

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 2019

Filed On: November 26, 2019

BEFORE: Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith,
Srinivasan, Millett, Pillard, Wilkins, Katsas, and Rao, Circuit Judges

ORDER

It is **ORDERED** by the en banc court that Circuit Rules 5, 8, 9, 12, 21, 25, 26.1, 27, 28, 35, 39, and 47.2 be amended as set out in the attachment to this order, effective December 1, 2019.

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.

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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(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.

Circuit Rule 9

Release in a Criminal Case

(a) **Appeal from a Pretrial Release or Detention Order.** An appeal from a pretrial release or detention order must be expedited. Appellant must make immediate arrangements for preparation of all necessary transcripts, including the transcript of proceedings before a magistrate judge, and notify the court in writing of those arrangements. Unless otherwise ordered by the court or a judge thereof, the following schedule will apply:

(1) Not later than 10 days after the transcript of record is filed, the appellant must serve and file an original and 4 copies of a memorandum of law and fact setting forth as many of the matters required by Circuit Rule 9(b) as are relevant. The memorandum of law and fact must be accompanied by a copy of the order under review and the statement of reasons (including related findings of fact and conclusions of law) entered by the district court.

(2) The appellee may file a responsive memorandum not later than 10 days after the filing of appellant's memorandum.

(3) The appellant may file a memorandum in reply within 7 days after the filing of appellee's memorandum.

(4) The memorandum, any response thereto, and the reply must comply with FRAP 27(d)(1)-(2). For the government, any disclosure statement required by FRAP 26.1(b) must be filed with the memorandum of law and fact or any response thereto, unless the statement has been filed previously with the court.

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(b) Release Pending Appeal from a Judgment of Conviction. The applicant must file an original and 4 copies of an application pertaining to release pending appeal from a judgment of conviction. The application, any response thereto, and a reply to the response must comply with FRAP 27(d)(1)-(2). The space limitations imposed by FRAP 27(d)(2) may be exceeded only if authorized by order of the court, or a judge thereof, on motion showing good cause. For the government, any disclosure statement required by FRAP 26.1(b) must be filed with any response to the application, unless the statement has been filed previously with the court. The application must contain, in the following order . . .

Circuit Rule 12

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

(f) Statement by Appellee, Intervenor, or Amicus Curiae. Within 7 days of service of the docketing statement, an appellee must file with the court any statement required by FRAP 26.1 and Circuit Rule 26.1.

Circuit Rule 21

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

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(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.

Circuit Rule 25

Filing and Service

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(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.

Circuit Rule 26.1

Disclosure Statement

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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).

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.

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(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.

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).

Circuit Rule 35

Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc

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(c) Panel Opinion, Certificate of Parties, and Disclosure Statement to be Attached. A copy of the opinion of the panel from which rehearing is being sought; 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 response to a petition.

Circuit Rule 39

Costs

(a) Allowable Items. Costs will be allowed for the docketing fee and for the cost of reproducing the number of copies of briefs and appendices to be filed with the court or served on parties, intervenors, and amici curiae, plus 3 copies for the prevailing party. The costs of reproducing the required copies of briefs and appendices will be taxed at actual cost or at a rate periodically set by the clerk to reflect the per page cost for the most economical means of reproduction available in the Washington metropolitan area, whichever is less. Charges incurred for covers and binding may also be claimed, at actual cost not to exceed a rate similarly determined by the clerk. The rates set by the clerk will be published by posting in the clerk's office and on the court's web site, and publication in The Daily Washington Law Reporter.

Circuit Rule 47.2

Appeal Expedited by Statute; Habeas Corpus Proceeding; Sentencing Appeal

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(b) Sentencing Appeal Pursuant to 18 U.S.C. § 3742.

(1) In an appeal from a sentence the court will, where appropriate upon motion, establish an expedited briefing and argument schedule. Memoranda and replies as provided below must be filed and served in accordance therewith. An original and 8 copies must be filed in each case.

(2) The appellant must file and serve a memorandum of law and fact setting forth appellant's challenge to the sentence. Appellee must file and serve a memorandum of law and fact setting forth the response to appellant's challenge. Appellant may file and serve a reply.

(3) 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.
