lodged along with a motion for leave to file the document or exceed the length limits, no response is required to the nonconforming document until a decision is rendered on the motion for leave to file or to exceed length limits.

See also Circuit Rule 25 (Filing and Service), and Circuit Rule 47.1 (Matters Under Seal).

## Circuit Rule 28

### Briefs

**(a) Contents of Briefs: Additional Requirements.** Briefs for an appellant/petitioner and an appellee/respondent, and briefs for an intervenor and an amicus curiae, must contain the following in addition to the items required by FRAP 28:

(1) **Certificate.** Immediately inside the cover and preceding the table of contents, a certificate titled "Certificate as to Parties, Rulings, and Related Cases," which contains a separate paragraph or paragraphs, with the appropriate heading, corresponding to, and in the same order as, each of the subparagraphs below.

(A) **Parties and Amici.** The appellant or petitioner must furnish a list of all parties, intervenors, and amici who have appeared before the district court, and all persons who are parties, intervenors, or amici in this court. An appellee or respondent, intervenor, or amicus may omit from its certificate those persons who were listed by the appellant or petitioner, but must state: "[Except for the following,] all parties, intervenors, and amici appearing [before the district court and] in this court are listed in the Brief for \_\_\_\_\_."

Any party or amicus curiae that is a corporation, association, joint venture, partnership, syndicate, or other similar entity must make the disclosure required by Circuit Rule 26.1. In a criminal case, the government must make the disclosure required by FRAP 26.1(b), and the appropriate party in a bankruptcy case must make the disclosure required by FRAP 26.1(c).

(B) **Rulings Under Review.** Appropriate references must be made to each ruling at issue in this court, including the date, the name of the district court judge (if any), the place in the appendix where the ruling can be found, and any official citation in the case of a district court or Tax Court opinion, the Federal Register citation and/or other citation in the case of an agency decision, or a statement that no such citation exists. Such references need not be included if they are contained in a brief previously filed by another person, but the certificate must state: "[Except for the following,] references to the rulings at issue appear in the Brief for \_\_\_\_."

(C) **Related Cases.** A statement indicating whether the case on review was previously before this court or any other court and, if so, the name and number of such prior case. The statement must also contain similar information for any other related cases currently pending in this court or in any other court of which counsel is aware. For purposes of this rule, the phrase "any other court" means any other United States court of appeals or any other court (whether federal or local) in the District of Columbia. The phrase "any other related cases" means any case involving substantially the same parties and the same or similar issues. If there are no related cases, the certificate must so state.

(2) **Table of Authorities.** In the left-hand margin of the table of authorities, an asterisk may be placed next to those authorities on which the brief principally relies, together with a notation at the bottom of the first page of the table stating: "Authorities upon which we chiefly rely are marked with asterisks." Even though the marking of "principal authorities" is optional, the table of authorities must identify each page of the brief on which the authority is cited; *passim* or similar terms may not be used.

(3) **Glossary.** All briefs containing abbreviations, including acronyms, must provide a "Glossary" defining each such abbreviation on a page immediately following the table of authorities. Abbreviations that are part of common usage need not be defined.

(4) **Statement of Jurisdiction.** The brief of the appellant or petitioner must set forth the jurisdictional statement required by FRAP 28(a)(4). Any party, intervenor, or amicus curiae may include in its brief a counter statement regarding jurisdiction.

(5) **Statutes and Regulations.** Pertinent statutes and regulations must be set forth either in the body of the brief following the statement of the issues presented for review or in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case a statement must appear in the body of the brief referencing the addendum. Any addendum exceeding 40 pages must be bound separately from the brief. If the statutes and regulations are included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the pertinent statutes and regulations are contained in a brief previously submitted by another party, they need not be repeated but, if they are not repeated, a statement must appear under this heading as follows: "[Except for the following,] all applicable statutes, etc., are contained in the Brief for \_\_\_\_\_."

(6) **Summary of Argument.** Except when a brief contains a "Standing" section as required by Circuit Rule 28(a)(7), in each brief, including a reply brief, a summary of argument must immediately precede the argument; the summary of argument must contain a succinct, clear statement of the arguments made in the body of the brief and not merely repeat the argument headings.

(7) **Standing.** In cases involving direct review in this court of administrative actions, the brief of the appellant or petitioner must set forth the basis for the claim of standing. This section, entitled "Standing," must follow the summary of argument and immediately precede the argument. When the appellant's or petitioner's standing is not apparent from the administrative record, the brief must include arguments and evidence establishing the claim of standing. See Sierra Club v. EPA, 292 F.3d 895, 900-01 (D.C. Cir. 2002). If the evidence is lengthy, and not contained in the administrative record, it may be presented in a separate addendum to the brief. If it is bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. Any addendum exceeding 40 pages must be bound separately from the brief.

(8) **Reference to Oral Argument and Submission Without Oral Argument.** If a case has been scheduled for oral argument, has already been argued, or is being submitted without oral argument, a brief must so state in capital letters at the top of the front cover and, where applicable, include the date of the argument.

(b) **References to Authorities and Other Material.** When citing to the record, authorities, or any other material, citations must refer to specific pages of the source; *passim* or similar terms may not be used.

(c) **Length of Briefs.** The length of briefs is governed by FRAP 28.1, 32(a)(7), and Circuit Rule 32(e).

(d) **Briefs for Intervenors.** The rules stated below apply with respect to the brief for an intervenor in



this court. For purposes of this rule, an intervenor is an interested person who has sought and obtained the court's leave to participate in an already instituted proceeding.

(1) Except by permission or direction of the court, the brief must conform to the brief lengths set out in Circuit Rule 32(e)(2).

(2) The brief must avoid repetition of facts or legal arguments made in the principal (appellant/petitioner or appellee/respondent) brief, and focus on points not made or adequately elaborated upon in the principal brief, although relevant to the issues before this court.

(3) Except as otherwise directed by the court, the brief must be filed in accordance with the time limitations described in FRAP 29.

(4) Intervenors on the same side must join in a single brief to the extent practicable. This requirement does not apply to a governmental entity. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) Any separate brief for an intervenor must contain a certificate of counsel plainly stating why the separate brief is necessary. Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.

(5) A reply brief may be filed for an intervenor on the side of appellant or petitioner at the time the appellant's or petitioner's reply brief is due.

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

(1) The court disfavors motions to exceed limits on the length of briefs and motions to extend the time for filing briefs that affect the oral argument schedule. Such motions will be granted only for extraordinarily compelling reasons.

(2) A motion to exceed the limits on length of briefs or to extend the filing time for a brief must be filed at least 7 days before the brief is due. Untimely motions will be denied absent exceptional circumstances, except that, where good cause is shown, the clerk may grant unopposed late-filed motions for extension of time that do not affect the oral argument schedule.

(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.

(4) Submission of a motion to exceed the limits on length of briefs or extend the time for filing a brief does not toll the time for compliance with filing requirements. Movants will be expected to meet all filing requirements in the absence of an order granting a waiver.

**(f) Citation of Supplemental Authorities.** After briefing has been completed, a party may file an original and 4 copies of a letter pursuant to FRAP 28(j).

See also Circuit Rule 28.1 (Cross-Appeals), Circuit Rule 29 (Brief of an Amicus Curiae), Circuit Rule 32.1 (Citing Judicial Dispositions), and Circuit Rule 47.1 (Matters Under Seal).

## **Circuit Rule 42**

### **Voluntary Dismissal in a Criminal Case**

In a criminal case, counsel must submit a motion to the court requesting dismissal, with service on opposing counsel. If the appellant was the defendant in district court, the motion must be accompanied by an affidavit from the appellant, stating that the appellant has been fully informed of the circumstances of the case and of the consequences of a dismissal, and wishes to dismiss the appeal. The affidavit must also recite the appellant's satisfaction with the services of counsel.

See also Circuit Rule 27(f) (Dispositive Motions).

## Circuit Rule 47.2

### Certain Expedited Proceedings

**(a) Appeal Expedited by Statute and Habeas Corpus Proceeding.** Upon filing a notice of appeal in a case invoking 18 U.S.C. § 3145, 18 U.S.C. § 3731, 28 U.S.C. chapter 153, 28 U.S.C. § 1826, or 28 U.S.C. § 1657, the clerk of the district court must transmit a copy of the notice of appeal and a certified copy of the docket entries to the clerk of this court forthwith. The clerk of this court will promptly open the appeal and enter an appropriate schedule upon the docket. If a hearing occurred, appellant must order the necessary portions of the transcript on an expedited basis and make arrangements with the clerk of the district court for prompt transmittal of the record to this court. A party desiring more expedited briefing than the schedule entered by the clerk, or expedited oral argument, should file a motion stating the basis for the requested relief.

**(b) Sentencing Appeal Pursuant to 18 U.S.C. § 3742; Compassionate Release Appeal Pursuant to 18 U.S.C. § 3582.**

(1) In an appeal from a sentence or an appeal in a compassionate release case, the court may, where appropriate or upon motion, establish an expedited schedule for briefing or a schedule for memoranda of law and fact in lieu of briefs.

(2) The memoranda and the reply must comply with FRAP 27(d)(1)-(2). Except by permission or direction of this court, the memoranda of law and fact may not exceed the length limits set by FRAP 27(d)(2), exclusive of pages containing the certificate required by Circuit Rule 28(a)(1). For the government, any disclosure statement required by FRAP 26.1(b) must be filed with its memorandum of law and fact, unless the statement has been filed previously with the court. An original and 4 copies of the memoranda and the reply must be filed.

(3) The memoranda need not contain a table of authorities, a statement of jurisdiction, or a summary of argument.

(4) The filings will be placed in the public record. Parties should avoid matters that could compromise the confidentiality of the presentence report. Where inclusion of confidential matters is unavoidable, the party should move to have the nonpublic portion of the submission placed under seal.

(5) Where the court is reviewing both sentence and conviction in the same proceeding, the rules set out above, except for Circuit Rule 47.2(b)(4), will not apply.

## **Circuit Rule 47.3**

### **Judicial Conference**

**(a) Purpose.** In accordance with 28 U.S.C. § 333, the Chief Circuit Judge may summon annually or biennially a conference of all circuit, district, bankruptcy, and magistrate judges of the circuit in active service for the purpose of considering the business of the courts and means to improve the administration of justice within the circuit. The conference will be called "the Judicial Conference of the District of Columbia Circuit."

**(b) Conference Arrangements and Procedures.**

(1) The Chief Circuit Judge will appoint a committee to assist with the arrangements for the conference, including such matters as program topics, speakers, and related conference activities. The committee will include circuit judges, district judges, and members of the bar.

(2) The Chief Circuit Judge presides at the conference. The Circuit Executive serves as conference secretary and will make and preserve a record of conference proceedings. The Chief Circuit Judge may appoint other committees, if needed, to pursue or carry out conference actions. If necessary, the Chief Circuit Judge will appoint a judge to serve as conference parliamentarian.

**(c) Composition.** In addition to the active circuit, district, bankruptcy, and magistrate judges of this circuit, others invited to participate in the conference must include:

(1) the senior, inactive senior, recalled, and former circuit, district, bankruptcy, and magistrate judges;

(2) the Circuit Executive;

(3) the Clerks of Court for the circuit and district and bankruptcy courts;

(4) the Circuit Librarian;

(5) the Director of the Legal Division;

(6) the Chief Circuit Mediator;

(7) the Director of Workplace Relations;

(8) the Chief Probation Officer;

(9) the Chief Justice of the United States;

(10) the chief judges of other courts in the District of Columbia, including both the federal courts and the courts of the District of Columbia;

(11) the Attorney General of the United States; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; and the Assistant Attorneys General in charge of the Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, National Security, and Tax Divisions; and the Assistant Attorneys General for the Office of Legal Policy, Office of Legal Counsel, and Office of Legislative Affairs;

(12) the Chairman and Ranking Minority Member of the Senate Judiciary Committee and the Chairman and Ranking Minority Member of the House Judiciary Committee;

(13) the Federal Public Defender for the District of Columbia;

(14) the United States Attorney for the District of Columbia;

(15) the Director of the District of Columbia Public Defender Service;

(16) the Attorney General of the District of Columbia;

(17) the Director of the Administrative Office of the United States Courts;

(18) the Director of the Federal Judicial Center;

(19) the deans of local law schools;

(20) members of the bar in such numbers as will permit and promote participation by those engaged in the various fields of federal court practice; and

(21) other individuals whose background, position, or achievement will contribute to the purpose and program of the conference.

## Circuit Rule 47.6

### Appeals from the Alien Terrorist Removal Court

#### (a) In General.

(1) **Perfection.** A party seeking to appeal from a decision of the Alien Terrorist Removal Court must do so by filing a notice of appeal in the office of the clerk of the court of appeals.

(2) **Appeals Treated as Motions.** Unless otherwise specified herein or ordered by the court, appeals will be treated and processed by the court as motions. See generally FRAP 27(d); Circuit Rule 27. The appellant must file, simultaneously with the notice of appeal, 5 copies of a memorandum in support of the appeal, not to exceed the length limits set by FRAP 27(d)(2). No response will be permitted unless specified by this rule. All submissions must be filed and, if served, served by hand. An alien not represented by counsel who is unable to file or serve submissions by hand must do so by the most expeditious means available to the alien that are effective to reach the Department of Justice promptly.

(3) **Submissions to be Filed Under Seal.** Unless otherwise specified herein, all submissions filed in the court in an appeal from the Alien Terrorist Removal Court must be filed under seal. In addition, any submission containing or referring to classified information must so indicate in an appropriate legend on the face of the submission. The court and all parties to a removal proceeding must comply with all applicable statutory provisions for the protection of classified information, and with the "Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information."

(4) **Appointment of Counsel.** Counsel appointed to represent or assist an alien in the Alien Terrorist Removal Court, including any "special attorney" designated under 8 U.S.C. § 1534(e)(3), must continue to represent or assist the alien in any proceedings in this court, without additional appointment.

(5) **Expedition.** All appeals from the Alien Terrorist Removal Court must be disposed of by this court as expeditiously as practicable. Any party to an appeal seeking disposition within a definite time period may move for such relief, stating the grounds in support.

#### (b) Appeal from the Denial of a Removal Application (8 U.S.C. § 1535(a)).

(1) **Perfection.** The United States may appeal the denial of an application to use the alien terrorist removal procedure, by filing in the court of appeals clerk's office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Record.** The United States must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit, under seal, the entire record of the application proceeding to the court of appeals.

(3) **Ex Parte Appeal.** An appeal from the denial of a removal application must be conducted ex parte and under seal. No submissions, including the notice of appeal and the memorandum in support of the appeal, will be served on the alien.

**(c) Interlocutory Appeal from Discovery Orders (8 U.S.C. § 1535(b)).**

(1) **Perfection.** The United States may appeal a determination of the Removal Court regarding a request for approval of an unclassified summary of evidence, or refusing to make requested findings under 8 U.S.C. § 1534(e)(3), by filing in the court of appeals clerk's office a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Record.** The United States must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court must be transmitted to and maintained by this court under seal.

(3) **Ex Parte Appeal.** An appeal from a discovery determination will be conducted ex parte and under seal. No submissions, except the notice of appeal, will be served on the alien.

**(d) Appeal from a Decision After a Removal Hearing (8 U.S.C. § 1535(c)).**

(1) **Perfection.** The United States or the alien may appeal the decision of the Removal Court after a removal hearing, by filing in the court of appeals clerk's office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) **Automatic Appeal.** In the case of a permanent resident alien in which the alien was denied an unclassified summary of evidence under 8 U.S.C. § 1534(e)(3), and in which appeal is automatic unless waived, the alien must file, within 20 days of the date of the Removal Court's order, a memorandum in support of the appeal, or a notice that the appeal has been waived. Failure to file a timely memorandum in support of the appeal, or a timely notice of waiver, will result in dismissal of the automatic appeal for lack of prosecution.

(3) **Record.** The appellant (except in the case of an automatic appeal) must serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court must transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court must be transmitted to and maintained by this court under seal.

In the case of an automatic appeal, the Removal Court must, upon the filing of the court's order after the removal hearing, transmit a certified copy of the order, together with the record of the removal proceedings, to the court of appeals.



(4) **Briefing.** Within 10 days of the filing of the appellant's memorandum in support of the appeal, the appellee must file a responsive memorandum. Appellant's reply, if any, is due 5 days after the date the response is filed. The memoranda and the reply must be filed under seal, to the extent necessary to comply with subsection (a)(3) of this rule, and may not exceed the length limits set by FRAP 27(d)(2).

(5) **Hearing and Disposition.** As soon as practicable after the filing of the appeal, the court will inform the parties whether it will hear argument on the appeal or dispose of the appeal on the written submissions. The court will dispose of the appeal as expeditiously as practicable.

(e) **Appeal from a Release or Detention Order (8 U.S.C. § 1535(e)).** Any appeal from a release or detention order of the Removal Court will be governed by Circuit Rule 9, except that the appellant's memorandum in support of the appeal must be filed simultaneously with the notice of appeal.

**Appendix:**  
**Length Limits Stated in the Federal Rules of  
Appellate Procedure and the D.C. Circuit Rules**

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure and the D.C. Circuit Rules. Please refer to the rules for precise requirements, and bear in mind the following:

- In computing these limits, you may exclude the items listed in FRAP 32(f).
- If you use a word limit or a line limit (other than the word limit in FRAP 28(j)), you must file the certificate required by FRAP 32(g).
- For the limits in FRAP 5, 21, 27, 35, and 40, as well as D.C. Cir. Rules 5(b) and 27(c):
  - You must use the word limit if you produce your document on a computer; and
  - You must use the page limit if you handwrite your document or type it on a typewriter.
- For the limits in FRAP 28.1, 29(a)(5), and 32, as well as D.C. Cir. Rule 32(e)(2):
  - You may use the word limit or page limit, regardless of how you produce the document; or
  - You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

<b>RULE</b>	<b>DOCUMENT</b>	<b>WORD LIMIT</b>	<b>PAGE LIMIT</b>	<b>LINE LIMIT</b>
FRAP 5(c)	Petition for Permission to Appeal	5,200	20	n/a
	Answer in Opposition	5,200	20	n/a
	Cross-Petition	5,200	20	n/a
D.C. Cir. Rule 5(b)	Reply	2,600	10	n/a
FRAP 21(d)	Extraordinary Writs	7,800	30	n/a
	Answer	7,800	30	n/a
FRAP 27(d)(2)	Motion	5,200	20	n/a
	Response	5,200	20	n/a
	Reply	2,600	10	n/a
D.C. Cir. Rule 27(c)	Response Combined with Motion for Affirmative Relief	7,800	30	n/a
	Reply and Response	5,200	20	n/a
	Final Reply	2,600	10	n/a
FRAP 32(a)(7) (regular appeal)	Principal Brief	13,000	30	1,300
	Reply Brief	6,500	15	650
FRAP 28.1(e) (cross-appeal)	Appellant's Principal Brief	13,000	30	1,300
	Appellant's Response & Reply Brief	13,000	30	1,300
	Appellee's Principal and Response Brief	15,300	35	1,500
	Appellee's Reply Brief	6,500	15	650

<b>RULE</b>	<b>DOCUMENT</b>	<b>WORD LIMIT</b>	<b>PAGE LIMIT</b>	<b>LINE LIMIT</b>
D.C. Cir. Rule 32(e)(2)	Intervenor's Principal Brief	9,100	19	813
	Intervenor's Reply Brief	4,550	9.5	412
FRAP 28(j)	Supplemental Authority Letter	350	n/a	n/a
FRAP 29(a)(5)	Amicus Brief at Merits Phase	½ length of principal brief for party per FRAP	½ length of principal brief for party per FRAP	½ length of principal brief for party per FRAP
FRAP 29(b)(4)	Amicus Brief on Rehearing Request	2,600	n/a	n/a
FRAP 35(b)(2)	Petition for Hearing or Rehearing En Banc	3,900	15	n/a
FRAP 40(b)	Petition for Panel Rehearing	3,900	15	n/a