



PUBLIC NOTICE

The United States Court of Appeals announces the following proposed amendments to the Local Rules are posted for public comment as required by 28 U.S.C. § 2071(b).

The United States Court of Appeals announces the following proposed amendments to the Local Rules are posted for public comment as required by 28 U.S.C. 2071(b). Amendments are proposed to the following Local Rules: 26.1(financial disclosure statements); 31.4 (oral extensions of time); 33 (mediation); 39 (costs); and 46.3 (appearances by law students). Any comments must be received by the Clerk of Court by June 3, 2011. Comments should be addressed to:

Marcia Waldron, Clerk of Court
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106

or by e_mail to: LARS_comments@ca3.uscourts.gov

1 **L.A.R. 26.1.0 CORPORATE DISCLOSURE STATEMENT**

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3 **26.1.1 Disclosure of Corporate Affiliations and Financial Interest**

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5 (d) In criminal appeals, the government must file a disclosure statement if an
6 organization is a victim of the crime. If the organizational victim is a corporation, the
7 statement must also identify any parent corporation and any publicly held corporation
8 that owns 10% or more of its stock to the extent it can be obtained through due diligence.
9

10 Committee Comments: The rule was revised and subsection (c) was added in 1995.
11 Prior Court Rule 25 imposed an obligation upon all parties to
12 civil or bankruptcy cases and all corporate defendants in

13 criminal cases to file a corporate affiliate/financial interest
14 disclosure statement. 3d Cir. L.A.R. 26.1.1(a) limits that
15 obligation to corporate parties only. The rule also provides
16 that the statement must be filed promptly after the notice of
17 appeal is filed, and must be made on a form provided by the
18 clerk. 3d Cir. L.A.R. 26.1.1(b) retains the requirement that
19 every party to an appeal disclose the identity of every
20 publicly owned corporation, not a party to an appeal, that has
21 a financial interest in the outcome of the litigation. The rule
22 also specifies that, under these circumstances, a negative
23 report need not be filed. “In writing” was deleted in 2008 to
24 provide for electronic filing of the notices. **Subsection d was**
25 **added in 2011 to adopt similar provisions of Federal Rule of**
26 **Criminal Procedure 12.4.**
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30 **31.4 Motions for Extension of Time to File a Brief**

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32 A party’s first request for an extension of time to file a brief must set forth good
33 cause. Generalities, such as that the purpose of the motion is not for delay or that counsel
34 is too busy, are not sufficient. A first request for an extension of 14 days or less may be
35 made by telephone or in writing. Counsel should endeavor to notify opposing counsel in
36 advance that such a request is being made. The grant or denial by the clerk of the
37 extension must be entered on the court docket. If a request for extension of time is made
38 and granted orally, ~~counsel must~~ **Filing Users are notified by the notice of docket activity**
39 **generated by the court's electronic docketing system; counsel must send a confirming**
40 **letter to parties who are not Filing Users.** file a confirming letter to the clerk and to
41 opposing counsel within 7 days. A first request for an extension of time should be made
42 at least 3 days in advance of the due date for filing the brief. A motion filed less than 3
43 days in advance of the due date must be in writing and must demonstrate that the good
44 cause on which the motion is based did not exist earlier or could not with due diligence
45 have been known or communicated to the court earlier. Subsequent requests for an
46 extension of time must be made in writing and will be granted only upon a showing of
47 good cause that was not foreseeable at the time the first request was made. Only one
48 motion for extension of time to file a reply brief may be granted.
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50 Source: None

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52 Cross-references: None

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54 Committee Comments: The rule was adopted in 2002 to permit the oral granting of a

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short extension of time. The rule was amended in 2011 to
modify the requirement of filing a confirming letter.

60 **L.A.R. 33.0 APPELLATE MEDIATION PROGRAM**

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62 **33.1 Appellate Mediation Program**

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64 Appeals in civil cases and petitions for review or for enforcement of administrative action
65 are referred to the Appellate Mediation Program to facilitate settlement or otherwise to assist in
66 the expeditious handling of the appeal or petition. A special master will serve as the ~~program~~
67 ~~director~~ Chief Circuit Mediator and, in cooperation with the clerk, will manage the Appellate
68 Mediation Program. Mediations will be conducted by a senior judge of the court of appeals, a
69 senior judge of a district court, the ~~special master~~ Chief Circuit Mediator, or other person
70 designated pursuant to Rule 48, FRAP Parties may confidentially request mediation by
71 telephone or by letter directed to the ~~special master~~ Chief Circuit Mediator. In all cases, however,
72 the special master will determine which cases are appropriate for mediation and will assign the
73 matter to a mediator.

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75 **33.2 Eligibility for Appellate Mediation Program**

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77 All civil appeals and petitions for review or for enforcement of agency action are eligible
78 for referral to the Appellate Mediation Program except: (1) original proceedings (such as
79 petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or
80 deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions
81 filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas
82 petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or
83 petitioner must file with the clerk, within 10 days of the docketing of the appeal with service on
84 all parties, ~~an original and two (2) copies~~ of a Civil Appeals Information Statement and a
85 Concise Summary of the Case, ~~on forms to be supplied by the clerk~~ which is available on the
86 court's website. Appellant must attach to the Concise Summary of the Case copies of the
87 order(s) being appealed and any accompanying opinion or memorandum of the district court or
88 agency. In the event the order(s) being appealed or any accompanying opinion or memorandum
89 adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the
90 decision of a bankruptcy judge, the report and recommendation or decision must also be
91 attached. In addition, any judge or panel of the court may refer to the ~~special master~~ Chief
92 Circuit Mediator any appeal, petition, motion or other procedural matter for review and possible
93 amicable resolution.

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95 **33.3 Initial Screening and Deferral of Briefing for Cases Selected for Mediation**

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97 The Clerk will provide the ~~special master~~ Chief Circuit Mediator with a copy of the
98 judgment or order on appeal, any opinion or memorandum issued by the district court or agency,
99 appellant's Civil Appeal Information Statement and Concise Summary of the Case and any
100 relevant motions. Following review of these materials, the ~~special master~~ Chief Circuit Mediator
101 may refer an appeal or petition to a senior judge, himself or herself, or such other person
102 designated pursuant to Rule 48, FRAP for mediation. The ~~special master~~ Chief Circuit Mediator
103 will advise the parties, the chosen mediator, and the clerk of the referral.

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105 If a case is referred to mediation, a briefing schedule will be deferred during the
106 pendency of mediation unless the court or ~~special master~~ **Chief Circuit Mediator** determines
107 otherwise. A referral to mediation will not, however, defer or extend the time for ordering any
108 necessary transcripts.

109
110 If a case is not accepted for mediation, or if accepted but is not resolved through
111 mediation, it will proceed in the appellate process as if mediation had not been considered or
112 initiated.

113 114 **33.4 Referral of Matters to Mediation by a Judge or Panel of the Court**

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116 At any time during the pendency of an appeal or petition, any judge or panel of the court
117 may refer the appeal or petition to **a senior judge of the court of appeals, a senior judge of a**
118 **district court, the ~~special master~~ Chief Circuit Mediator, or other person designated pursuant to**
119 **Rule 48, F.R.A.P.** for mediation or any other purpose consistent with this rule. In addition, any
120 judge or panel of the court may refer any appeal, petition, motion or other procedural matters for
121 review and possible amicable resolution. The procedures set forth in L.A.R. 33.5 are applicable
122 to matters referred for mediation pursuant to L.A.R. 33.4 unless otherwise directed by the ~~special~~
123 ~~master~~ **Chief Circuit Mediator**. Documents, including but not limited to, those specified in
124 L.A.R. 33.5(a) may be required.

125 126 **33.5 Proceedings After Selection for the Program**

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128 (a) Submission of Position Papers and Documents. Within 15 days of the case's
129 selection for mediation by the ~~special master~~ **Chief Circuit Mediator**, each counsel must prepare
130 and submit to the mediator a confidential position paper of no more than 10 pages, stating
131 counsel's views on the key facts and legal issues in the case, as well as on key factors relating to
132 settlement. The position paper will include a statement of motions filed in the court of appeals
133 and their status. Copies of position papers submitted by the parties directly to the mediator
134 should not be served upon opposing counsel. Documents prepared for mediation sessions are not
135 to be filed with the Clerk's Office and are not to be of record in the case.

136
137 (b) Mediation Sessions. The mediator will notify the parties of the time, date, and place
138 of the mediation session and whether it will be conducted in person or telephonically. Unless the
139 mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each
140 party responsible for the appeal and by the person or persons with actual authority to negotiate a
141 settlement of the case. If settlement is not reached at the initial mediation session, but the
142 mediator believes further mediation sessions or discussions would be productive, the mediator
143 may conduct additional mediation sessions in person or telephonically.

144
145 (c) Confidentiality of Mediation Proceedings. The mediator will not disclose to anyone
146 statements made or information developed during the mediation process. The attorneys and
147 other persons attending the mediation are likewise prohibited from disclosing statements made or
148 information developed during the mediation process to anyone other than clients, principals or
149 co-counsel, and then, only upon receiving due assurances that the recipients will honor the
150 confidentiality of the information. Similarly, the parties are prohibited from using any

151 information obtained as a result of the mediation process as a basis for any motion or argument
152 to any court. The mediation proceedings are considered compromise negotiations under Rule
153 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a
154 settlement has been reached as a result of mediation will not be considered confidential.
155

156 (d) Settlement. No party will be bound by statements or actions at a mediation session
157 unless a settlement is reached. If a settlement is reached, the agreement must be reduced to
158 writing and will be binding upon all parties to the agreement, and counsel must file a stipulation
159 of dismissal of the appeal pursuant to Rule 42(b), FRAP. Such a stipulation must be filed within
160 30 days after settlement is reached unless an extension thereof is granted by the ~~special~~
161 ~~master~~ **Chief Circuit Mediator**.

162 **33.6 Mediation in Pro Se Cases**

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165 In appropriate cases, the ~~Director of the Mediation Program~~ **Chief Circuit Mediator** may
166 request counsel to represent pro se litigants for purposes of mediation only. Counsel must agree
167 to take the case on a pro bono basis, except that if an applicable statute authorizes the award of
168 attorneys' fees, counsel may enter into a written agreement with the client assigning to the
169 attorney any amounts designated as attorneys' fees. The case will be treated as any other case
170 subject to mediation and all provisions of L.A.R. 33 will apply. If mediation is unsuccessful,
171 counsel may discontinue his or her representation; however, counsel may continue to represent
172 the litigant through the rest of the appeal if counsel wishes and the party agrees. The ~~Director of~~
173 ~~the Mediation Program~~ **Chief Circuit Mediator** may adopt and implement specific procedures in
174 furtherance of this rule.
175

176 Source: New rule in 2000.

177
178 Cross-references: None

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180 Committee Comments: ~~None~~ **The rule was amended in 2011 to reflect a change in the title**
181 **of the circuit mediator and to accommodate electronic filing.**
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185 **39.3 Taxation of Reproduction Costs**

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187 The cost of printing or otherwise producing necessary copies of briefs and
188 appendices are taxable as follows:
189

190 (a) Number of Briefs. Costs will be allowed for ten (10) copies of each brief
191 **required to be filed with the court** plus ~~two (2)~~ **one (1) copy** for each party
192 separately represented **if the party has not consented to electronic service**, unless the court
193 directs a greater number of briefs to be filed.
194

195 (b) Number of Appendices. Costs will be allowed for four (4) copies of the
196 appendix **required to be filed with the court** plus one (1) copy for each party separately
197 represented **if the party has not consented to electronic service**, unless the court directs a
198 greater number of appendices to be filed.
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(c) Costs of Reproduction of Briefs and Appendices. In taxing costs for printed or photocopied briefs and appendices, the clerk will tax costs at the following rates, or at the actual cost, whichever is less, depending upon the manner of reproduction or photocopying:

- (1) Reproduction (whether by offset or typography):
 - Reproduction per page \$ 4.00
(for 20 copies or less)
 - Covers (for 20 copies or less) \$ 50.00
 - Binding per copy \$ 4.00
 - Sales tax Applicable Rate
- (2) Photocopying (whether in house or commercial):
 - Reproduction per page \$.10
per copy
 - Binding per copy \$ 4.00
 - Covers \$ 40.00
(for 20 copies or less)
 - Sales Tax Applicable Rate

(3) In the event a party subsequently corrects deficiencies in either a brief or appendix pursuant to 3d Cir. L.A.R. Misc. 107.3 and that party prevails on appeal, costs which were incurred in order to bring the brief or appendix into compliance may not be allowed.

(d) Other Costs. No other costs associated with briefs and appendices, including the costs of typing, word processing, ~~and~~ preparation of tables and footnotes, **and electronic filing** will be allowed for purposes of taxation of costs.

Source: 1988 Court Rule 20.1

Cross-references: 28 U.S.C. § 1920; FRAP 39

Committee Comments: Sales tax will be included in the costs only when actually paid to a commercial photocopying service. No substantive change from prior Court Rule 20.1 is intended. **Amended in 2011 to conform to L.A.R. 31 regarding copies to be served on opposing counsel and to clarify that costs for reproduction**

241 of paper briefs for opposing parties are recoverable only if
242 paper briefs are actually provided.
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246 **46.3 Entry of Appearance by Eligible Law Students**

247 (a) Eligibility

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249
250 (1) An eligible law student may enter an appearance in this court on behalf
251 of any indigent prisoner in any civil rights or habeas corpus matter. An indigent who was
252 confined at the commencement of the district court action will be considered an "indigent
253 prisoner" for purposes of this rule, even though the prisoner may have been subsequently
254 released. The person on whose behalf the student is appearing must indicate in writing
255 his or her consent to that appearance and a supervising lawyer must also indicate in
256 writing his or her approval of that appearance.
257

258 (2) The court may appoint, either in response to a motion for appointment
259 of counsel or *sua sponte*, a law student who is participating in a law school clinic or pro
260 bono program to represent an indigent pro se litigant. To facilitate the scheduling of
261 cases, the student must be enrolled in the law school program for a full year. If the court
262 appoints a law student *sua sponte*, the person on whose behalf the student is appearing
263 must indicate in writing his or her consent to that appearance. Students appointed by the
264 court must enter an appearance in accordance with this rule.
265

266 (23) In each case the written consent and approval of the person the law
267 student represents referred to above must be filed in the record of the case and must be
268 brought to the attention of the court.
269

270 (34) An eligible law student may engage in other activities under the
271 general supervision of a member of the bar of this court outside the personal presence of
272 that lawyer for the purpose of preparation of briefs, abstracts, and other documents to be
273 filed in this court, but such documents must be signed by the supervising lawyer.
274

275 (45) An eligible law student may participate in oral argument in this court
276 but only in the presence of the supervising lawyer, who must be prepared to supplement
277 any written or oral statement made by the student. Students should recognize that
278 argument may be scheduled during school breaks.
279

280 (b) Requirements and Limitations. In order to make an appearance pursuant to
281 this rule, the law student must:
282

283 (1) Be duly enrolled in a law school approved by the American Bar
284 Association.

285 (2) Have completed legal studies amounting to at least four semesters, or
286 the equivalent if the school is on some basis other than a semester basis **or be enrolled in**
287 **a law school clinic or pro bono program.**

288
289 (3) **If not enrolled in a law school clinic or pro bono program,** ~~B~~be certified
290 by the dean of his or her law school as being of good character and competent legal
291 ability, and as being adequately trained to perform as an eligible law student under this
292 rule.

293
294 ~~(4) Be introduced to this court by an attorney admitted to practice in this~~
295 ~~court and take the following oath or affirmation in open court:~~

296
297 ~~"I, [name], do swear (or affirm) that I will support the Constitution of the United States,~~
298 ~~and that, in practicing as an eligible law student under 3d Cir. L.A.R. 46.3 I will conduct~~
299 ~~myself strictly in accordance with the terms of that rule and according to law."~~

300
301 (54) Neither ask for nor receive any compensation or remuneration of any
302 kind from the person on whose behalf the law student renders service, but this will not
303 prevent a lawyer, legal aid bureau, law school, public defender agency, or the
304 government from paying compensation to the eligible law student, nor will it prevent any
305 agency from making such charges for its services as it may otherwise properly require.

306
307 (65) **Submit with the appearance form a certification** ~~C~~ertify in writing
308 that the law student has read and is familiar with the rules of professional conduct
309 governing attorneys practicing in the jurisdiction of the supervising attorney.

310
311 (7) **Submit with the appearance form the following signed and notarized**
312 **oath or affirmation:**

313
314 **"I, [name], do swear (or affirm) that I will support the Constitution of the United States,**
315 **and that, in practicing as an eligible law student under 3d Cir. L.A.R. 46.3 I will conduct**
316 **myself strictly in accordance with the terms of that rule and according to law."**

317
318 (c) Certification

319
320 (1) The certification of a student by the law school dean must be filed with
321 the clerk of court and, unless it is sooner withdrawn, will remain in effect until the
322 expiration of eighteen (18) months after it is filed, or until the announcement of the
323 results of the first bar examination of the state where the student's law school is located
324 following the student's graduation, whichever is earlier. For any student who passes that

325 examination or who is admitted to the bar without taking an examination, the certification
326 will continue in effect until the date the student is admitted to the bar. The student is

327 responsible for advising the clerk in writing of any change in status or event affecting the
328 student's certification.

329

330 (2) The certification may be withdrawn by the dean at any time by sending
331 a notice to that effect to the clerk of the court. It is not necessary that the notice state the
332 cause for withdrawal.

333

334 (3) The certification may be terminated by this court at any time without
335 notice or hearing and without any showing of cause.

336

337 (d) Supervision. The member of the bar under whose supervision an eligible law
338 student does any of the things permitted by this rule must:

339

340 (1) Be a lawyer in good standing of the bar of this court **and enter an**
341 **appearance in the case.**

342

343 (2) Assume personal professional responsibility for the student's guidance
344 in any work undertaken and for supervising the quality of the student's work.

345

346 (3) Assist the student to the extent the supervising lawyer considers it
347 necessary.

348

349 (4) **Be prepared to appear and argue if the student is unavailable when the**
350 **case is scheduled for oral argument.**

351

352 Source: 1988 Court Rule 9.3

353

354 Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

355

356 Committee Comments: The Model Rules of Professional Responsibility replace the
357 Canons of Professional Ethics. No substantive change from
358 prior Court Rule 9.3 is intended. **Revised in 2011.**

359

360 Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

361

362 Committee Comments: The Model Rules of Professional Responsibility replace the
363 Canons of Professional Ethics. No substantive change from
364 prior Court Rule 9.3 is intended.