

1 **L.A.R. 1.0 SCOPE AND TITLE OF RULES**

2 **1.1 Scope and Organization of Rules**

3 The following Local Appellate Rules (L.A.R.) are adopted by the United States Court of
4 Appeals for the Third Circuit as supplementary to the Federal Rules of Appellate Procedure
5 (FRAP) and apply to procedure in this court. The numbering of the Local Appellate Rules has
6 been organized to follow the numbering system of the Federal Rules of Appellate Procedure in
7 order to increase public accessibility to the Rules. Where a local rule has no counterpart in the
8 Federal Rules of Appellate Procedure it is classified as a Miscellaneous Rule. The
9 Miscellaneous Local Appellate Rules begin with Rule 101.0.

10 Source: 1988 Court Rule 1.1

11 Cross-references: 28 U.S.C. § 2072; FRAP 1, 47

12 Committee Comments: The Local Appellate Rules bind all litigants in this court. Each
13 Local Appellate Rule is numbered to correspond to its counterpart
14 in the Federal Rules, *e.g.*, Local Appellate Rule 1.0 corresponds to
15 Federal Rule of Appellate Procedure 1. Cross-references are
16 provided for convenience and are not intended to be exhaustive.
17 Committee Comments are provided by the court's Rules
18 Committee and are intended to guide, but not bind, litigants in this
19 court.
20

21 **1.2 Title; Citation Form**

22
23 These rules are to ~~may~~ be known as the Third Circuit Local Appellate Rules, and cited as
24 3rd Cir. L.A.R. __. __ (~~1997~~ 2008).

25 Source: None

26 Cross-references: FRAP 1

27 Committee Comments: The Local Rules Project of the Judicial Conference Committee on
28 Rules and Practice recommends that all courts of appeals follow a
29 uniform numbering and citation system, for ease of reference and
30 indexing of local rules. This court follows the recommendation of
31 the Local Rules Project.

32 **L.A.R. 3.0 APPEAL AS OF RIGHT - HOW TAKEN**

33 **3.1 Notice to Trial Judge; Opinion in Support of Order**

34 At the time of the filing of the notice of appeal, the appellant must shall mail a copy
35 thereof by ordinary mail transmit a copy to the trial judge. Within 15 Within No later than 30
36 days thereafter after the docketing of a notice of appeal, the trial judge may file and transmit mail
37 to the parties a written opinion or a written amplification of a prior written or oral recorded
38 ruling or opinion. Failure to give notice of the appeal to the trial judge shall will not affect the
39 jurisdiction of this court.

40 Source: 1988 Court Rules 8.4; enacted 200?; amended 2008.

41 Cross-References: FRAP 3, 24, Form 1, Form 3

42 Committee Comments: A district court may properly prepare an opinion or memorandum
43 explaining a decision after an appeal is taken. The rule is not
44 intended to inhibit or discourage district courts from preparing
45 opinions as they presently do. To the contrary, the rule was
46 designed to provide more flexibility. Prior Court Rule 8.4 ~~has~~
47 ~~been~~-was amended in 1995 to apply to all appellants, not simply
48 pro se habeas corpus petitioners. Otherwise, no substantive
49 change from prior Court Rule 8.4 ~~is~~ was intended. This rule does
50 not authorize a trial judge to change a prior ruling except as
51 provided by the federal rules. ~~rule 5-9. F.R.C.P. 59(e). For~~
52 procedures under F.R.C.P. 60(b) when a case is on appeal, see
53 Venen v. Sweet, 758 F.2d 117, 120 (3d Cir. 1985). The This rule
54 was amended in 2008 to change the time from 15 to 30 days.

55 **3.2 Joint Notice of Appeal**

56 When parties have filed a joint notice of appeal, only one appeal will be docketed and
57 only one docketing fee paid. Parties filing a joint notice of appeal ~~shall~~ must file a single
58 consolidated brief and appendix.

59 Source: None

60 Cross-references: FRAP 3(b), 28(I), 31

61 Committee Comments: New provision in 1995.

62 **3.3 Payment of Fees**

63 (a) If a proceeding is docketed without prepayment of the applicable docketing fee, the

64 appellant ~~shall~~ must pay the fee within fourteen (14) days after docketing. If the appellant fails
65 to do so, the clerk is authorized to dismiss the appeal.

66 (b) If an action has been dismissed pursuant to 28 U.S.C. § 1915 as frivolous or
67 malicious, or if the district court certifies pursuant to § 1915(a) and FRAP 24(a) that an appeal
68 is not taken in good faith, the appellant may either pay the applicable docketing fee or file a
69 motion to proceed in forma pauperis within 14 days after docketing. If appellant fails to either
70 pay the applicable docketing fee or file the motion to proceed in forma pauperis and any required
71 supporting documents, the clerk is authorized to dismiss the appeal 30 days after docketing of
72 the appeal.

73 Source: 1988 Court Rule 28.1

74 Cross-References: 28 U.S.C. §1915; FRAP 3(a), 24(a); 3rd Cir. L.A.R. 24.1, 39.2,
75 Misc. 107.2(a)

76 Committee Comments: Subsection (b) ~~is a new provision which~~ was added in 1995 to
77 codify~~ies~~ existing practice. Subsection (b) is not intended to
78 preclude a litigant who did not seek leave to proceed in forma
79 pauperis in the district court from requesting leave to proceed in
80 forma pauperis in the court of appeals.

81 **3.4 Notice of Appeal in Pro Se Cases**

82 The court ~~shall~~ will deem a paper filed by a pro se litigant after the decision of the district
83 court in a civil, criminal, or habeas corpus case to be a notice of appeal despite informality in its
84 form or title, if it evidences an intention to appeal. The court ~~shall~~ will deem an application for
85 leave to appeal in forma pauperis or an application ~~to this court~~ for a certificate of appealability
86 to be a notice of appeal if no formal notice has been filed. The grant or denial of a certificate of
87 appealability by the district court ~~shall~~ will not be treated as a notice of appeal.

88 Source: 1988 Court Rules 8.1, 8.3

89 Cross-References: 28 U.S.C. §2253; F.R.A.P. 3, 4(d), & 22(b), 24, Form 1, Form 3

90 Committee Comments: This rule is designed to emphasize that the jurisdictional
91 requirement of a notice of appeal is met in a pro se case by the
92 filing of ~~either~~ an informal document, ~~or~~ a request for certificate of
93 appealability, or a motion for in forma pauperis status in this court,
94 but not by the mere granting or denial by the district court of a
95 certificate of appealability. The portions of prior Court Rule 8 that
96 were repetitive of F.R.A.P. 3 and 4 have been deleted; otherwise
97 no substantive change from prior Court Rule 8 is intended.

98 Technical changes were made to conform to the Antiterrorism and
99 Effective Death Penalty Act. ~~This rule takes no position on the~~
100 ~~question of whether a district court can grant or deny a certificate~~
101 ~~of appealability.~~

102 **L.A.R. 4.0 APPEAL AS OF RIGHT - WHEN TAKEN**103 **4.1 Expedited Appeals**

104 A party who seeks an expedited appeal ~~shall~~ must file a motion within fourteen (14) days
105 of the notice of appeal setting forth the exceptional reason that warrants expedition. If a reason
106 for expedition arises thereafter, the moving party ~~shall~~ must file a motion within fourteen (14)
107 days of the ~~date the reason occurred of the~~ occurrence that is the basis of the motion. Motions
108 seeking an expedited appeal ~~shall~~ must include a proposed briefing schedule that has been agreed
109 upon by the parties, if possible, but if they cannot agree, they should submit their own proposal
110 with reasons in the motion or response. The non-moving party may agree to a proposed briefing
111 schedule without conceding that expedition is necessary. A response to the motion, if any, ~~shall~~
112 must be filed within seven (7) calendar days after service of the motion and any reply within
113 three (3) calendar days after service of the response unless otherwise directed by the court or
114 clerk. The court or clerk may direct that service be made in the manner provided by L.A.R. 27.7.

115 Source: None

116 Cross-references: F.R.A.P. 4

117 Committee Comments: ~~New provision.~~ This rule was ~~has been~~ added in 1995 to emphasize
118 that a request for an expedited appeal ~~should~~ must be made
119 promptly. Calendar days were specified by the 2008 amendments.
120 See L.A.R. 27.7 requiring notification to the clerk of expedited or
121 urgent matters.

122 **L.A.R. 5.0 APPEALS BY PERMISSION UNDER 28 U.S.C. § 1292(b) [ABROGATED]**123 **5.1 Petition for Permission to Appeal [Abrogated]**

124 Reason for elimination of L.A.R.. 5.1:

125 FRAP 5(b), which sets forth the contents of a petition for permission to appeal, requires
126 that the petition include “the question itself.” This requirement makes L.A.R. 5.1
127 unnecessary.

128 **L.A.R. 8.0 STAY OR INJUNCTION PENDING APPEAL**129 **8.1 Motion for Stay in Court of Appeals**

130 A motion for a stay of ~~the~~ a judgment or order of a district court or ~~the~~ a decision of the
131 United States Tax Court pending appeal, or for an order suspending, modifying, restoring or
132 granting an injunction during the pendency of an appeal must ~~shall~~ include a copy of any
133 relevant judgment, decision, or order of the district court or the decision of the United States Tax
134 Court and any accompanying opinion. Failure to do so ~~shall~~ is a ground for dismissal of the
135 motion.

136 Source: 1988 Court Rules 11.2, 11.4

137 Cross-references: F.R.A.P. 8, 18, 27; 3rd Cir. L.A.R. 18.0, 27.0

138 Committee Comments: This rule ~~has been~~ was revised in 1995 to apply to decisions of the
139 United States Tax Court as well as the judgments and orders of the
140 United States district court. Otherwise, no substantive change from
141 prior Court Rules 11.2 or 11.4 is intended. The rule was amended
142 to delete references to a supersedeas bond, because approval of a
143 supersedeas bond must be sought in the district court under FRAP
144 8.1(C).

145 **8.2 Expedited Consideration**

146 If the court or clerk determines that a motion under L.A.R. 8.1 requires expedited
147 treatment, proceedings in regard to the motion will be in accordance with L.A.R. 27.7.

148 Source: New provision in 2002

149 Cross-references: None

150 Committee Comments: Section 8.2 was added to clarify procedures in expedited cases. See
151 L.A.R. 27.7 requiring notification to the clerk of expedited or
152 urgent matters.
153

154 **8.3 Death Penalty Cases**

155 Except as provided in 28 U.S.C. § 2262, the provisions of 3rd Cir. L.A.R. Misc. 111.0
156 ~~shall~~ govern all stay proceedings in death penalty cases, including appeals from the grant or
157 denial of a petition under 28 U.S.C. §§ 2254 or 2255, applications to file a second or successive
158 petition under 28 U.S.C. §2244 and/or § 2255, and in original habeas corpus actions challenging
159 a conviction in which a sentence of death has been imposed.

160 In a direct appeal of conviction or sentence in a criminal case in which the district court
161 has imposed a sentence of death, an order ~~shall~~ will be entered staying the sentence.

162
163 Source: None

164 Cross-references: F.R.A.P. 8, 22; Fed. R. Crim. Pro. 38(a); 3rd Cir. L.A.R. Misc.
165 111.0

166 Committee Comments: New provision in 1995. To the extent consistent with F.R.A.P. and
167 applicable statutes, all local procedure in death penalty
168 proceedings are ~~will be~~ governed by 3rd Cir. L.A.R. Misc. 111.0.
169 Technical changes were made to conform to the Antiterrorism and
170 Effective Death Penalty Act.

171 **L.A.R. 9.0 RELEASE IN CRIMINAL CASES**

172 **9.1 Appeals of Orders Relating to Release or Detention; Release Before Judgment of** 173 **Conviction**

174 ~~(a) Appeals of Orders Relating to Release or Detention Before Judgment of Conviction:~~
175 An appeal from an order granting or denying release from custody with or without bail or for
176 detention of a defendant prior to judgment of conviction ~~shall~~ must be by motion filed either
177 concurrently with or promptly after filing a notice of appeal. The movant ~~shall~~ must set forth in
178 the body of the motion the applicable facts and law and attach a copy of the reasons given by the
179 district court for its order. The opposing party may file a response within three (3) calendar days
180 after service of the motion, unless the court directs that the time ~~shall~~ be shortened or extended.

181 ~~(b) Release After Judgment of Conviction:~~ Requests for release from custody or for
182 detention of a defendant after judgment of conviction ~~shall~~ must be by motion filed
183 expeditiously. The time periods and form requirements set forth in 3rd Cir. L.A.R. 9.1(a) are
184 applicable to such motions.

185 Source: 1988 Court Rules 11.3, 11.4

186 Cross-references: FRAP 9, 27; 3rd Cir. L.A.R. 27.0

187 Committee Comments: Renumbered by the 1995 rules revision; no substantive change is
188 intended from prior Court Rule 11.3. Calendar days were specified
189 in the 2008 amendments.

190 **L.A.R. 11.0 TRANSMISSION OF THE RECORD**

191 **11.1 Duty of Appellant**

192 Within ten (10) days after filing a notice of appeal, the appellant ~~shall~~ must deposit with
193 the court reporter the estimated cost of the transcript of all or the necessary part of the notes of
194 testimony taken at trial. Where an appellant cannot afford the cost of transcripts, counsel for
195 appellant, or the appellant pro se, ~~shall~~ must make application to the district court within 10 days
196 of the notice of appeal for the provision of such transcript pursuant to 28 U.S.C. §753(f). If the
197 district court denies the application, appellant ~~shall~~ must, within 10 days of the order denying the
198 application, either deposit with the court reporter the fees for such transcript or apply to the court
199 of appeals for the transcript at government expense. Failure to comply with this rule ~~shall be~~
200 constitutes grounds for dismissal of the appeal.

201 Source: 1988 Court Rule 15.1

202 Cross-references: 28 U.S.C. § 753(f); FRAP 10(b), 11(a); 3rd Cir. L.A.R. 10.1(b),
203 Misc. 107.1(b)

204 Committee Comments: No substantive change from prior Court Rule 15.1 is intended.
205 The rule codifies current practice.

206 **11.2 Retention of the Record in the District Court**

207 A certified copy of the docket entries in the district court ~~shall~~ must be transmitted to the
208 clerk of this court in lieu of the entire record in all counseled appeals. In all pro se cases, all
209 **documents, including briefs filed in support of dispositive motions,** that are not available in
210 electronic form on PACER, ~~the entire record, including briefs filed in support of dispositive~~
211 ~~motions,~~ ~~shall~~ must be certified and transmitted to the clerk of this court. The clerk of the
212 district court ~~shall~~ must transmit ~~the entire district court record~~ in any state habeas case or habeas
213 case emanating from any territorial court or motions to vacate sentence under 28 U.S.C. § 2255,
214 whether counseled or pro se, all documents that are not available in electronic form on PACER.
215 In such cases, the clerk of the district court ~~shall~~ must transmit to the court of appeals any state
216 or territorial records or any documents from the prior criminal trial lodged with the district court
217 during its determination of the habeas case.

218 Source: 1988 Court Rule 14.1

219 Cross-references: FRAP 11(e); 22(b)

220 Committee Comments: ~~No substantive change from current practice or prior Court Rule~~
221 ~~14.1 is intended.~~ Changes were made in 2008 to reflect practices
222 for electronic records. The granting of a motion to proceed on the
223 original record exempts a litigant from filing an appendix.
224 Transmission of the record by the district court to the court of
225 appeals is not a prerequisite to the granting of such motion. The
226 fact that the district court clerk has transmitted the record to the
227 court of appeals does not dictate the granting of the motion.

228 **L.A.R. 15.0 REVIEW OR ENFORCEMENT OF AGENCY ORDERS - HOW**
229 **OBTAINED; INTERVENTION**

230
231 **15.1 Brief and Argument in Enforcement and Review Proceedings**

232 In any enforcement or review proceeding with respect to an order or action of a federal
233 agency or board, each party adverse to the agency or board is ~~shall be~~ considered to be the
234 petitioner(s) and the federal agency or board to be the respondent, solely for the procedural
235 purposes of briefing and oral argument, unless the court orders otherwise. Nothing in this rule
236 ~~shall have~~ has the effect of changing or modifying the burden of the agency or board of
237 establishing its right to enforcement.

238 Source: 1988 Court Rule 26.1

239 Cross-references: FRAP 15

240 Committee Comments: The portions of prior Court Rule 26.1 that were repetitive of FRAP
241 15 have been deleted. This rule has been designed to expand the
242 procedure which FRAP 15.1 limits to a single agency, the National
243 Labor Relations Board, to encompass all federal administrative
244 agencies.

245 **L.A.R. 18.0 STAY PENDING REVIEW**

246 **18.1 Stay of an Order or Decision of an Agency**

247 An application to this court for stay of the judgment or order of an agency pending
248 review, for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or
249 granting an injunction during the pendency of an appeal ~~shall~~ must include a copy of the relevant
250 judgment, decision, or order of the agency and any accompanying opinion. In cases challenging
251 a decision of the Board of Immigration Appeals, the opinion of the IJ (immigration judge) must
252 be included. Failure to do so ~~shall be~~ is a ground for dismissal of the motion.

- 253 Source: 1988 Court Rules 11.2, 11.4
- 254 Cross-references: FRAP 8, 18, 27; 3rd Cir. L.A.R. 27.0
- 255 Committee Comments: No substantive change from prior Court Rules 1.2 or 11.4 is
256 intended. See L.A.R. 27.7 requiring notification to the clerk of
257 expedited or urgent matters.

258 **L.A.R. 21.0 MANDAMUS PETITIONS IN CRIME VICTIMS RIGHTS CASES**

259 **21.1 Petitions for Writ of Mandamus Pursuant to 18 U.S.C. § 3771(d)(3)**

260 (a) A petition for writ of mandamus filed pursuant to 18 U.S.C. § 3771(d)(3), the Crime
261 Victims' Rights Act, must bear the caption "PETITION FOR WRIT OF MANDAMUS
262 PURSUANT TO 18 U.S.C. § 3771(d)(3), CRIME VICTIMS' RIGHTS ACT." Before filing
263 such a petition, the petitioner's counsel, or the petitioner if appearing pro se, must notify by
264 telephone the clerk's office of the Court of Appeals that such a petition will be filed, and must
265 **make arrangements for filing in this court and immediate service of the petition on the U.S.**
266 **Attorney and all other parties in the district court relevant parties.**

267 (b) **The clerk will notify the U.S. Attorney and all other parties in the district court when**
268 **a petition is received. The government must file a response to the petition, and any other party in**
269 **the district court may file a response to the petition, within twenty-four hours of notification by**
270 the clerk unless the clerk directs otherwise. The government is responsible for notifying
271 additional victims of the proceedings. Any additional victims wishing to join in the action, must
272 file their petitions within twenty-four hours of case opening.

273 (c) A failure to ~~notify this court ahead of time that such a filing is being made~~ is provide
274 advance notice of such petition, in accordance with subsection (a) of this rule, will be deemed
275 consent to the five day continuance permitted in 18 U.S.C. § 3771(d)(3) and may be construed as
276 a waiver of the time limits prescribed by the statute.

- 277 Source: None
- 278 Cross-references: FRAP 8, L.A.R. 8.0
- 279 Committee Comments: This Rule was added in 2008 to assist the court in complying with
280 the time limits the Act places on decisions.

281 **L.A.R. 22.0 HABEAS CORPUS PROCEEDINGS**282 **22.1 Necessity of Certificate of Appealability**

283 (a) When a certificate of appealability is required, a formal application ~~should~~ must be
284 filed with the court of appeals, but the court may deem a paper filed by a habeas corpus
285 petitioner that discloses the intent to obtain appellate review to be an application for a certificate
286 of appealability, regardless of its title or form. If an application is not filed with the notice of
287 appeal, the appellant may file and serve an application within 21 days of either the docketing of
288 the appeal in the court of appeals or of the entry of the order of the district court denying a
289 certificate, whichever is later. The ~~respondents~~ appellees may, but need not unless directed by
290 the court, file a memorandum in opposition to the granting of a certificate, within 14 days of
291 service of the application. The appellant may, but need not, file a reply within 10 days of service
292 of the response. The length and form of any application, response, or reply must conform to the
293 requirements of FRAP 27 governing motions.

294 (b) If the district court grants a certificate of appealability as to only some issues, the
295 court of appeals will not consider uncertified issues unless appellant ~~petitioner~~ first seeks, and
296 the court of appeals grants, certification of additional issues. Appellant ~~petitioner~~ desiring
297 certification of additional issues must file, in the court of appeals, a separate motion for
298 additional certification, along with a statement of the reasons why a certificate should be granted
299 as to any issue(s) within 21 days of the docketing of the appeal in the court of appeals.
300 Appellees ~~Respondents~~ may file a memorandum in opposition within 14 days of service of the
301 application. Appellant's ~~petitioner~~ reply, if any, must be filed within 10 days of the service of
302 the response. The length and form of any application, response, or reply, must conform to the
303 requirements of Rule 27, FRAP governing motions. If granted, the order must be ~~attached to the~~
304 ~~petitioner's~~ brief included in volume one of the appendix, which may be attached to the
305 appellant's ~~petitioner~~ brief. If the motions panel denies the motion to certify additional issues,
306 the parties should brief only the issues certified unless the merits panel directs briefing of any
307 additional issues. **Notwithstanding the above, the merits panel may expand the certificate of**
308 **appealability as required in the circumstances of a particular case.**

309 (c) In a multi-issue case if the district court grants a certificate of appealability, but does
310 not specify on which issues the certificate is granted as required by 28 U.S.C. § 2253(c)(3), the
311 clerk ~~shall~~ will remand the case for specification of the issues.

312
313 (d) A certificate of appealability is required if a petitioner files a cross-appeal. The
314 petitioner should apply to the district court for a certificate in the first instance.

315
316 Source: 1988 Court Rule 13.1

317 Cross-references: 28 U.S.C. § 2253; F.R.A.P. 3, 22; 3rd Cir. L.A.R. 3.4

318 Committee Comments: The portions of prior Court Rule 13 that were repetitive of

319 F.R.A.P. 22 were ~~have been~~ deleted in 1995; otherwise no
320 substantive change from prior Court Rule 13.1 is intended.
321 Technical changes were made to conform to FRAP 27 in 1997.
322 The response time was lengthened to permit litigants sufficient
323 time to file an application or response.

324 **22.2 Statement of Reasons for Certificate of Appealability**

325 At the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued,
326 the district judge ~~shall~~ will make a determination as to whether a certificate of appealability
327 should issue. If the district judge issues a certificate, the judge ~~shall~~ must state the specific issue
328 or issues that satisfy the criteria of 28 U.S.C. § 2253. If an order denying a petition under § 2254
329 or § 2255 is accompanied by an opinion or a magistrate judge's report, it is sufficient if the order
330 denying the certificate references the opinion or report. If the district judge has not made a
331 determination as to whether to issue a certificate of appealability by the time of the docketing of
332 the appeal, the clerk ~~shall~~ will enter an order remanding the case to the district court for a prompt
333 determination as to whether a certificate should issue.

334 Source: F.R.A.P. 22

335 Cross-references: 28 U.S.C. §§ 2253, 2254, 2255; F.R.A.P. 22

336 Committee Comments: Technical changes were made in 1997 to conform to the
337 Antiterrorism and Effective Death Penalty Act. ~~This rule takes no~~
338 ~~position on the question of whether a district court can grant or~~
339 ~~deny a certificate of appealability.~~

340 **22.3 Review of Application for Certificate of Appealability**

341 An application for a certificate of appealability will be referred to a panel of three judges.
342 If all the judges on the panel conclude that the certificate should not issue, the certificate will be
343 denied, but if any judge of the panel is of the opinion that the applicant has made the showing
344 required by 28 U.S.C. § 2253, the certificate will issue.

345 Source: F.R.A.P. 22

346 Cross-references: 28 U.S.C. § 2253; F.R.A.P. 22

347
348 Committee Comments: Technical changes were made in 1997 to conform to the
349 Antiterrorism and Effective Death Penalty Act.

350 **22.4 Death Penalty Cases**

351 The provisions of 3rd Cir. L.A.R. Misc. 111.0 ~~shall~~ govern all appeals from the grant or

352 denial of a petition for writ of habeas corpus or original habeas corpus proceedings challenging a
353 conviction in which a sentence of death has been imposed.

354 Source: None

355 Cross-references: F.R.A.P. 8, 22; 3rd Cir. L.A.R. 8.0, Misc. 111.0

356 Committee Comments: New provision in 1997. To the extent consistent with F.R.A.P. and
357 applicable, local procedure in all death penalty proceedings will be
358 governed by 3rd Cir. L.A.R. Misc. 111.0.

359 **22.5 Application for Authorization to File a Second or Successive Petition Under 28**
360 **U.S.C. § 2254 or § 2255**

361 (a) Forms for filing an application to file a second or successive petition under 28 U.S.C.
362 § 2254 or § 2255 are available from the clerk. If the form application is not used, the application
363 must contain the information requested in the form. The application must be accompanied by:

364 (1) the proposed new § 2254 or § 2255 petition;

365 (2) copies of all prior § 2254 or § 2255 petitions;

366 (3) copies of the docket entries in all prior § 2254 or § 2255 proceedings;

367 (3) copies of the docket entries in all prior § 2254 or § 2255 proceedings;

368 (3) copies of all magistrate judge's reports, district court opinions and orders
369 disposing of the prior petitions; and

370 (4) any other relevant documents.

371 If the applicant is unable to obtain and attach the documents listed in (2), (3), or (4), the
372 applicant must file a declaration stating the reasons why the applicant is unable to obtain the
373 documents.

374 (b) The application may be accompanied by a memorandum, not exceeding 20 pages,
375 clearly stating how the standards of § 2244(b) and/or § 2255 are satisfied.

376 (c) The movant shall must serve a copy of the application for authorization to file a
377 second or successive petition and all accompanying attachments on the appropriate respondent.
378

379 (d) Any response to the application must be filed within 7 calendar days of the filing of
380 the application with the clerk.

381 (e) If the court determines that the motion and accompanying materials are not

382 sufficiently complete to assess the motion, the court may deny the motion with or without
383 prejudice to refile or may in its discretion treat the motion as lodged, the filing being deemed
384 complete when the deficiency is remedied.

385 (f) The clerk ~~shall~~ will transmit a copy of any order granting authorization to file a
386 second or successive petition to the appropriate district court together with a copy of the petition.

387 (g) No filing fee is required for an application to file a second or successive petition. If
388 the application is granted, the filing of the petition in the district court will be subject to the
389 requirements of 28 U.S.C. § 1915(a).

390 (h) If the district court enters an order transferring to the court of appeals an application
391 to file a second or successive petition or a § 2254 or § 2255 petition that the district court deems
392 to be a second or successive petition requiring authorization, the clerk of the district court ~~shall~~
393 must promptly ~~transmit~~ certify the record to the court of appeals as provided in L.A.R. 11.2. The
394 record ~~shall~~ must include the documents listed in part (a)(1) through (5) of this rule. The clerk of
395 the district court ~~shall~~ must transmit copies of its order of transfer and any necessary documents
396 to the appropriate respondent.

397 (i) If a case transferred by the district court does not contain a statement by the applicant
398 as to how the standards of § 2244(b) or § 2255 are satisfied, the clerk may direct the applicant to
399 file a memorandum clearly stating how the statutory standards are met. Failure to file a
400 memorandum as directed will result in the dismissal of the case by the clerk without further
401 notice. If the applicant files a memorandum as directed, the time prescribed in § 2244(b)(3)(D)
402 for deciding the application will run from the date the memorandum is filed.

403 (j) If an appeal is taken in a case in which the district court issued an order denying a
404 petition under § 2254 or § 2255 on the grounds that it is a second or successive petition that
405 requires authorization under § 2244, the record on appeal ~~transmitted~~ certified to this court as
406 provided in L.A.R. 11.2 ~~shall~~ must include the documents
407 listed in part (a)(1) through (5) of this rule.

408 Source: F.R.A.P. 22

409 Cross-references: 28 U.S.C. §§ 2244, 2253, 2254, 2255; F.R.A.P. 22

410 Committee Comments: Technical changes were made in 1997 to conform to the
411 Antiterrorism and Effective Death Penalty Act. Revisions were
412 made in 2008 to specify calendar days and to accommodate
413 electronic records.

414 **L.A.R. 24.0 PROCEEDINGS IN FORMA PAUPERIS**415 **24.1 Documents Required with Application**

416 (a) In civil cases in which 28 U.S.C. § 1915(b) applies, prisoners seeking to proceed on
417 appeal in forma pauperis ~~shall~~ must file the following documents in the court of appeals:

418 (1) an affidavit of poverty that includes the amount in the prisoner's prison
419 account;

420 (2) a certified copy of the prison account statement(s) (or institutional equivalent)
421 for the 6 month period immediately preceding the filing of the notice of appeal; and

422 (3) a signed form authorizing prison officials to assess and deduct the filing fees
423 in accordance with 28 U.S.C. § 1915(b).

424 (b) After the filing of the documents required in subsection (a) in civil cases in which 28
425 U.S.C. § 1915(b) applies, the clerk will issue an order directing the warden of the prison to
426 assess and deduct the filing fees in accordance with 28 U.S.C. § 1915(b).

427 (c) In cases filed in which 28 U.S.C. § 1915(b) does not apply, prisoners seeking to
428 proceed on appeal in forma pauperis ~~shall~~ must file an affidavit of poverty in the form prescribed
429 by the Federal Rules of Appellate Procedure accompanied by a certified statement of the prison
430 account statement(s) (or institutional equivalent) for the 6 month period preceding the filing of
431 the notice of appeal or petition for extraordinary writ. No assessment order will be entered
432 unless the court determines that the case is subject to the requirements of § 1915(b) and directs
433 that assessments be made.

434 Source: None

435 Cross-references: 28 U.S.C. § 1915

436 Committee Comments: Technical changes were made in 1997 to conform to the Prison
437 Litigation Reform Act.

438 **24.2 Failure to File**

439 Failure to file any of the documents specified in Rule 24.1 will result in the dismissal of
440 the appeal by the clerk under L.A.R. 3.3 and L.A.R. Misc. 107.1(a).

441 Source: None

442 Cross-references: L.A.R. 3.3 and L.A.R. Misc. 107.1(a)

443 Committee Comments: None

444 **24.3 Issuance of Order**

445 If the affidavit in support of a motion to proceed in forma pauperis demonstrates that the
446 appellant qualifies for in forma pauperis status and the appellant is not precluded from
447 proceeding in forma pauperis under 28 U.S.C. § 1915(g), the clerk will issue an order granting in
448 forma pauperis status. If 28 U.S.C. § 1915(b) applies, the order ~~shall~~ will direct prison officials
449 to assess and deduct the filing fees in accordance with the statute and transmit such fees to the
450 appropriate district court. The clerk ~~shall~~ must send a copy of the order to the prisoner, the
451 warden of the prison where appellant is incarcerated, and the appropriate district court.

452 Source: None

453 Cross-references: 28 U.S.C. § 1915

454 Committee Comments: Technical changes were made in 1997 to conform to the Prison
455 Litigation Reform Act.

456 **L.A.R. 25.0 FILING AND SERVICE**

457 **25.1 Electronic Filing and Service**

458 (a) All briefs, motions, and petitions for rehearing, and all documents (other than
459 appendices), filed in any case with the court, must be filed by electronic filing when required by
460 L.A.R. 113. Paper copies of appendices and briefs shall be filed as provided in L.A.R. 30.1 and
461 31.1 respectively. No paper copies of any other documents shall be filed unless permitted by
462 L.A.R. 113 or by order of the court.

463 (b) Service of electronically filed documents is governed by L.A.R. 113.4. Where a
464 document is not filed electronically, the filer must use an alternative method of service
465 prescribed by FRAP 25(c).

466 **25.21 Facsimile Filing**

467 Papers may not be filed by facsimile without prior authorization by the clerk.
468 Authorization may be secured only in situations determined by the clerk to be of an emergency
469 nature or other compelling circumstance. In such cases, the original signed document must be
470 filed promptly thereafter.

471 **25.3 Personal Identifiers**

472 Certain personal identifiers must be excluded or redacted from all documents filed with
 473 the court, as specified in L.A.R. 113.12.

474 Source: None

475 Cross-references: None

476 Committee Comments: New provision in 1995. This rule deals solely with filing by fax.
 477 The filing of briefs by e-mail or
 478 other electronic means (not including
 479 fax) is governed by L.A.R. 31.1

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

481 **26.1.1 Disclosure of Corporate Affiliations and Financial Interest**

482 (a) Promptly after the notice of appeal is filed, each corporation that is a party to an
 483 appeal, whether in a civil, bankruptcy, or criminal case, ~~shall~~ must file a corporate
 484 affiliate/financial interest disclosure statement on a form provided by the clerk that identifies
 485 every publicly owned corporation ~~not named in the appeal~~ with which it is affiliated but which is
 486 not named in the appeal. The form ~~shall~~ must be completed whether or not the corporation has
 487 anything to report.

488 (b) Every party to an appeal ~~shall~~ must identify on the disclosure statement required by
 489 FRAP 26.1 every publicly owned corporation not a party to the appeal, if any, that has a
 490 financial interest in the outcome of the litigation and the nature of that interest. The form ~~shall~~
 491 must be completed only if a party has something to report under this section.

492 (c) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy estate
 493 ~~shall~~ must promptly provide to the clerk in writing a list identifying (1) the debtor, if not named
 494 in the caption, (2) the members of the creditors' committees or the top 20 unsecured creditors,
 495 and (3) any entity not named in the caption which is an active participant in the proceeding. If
 496 the debtor or trustee of the bankruptcy estate is not a party, the appellant ~~shall~~ must file this list
 497 with the clerk.

498 Source: 1988 Court Rule 25

499 Cross-references: 28 U.S.C. § 455; FRAP 26.1

500 Committee Comments: The rule was revised and subsection (c) ~~is new~~ was added in 1995.

501 Prior Court Rule 25 imposed an obligation upon all parties to civil
502 or bankruptcy cases and all corporate defendants in criminal cases
503 to file a corporate affiliate/financial interest disclosure statement.
504 3rd Cir. L.A.R. 26.1.1(a) limits that obligation to corporate parties
505 only. The rule also provides that the statement ~~shall~~ must be filed
506 promptly after the notice of appeal is filed, and ~~shall~~ must be made
507 on a form provided by the clerk. 3rd Cir. L.A.R. 26.1.1(b) retains
508 the requirement that every party to an appeal disclose the identity
509 of every publicly owned corporation, not a party to an appeal, that
510 has a financial interest in the outcome of the litigation. The
511 ~~revised~~ rule also specifies that, under these circumstances, a
512 negative report need not be filed.

513 **26.1.2 Notice of Possible Judicial Disqualification**

514 (a) If any judge of this court participated at any stage of the case, in the trial court or in
515 related state court proceedings, appellant, promptly after filing the notice of appeal, ~~shall~~ must
516 separately notify the clerk in writing of the judge and the other action, and ~~shall~~ must send a
517 copy of such notice to appellee's counsel. Appellee has a corresponding responsibility to so
518 notify the clerk if, for any reason, appellant fails to comply with this rule fully and accurately.

519 (b) A party seeking disqualification of a judge for any other reason must file a motion,
520 which must comply with FRAP 27 and L.A.R. 27.

521 Source: 1988 Court Rule 19.1

522 Cross-references: 28 U.S.C. §§ 144, 455; FRAP 26.1

523 Committee Comments: Prior Court Rule 19.1 required appellant to notify the clerk of a
524 possible judicial disqualification when filing the opening brief.
525 3rd Cir. L.A.R. 26.1.2 now requires appellant to notify the clerk of
526 such disqualification promptly after filing the notice of appeal. 3rd
527 Cir. L.A.R. 26.1.2, which was adopted in 1995, adds a ~~new~~
528 requirement that appellee notify the clerk of any possible
529 disqualification if appellant fails to do so.

530 **L.A.R. 27.0 MOTIONS**

531 **27.1 No Oral Argument Except When Ordered**

532 Motions are considered and decided by the court upon the motion papers and briefs
 533 without oral argument unless ordered by the court or a judge thereof. Counsel may assume there
 534 will not be oral argument unless advised by the clerk to appear at a time and place fixed by the
 535 court.

536 Source: 1988 Court Rule 11.1

537 Cross-references: FRAP 8, 9, 18, 21, 27, 34, 40; 3rd Cir. L.A.R. 8.1, 9.0, 18.0

538 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
 539 substantive change from prior Court Rule 11.1 is intended.

540 **27.2 Form, Filing and Service**

541 (a) All motions, responses to motions, and replies to such responses must be filed by
 542 electronic filing when required by L.A.R. 113. No paper copies of such documents shall be filed
 543 unless authorized by L.A.R. 113 or by order of the court.

544 (b) Service of electronically-filed motions, responses to motions, and replies to such
 545 responses is governed by Misc. L.A.R. 113.4. Where such a document is not filed
 546 electronically, the filer must use an alternative method of service prescribed by FRAP 25(c).
 547 Motions shall must ordinarily be served on other parties by means equally expeditious to those
 548 used to file the motion with the court. When time does not permit actual service on other parties,
 549 or the moving party has reason to believe that another party may not receive the motion in
 550 sufficient time to respond before the court acts (as in certain emergency motions), the moving
 551 party should notify such other parties by telephone, e-mail, or facsimile of the filing of the
 552 motion.

553 (c) A motion or response to a motion may not exceed 5600 words, and a reply to a
 554 response may not exceed 2800 words, unless the court permits or directs otherwise. The number
 555 of words must be calculated and certified as provided in FRAP 32(a)(7).

556 (d) Certain personal identifiers must be excluded or redacted from all documents filed
 557 with the court, as specified in L.A.R. 113.12.

558 Source: None

559 Cross-references: FRAP 8, 9, 18, 25, 27, 41; 3rd Cir. L.A.R. 8.1, 9.0, 18.0 and
 560 L.A.R. Misc. 113.4

561 Committee Comments: New provision in 1995. The seven-day period for filing a response

562 provided by FRAP 27(a) runs from the time of service. If service
563 is not effectuated promptly, the disposition of the motion may be
564 delayed or parties opposing the motion may not have an
565 opportunity to respond before the court rules on the motion.

566 **27.3 Uncontested Motions**

567 Each uncontested motion ~~shall~~ must be certified as uncontested by counsel. In the
568 absence of a timely response, the court may treat a motion without such certification as
569 uncontested. All motions, whether contested or uncontested, are determined on their merits.

570 Source: None

571 Cross-references: FRAP 8, 9, 18, 27, 41; 3rd Cir. L.A.R. 8.1, 9.0, 18.0

572 Committee Comments: New provision in 1995. The seven-day period for filing a response
573 provided by FRAP 27(a) is unnecessary where a motion is
574 uncontested. A certification to that effect will aid in the speedy
575 disposition of the motion.

576 **27.4 Motions for Summary Action**

577 A party may move for summary action affirming, enforcing, vacating, remanding,
578 modifying, setting aside or reversing a judgment, decree or order, alleging that no substantial
579 question is presented or that subsequent precedent or a change in circumstances warrants such
580 action. In addition, the court may *sua sponte* list a case for summary action.

581 Source: Third Circuit Internal Operating Procedures 10.6 (1990)

582 Cross-references: 28 U.S.C. §2106; FRAP 27; Third Circuit Internal Operating
583 Procedure 10.6 (1994)

584 Committee Comments: No substantive change from current practice or IOP 10.6 is
585 intended. The filing of a motion for summary action does not stay
586 the regular briefing schedule set forth in FRAP 31(a).

587 **27.5 Powers of Single Judge**

588 A single judge of the court may not grant or deny a motion that the court has ordered to
589 be acted on by the court or a panel thereof, and ordinarily a single judge will not entertain and
590 grant or deny a motion for release or for modification of the conditions of release pending review
591 in a criminal case, a motion for leave to intervene, or a motion to postpone the oral argument in a
592 case which has been included by the clerk in the argument list for a particular weekly session of

593 the court. The action of a single judge may be reviewed by a panel of the court.

594 Source: 1988 Court Rule 2.4

595 Cross-references: FRAP 27(c); Third Circuit Internal Operating Procedure 10.5
596 (1994)

597 Committee Comments: Prior Court Rule 2.4 provided that a single judge could not
598 entertain a motion for leave to file a brief as amicus curiae or a
599 motion that a party requests be heard orally by the Court. 3rd Cir.
600 L.A.R. 27.5 removes these restrictions and permits a single judge
601 to entertain such motions.

602 **27.6 Motions Decided by the Clerk**

603 ~~If the court so orders,~~ The clerk may entertain and dispose of any motion that can
604 ordinarily be disposed of by a single judge of this court under the provisions of FRAP 27(c) and
605 3rd Cir. L.A.R. 27.5, provided the subject of the motion is ministerial, relates to the preparation
606 or printing of the appendix and briefs on appeal, or relates to calendar control. If application is
607 promptly made, the action of the clerk may be reviewed in the first instance by a single judge or
608 by a panel of the court.

609 Source: 1988 Court Rule 11.5

610 Cross-references: FRAP 27

611 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
612 substantive change from prior Court Rule 11.5 is intended.

613 **27.7 Motions in Which Expedited Consideration is Requested**

614 If the court or clerk determines that a motion requires expedited consideration, the court
615 or the clerk ~~shall~~ will direct that a response in opposition, if any, must be filed within seven (7)
616 calendar days after service of the motion and any reply within three (3) calendar days after
617 service of the response unless a shorter time is directed by the court or clerk. Service of
618 documents filed under this rule, including the initial motion ~~shall~~ must be in accordance with
619 L.A.R. 27.2 unless the court or clerk directs that a more expeditious method of service be used.
620 To the fullest extent possible, the clerk ~~should~~ must be given advance notice by telephone that a
621 motion requiring expedited or urgent consideration may be filed.

622 Source: New Provision added in 2002.

623 Cross-references: L.A.R. 8.0

624 Committee Comments: Section 27.7 was added in 2002 to clarify procedures for expedited
625 motions. Calendar days was specified in 2008.

626 **27.8 Supplemental Pro Se Motions Prohibited**

627 (a) Except as provided in subsection (b) and (c) in cases in which counsel has filed a
628 motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967), parties represented by
629 counsel may not file a motion or other document pro se. If a party represented by counsel sends
630 a pro se motion or other document to the court, the clerk will forward the motion to the party's
631 attorney of record for whatever action counsel deems appropriate, and will notify the party that it
632 has done so under this rule.

633 (b) In cases in which counsel has filed a motion under L.A.R. 109.2 to withdraw under
634 *Anders v. California*, 386 U.S. 738 (1967), the defendant may file pro se motions relating to the
635 pro se brief authorized by L.A.R. 109.2.

636 (c) A party may file pro se a motion for the appointment of new counsel or a motion to
637 proceed pro se. The party may file no other motion or document pro se unless and until the
638 motion for new counsel or to proceed pro se is decided.

639 Source: None

640 Cross-references: L.A.R. 31.3 (pro se briefs)
641

642 Committee Comments: Rule 27.8, adopted in 2008, is intended to establish a uniform
643 policy of dealing with pro se motions from parties who are
644 represented by counsel. See *Martinez v. Court of Appeal of Cal.*
645 528 U.S. 152 (2000)(no right to self representation on appeal).

646 **L.A.R. 28.0 BRIEFS**

647 **28.1 Brief of the Appellant**

648 (a) The brief of appellant/petitioner ~~shall~~ must include, in addition to the sections
649 enumerated in F.R.A.P. 28, the following:

650 (1) in the statement of the issues presented for review required by F.R.A.P.
651 28(a)(5), a designation by reference to specific pages of the appendix or place in the proceedings
652 at which each issue on appeal was raised, objected to, and ruled upon;

653 (2) after the statement of the issues presented for review, a statement of related

654 cases and proceedings, stating whether the party is aware of any appeals, completed, pending, or
 655 about to be presented before this court, arising out of, or in any way related to, this case or
 656 proceeding, has been before this court previously, and whether the The party may also state
 657 whether the party is aware of any other case or proceeding that is in any way related, which is
 658 completed, pending or about to be presented before this court or any other court or agency, state
 659 or federal. If the party is aware of any previous or pending appeals before this court arising out
 660 of the same case or proceeding, the statement should identify each such case; and

661 (3) See L.A.R. 32.2(c) for other attachments to the brief.

662 (b) The statement of the standard or scope of review for each issue on appeal, *i.e.*,
 663 whether the trial court abused its discretion; whether its fact findings are clearly erroneous;
 664 whether it erred in formulating or applying a legal precept, in which case review is plenary;
 665 whether, on appeal or petition for review of an agency action, there is substantial evidence in the
 666 record as a whole to support the order or decision, or whether the agency's action, findings and
 667 conclusions should be held unlawful and set aside for the reasons set forth in 5 U.S.C. § 706(2),
 668 should appear under a separate heading placed before the discussion of the issue in the argument
 669 section.

670 (c) The court expects counsel to exercise appropriate professional behavior in all briefs
 671 and to refrain from making *ad hominem* attacks on opposing counsel or parties.

672 Source: 1988 Court Rule 21.1

673 Cross-references: F.R.A.P. 28-32, 39; 3rd Cir. L.A.R. 29-32, 39

674 Committee Comments: 3rd Cir. L.A.R. 28.1, added in 1995, contains a ~~new~~ requirement
 675 that the appellant must designate where in the proceedings each
 676 issue was preserved for appeal. Appellant should cite to the
 677 appendix, but if the germane portion of the record is not included
 678 in the appendix, the appellant ~~shall~~ must cite to the original record.
 679 If the matter has not been filed of record in the district court,
 680 appellant may cite to the original document. 3rd Cir. L.A.R. 28.1
 681 no longer requires parties to file a separate statement with the
 682 Clerk's Office identifying any previous or pending appeals because
 683 such matters must be identified in the briefs. 3rd Cir. L.A.R. 28.1
 684 also makes explicit for the first time the court's expectation that
 685 counsel will write briefs in a professional manner and refrain from
 686 making *ad hominem* attacks on the opposing side. The portions of
 687 prior Court Rule 21.1 that were repetitive of F.R.A.P. 28 have
 688 been deleted. See L.A.R. 32.2(c) for permissible attachments to
 689 the brief.

690 **28.2 Brief of the Appellee**

691 The brief of the appellee or respondent ~~shall~~ must conform to the requirements of FRAP
 692 28(b) and 3rd Cir. L.A.R. 28.1 (a)(2)(ii), (b) and (c). If the appellee is also a cross-appellant, the
 693 appellee's brief ~~shall~~ must also comply with rules 28.1(a)(1)(i) and (a)(3)(iii). The brief of an
 694 appellee who has been permitted to file one brief in consolidated appeals ~~shall~~ must contain an
 695 appropriate cross reference index which clearly identifies and relates appellee's answering
 696 contentions to the specific contentions of the various appellants. The index ~~shall~~ must contain an
 697 appropriate reference by appellee to the question raised and the page in the brief of each
 698 appellant.

699 Source: 1988 Court Rule 21.1

700 Cross-references: FRAP 28-32; 3rd Cir. L.A.R. 29-32

701 Committee Comments: The portions of prior Court Rule 21.1 that were repetitive of FRAP
 702 28 were deleted in 1995. ~~have been deleted~~. Otherwise no
 703 substantive change from prior Court Rule 21.1 is.

704 **28.3 Citation Form; Certification**

705 (a) In the argument section of the brief required by F.R.A.P. 28(a)(9), citations to federal
 706 opinions that have been reported ~~shall~~ must be to the United States Reports, the Federal
 707 Reporter, the Federal Appendix, the Federal Supplement or the Federal Rules Decisions, and
 708 ~~shall~~ must identify the judicial circuit or district, and year of decision. Citations to the United
 709 States Supreme Court opinions that have not yet appeared in the official reports may be to the
 710 Supreme Court Reporter, the Lawyer's Edition or United States Law Week in that order of
 711 preference. Citations to United States Law Week ~~shall~~ must include the month, day and year of
 712 the decision. Citations to federal decisions that have not been formally reported ~~shall~~ must
 713 identify the court, docket number and date, and refer to the electronically transmitted decision.
 714 Citations to services and topical reports, whether permanent or looseleaf, and to electronic
 715 citation systems, ~~shall~~ must not be used if the text of the case cited has been reported in the
 716 United States Reports, the Federal Reporter, the Federal Supplement, or the Federal Rules
 717 Decisions. Citations to state court decisions should include the West Reporter system whenever
 718 possible, with an identification of the state court. [Hyperlinks are not required, but may be used](#)
 719 [as specified in L.A.R. 113.13.](#)

720 (b) For each legal proposition supported by citations in the argument, counsel ~~shall~~ must
 721 cite to any opposing authority if such authority is binding on this court, e.g., U.S. Supreme Court
 722 decisions, published decisions of this court, or, in diversity cases, decisions of the [highest court](#)
 723 [of the applicable](#) state [supreme court](#).

724 (c) All assertions of fact in briefs ~~shall~~ must be supported by a specific reference to the

725 record. All references to portions of the record contained in the appendix ~~shall~~ must be
 726 supported by a citation to the appendix, followed by a parenthetical description of the document
 727 referred to, unless otherwise apparent from context. [Hyperlinks are not required, but may be](#)
 728 [used as specified in L.A.R. 113.13.](#)

729 (d) Except as otherwise authorized by law, each party ~~shall~~ must include a certification
 730 in the initial brief filed by that party with the court that at least one of the attorneys whose names
 731 appear on the brief is a member of the bar of this court, or has filed an application for admission
 732 pursuant to 3rd Cir. L.A.R. 46.1.

733 Source: 1988 Court Rule 21.1

734 Cross-references: 28 U.S.C. §§ 515, 517, 518; Third Circuit Internal Operating
 735 Procedure 9.1 (1994)

736 Committee Comments: Subsection (b) was adopted in 1995. ~~is new.~~ It imposes upon each
 737 party the obligation to cite to authority that is binding on this
 738 court, whether that authority supports or opposes the party's
 739 propositions. Otherwise, no substantive change from prior Court
 740 Rule 21.1 is intended, including the court's longstanding practice
 741 of not requiring attorneys representing the United States, or any
 742 agency thereof, to be a member of the bar of this court.

743 **28.4 Signing the Brief**

744 All briefs must be signed in accordance with the provision of L.A.R. 46.4. Electronic
 745 briefs may be signed with either an electronically generated signature or “/s/ typed name” in
 746 the signature location. Counsel’s state Bar number, if any, and address and phone number ~~shall~~
 747 must be included with the signature.

748 Source: Fed. R. Civ. P. 11

749 Cross-references: L.A.R. 46.4; L.A.R. Misc. 113.4

750 Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires
 751 signatures on all papers. The signing of documents is important
 752 because it constitutes a certificate by the attorney or party that he
 753 or she has read the pleading or brief to ensure that it complies with
 754 all federal and local rules. The requirement is interpreted broadly
 755 and the attorney of record may designate another person to sign
 756 the brief. If a party is represented by multiple counsel, the
 757 signature from only one attorney of record is required.

758 **28.5 Page Limitations in Cross Appeals**

759	The briefs in a cross appeal shall must have the following page limitations:	
760	1 st brief (appellant's principal brief)	30 35 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C) 28.1(e)(2) and (3) .
761		
762	2 nd brief (appellee's answering brief in direct appeal, cross appellant's principal brief)	30 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C) 28.1(e)(2) and (3)
763		
764		
765		
766	3 rd brief (appellant's reply brief in direct appeal, cross appellee's answering brief)	30 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C) 28.1(e)(2) and (3)
767		
768		
769	4 th brief (cross appellant's reply)	15 pages or compliance with F.R.A.P. 32(a)(7)(B) and (C) 28.1(e)(2) and (3)
770		
771		
772	Source:	None
773	Cross-references:	FRAP 28(h).1
774	Committee Comments:	New provision in 1997; revised in 2000 and 2008 to conform to amendments to the Federal Rules of Appellate Procedure. This rule has been added for clarification of the page limitations.
775		
776		

777 *Amendment suggested to clear up confusion. Unless "new" is specified in the second sentence it*
 778 *appears that if no additional briefing is ordered, an amicus that is already in the case still gets*
 779 *to file an additional brief, while a party would not be permitted to do so.*

780 **L.A.R. 29.0 AMICI CURIAE BRIEFS**

781 **29.1 Time for Filing Amici Curiae Briefs on Rehearing**

782 **(a)** In a case ordered for rehearing before the court en banc or before the original panel, if
 783 the court permits the parties to file additional briefs, any amicus curiae ~~shall~~ must file its brief in
 784 accordance with Rule 29(e) of the Federal Rules of Appellate Procedure. In a case ordered for
 785 rehearing in which no additional briefing is directed, unless the court directs otherwise, any new
 786 amicus ~~brief~~ must ~~be~~ filed a brief within 28 days after the date of the order granting rehearing,
 787 and any party may file a response to such an amicus brief within 21 days after the amicus brief is
 788 served. Before completing the preparation of an amicus brief, counsel for an amicus curiae ~~shall~~
 789 must attempt to ascertain the arguments that will be made in the brief of any party whose
 790 position the amicus is supporting, with a view to avoiding any unnecessary repetition or

791 restatement of those arguments in the amicus brief.

792 (b) The statement required by FRAP 29(c)(3) does not count toward the word limitation
 793 in FRAP 32(a)(7).

794 Source: None

795 Cross-references: FRAP 29(e)

796

797 Committee Comments: New provision in 2000.

798 **L.A.R. 30.0 APPENDIX TO THE BRIEFS**

799 **30.1 Method and Number to be Filed and Served**

800 (a) The appendix must be filed in paper format only, but a party may move for
 801 permission to file the appendix electronically.

802 (b) Regardless of whether the appendix is filed electronically, four **Four** paper copies of
 803 the appendix ~~shall~~ must be filed, unless otherwise ordered. In Virgin Island cases only, one
 804 additional copy of the appendix ~~shall~~ must be filed with the clerk of the district court in the
 805 location from which the appeal is taken (St. Thomas or St. Croix). When hearing or rehearing by
 806 the court en banc is ordered, the parties will be directed to file additional copies for the court's
 807 use.

808 (c) One paper copy of the appendix shall be served by the methods of service prescribed
 809 by FRAP (c).

810 Source: 1988 Court Rule 10.1

811 Cross-references: FRAP 30(a); 3rd Cir. L.A.R. 31.1

812 Committee Comments: The portions of prior Court Rule 10.1 that were repetitive of FRAP
 813 30(a) were ~~have been~~ deleted in 1995. The rule now clarifies that
 814 upon the grant of a petition for rehearing, additional copies of the
 815 appendix as well as the briefs will be ordered. Otherwise no
 816 substantive change from prior Court Rule 10.1 is intended.

817 **30.2 Hearing on Original Papers**

818 In cases involving applications for a writ of habeas corpus under 28 U.S.C. §§ 2241,
 819 2254 or 2255, or when permission has been granted for the appellant to proceed in forma
 820 pauperis, the appeal will be heard on the original record. Appellants in such cases must strictly
 821 comply with the requirements of 3rd Cir. L.A.R. 32.2(c) with respect to inclusion of the trial

822 court's opinion or order in the brief, and ~~shall~~ must also include copies of the docket entries in
823 the proceedings below and the notice of appeal and any order granting a certificate of
824 appealability. In any other case, this court, upon motion, may dispense with the requirement of
825 an appendix and permit an appeal or petition to be heard on the original record, with such copies
826 of the record, or relevant parts thereof, as the court may require.

827 Source: 1988 Court Rule 10.2

828 Cross-references: FRAP 30(f)

829 Committee Comments: The requirement of prior Court Rule 10.2 that habeas corpus
830 petitioners or appellants proceeding in forma pauperis attach to
831 their briefs copies of the district court opinion or order appealed
832 from were ~~has been~~ deleted in 1995 as repetitious of 3rd Cir.
833 L.A.R. 32.2(c). 3rd Cir. L.A.R. 30.2 cautions such appellants of
834 the importance of complying with 3rd Cir. L.A.R. 32.2(c), and
835 further requires them to attach copies of the docket entries below
836 and notice of appeal to the opening brief. The requirement of
837 attaching a copy of the order granting a certificate of appealability
838 was added in 2002.

839 **30.3 Contents of Appendix**

840

841 (a) Relevant portions of a trial transcript, exhibit, or other parts of the record referred to
842 in the briefs ~~shall~~ must be included in the appendix at such length as may be necessary to
843 preserve context. Relevant portions of the district court briefs may be included in the appendix
844 only if necessary to show whether an issue was raised or an argument was made in the district
845 court or in the proceeding being reviewed. Transcript portions are not considered relevant under
846 this rule merely because they are referred to in the Statement of the Case or Statement of Facts, if
847 they are not otherwise necessary for an understanding of the issues presented for decision.
848 Whenever an appeal challenges the sufficiency of the evidence to support a verdict or other
849 determination (including an argument that a finding is clearly erroneous), the appendix ~~shall~~
850 must reprint all the evidence of record which supports the challenged determination. In all
851 appeals in this court, the appendix ~~shall~~ must contain, in addition to the requirements of F.R.A.P.
852 30(a), a table of contents with page references, a copy of the notice of appeal, the relevant
853 opinions of the trial court or bankruptcy court, or the opinion or report and recommendation of
854 the magistrate judge, or the decision of the administrative agency, and a copy of any order
855 granting a certificate of appealability.

856 (b) Records sealed [under L.A.R. 106.1 or](#) in the district court and not unsealed by order
857 of the court ~~shall~~ must not be included in the appendix, but may be submitted in a separate,
858 sealed volume of appendix.

859 (c) In an appeal challenging a criminal sentence, the appellant ~~shall~~ must file, at the time
860 of filing the appendix, four copies of the Presentence Investigation Report and four copies of the
861 judgment's statement of reasons for the sentence, in four a sealed envelopes appropriately
862 labeled. The Presentence Investigation Report and the statement of reasons must not be included
863 in the Appendix.

864 (d) Certain documents must be included in volume one of the appendix, and may be
865 bound with the brief, as provided in L.A.R. 32.2(c).

866 Source: 1988 Court Rule 10.3

867 Cross-references: FRAP 30(a), (b) and (f); 3rd Cir. L.A.R. 32.0, Misc. 106.1(c)

868 Committee Comments: The portions of prior Court Rule 10.3 that were repetitive of FRAP
869 30 were ~~have been~~ deleted in 1995. The portion of prior Court
870 Rule 10.3 addressed to those cases in which the court by order has
871 dispensed with the requirement of an appendix has also been
872 deleted from this rule. Such cases are now addressed by 3rd Cir.
873 L.A.R. 30.2. Briefs submitted to the trial court or agency should
874 not be included in the appendix unless the brief serves as evidence
875 that an issue has been preserved or specifically waived. Trial
876 exhibits which are important to the court's understanding of the
877 issues should be reproduced either in the appendix or as exhibits to
878 the brief.

879 **30.4 Deferred Appendix**

880 The use of a deferred appendix pursuant to FRAP 30(c) is not favored.

881 Source: 1988 Court Rule 10.4

882 Cross-references: FRAP 30, 32; 3rd Cir. L.A.R. 32.0

883 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
884 substantive change from prior Court Rule 10.4 is intended.
885

886 **30.5 Sanctions Pursuant to F.R.A.P. 30(b)(2)**

887 (a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may
888 impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that
889 any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that
890 are unnecessary for the determination of the issues presented on appeal.

891 (b) A party filing such a motion ~~shall~~ must do so not later than ten (10) days after a bill
892 of costs has been served. The movant ~~shall~~ must submit with the motion an itemized statement
893 specifically setting forth, by name and appendix page number, the item or items that the movant
894 asserts were unnecessarily included in the appendix.

895 (c) Any party against whom sanctions are requested may file an answer to the motion or
896 Rule to Show Cause, which ~~shall~~ must be filed within ten (10) days after service of the motion or
897 Rule to Show Cause.

898 Source: 1988 Court Rule 20.4

899 Cross-references: FRAP 30(b), 39; 3rd Cir. L.A.R. Misc. 107.4

900 Committee Comments: Renumbered by the 1995 revision of the rules; no substantive
901 change from prior Court Rule 20.4 is intended.

902 L.A.R. 31.0 FILING AND SERVICE OF BRIEFS

903 31.1 Number of Copies to be Filed and Served 904 Electronic and Paper Filing and Service

905 (a) Unless otherwise required by this court, each party ~~shall~~ must file seven ~~ten (7)~~(10)
906 paper copies (i.e. an original and six ~~nine~~ copies) of each brief with the clerk and, unless counsel
907 has consented to electronic service, serve two (2) paper copies on counsel for each party
908 separately represented. In Virgin Islands cases only, one additional paper copy of the briefs ~~shall~~
909 must be filed with the clerk of the district court in the location from which the appeal is taken
910 (St. Thomas or St. Croix). When hearing or rehearing by the court en banc is ordered, the parties
911 will be directed to file additional paper copies for the court's use.

912 (b) In addition to the paper briefs, counsel for any party or amicus curiae must file with
913 the court the same brief in electronic form by electronic filing as provided in L.A.R. 113 unless
914 otherwise ordered by the court.

915 (1) Filing must be by e-mail or such other method as the court specifies.

916 (2)(1) The brief must be an attachment in PDF format. The Clerk may prescribe
917 additional requirements to aid in transmission.

918 (3)(2) The date of filing the brief is the date the electronic version of the brief is
919 received by the Clerk, provided that seven ~~ten~~ paper copies are mailed as provided in Rule
920 25(a)(2)(B), FRAP on the same day as, or the next business day after, the date of electronic
921 transmission.

922 (4)(3) The electronic version of the brief is the official record copy of the brief; if
923 corrections are required to be made to the paper brief, a corrected copy of the electronic brief
924 must be provided.

925 (5)(4) Litigants proceeding pro se must follow L.A.R. 113.2 regarding whether
926 they may need not file an electronic brief.

927 (c) In addition to the certification of type-volume limitations required by Rule
928 32(a)(7)(C), and in the same document, counsel must certify that the text of the electronic brief is
929 identical to the text in the paper copies. Counsel must also certify that a virus detection program
930 has been run on the file and that no virus was detected. The certification must specify the
931 version of the virus detection program used. Sanctions may be imposed if a filing contains a
932 computer virus or worm.

933 (d) Electronically-filed briefs must be served electronically on all other parties who are
934 Filing Users as provided in L.A.R. 113.4. A party may serve the opposing party electronically
935 only with the prior consent of the opposing party. If electronic service is used, the filing party
936 must note in the certificate of service that the opposing party is a Filing User and will therefore
937 be served pursuant to L.A.R. 113.4. If the filing party has bound volume one of the appendix
938 with the brief as permitted by L.A.R. 32.2(c), the party must either (a) create a pdf copy of
939 volume one of the appendix and file it as an electronic attachment to the electronic brief, or (b)
940 serve one paper copy of the brief and volume one of the appendix as provided by FRAP 25(c).
941 consented to electronic service. If parties consent to electronic service, paper copies need not be
942 served.

943 (e) If another party is not a Filing User, or if the brief is filed in paper format only, the
944 party filing the brief must serve one paper copy of the brief on the other party or parties as
945 provided by L.A.R. 113.4 and FRAP 25 (c).

946 Source: 1988 Court Rule 21.2

947 Cross-references: F.R.A.P. 28-32; 3rd Cir. L.A.R. 28-32; L.A.R. Misc. 113.4
948 (electronic service using the court's electronic filing system
949 cm/ecf)

950 Committee Comments: The rule was amended in 2002 to require electronic filing of briefs.
951 Instructions on electronic filing can be found on the court's web
952 site at www.ca3.uscourts.gov. A party proceeding pro se need not
953 file electronically, but if the party wishes to file electronically, this
954 rule must be followed. PDF format makes a document more
955 stable when electronically transmitted. This format also insures
956 that pagination remains the same regardless of what printer is used
957 to print the document. The PDF brief document should be created

958 by converting a wordprocessing document, not by scanning.
 959 Scanned documents that are converted to PDF are more difficult to
 960 transport and store and often are not searchable.

961 **31.2 Appellee's Brief**

962 A local, state or federal entity or agency, which was served in the district court and
 963 which is the appellee, must file a brief in all cases in which a briefing schedule is issued unless
 964 the court has granted a motion seeking permission to be excused from filing a brief. This rule
 965 does not apply to entities or agencies that are respondents to a petition for review unless the
 966 entity or agency is the sole respondent or to entities or agencies which acted solely as an
 967 adjudicatory tribunal.

968 Source: None

969 Cross-references: F.R.A.P. 28-32; 3rd Cir. L.A.R. 28-32

970 Committee Comments: ~~New~~ Rule 31.2 was added in 2000 and is intended to change the
 971 practice of some agencies who choose not to file briefs when they
 972 are named as appellee.

973 **31.3 Supplemental Pro Se Briefs Prohibited**

974 Except in cases in which counsel has filed a motion [under L.A.R. 109.2](#) to withdraw
 975 under *Anders v. California*, 386 U.S. 738 (1967), parties represented by counsel may not file a
 976 brief pro se. If a party sends a pro se brief to the court, the clerk ~~shall~~ will forward the brief to
 977 the party's attorney of record, [and will notify the party that it has done so under this rule.](#)
 978 Counsel may choose to include the arguments in his or her brief or may in the unusual case file a
 979 motion to file a supplemental brief, if appropriate.

980 Source: None

981 Cross-references: Pro se motions and other documents are governed by L.A.R. 27.8

982 Committee Comments: ~~New~~ Rule 31.3 was added in 2002 and is intended to establish a
 983 uniform policy of dealing with pro se briefs from parties who are
 984 represented by counsel. [See *Martinez v. Court of Appeal of Cal.*](#)
 985 [528 U.S. 152 \(2000\)](#)(no right to self representation on appeal).
 986

987 **31.4 Motions for Extension of Time to File a Brief**

988 A party's first request for an extension of time to file a brief must set forth good cause.
 989 Generalities, such as that the purpose of the motion is not for delay or that counsel is too busy,
 990 are not sufficient. A first request for an extension of fourteen (14) calendar days or less may be

991 made by telephone or in writing. Counsel should endeavor to notify opposing counsel in
992 advance that such a request is being made. The grant or denial by the clerk of the extension ~~shall~~
993 must be entered on the court docket. If a request for extension of time is made and granted
994 orally, counsel must send a confirming letter to the clerk and to opposing counsel within seven
995 (7) calendar days. A first request for an extension of time should be made at least three (3)
996 calendar days in advance of the due date for filing the brief. A motion filed less than three (3)
997 calendar days in advance of the due date must be in writing and must demonstrate that the good
998 cause on which the motion is based did not exist earlier or could not with due diligence have
999 been known or communicated to the court earlier. Subsequent requests for an extension of time
1000 must be made in writing and will be granted only upon a showing of good cause that was not
1001 foreseeable at the time the first request was made. Only one motion for extension of time to file
1002 a reply brief may be granted.

1003 Source: None

1004 Cross-references: None

1005 Committee Comments: The rule was adopted in 2002 to permit the oral granting of a short
1006 extension of time.

1007 **L.A.R. 32.0 FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS**

1008 **32.1 Forms of Briefs, Appendices, Motions, and Other Papers Documents**

1009 All briefs, appendices, motions and other papers documents (collectively
1010 "documents" papers) ~~shall~~ must conform to the following requirements, unless otherwise
1011 provided by the FRAP:

1012 (a) All documents filed in paper format papers ~~shall~~ must be firmly bound at the left
1013 margin, and any metal fasteners or staples must be covered. All fasteners must have smooth
1014 edges. Use of backbones or spines without stapling is prohibited. Forms of binding such as velo
1015 binding and spiral binding are acceptable forms of binding.

1016 (b) All documents papers ~~shall~~ must have margins on both sides of each page that are no
1017 less than one (1) inch wide, and margins on the top and bottom of each page that are no less than
1018 three-quarters (3/4) of an inch wide.

1019 (c) Typeface. Briefs ~~shall~~ must comply with the provisions of F.R.A.P. 32(a)(5) and
1020 (6).
1021

1022 (d) Electronic briefs must be in PDF format; the entire brief must be contained in
1023 one electronic file. If the party has bound volume one of the appendix with the brief as permitted

1024 by L.A.R. 32.2(c), the party may create a pdf copy of volume one of the appendix and file it as
 1025 an electronic attachment to the electronic brief. Otherwise, only Only paper copies of the
 1026 appendix are required permitted, but a party may move to file the appendix electronically.

1027 (e) Certain personal identifiers must be excluded or redacted from all documents filed
 1028 with the court, as specified in L.A.R. 113.12.

1029 Source: 1988 Court Rules 21.2(B), 22 and 22.1

1030 Cross-references: F.R.A.P. 27, 32, 40; 3rd Cir. L.A.R. 27.0, 35.1 and 35.2

1031 Committee Comments: The portions of prior Court Rules 21.2(B) and 22.1 that were
 1032 repetitive of F.R.A.P. 32 were ~~have been~~ deleted in 1995. The rule
 1033 was amended to require electronic filing of the brief. Binding
 1034 volume one of the appendix into the paper brief only, which is
 1035 preferred, does not prevent counsel from certifying as required in
 1036 L.A.R. 31.1(c) that the text of the paper brief and the electronic
 1037 brief are identical.

1038 **32.2 Form of Briefs and Appendices**

1039 (a) Excessive footnotes in briefs are discouraged. Footnotes ~~shall~~ must be printed in the
 1040 same size type utilized in the text.

1041 (b) Where a transparent cover is utilized, the underlying cover sheet of the paper brief or
 1042 appendix must nevertheless conform to the color requirements of F.R.A.P. 32(a)(2) and 32(b)(1).

1043 (c) Volume one of the appendix must consist only of (1) a copy of the notice of appeal,
 1044 (2) the order or judgment from which the appeal is taken, and any other order or orders of the
 1045 trial court which pertain to the issues raised on appeal (3) the relevant opinions of the district
 1046 court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge,
 1047 or the decision of the administrative agency, if any and (4) any order granting a certificate of
 1048 appealability, and (5) no more than 25 additional pages. Volume one of the appendix may be
 1049 bound in the brief and ~~shall~~ will not be counted toward the page or type volume limitations on
 1050 the brief. All other volumes of the appendix must be separately bound.

1051 (d) Where there is a multi-volume appendix, counsel should specify on the cover of each
 1052 volume the pages contained therein, e.g., Vol. 2, pp. 358-722. Costs to the party entitled to them
 1053 will be allowed for documents appended to the brief.

1054 (e) Certain personal identifiers must be excluded or redacted from all documents filed
 1055 with the court, as specified in L.A.R. 113.12.

- 1056 Source: 1988 Court Rule 21.2
- 1057 Cross-references: FRAP 28-32; 3rd Cir. L.A.R. 28-32
- 1058 Committee Comments: The portions of prior Court Rule 21.2A that were repetitive of
1059 FRAP 32(a) were ~~have been~~ deleted in 1995. Subsection (a) has
1060 been added to curtail the use of footnotes as a means to circumvent
1061 the page limitations set forth in FRAP. The Rule has been
1062 amended to require that additional relevant opinions be bound in
1063 the brief.

1064 **32.3 Form of Motions and Other Papers Only**

1065 (a) Briefs and memoranda in support of or in opposition to motions need not comply
1066 with the color requirements of FRAP 32(a).

1067 (b) **Suggestions Petitions** for rehearing en banc in which petitioner is represented by
1068 counsel ~~shall~~ must contain the "Statement of Counsel" required by 3rd Cir. L.A.R. 35.1. As
1069 provided in L.A.R. 35.2 and 40.1, all All petitions **or suggestions** seeking either panel rehearing
1070 or rehearing en banc ~~shall~~ must include as an exhibit a copy of the panel's judgment, order, and
1071 opinion, if any, as to which rehearing is sought.

1072 (c) Certain personal identifiers must be excluded or redacted from all documents filed
1073 with the court, as specified in L.A.R. 113.12.

- 1074 Source: 1988 Court Rules 21.2(B), 22 and 22.1
- 1075 Cross-references: FRAP 27, 32, 40; 3rd Cir. L.A.R. 27.0, 35.1 and 35.2
- 1076 Committee Comments: The portions of prior Court Rules 21.2(B) and 22.1 that were
1077 repetitive of FRAP 32 were ~~have been~~ deleted in 1995.
1078 Otherwise no substantive change from prior Court Rules 21.2(B)
1079 and 22.1 is intended.

1080 **L.A.R. 33.0 APPELLATE MEDIATION PROGRAM**

1081 **33.1 Appellate Mediation Program**

1082 Appeals in civil cases and petitions for review or for enforcement of administrative
1083 action are referred to the Appellate Mediation Program to facilitate settlement or otherwise to
1084 assist in the expeditious handling of the appeal or petition. A special master ~~shall~~ will serve as
1085 the program director and, in cooperation with the clerk, ~~shall~~ will manage the Appellate
1086 Mediation Program. Mediations will be conducted by a senior judge of the court of appeals, a
1087 senior judge of a district court, the special master, or other person designated pursuant to Rule

1088 48, F.R.A.P. Parties may confidentially request mediation by telephone or by letter directed to
1089 the special master. In all cases, however, the special master will determine which cases are
1090 appropriate for mediation and will assign the matter to a mediator.

1091 **33.2 Eligibility for Appellate Mediation Program**

1092 All civil appeals and petitions for review or for enforcement of agency action ~~shall be~~ are
1093 eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as
1094 petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or
1095 deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions
1096 filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas
1097 petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or
1098 petitioner ~~shall~~ must file with the clerk, within ten (10) days of the docketing of the appeal with
1099 service on all parties, an original and two (2) copies of a Civil Appeals Information Statement
1100 and a Concise Summary of the Case, on forms to be supplied by the clerk. Appellant ~~shall~~ must
1101 attach to the Concise Summary of the Case copies of the order(s) being appealed and any
1102 accompanying opinion or memorandum of the district court or agency. In the event the order(s)
1103 being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer
1104 to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge,
1105 the report and recommendation or decision ~~shall~~ must also be attached. In addition, any judge or
1106 panel of the court may refer to the special master any appeal, petition, motion or other procedural
1107 matter for review and possible amicable resolution.

1108 **33.3 Initial Screening and Deferral of Briefing for Cases Selected for Mediation**

1109 The Clerk will provide the special master with a copy of the judgment or order on appeal,
1110 any opinion or memorandum issued by the district court or agency, appellant's Civil Appeal
1111 Information Statement and Concise Summary of the Case and any relevant motions. Following
1112 review of these materials, the special master may refer an appeal or petition to a senior judge,
1113 himself or herself, or such other person designated pursuant to Rule 48, F.R.A.P. for mediation.
1114 The special master ~~shall~~ will advise the parties, the chosen mediator, and the clerk of the referral.

1115 If a case is referred to mediation, a briefing schedule ~~shall~~ will be deferred during the
1116 pendency of mediation unless the court or special master determines otherwise. A referral to
1117 mediation ~~shall~~ will not, however, defer or extend the time for ordering any necessary
1118 transcripts.

1119 If a case is not accepted for mediation, or if accepted but is not resolved through
1120 mediation, it will proceed in the appellate process as if mediation had not been considered or
1121 initiated.

1122 **33.4 Referral of Matters to Mediation by a Judge or Panel of the Court**

1123 At any time during the pendency of an appeal or petition, any judge or panel of the court

1124 may refer the appeal or petition to the special master for mediation or any other purpose
1125 consistent with this rule. In addition, any judge or panel of the court may refer any appeal,
1126 petition, motion or other procedural matters for review and possible amicable resolution. The
1127 procedures set forth in L.A.R. 33.5 are applicable to matters referred for mediation pursuant to
1128 L.A.R. 33.4 unless otherwise directed by the special master. Documents, including but not
1129 limited to, those specified in L.A.R. 33.5(a) may be required.

1130 **33.5 Proceedings After Selection for the Program**

1131 (a) Submission of Position Papers and Documents. Within fifteen (15) days of the case's
1132 selection for mediation by the special master, each counsel ~~shall~~ must prepare and submit to the
1133 mediator a confidential position paper of no more than ten (10) pages, stating counsel's views on
1134 the key facts and legal issues in the case, as well as on key factors relating to settlement. The
1135 position paper will include a statement of motions filed in the court of appeals and their status.
1136 Copies of position papers submitted by the parties directly to the mediator should not be served
1137 upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the
1138 Clerk's Office and are not to be of record in the case.

1139 (b) Mediation Sessions. The mediator will notify the parties of the time, date, and place
1140 of the mediation session and whether it will be conducted in person or telephonically. Unless the
1141 mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each
1142 party responsible for the appeal and by the person or persons with actual authority to negotiate a
1143 settlement of the case. If settlement is not reached at the initial mediation session, but the
1144 mediator believes further mediation sessions or discussions would be productive, the mediator
1145 may conduct additional mediation sessions in person or telephonically.

1146 (c) Confidentiality of Mediation Proceedings. The mediator ~~shall~~ will not disclose to
1147 anyone statements made or information developed during the mediation process. The attorneys
1148 and other persons attending the mediation are likewise prohibited from disclosing statements
1149 made or information developed during the mediation process to anyone other than clients,
1150 principals or co-counsel, and then, only upon receiving due assurances that the recipients will
1151 honor the confidentiality of the information. Similarly, the parties are prohibited from using any
1152 information obtained as a result of the mediation process as a basis for any motion or argument
1153 to any court. The mediation proceedings ~~shall be~~ are considered compromise negotiations under
1154 Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a
1155 settlement has been reached as a result of mediation ~~shall~~ will not be considered confidential.

1156 (d) Settlement. No party ~~shall~~ will be bound by statements or actions at a mediation
1157 session unless a settlement is reached. If a settlement is reached, the agreement ~~shall~~ must be
1158 reduced to writing and ~~shall~~ will be binding upon all parties to the agreement, and counsel ~~shall~~
1159 must file a stipulation of dismissal of the appeal pursuant to Rule 42(b), F.R.A.P. Such a
1160 stipulation must be filed within thirty (30) days after settlement is reached unless an extension
1161 thereof is granted by the special master.

1162 **33.6 Mediation in Pro Se Cases**

1163 In appropriate cases, the Director of the Mediation Program may request counsel to
 1164 represent pro se litigants for purposes of mediation only. Counsel must agree to take the case on
 1165 a pro bono basis, except that if an applicable statute authorizes the award of attorneys' fees,
 1166 counsel may enter into a written agreement with the client assigning to the attorney any amounts
 1167 designated as attorneys' fees. The case will be treated as any other case subject to mediation and
 1168 all provisions of L.A.R. 33 will apply. If mediation is unsuccessful, counsel may discontinue his
 1169 or her representation; however, counsel may continue to represent the litigant through the rest of
 1170 the appeal if counsel wishes and the party agrees. The Director of the Mediation Program may
 1171 adopt and implement specific procedures in furtherance of this rule.

1172 Source: New rule in 2000.

1173 Cross-references: None

1174 Committee Comments: None

1175 **L.A.R. 34.0 ORAL ARGUMENT**1176 **34.1 In General**

1177 (a) The court ~~shall~~ will allow oral argument in all cases unless the panel, after
 1178 examination of the briefs and records or appendices, is unanimously of the opinion that oral
 1179 argument is not needed.

1180 (b) Any party to the appeal ~~shall have~~ has the right to file a statement with the court
 1181 setting forth the reasons why, in the party's opinion, oral argument should be heard. Such
 1182 statement ~~shall~~ must be filed with the clerk within seven (7) calendar days after the filing of
 1183 appellee's or respondent's the reply brief, or the expiration of time for filing a reply brief. The
 1184 request ~~shall~~ must set forth the amount of argument time sought.

1185 (c) In certain appeals, the clerk will inform the parties by letter of a particular issue(s)
 1186 that the panel wishes the parties to address.

1187 (d) The court ~~shall~~ will grant a motion requesting rescheduling of the argument only
 1188 where the moving party shows extraordinary circumstances.

1189 (e) If a party ~~parties~~ requests oral argument by video-conference, a joint statement of all
 1190 parties motion to that effect ~~shall~~ must be filed with the clerk no later than fourteen (14) days
 1191 after the setting of a disposition date, filing of the appellee's or respondent's brief. Within seven
 1192 (7) calendar days of the filing of such a request, other parties may file a response. Granting of

1193 the request ~~shall be~~ is at the Court's discretion.

1194 Source: 1988 Court Rule 12.6

1195 Cross-references: FRAP 21(b), 34; 3rd Cir. L.A.R. 27.1; Third Circuit Internal
1196 Operating Procedures, Chapter 2 (1994)

1197 Committee Comments: Because the panels are constituted in advance for a specific sitting,
1198 rescheduling of an argument may result in a second panel being
1199 assigned an appeal when one panel has already performed the
1200 necessary study of the briefs and appendix. Alternatively, it may
1201 result in members of the panel having to travel to Philadelphia at
1202 additional government expense, disrupting previously established
1203 schedules. Such needless waste of judicial resources underlies this
1204 court's precedent of declining to reschedule except upon a showing
1205 of extraordinary circumstances. Subsection (c), adopted in 1995,
1206 contains a ~~new~~ provision that counsel in certain cases will be
1207 notified prior to the oral argument of a particular issue, if any, that
1208 is of concern to the court. The portions of prior Court Rule 12.6
1209 that were repetitive of FRAP were ~~have been~~ deleted in 1995.
1210 Otherwise no substantive change from prior Court Rule 12.6 is
1211 intended. The rule was revised and simplified in 2000. Calendar
1212 days was specified in 2008.

1213
1214 **34.2 Continuance**

1215 For good cause the court may pass a case listed for oral argument or order its
1216 continuance. No stipulation to pass or continue a case will be recognized as binding upon the
1217 court.

1218 Source: 1988 Court Rule 12.5

1219 Cross-references: FRAP 34; 3rd Cir. L.A.R. 34.1

1220 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
1221 substantive change from prior Court Rule 12.5 is intended.
1222

1223 **34.3 No Oral Argument on Motions Except When Ordered**

1224 The court ~~shall~~ will consider and decide motions upon the motion papers and briefs, and
1225 ~~shall~~ will not hear oral argument unless ordered by the court or a judge thereof. Counsel may
1226 assume there will not be oral argument unless advised by the clerk to appear at a time and place
1227 fixed by the court.

- 1228 Source: 1988 Court Rule 11.1
- 1229 Cross-references: FRAP 8, 9, 18, 27, 34, 40, 41; 3rd Cir. L.A.R. 27.1
- 1230
- 1231 Committee Comments: This rule is identical to 3rd Cir. L.A.R. 27.1. No substantive
- 1232 change from prior Court Rule 11.1 is intended.

1233 **L.A.R. 35.0 DETERMINATION OF CAUSES BY THE COURT EN BANC**

1234 **35.1 Required Statement for Rehearing En Banc**

- 1235 Where the party suggesting rehearing en banc is represented by counsel, the **suggestion**
- 1236 petition shall must contain, so far as is pertinent, the following statement of counsel:

1237 "I express a belief, based on a reasoned and studied professional

1238 judgment, that the panel decision is contrary to decisions of the United

1239 States Court of Appeals for the Third Circuit or the Supreme Court of the

1240 United States, and that consideration by the full court is necessary to

1241 secure and maintain uniformity of decisions in this court, *i.e.*, the panel's

1242 decision is contrary to the decision of this court or the Supreme Court in

1243 [citing specifically the case or cases], OR, that this appeal involves a

1244 question of exceptional importance, *i.e.*, [set forth in one sentence]." This

1245 statement does not count toward the word limitation in L.A.R. 35.2(b).

- 1246 Source: 1988 Court Rule 22
- 1247 Cross-references: FRAP 32(b), 35, 40; 3rd Cir. L.A.R. 32.3; Third Circuit Internal
- 1248 Operating Procedures, Chapter 9 (1994)
- 1249 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
- 1250 substantive change from prior Court Rule 22 is intended.

1251 **35.2 Form, Filing and Service of and Required Attachments to Petition for Rehearing**

1252

- 1253 (a) Petitions for rehearing en banc must be electronically filed and served as provided in
- 1254 L.A.R. 113. No paper copies may be filed unless otherwise ordered by the court. A petition
- 1255 seeking rehearing en banc shall must include as an **electronic** exhibit a **pdf** copy of the panel's
- 1256 judgment, order, and opinion, if any, as to which rehearing is sought.

- 1257 (b) Unless otherwise ordered, a petition for rehearing may not exceed 4,200 words. The
- 1258 number of words must be calculated and certified as provided in FRAP 32(a)(7). (b) ~~An~~
- 1259 ~~original and fourteen (14) copies of a petition for rehearing en banc shall be filed unless~~

1260 ~~otherwise directed by the court.~~

1261 Source: 1988 Court Rule 22.1

1262 Cross-references: F.R.A.P. 32(b)(c), 35, 40; 3rd Cir. L.A.R. 32.3

1263 Committee Comments: ~~No substantive change from prior Court Rule 22.1 is intended.~~
1264 ~~The addition of subsection (b) is not intended to alter the~~
1265 ~~provisions of IOP 9.5.1 which provide that an unlabeled petition~~
1266 ~~will be construed as requesting both panel rehearing and rehearing~~
1267 ~~en banc. Subsection (b) was amended deleted in 2008 because of~~
1268 ~~electronic filing.~~

1269 **35.3 Composition of En Banc Quorum**

1270 For purposes of determining the majority number necessary to grant a petition for
1271 rehearing, all circuit judges currently in regular active service who are not disqualified will be
1272 counted. ~~However, a petition for rehearing shall not be granted unless a majority of the judges in~~
1273 ~~regular active service are not disqualified from voting on the petition.~~

1274 Source: None

1275 Cross-references: FRAP 35; 3rd Cir. L.A.R. Misc. 101.0

1276 Committee Comments: Changes were made in 2002 to conform the rule to Internal
1277 Operating Procedure Chapter 9. The last sentence of the 2002 rule
1278 was deleted in 2008 to conform to amendments to F.R.A.P. 35.

1279 **35.4 Caution**

1280 As noted in FRAP 35, en banc hearing or rehearing of appeals is not favored. Counsel
1281 have a duty to the court commensurate with that owed their clients to read with attention and
1282 observe with restraint the required statement for rehearing en banc set forth in 3rd Cir. L.A.R.
1283 35.1. Counsel are reminded that in every case the duty of counsel is fully discharged without
1284 filing a petition suggestion for rehearing en banc unless the case meets the rigorous requirements
1285 of FRAP 35 and 3rd Cir. L.A.R. 35.1.

1286 Source: None

1287 Cross-references: 28 U.S.C. § 1927; FRAP 35, 38; 3rd Cir. L.A.R. 35.1; Third
1288 Circuit Internal Operating Procedures, Chapter 9 (1994)

1289 Committee Comments: New provision in 1995. This rule is modeled after U.S. Ct. of
1290 App. 5th Cir. Rule 35 (1991). The purpose of the rule is to
1291 emphasize that the court does not favor requests for hearing or

1292 rehearing en banc, and to discourage inappropriate requests from
1293 being made.

1294 **35.5 Death Penalty Cases**

1295 The provisions of 3rd Cir. L.A.R. Misc. 111.7 shall govern all petitions seeking hearing
1296 or rehearing by the court en banc in all actions challenging a conviction in which a sentence of
1297 death has been imposed.

1298 Source: 3rd Cir. L.A.R. 8.2, 22.2

1299 Cross-Reference: FRAP 35, 3rd Cir. L.A.R. Misc. 111.7

1300 Committee Comments: New provision in 1995. To the extent consistent with FRAP and
1301 applicable, local procedure in all death penalty proceedings will be
1302 governed by 3rd Cir. L.A.R. Misc. 111.0.

1303 **L.A.R. 36.0 ENTRY OF JUDGMENT**

1304 **36.1 Opinions**

1305 All written opinions of the court and of the panels thereof shall will be filed with and
1306 preserved by the clerk. All opinions shall will be posted on the court's internet web site printed
1307 under the supervision of the clerk. Printed opinions need not be copied into the minutes but shall
1308 be bound and kept in the Clerk's Office, and, and; when bound posted on the court's internet web
1309 site shall, they will be deemed to have been recorded.

1310 Source: 1988 Court Rule 16

1311 Cross-references: FRAP 36

1312 Committee Comments: Amended in 2008 to conform to current practice of electronic
1313 posting of opinions. No substantive change from prior Court Rule
1314 16 is intended.

1315 ~~**36.2 Copies of Printed Opinions**~~

1316 ~~—— (a) Parties. Each party to an appeal shall receive one copy of the court's printed opinion~~
1317 ~~free of charge.~~

1318 ~~—— (b) Subscriptions. Subscriptions for the printed opinions of this court may be received~~
1319 ~~by the clerk at a fee to be set by order of the court from time to time, which may set a lesser fee~~
1320 ~~for non-profit institutions.~~

1321 ~~—— (c) "Public Interest List." Copies of printed opinions will be furnished free of charge to~~
 1322 ~~those appearing on a "Public Interest List" established by order of the court in the interest of~~
 1323 ~~providing proper and adequate dissemination to the general public.~~

1324 ~~—— (d) Other. All other persons desiring a copy of a printed opinion of this court may~~
 1325 ~~receive one from the clerk at a fee to be set by order of the court from time to time.~~

1326 Source: ~~————— 1988 Court Rules 17.2 and 17.3~~

1327 Cross-references: ~~————— FRAP 36~~

1328 Committee Comments: ~~————— No substantive change from prior Court Rules 17.2 and 17.3 is~~
 1329 ~~intended.~~

1330 **L.A.R. 39.0 COSTS**

1331 **39.1 Certification or Certiorari to Supreme Court**

1332 In all cases certified to the Supreme Court or removed thereto by certiorari, the fees of
 1333 the clerk of this court ~~shall~~ must be paid before a transcript of the record ~~shall be~~ is transmitted
 1334 to the Supreme Court.

1335 Source: 1988 Court Rule 17.1

1336 Cross-references: 28 U.S.C. §§ 1254, 1913, 1920; FRAP 39

1337 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
 1338 substantive change from prior Court Rule 17.1 is intended.

1339 **39.2 Schedule of Fees and Costs**

1340 Pursuant to 28 U.S.C. § 1913, a uniform schedule of fees and costs is prescribed from
 1341 time to time by the Judicial Conference of the United States. An up-to-date schedule can be
 1342 found as an annotation to 28 U.S.C. § 1913 in the United States Code, the United States Code
 1343 Annotated, and West's Federal Civil Judicial Procedure and Rules manual.

1344 Source: 1988 Court Rule 17.2

1345 Cross-references: 28 U.S.C. § 1913; FRAP 39

1346 Committee Comments: The provisions of prior Court Rule 17.2 that were repetitive of 28
 1347 U.S.C. § 1913 and FRAP 3(b) and 24(a) have been deleted. The
 1348 provisions of prior Court Rule 17.2 regarding the costs of printed

1349 opinions have been moved to 3rd Cir. L.A.R. 36.2.

1350 **39.3 Taxation of Reproduction Costs**

1351 The cost of printing or otherwise producing necessary copies of briefs and appendices
1352 ~~shall be~~ are taxable as follows:

1353 (a) Number of Briefs. Costs will be allowed for ten (10) copies of each brief plus two
1354 (2) copies for each party separately represented, unless the court ~~shall~~ directs a greater number
1355 of briefs to be filed.

1356 (b) Number of Appendices. Costs will be allowed for four (4) copies of the appendix
1357 plus one (1) copy for each party separately represented, unless the court ~~shall~~ directs a greater
1358 number of appendices to be filed.

1359 (c) Costs of Reproduction of Briefs and Appendices. In taxing costs for printed or
1360 photocopied briefs and appendices, the clerk ~~shall~~ will tax costs at the following rates, or at the
1361 actual cost, whichever is less, depending upon the manner of reproduction or photocopying:

1362	(1)	Reproduction (whether by offset or typography):	
1363		Reproduction per page	\$ 4.00
1364		(for 20 copies or less)	
1365		Covers (for 20 copies or less)	\$ 50.00
1366			
1367		Binding per copy	\$ 4.00
1368		Sales tax	Applicable Rate
1369	(2)	Photocopying (whether in house or commercial):	
1370		Reproduction per page	\$.10
1371		per copy	
1372		Binding per copy	\$ 4.00
1373		Covers	\$ 40.00
1374		(for 20 copies or less)	
1375		Sales Tax	Applicable Rate

1376 (3) In the event a party subsequently corrects deficiencies in either a brief or
1377 appendix pursuant to 3rd Cir. L.A.R. Misc. 107.3 and that party prevails on appeal, costs which
1378 were incurred in order to bring the brief or appendix into compliance may not be allowed.
1379

1380 (d) Other Costs. No other costs associated with briefs and appendices, including the
1381 costs of typing, word processing, and preparation of tables and footnotes, ~~shall~~ will be allowed
1382 for purposes of taxation of costs.

- 1383 Source: 1988 Court Rule 20.1
- 1384 Cross-references: 28 U.S.C. § 1920; F.R.A.P. 39
- 1385 Committee Comments: Sales tax will be included in the costs only when actually paid to a
1386 commercial photocopying service. No substantive change from
1387 prior Court Rule 20.1 is intended.

1388 **39.4 Filing Date; Support for Bill of Costs**

1389 (a) The court ~~shall~~ will deny untimely bills of cost unless a motion showing good cause
1390 is filed with the bill.

1391 (b) Parties ~~shall~~ must submit the itemized and verified bill of costs on a standard form to
1392 be provided by the clerk.

1393 (c) An answer to objections to a bill of costs may be filed within 10 days of service of
1394 the objections.

1395 Source: 1988 Court Rules 20.2, 20.3

1396 Cross-references: FRAP 39

1397 Committee Comments: The portions of prior Court Rules 20.2 and 20.3 that were
1398 repetitive of FRAP 39 were ~~have been~~ deleted in 1995. The rule
1399 now specifically allows for an answer to objections, a codification
1400 of existing practice. Otherwise, no substantive change from prior
1401 Court Rules 20.2 and 20.3 is intended.

1402 **L.A.R. 40.0 PETITION FOR PANEL REHEARING**

1403 **40.1 Form, Filing, and Service of and Required Attachments to Petition for Panel**
1404 **Rehearing**

1405 (a) Petitions for panel rehearing must be electronically filed and served as provided in
1406 L.A.R. 113. No paper copies may be filed unless otherwise ordered by the court. A petition
1407 seeking panel rehearing ~~shall~~ must include as an electronic exhibit a pdf copy of the panel's
1408 judgment, order, and opinion, if any, as to which rehearing is sought.

1409 (b) Unless otherwise ordered, a petition for rehearing may not exceed 4,200 words. The
1410 number of words must be calculated and certified under FRAP 32(a)(7).

1411 (b) An original and three (3) copies of a petition for panel rehearing shall must be filed
1412 unless otherwise directed by the court.

1413 Source: New provision in 2000.

1414 Cross-references: F.R.A.P. 35, 40

1415 Committee Comments: This ~~is a new~~ provision is designed to create parallel provisions for
1416 petitions for panel rehearing and rehearing en banc. It is not
1417 intended to alter the provisions of IOP 9.5.1 which provide that an
1418 unlabeled petition will be construed as requesting both panel
1419 rehearing and rehearing en banc.

1420 L.A.R. 45.0 DUTIES OF CLERKS

1421 45.1 Office - Where Kept

1422 The Clerk's Office ~~shall~~ will be kept in the United States Courthouse in the city of
1423 Philadelphia.

1424 Source: 1988 Court Rule 5.1

1425 Cross-references: FRAP 45

1426 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
1427 substantive change from prior Court Rule 5.1 is intended.

1428 45.2 Daily Listing of Cases

1429 The clerk ~~shall~~ must prepare, under the direction of the court, a list for each session of the
1430 court, on which so far as practicable each case ~~shall~~ will be listed for argument or submission on
1431 a day certain during the week.

1432 Source: 1988 Court Rule 12.2

1433 Cross-references: FRAP 34, 45; 3rd Cir. L.A.R. 34.1

1434 Committee Comments: Language describing the clerk's method of preparing the argument
1435 lists was ~~has been~~ deleted in 1995. Otherwise, no substantive
1436 change from prior Court Rule 12.2 is intended.
1437

1438 **L.A.R. 46.0 ATTORNEYS**1439 **46.1 Admission**

1440

1441 (a) Except as the court otherwise directs, practice before the court ~~shall be~~ is limited to
 1442 the members of the bar of this court. Admission to the bar of this court ~~shall be~~ is governed by
 1443 the provisions of FRAP 46 and such other requirements as the court may adopt from time to
 1444 time, provided, however, that (I) the applicant ~~shall~~ must be familiar with the contents of the
 1445 Federal Rules of Civil Procedure, Criminal Procedure, and Appellate Procedure, as well as with
 1446 the Local Appellate Rules and Internal Operating Procedures of this court, and (ii) the applicant
 1447 has read and understood those provisions of the above documents dealing with briefs, motions
 1448 and appendices. The fee for admission ~~shall be~~ are determined by order of the court and ~~shall be~~
 1449 are payable to the clerk as trustee. All funds received from such applications ~~shall~~ must be
 1450 deposited in the Administrative Fund of the court designated for this purpose.

1451 (b) Unless the court otherwise directs, an attorney ~~shall~~ must apply for admission to the
 1452 bar of this court when the attorney enters an appearance, or at such time as a motion, brief, or
 1453 other document is filed in this court. An attorney who will argue the appeal, if not previously
 1454 admitted to the bar of this court, may apply for admission on or before the date of oral argument.
 1455 Forms prescribed by the court for purpose of admission may be obtained from the clerk of this
 1456 court.

1457 (c) Any applicant for admission to the bar of this court may be admitted in open court on
 1458 oral motion, on motion before a single judge of this court, or as the court may otherwise from
 1459 time to time determine. However, qualified applicants to the bar of this court not previously
 1460 admitted and who will argue the appeal ~~shall~~ must be admitted in open court on oral motion.

1461 (d) An applicant for admission to the bar of this court may be admitted on written or oral
 1462 motion of a member of the bar of this court or a circuit or district judge of this circuit.

1463 (e) The initial brief filed by each party with the court ~~shall~~ must contain a certification
 1464 that at least one of the attorneys whose names appear on the brief is a member of the bar of this
 1465 court, or has filed an application for admission pursuant to this rule.

1466 Source: 1988 Court Rule 9.1

1467 Cross-references: FRAP 46; 3rd Cir. L.A.R. 28.3(a); Third Circuit Attorney
 1468 Disciplinary Rules

1469 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
 1470 substantive change from prior Court Rule 9.1 is intended. It is not
 1471 intended that current practice permitted by law be changed. See
 1472 L.A.R. Misc. 113.2 for requirements for registration for electronic

1473 filing.

1474 **46.2 Entry of Appearance**

1475 Within ten (10) days of notification of the docketing of a case, counsel for the appellant
 1476 or petitioner shall must file an entry of a written appearance which shall must include an address
 1477 where notices and papers may be mailed to or served upon him or her. Counsel must include an
 1478 e-mail address. The entry of appearance form shall must be filed and served on all parties
 1479 pursuant to L.A.R. 113. Not later than ten days after the docketing of the appeal, counsel for all
 1480 parties in the trial court or agency below and any other persons entitled to participate in the
 1481 proceedings as appellees or respondents and desiring to do so, shall must file and serve similar
 1482 entries of a written appearances. Any such party or other person on whose behalf counsel fails to
 1483 file an entry of a written appearance within the time fixed by this rule will not be entitled to
 1484 receive notices or copies of briefs and appendices until an entry of a written appearance has been
 1485 entered for such party. A party desiring to appear without counsel may so notify the clerk of this
 1486 court in a document filed pursuant to L.A.R. 113.2(b) writing and shall will be deemed to appear
 1487 pro se in which case the pro se party must be served directly with copies of notices, motions, and
 1488 briefs.

1489 Source: 1988 Court Rule 9.2

1490 Cross-references: FRAP 46

1491 Committee Comments: This rule was renumbered by the 1995 revision of the rules; no
 1492 substantive change from prior Court Rule 9.2 is intended. The
 1493 requirement of an e-mail address was added in 2008.

1494 **46.3 Entry of Appearance by Eligible Law Students**

1495 (a) Eligibility

1496 (1) An eligible law student may enter an appearance in this court on behalf of any
 1497 indigent prisoner in any civil rights or habeas corpus matter. An indigent who was confined at
 1498 the commencement of the district court action shall will be considered an "indigent prisoner" for
 1499 purposes of this rule, even though the prisoner may have been subsequently released. The
 1500 person on whose behalf the student is appearing must indicate in writing his or her consent to
 1501 that appearance and a supervising lawyer must also indicate in writing his or her approval of that
 1502 appearance.

1503 (2) In each case the written consent and approval referred to above shall must be
 1504 filed in the record of the case and shall must be brought to the attention of the court.

1505 (3) An eligible law student may engage in other activities under the general

1506 supervision of a member of the bar of this court outside the personal presence of that lawyer for
1507 the purpose of preparation of briefs, abstracts, and other documents to be filed in this court, but
1508 such documents must be signed by the supervising lawyer.

1509 (4) An eligible law student may participate in oral argument in this court but only
1510 in the presence of the supervising lawyer, who ~~shall~~ must be prepared to supplement any written
1511 or oral statement made by the student.

1512 (b) Requirements and Limitations. In order to make an appearance pursuant to this rule,
1513 the law student must:

1514 (1) Be duly enrolled in a law school approved by the American Bar Association.

1515 (2) Have completed legal studies amounting to at least four semesters, or the
1516 equivalent if the school is on some basis other than a semester basis.

1517 (3) Be certified by the dean of his or her law school as being of good character
1518 and competent legal ability, and as being adequately trained to perform as an eligible law student
1519 under this rule.

1520 (4) Be introduced to this court by an attorney admitted to practice in this court
1521 and take the following oath or affirmation in open court:

1522 "I, [name], do swear (or affirm) that I will support the Constitution of the
1523 United States, and that, in practicing as an eligible law student under 3rd
1524 Cir. L.A.R. 46.3 I ~~shall~~ will conduct myself strictly in accordance with the
1525 terms of that rule and according to law."

1526 (5) Neither ask for nor receive any compensation or remuneration of any kind
1527 from the person on whose behalf the law student renders service, but this ~~shall~~ will not prevent a
1528 lawyer, legal aid bureau, law school, public defender agency, or the government from paying
1529 compensation to the eligible law student, nor ~~shall~~ will it prevent any agency from making such
1530 charges for its services as it may otherwise properly require.

1531 (6) Certify in writing that the law student has read and is familiar with the rules
1532 of professional conduct governing attorneys practicing in the jurisdiction of the supervising
1533 attorney.

1534 (c) Certification

1535 (1) The certification of a student by the law school dean ~~shall~~ must be filed with
1536 the clerk of court and, unless it is sooner withdrawn, ~~shall~~ will remain in effect until the
1537 expiration of eighteen (18) months after it is filed, or until the announcement of the results of the
1538 first bar examination of the state where the student's law school is located following the student's

1539 graduation, whichever is earlier. For any student who passes that examination or who is
 1540 admitted to the bar without taking an examination, the certification ~~shall~~ will continue in effect
 1541 until the date the student is admitted to the bar. The student ~~shall be~~ is responsible for advising
 1542 the clerk in writing of any change in status or event affecting the student's certification.

1543
 1544 (2) The certification may be withdrawn by the dean at any time by sending
 1545 ~~mailing~~ a notice to that effect to the clerk of the court. It is not necessary that the notice state the
 1546 cause for withdrawal.

1547 (3) The certification may be terminated by this court at any time without notice
 1548 or hearing and without any showing of cause.

1549 (d) Supervision. The member of the bar under whose supervision an eligible law student
 1550 does any of the things permitted by this rule ~~shall~~ must:

1551 (1) Be a lawyer in good standing of the bar of this court.

1552 (2) Assume personal professional responsibility for the student's guidance in any
 1553 work undertaken and for supervising the quality of the student's work.

1554 (3) Assist the student to the extent the supervising lawyer considers it necessary.

1555 Source: 1988 Court Rule 9.3

1556 Cross-references: FRAP 46; Third Circuit Attorney Disciplinary Rules

1557 Committee Comments: The Model Rules of Professional Responsibility replace the
 1558 Canons of Professional Ethics. No substantive change from prior
 1559 Court Rule 9.3 is intended.

1560 **46.4 Signing Papers**

1561 All papers, motions and briefs must be signed by an attorney or by a party appearing pro
 1562 se. [Electronically-filed documents may be signed with either an electronically generated signature](#)
 1563 or "s/ typed name" in the signature location. [Electronic signatures are acceptable.](#)

1564 Source: Fed. R. Civ. P. 11

1565 Cross-references: L.A.R. 28.4; L.A.R. Misc. 113.9

1566 Committee Comments: This rule is derived from Fed. R. Civ. P. 11 which requires
 1567 signatures on all papers. The signing of documents is important
 1568 because it constitutes a certificate by the attorney or party that he
 1569 or she has read the pleading or brief to ensure that it complies with
 1570 all federal and local rules. The requirement is interpreted broadly

1571 and the attorney of record may designate another person to sign the
1572 brief. If a party is represented by multiple counsel, the signature
1573 from only one attorney of record is required. The rule was
1574 amended in 2008 to permit electronic signatures.

1575

1576 **L.A.R. 47.0 RULES BY COURTS OF APPEALS**

1577 **47.1 Advisory Committee**

1578 Any proposed change in the Third Circuit Local Appellate Rules ~~shall~~ will be forwarded
1579 for comment to the Lawyers Advisory Committee, which constitutes the advisory committee for
1580 the study of the rules of practice as required by 28 U.S.C. § 2077(b).

1581 Source: None

1582 Cross-references: 28 U.S.C. § 2077(b)

1583 Committee Comments: The 1988 amendments to the Judicial Code provide for the
1584 appointment of an advisory committee to study, *inter alia*, local
1585 rules of practice. 3rd Cir. L.A.R. 47.1 specifies the Lawyers
1586 Advisory Committee (LAC) as the statutorily-required review
1587 committee, and specifies that any proposed changes in these rules
1588 ~~shall~~ be studied by the LAC before they are adopted.

1589 **L.A.R. 48.0 SPECIAL MASTERS**

1590 **48.1 Special Masters**

1591 The court may appoint a master to hold hearings, if necessary, and make
1592 recommendations as to any auxiliary matter requiring a factual determination in the court of
1593 appeals. If the master is not a court officer, the compensation to be allowed to the master ~~shall~~
1594 will be fixed by the court, and ~~shall~~ will be charged upon such of the parties as the court may
1595 direct.

1596 Source: None

1597 Cross-references: FRAP 48

1598 Committee Comments: New provision in 1997. This rule is intended to formalize by rule
1599 the court's practice of appointing special masters to resolve factual

1600 questions where appropriate and needed by the court.

1601 Miscellaneous - 3rd Circuit Local Appellate Rules

1602 **L.A.R. MISC. 101.0 CONSTITUTION OF THE COURT - PANELS - QUORUM**1603 **101.1 The Court - Judges who Constitute it**

1604 The court consists of the circuit judges in regular active service. The circuit justice and
1605 other justices and judges so designated or assigned by the chief judge are eligible to sit as judges
1606 of the court.

1607 Source: 1988 Court Rule 2.1

1608 Cross-references: None

1609 Committee Comments: Prior Court Rule 2.1 has no counterpart in FRAP and is therefore
1610 classified as Miscellaneous. No substantive change from prior
1611 Court Rule 2.1 is intended.

1612 **101.2 Quorum - Adjournment in Absence of - By Whom Adjourned**

1613 A majority of the number of judges authorized to constitute the court or a panel thereof
1614 ~~shall~~ constitutes a quorum. When necessary, a judge may attend via audio or video conference.
1615 If a quorum does not attend on any day appointed for holding a session of the court or a panel
1616 thereof, any judge who does attend may adjourn the court or panel, or, in the absence of any
1617 judges, the clerk may adjourn the court or panel.

1618 Source: 1988 Court Rule 2.5

1619 Cross-references: 28 U.S.C. § 46(d)

1620 Committee Comments: Prior Court Rule 2.5 has no counterpart in FRAP and is therefore
1621 classified as Miscellaneous. All references in the prior rule to
1622 "divisions" of this court have been changed to "panels."
1623 Otherwise, no substantive change from prior Court Rule 2.5 is
1624 intended. The rule was amended in 2008 to clarify that judges
1625 may attend by audio or video conference.

1626 **L.A.R. MISC. 102.0 SESSIONS**1627 **102.1 Sessions - When and Where Held**

1628 (a) Stated sessions of the court or of its panels ~~shall~~ will be held at Philadelphia or at
1629 another place within the circuit commencing on such dates each month as the court ~~shall~~
1630 designates, and in the Virgin Islands commencing at such dates as the court ~~shall~~ designates.

1631 Pursuant to request of the parties or order of the court, a Virgin Islands case may be heard at
 1632 another place in the circuit. The stated sessions of the court in the Virgin Islands ~~shall~~ will be
 1633 held in Charlotte Amalie in even-numbered years and in Christiansted in odd-numbered years
 1634 unless the court directs otherwise.

1635 (b) Special sessions may be held at any time or place within the circuit when so ordered
 1636 by the court.

1637 Source: 1988 Court Rules 3.2 and 3.3

1638 Cross-references: None

1639 Committee Comments: Prior Court Rules 3.2 and 3.3 have no counterpart in F.R.A.P. and
 1640 are therefore classified as Miscellaneous. The rule has been
 1641 revised to give the court the option to schedule its Virgin Islands
 1642 sessions in months other than April and December. A reference to
 1643 the "divisions" of this court has been changed to "panels."
 1644 Otherwise, no substantive change from prior Court Rules 3.2 and
 1645 3.3 is intended. The rule has been revised so that the court may sit
 1646 at other places within the circuit and may, in appropriate
 1647 circumstances, reverse the place or alter the timing of the Virgin
 1648 Islands sitting.

1649 **L.A.R. MISC. 103.0 MARSHAL, CRIER, AND OTHER OFFICERS**

1650 **103.1 Who Shall Attend Court**

1651 A crier and, if requested, the marshal of the district in which the sessions of the court are
 1652 held ~~shall~~ will be in attendance during the sessions of the court.

1653 Source: 1988 Court Rule 6.1

1654 Cross-references: None

1655 Committee Comments: Prior Court Rule 6.1 has no counterpart in FRAP and is therefore
 1656 classified as Miscellaneous. ~~A reference to "divisions" of this~~
 1657 ~~court has been changed to "panels."~~ Otherwise, No substantive
 1658 change from prior Court Rule 6.1 is intended.

1659 **L.A.R. MISC. 104.0 COURT LIBRARIES**

1660 **104.1 Regulations Governing Use of Libraries**

1661 The law libraries ~~shall~~ will be open during such hours as are reasonable to satisfy the

1662 needs of the court, and ~~shall~~ will be governed by such regulations as the librarian, with the
1663 approval of the court's library committee, may from time to time make effective.

1664 Source: 1988 Court Rule 7.3

1665 Cross-references: None

1666 Committee Comments: Prior Court Rule 7.3 has no counterpart in FRAP and is therefore
1667 classified as Miscellaneous. No substantive change from prior
1668 Court Rule 7.3 is intended.

1669 **L.A.R. MISC. 105.0 JUDICIAL CONFERENCE OF THE THIRD CIRCUIT**

1670 **105.1 Attendance at Invitations to the Conference**

1671 In addition to judicial participants, attendance at the Judicial Conference of the Third
1672 Circuit may be open at the discretion of the chief judge to any member of the bar of any court
1673 within the circuit interested in the work of the courts and the administration of justice in the
1674 circuit.

1675 Source: 1988 Court Rule 18.2

1676 Cross-references: 28 U.S.C. § 333

1677 Committee Comments: Prior Court Rule 18.2 has no counterpart in F.R.A.P. and is
1678 therefore classified as Miscellaneous. The rule has been revised to
1679 reflect the court's open invitation policy.

1680 **L.A.R. MISC. 106.0 FILING OF PAPERS UNDER SEAL**

1681 **106.1 Necessity; Grand Jury Matters; Previously Impounded Records; Unsealing**

1682 (a) Generally. With the exception of matters relating to grand jury investigations, filing
1683 of papers under seal without prior court approval is discouraged. If a party believes a portion of
1684 a brief or other papers merits treatment under seal, the party ~~shall~~ must file a motion setting forth
1685 with particularity the reasons why sealing is deemed necessary. Any other party may file
1686 objections, if any, within seven (7) calendar days.

1687 A motion to seal must explain the basis for sealing and specify the desired duration of the
1688 sealing order. If discussion of confidential material is necessary to support the motion to seal,
1689 the motion may be filed provisionally under seal. Rather than automatically requesting the
1690 sealing of an entire brief, motion, or other filing, litigants should consider whether argument
1691 relating to sealed materials may be contained in a separate sealed supplemental brief, motion or

1692 filings. Sealed documents must not be included in a regular appendix, but may be submitted in a
1693 separate, sealed volume of the appendix. In addressing material under seal (except for the
1694 presentencing report) in an unsealed brief or motion or oral argument counsel are expected not to
1695 disclose the nature of the sealed material and to apprise the court that the material is sealed.

1696 (b) Grand Jury Matters. In matters relating to grand jury investigations, when there is
1697 inadequate time for a party to file a motion requesting permission to file papers under seal, the
1698 party may file briefs and other papers using initials or a John or Jane Doe designation to avoid
1699 disclosure of the identity of the applicant or the subject matter of the grand jury investigation.
1700 Promptly thereafter, the party ~~shall~~ must file a motion requesting permission to use such a
1701 designation. All responsive briefs and other papers ~~shall~~ must follow the same format until
1702 further order of the court.

1703

1704 (c) Records Impounded in the District Court.

1705 (1) Criminal Cases and Cases Collaterally Attacking Convictions. Motions,
1706 briefs, other papers, and any other part of the record related to any grand jury investigation,
1707 presentence report, statement of reasons for the sentence and other similar material in a criminal
1708 case or a case collaterally attacking a conviction (cases under 28 U.S.C. §§ 2241, 2254, 2255),
1709 which were filed with the district court under seal pursuant to statute, rule or an order of
1710 impoundment, and which constitute part of the record transmitted to this court, ~~shall~~ remain
1711 subject to the district court's impoundment order and ~~shall~~ will be placed under seal by the clerk
1712 of this court until further order of this court. In cases in which impounded documents other than
1713 grand jury materials, presentence reports, statements of reasons for judgment, or other
1714 documents required to be sealed by statute or rule, are included in the record ~~sent~~ transmitted
1715 to this court under L.A.R. 11.2, the party seeking to have the document sealed ~~shall~~ must file a
1716 motion within 21 days of receiving notice of the docketing of the appeal in this court, explaining
1717 the basis for sealing and specifying the desired duration of the sealing order. If discussion of
1718 confidential material is necessary to support the motion to seal, the motion may be filed
1719 provisionally under seal.

1720 (2) Civil Cases. When the district court impounds part or all of the papers in a
1721 civil case, they will remain under seal in this court for thirty (30) days after the filing of the
1722 notice of appeal to give counsel an opportunity to file a motion to continue the impoundment,
1723 setting forth the reasons therefor. A motion to continue impoundment must explain the basis for
1724 sealing and specify the desired duration of the sealing order. If the motion does not specify a
1725 date, the documents will be unsealed, without notice to the parties, five years after conclusion of
1726 the case. If discussion of confidential material is necessary to support the motion to seal, the
1727 motion may be filed provisionally under seal. If a motion to continue impoundment is filed, the
1728 documents ~~shall~~ will remain sealed until further order of this court.

1729 [\(d\) The method of filing of motions to seal and sealed documents is governed by L.A.R.](#)
1730 [113.7.](#)

1731 [\(e\) The filing of unredacted versions of certain redacted documents is governed by](#)
1732 [L.A.R. 113.12.](#)

1733 Source: 1988 Court Rule 21.3

1734 Cross-references: 3rd Cir. L.A.R. 30.3

1735 Committee Comments: Prior Court Rule 21.3 has no counterpart in F.R.A.P. and is
1736 therefore classified as Miscellaneous. The rule has been revised to
1737 place an affirmative obligation to file a motion on the party in a
1738 civil matter who wishes to continue the sealing of papers on
1739 appeal. The archiving center will not accept sealed documents,
1740 which presents storage problems for the court. The rule has been
1741 amended to require the parties to specify how long documents
1742 must be kept under seal after the case is closed. Calendar days was
1743 specified in 2008.

1744 **L.A.R. MISC. 107.0 SANCTIONS**

1745 **107.1 Dismissal of Appeal for Failure to Pay Certain Fees**

1746 (a) The clerk is authorized to dismiss the appeal if the appellant does not pay the
1747 docketing fee within fourteen (14) days after docketing, as prescribed by 3rd Cir. L.A.R. 3.3.

1748 (b) The appellant's failure to comply with 3rd Cir. L.A.R. 11.1 regarding transcription
1749 fees ~~shall be~~ is grounds for dismissal of the appeal.

1750 Source: 1988 Court Rules 15.1, 28.1

1751

1752 Cross-references: FRAP 3(a), 11; 3rd Cir. L.A.R. 3.3

1753 Committee Comments: For the convenience of counsel, all rules relating to sanctions are
1754 included in 3rd Cir. L.A.R. Misc. 107.0. Where these rules have
1755 some counterpart in FRAP, they are included in both the
1756 corresponding 3rd Cir. L.A.R. and Misc. 107.0. Where they have
1757 no counterpart in FRAP, they are included in 3rd Cir. L.A.R. Misc.
1758 107.0 only. Only the parts of prior Court Rules 15.1 and 28.1
1759 setting forth sanctions have been included here. No substantive
1760 change from prior Court Rules 15.1 and 28.1 is intended.

1761 **107.2 Dismissal for Failure to Prosecute**

1762 (a) When an appellant fails to comply with the Federal Rules of Appellate Procedure or
1763 the Local Appellate Rules of this court, the clerk ~~shall~~ will issue written notice to counsel or to

1764 the appellant who appears pro se that upon the expiration of fourteen (14) days from the date of
1765 the notice, the appeal may be dismissed for want of prosecution unless appellant remedies the
1766 deficiency within that time. If the deficiency is not remedied within this period, the clerk is
1767 authorized to dismiss the appeal for want of prosecution and issue a certified copy thereof to the
1768 clerk of the district court as the mandate. The appellant ~~shall~~ is not ~~be~~ entitled to remedy the
1769 deficiency after the appeal is dismissed except by order of the court. A motion to set aside such
1770 an order must be justified by the showing of good cause and ~~may not~~ must be filed ~~after~~ within
1771 ten (10) days of the date of dismissal. If the appeal is one taken from the District Court of the
1772 Virgin Islands, an additional ten (10) days ~~shall~~ will be added to the time limits specified in this
1773 paragraph.

1774 (b) Notwithstanding subsection (a), if an appellant fails to comply with the Federal Rules
1775 of Appellate Procedure and the Local Appellate Rules with respect to the timely filing of a brief
1776 and appendix, at any time after the seventh day following the due date, the clerk is authorized to
1777 dismiss the appeal for want of timely prosecution. The procedure to be followed in requesting
1778 an order to set aside dismissal of the appeal is the same as that set forth in subsection (a).

1779 Source: 1988 Court Rule 28.2

1780 Cross-references: FRAP 3(a)

1781 Committee Comments: Prior Court Rule 28.2 ~~has~~ had no counterpart in FRAP and is
1782 therefore classified as Miscellaneous. No substantive change from
1783 prior Court Rule 28.2 is intended.

1784 **107.3 Non-Conforming Motion, Brief or Appendix**

1785 If a motion, brief, or appendix submitted for filing does not comply with F.R.A.P. 27 - 32
1786 or 3rd Cir. L.A.R. 27.0 - 32.0, the clerk ~~shall~~ will file the document, but notify the party of the
1787 need to promptly correct the deficiency. The clerk ~~shall~~ will also cite this rule and indicate to
1788 the defaulting party how he or she failed to comply. In the event a party subsequently corrects
1789 the deficiencies in either a brief or appendix pursuant to this rule and that party prevails on
1790 appeal, costs which were incurred in order to bring the brief or appendix into compliance may
1791 not be allowed. If the party fails or declines to correct the deficiency, the clerk ~~shall~~ must refer
1792 the defaulting document, any motion or answer by the party, and pertinent correspondence to a
1793 judge of this court for review. If the court finds that the party continues not to be in compliance
1794 with the rules despite the notice by the clerk, the court may, in its discretion, impose sanctions as
1795 it may deem appropriate, including but not limited to the dismissal of the appeal, striking of the
1796 document, imposition of costs or disciplinary sanctions upon counsel.

1797 Source: 1988 Court Rule 21.4

1798 Cross-references: F.R.A.P. 3(a), 30(b)(2), 38; 3rd Cir. L.A.R. 27.0 - 32.0

1799 Committee Comments: Prior Court Rule 21.4 ~~has~~ had no counterpart in F.R.A.P. and is
1800 therefore classified as Miscellaneous. No substantive change from
1801 prior Court Rule 21.4 is intended.

1802 **107.4 Sanctions Pursuant to F.R.A.P. 30(b)(2)**

1803 (a) The court, *sua sponte* by Rule to Show Cause or on the motion of any party, may
1804 impose sanctions in the form of denial of all or some of the costs of the appeal upon finding that
1805 any party has unreasonably and vexatiously caused the inclusion of materials in an appendix that
1806 are unnecessary for the determination of the issues presented on appeal.

1807 (b) A party filing such a motion ~~shall~~ must do so not later than ten (10) days after a bill
1808 of costs has been served. The movant ~~shall~~ must submit with the motion an itemized statement
1809 specifically setting forth, by name and appendix page number, the item or items that the movant
1810 asserts were unnecessarily included in the appendix.

1811 (c) Any party against whom sanctions are requested may file an answer to the motion or
1812 Rule to Show Cause, which ~~shall~~ must be filed within ten (10) days after service of the motion or
1813 Rule to Show Cause.

1814 Source: 1988 Court Rule 20.4

1815 Cross-references: F.R.A.P. 30(b)(2); 3rd Cir. L.A.R. 30.5

1816 Committee Comments: This Miscellaneous Rule is identical to 3rd Cir. L.A.R. 30.5. No
1817 substantive change from prior Court Rule 20.4 is intended.

1818 **L.A.R. MISC. 108.0 APPLICATIONS FOR ATTORNEY'S FEES AND EXPENSES**

1819 **108.1 Application For Fees**

1820 (a) Except as otherwise provided by statute, all applications for an award of attorney's
1821 fees and other expenses relating to a case filed in this court, regardless of the source of authority
1822 for assessment, ~~shall~~ must be filed within thirty (30) days after the entry of this court's judgment,
1823 unless a timely petition for rehearing or [suggestion petition](#) for rehearing en banc has been filed,
1824 in which case a request for attorney's fees ~~shall~~ must be filed within fourteen (14) days after the
1825 court's disposition of such petition or [suggestion petition](#). Such application ~~shall~~ must be filed
1826 with the clerk in the time set forth above whether or not the parties seek further action in the case
1827 or further review from any court.

1828 (b) The court ~~shall~~ will strictly adhere to the time set forth above and grant exceptions
1829 only in extraordinary circumstances.

1830 (c) The application ~~shall~~ must include a short statement of the authority pursuant to
1831 which the party seeks the award. The application ~~shall~~ must also show the nature and extent of
1832 services rendered and the amount sought, including an itemized statement in affidavit form from
1833 the attorney stating the actual time expended and the rate at which fees are computed, together
1834 with a statement of expenses for which reimbursement is sought.

1835 Source: 1988 Court Rule 27.1

1836 Cross-references: None

1837 Committee Comments: Prior Court Rule 27.1 has no counterpart in FRAP and is therefore
1838 classified as Miscellaneous. No substantive change from prior
1839 Court Rule 27.1 is intended. L.A.R. Misc. 108.3 addresses claims
1840 for attorney's fees and expenses under the Criminal Justice Act, 18
1841 U.S.C. § 3006A.

1842 **108.2 Objections to Applications for Fees**

1843 Written objections to an allowance of attorney's fees, setting forth specifically the basis
1844 for objection, ~~shall~~ must be filed within ten (10) days after service of the application. Thereafter,
1845 the court may, when appropriate, either refer the application to the district court or agency where
1846 the case originated or refer the application to a master.

1847 Source: 1988 Court Rule 27.2

1848 Cross-references: FRAP 48; 3rd Cir. L.A.R. 48.0

1849
1850 Committee Comments: Prior Court Rule 27.2 has no counterpart in FRAP and is therefore
1851 classified as Miscellaneous. No substantive change from prior
1852 Court Rule 27.2 is intended.

1853

1854 **108.3 Fee Applications Under 18 U.S.C. § 3006A**

1855 All claims for attorney's fees and reimbursement for expenses reasonably incurred by
1856 counsel in representing a defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, ~~shall~~ be
1857 must filed with the clerk no later than 45 days after the conclusion of the attorney's
1858 representation. Such claims ~~shall~~ must be itemized and prepared on prescribed forms.

1859 Source: 1988 Court Rule 30.1

1860 Cross-references: 18 U.S.C. § 3006A; Third Circuit Criminal Justice Act Plan,
1861 Chapter 4(2) (1991)

1862 Committee Comments: Prior Court Rule 30.1 has no counterpart in FRAP and is therefore
1863 classified as Miscellaneous. No substantive change from prior
1864 Court Rule 30.1 is intended.

1865 **L.A.R. MISC. 109.0 COUNSEL IN DIRECT CRIMINAL APPEALS**

1866 **109.1 Trial Counsel to Continue Representation on Appeal**

1867 Trial counsel in criminal cases, whether retained or appointed, are expected to continue
1868 on appeal absent extraordinary circumstances. After the entry of an order of judgment, counsel
1869 will not be permitted to withdraw from a direct criminal appeal without specific leave of this
1870 court. Trial counsel not members of the bar of this court ~~shall~~ must promptly move for
1871 admission pursuant to 3rd Cir. L.A.R. 46.1.

1872 Source: None

1873 Cross-references: None

1874 Committee Comments: ~~New provision.~~ 3rd Cir. L.A.R. Misc. 109.1 is designed to remind
1875 trial counsel in criminal cases that they are expected to continue
1876 the representation of their clients through appeal. "Trial counsel"
1877 includes counsel who have represented a client at pretrial, plea or
1878 sentencing proceedings.

1879 **109.2 Motions by Trial Counsel to Withdraw Representation**

1880 (a) Where, upon review of the district court record, ~~trial~~ counsel is persuaded that the
 1881 appeal presents no issue of even arguable merit, ~~trial~~ counsel may file a motion to withdraw and
 1882 supporting brief pursuant to Anders v. California, 386 U.S. 738 (1967), which ~~shall~~ must be
 1883 served upon the appellant and the United States. The United States ~~shall~~ must file a brief in
 1884 response. Appellant may also file a brief in response pro se. After all briefs have been filed, the
 1885 clerk will refer the case to a merits panel. If the panel agrees that the appeal is without merit, it
 1886 will grant ~~trial~~ counsel's Anders motion, and dispose of the appeal without appointing new
 1887 counsel. If the panel finds arguable merit to the appeal, or that the Anders brief is inadequate to
 1888 assist the court in its review, it will ~~discharge current counsel, appoint substitute counsel,~~ order
 1889 supplemental briefing and restore the case to the calendar. The panel will also determine
 1890 whether to continue the appointment of current counsel or to direct the clerk to discharge current
 1891 counsel and appoint new counsel.

1892 (b) In cases in which a motion to withdraw filed by counsel appointed under the
 1893 Criminal Justice Act has been granted after the filing of a brief pursuant to Anders v. California,
 1894 386 U.S. 738 (1967), the court in its decision determining the case may state that the issues
 1895 presented in the appeal lack legal merit for purposes of counsel filing a petition for writ of
 1896 certiorari in the Supreme Court. In such a case counsel ~~shall be~~ is under no obligation to file a
 1897 petition. In all other cases in which counsel appointed under the Criminal Justice Act is of the
 1898 opinion, in his or her professional judgment, that no issues are present which warrant the filing
 1899 of a petition for writ of certiorari in the Supreme Court, counsel ~~shall~~ must promptly file with the
 1900 court of appeals a motion stating that opinion with particularity and requesting leave to
 1901 withdraw. *See Austin v. United States*, 513 U.S. 5 (1994). Any such motion ~~shall~~ must be
 1902 served on the appellant and the United States.

1903 (c) If the court is of the opinion in a case in which counsel has been appointed under the
 1904 Criminal Justice Act that there are no issues present which warrant the filing of a petition for
 1905 writ of certiorari, the court may include a statement to that effect in its decision and counsel may
 1906 thereafter file the appropriate motion to withdraw. Any such motion ~~shall~~ must be served on the
 1907 appellant and the United States. The absence of a statement by the court with respect to the
 1908 merit of issues which might be presented to the Supreme Court ~~shall~~ must not be construed as an
 1909 indication of the opinion of the court of appeals of merit or lack of merit of any issue.

1910 Source: None

1911 Cross-references: Third Circuit Criminal Justice Act Plan, Chapter 3

1912 Committee Comments: New provision in 1995. 3rd Cir. L.A.R. Misc. 109.2 sets out for
 1913 the first time the procedure by which trial counsel may withdraw
 1914 from a non-meritorious criminal appeal pursuant to Anders v.
 1915 California, 386 U.S. 738 (1967). Addition of sections (b) and (c)
 1916 was made in response to Austin v. United States, 513 U.S. 5

1917 (1994). Subsection (a) was revised in 2008 to conform with
 1918 United States v. Marvin, 211 F.3d 778, 782 n.4 (3d Cir. 2000).

1919 **L.A.R. MISC. 110.0 CERTIFICATION OF QUESTIONS OF STATE LAW**

1920 **110.1 Certification of Questions of State Law**

1921 When the procedures of the highest court of a state provide for certification to that court
 1922 by a federal court of questions arising under the laws of that state which will control the outcome
 1923 of a case pending in the federal court, this court, sua sponte or on motion of a party, may certify
 1924 such a question to the state court in accordance with the procedures of that court, and will stay
 1925 the case in this court to await the state court's decision whether to accept the question certified.
 1926 The certification will be made after the briefs are filed in this court. A motion for certification
 1927 ~~shall~~ must be included in the moving party's brief.

1928 **L.A.R. MISC. 111.0 DEATH PENALTY CASES**

1929 **111.1 Scope**

1930 This rule, in conjunction with all other applicable rules, ~~shall~~ governs all cases in which
 1931 this court is required to rule on the imposition of the death penalty. The rule ~~shall be~~
 1932 isapplicable to direct criminal appeals, appeals from the grant or denial of a motion to vacate
 1933 sentence or a petition for writ of habeas corpus, appeals from the grant or denial of requests for
 1934 stay or injunctive relief, applications under 28 U.S.C. § 2244 and/or § 2255, and original
 1935 petitions for writ of habeas corpus.

1936 Source: 1988 Court Rule 29 (Introductory Paragraph)

1937 Cross-references: 18 U.S.C. § 3731, 28 U.S.C. §§ 2254, 2255; Federal Rules of
 1938 Appellate Procedure; 3rd Cir. L.A.R.; 3rd Cir. Internal Operating
 1939 Procedures

1940 Committee Comments: Prior Court Rule 29 (Introductory Paragraph) has no counterpart in
 1941 F.R.A.P. and is therefore classified as Miscellaneous. 3rd Cir.
 1942 L.A.R. Misc. 111.1 broadens the scope of the prior rule to provide
 1943 for review of death sentences imposed on federal as well as state
 1944 prisoners. Where applicable, 3rd Cir. L.A.R. Misc. 111.2 - 111.7
 1945 are similarly amended to reflect the broadened scope of 3rd Cir.
 1946 Misc. 111.0.

1947 **111.2 Preliminary Requirements**

1948 (a) In aid of this court's potential jurisdiction, each party in any proceeding filed in any
1949 district court in this circuit challenging the imposition of a sentence of death pursuant to a
1950 federal or state court judgment ~~shall~~ must file a "Certificate of Death Penalty Case" with any
1951 initial pleading filed in the district court. A certificate ~~shall~~ must also be filed by the U.S.
1952 Attorney upon return of a verdict of death in a federal criminal case. The certificate will include
1953 the following information: names, addresses, and telephone numbers of parties and counsel; if
1954 set, the proposed date of execution of sentence; and the emergency nature of the proceedings.
1955 Upon docketing, the clerk of the district court will transmit a copy of the certificate, together
1956 with a copy of the petition, to the clerk of this court.

1957 (b) Upon entry of an appealable order in the district court, the clerk of the district court
1958 and appellant's counsel will prepare the record for appeal. The record will be transmitted to this
1959 court within five (5) calendar days after the filing of a notice of appeal from the entry of an
1960 appealable order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1), unless
1961 the appealable order is entered within fourteen (14) days of the date of a scheduled execution, in
1962 which case the record ~~shall~~ must be transmitted immediately by expedited delivery.

1963 (c) Upon the entry of a warrant or order setting an execution date in any case within the
1964 geographical boundaries of this circuit, and in aid of this court's potential jurisdiction, the clerk
1965 is directed to monitor the status of the execution and any pending litigation and to establish
1966 communications with all parties and relevant state and/or federal courts. Without further order
1967 of this court, the clerk may direct parties to lodge with this court up to five copies of (1) relevant
1968 portions of previous state and/or federal court records, or the entire record, and (2) pleadings,
1969 briefs, and transcripts of any ongoing proceedings.

1970 Source: 1988 Court Rule 29.1

1971 Cross-references: 18 U.S.C. § 3731, 28 U.S.C. §§ 1291, 1292

1972 Committee Comments: Prior Court Rule 29.1 has no counterpart in F.R.A.P. and is
1973 therefore classified as Miscellaneous. The prior rule's general
1974 reference to a "certificate providing specific information" has been
1975 changed to the more specific "Certificate of Death Penalty Case"
1976 to reflect current practice. Subsection (c) directs the clerk to
1977 establish lines of communication with the sentencing court and
1978 other concerned parties and to authorize the filing of papers and
1979 court records in advance of the court's jurisdiction. This section
1980 has been added because some parties in recent cases have
1981 challenged the clerk's authority to request information in the
1982 absence of a docketed appeal. Because early warning is critical,
1983 the court expressly delegates this authority to the clerk pursuant to
1984 this local rule. Calendar days was specified in 2008.

1985 **111.3 Review of Direct Criminal Appeals, Petitions for Writs of Habeas Corpus**
 1986 **and Motions to Vacate Sentence**

1987 (a) In all such cases, the district court ~~shall~~ must articulate the reasons for its disposition
 1988 of the case in a written opinion, which ~~shall~~ must be expeditiously prepared and filed, or by an
 1989 oral opinion from the bench, which ~~shall~~ must be promptly transcribed.

1990 (b) The district court ~~shall~~ must state whether a certificate of appealability is granted or
 1991 denied at the time a final decision is entered on the merits of a claim seeking relief under 28
 1992 U.S.C. § 2254 or 2255. If the district court grants the certificate of appealability, it ~~shall~~ must
 1993 state the issues that merit the granting of the certificate and it ~~shall~~ must also grant a stay
 1994 pending disposition of the appeal except as provided in 28 U.S.C. § 2262.

1995 (c) The denial of a certificate of appealability by the district court will not delay
 1996 consideration by this court of a motion for stay or review of the merits. If the court grants a
 1997 certificate of appealability, it may thereafter affirm, reverse or remand without further briefing
 1998 under I.O.P. 10.6 or may direct full briefing and oral argument.

1999 Source: 1988 Court Rule 29.2

2000 Cross-references: 28 U.S.C. § 2254

2001 Committee Comments: Subsection (c) is intended to clarify this court's practice with
 2002 respect to certificates of appealability in death penalty cases. In
 2003 accordance with *Barefoot v. Estelle*, 463 U.S. 880 (1982), the court
 2004 of appeals may consider, in addition to whether there has been a
 2005 substantial showing of the denial of a constitutional right, the
 2006 severity of the sentence in determining whether a certificate of
 2007 appealability should be issued. Technical changes were made to
 2008 conform to the Antiterrorism and Effective Death Penalty Act.
 2009 ~~This rule takes no position on the question of whether a district~~
 2010 ~~court can grant or deny a certificate of appealability.~~

2011 **111.4 Motion for Stay of Execution of a Federal or State Court Judgment and**
 2012 **Motions to Vacate Orders Granting a Stay**

2013 (a) Except as provided in 28 U.S.C. § 2262, motions for stay of execution and motions to
 2014 vacate stay orders may be filed in docketed requests for certificate of appealability, applications
 2015 to file a second or successive petition, or appeals from the denial of injunctive relief. No such
 2016 motion may be entertained unless a case has been docketed in this court. If a stay application is
 2017 submitted to this court before a district court decision is entered, the clerk ~~shall~~ must transmit the

2018 motion to the panel designated to hear and dispose of the case.

2019 (b) Documents Required. The movant ~~shall~~ must file the original and three (3) copies of
2020 a motion and serve all parties. Legible copies of the documents listed in ~~F-x~~ 1-10 below must be
2021 attached to the motion. If time does not permit, the motion may be filed without attachments,
2022 but the movant ~~shall~~ must file the necessary copies as soon as possible.

2023 (1) The complaint or petition to the district court;

2024 (2) Each brief or memorandum of authorities filed by both parties in the district
2025 court;

2026 (3) The opinion giving the reasons advanced by the district court for granting or
2027 denying relief;

2028 (4) The district court judgment granting or denying relief;

2029 (5) The application to the district court for a stay;

2030 (6) The district court order granting or denying a stay, and the statement of
2031 reasons for its action;

2032 (7) The certificate of appealability or, if there is none, the order denying a
2033 certificate of appealability;

2034 (8) A copy of each state or federal court opinion or judgment in cases in which
2035 appellant was a party involving any issue presented to this court or, if the ruling was not made in
2036 a written opinion or judgment, a copy of the relevant portions of the transcripts;

2037 (9) A copy of the docket entries of the district court; and

2038 (10) Notice of appeal.

2039 (c) Emergency Motions. Emergency motions or applications, whether addressed to the
2040 court or to an individual judge, ~~shall~~ must ordinarily be filed with the clerk rather than an
2041 individual circuit judge. If time does not permit the filing of a motion or application in person,
2042 by mail, or ~~by wire~~electronically, counsel may communicate with the clerk or a single judge of
2043 this court and thereafter ~~shall~~ must file the motion with the clerk in writing as promptly as
2044 possible. The motion, application, or oral communication ~~shall~~ must contain a brief account of
2045 the prior actions of this court or judge to which the motion or application, or a substantially
2046 similar or related petition for relief, has been submitted.

2047 Source: 1988 Court Rule 29.3

2048 Cross-references: 28 U.S.C. § 2251; F.R.A.P. 8

2049 Committee Comments: Prior Court Rule 29.3 has no counterpart in F.R.A.P. and is
2050 therefore classified as Miscellaneous. Except where necessary to
2051 reflect the expansion of this rule to reach federal prisoners, no
2052 substantive change from prior Court Rule 29.3 is intended.

2053 **111.5 Statement of the Case; Exhaustion; Issues Presented**

2054 In addition to requirements set forth in 3rd Cir. L.A.R. 28 with respect to the contents of
2055 motions and briefs, any application, motion, or brief that may result in either a disposition on the
2056 merits or the grant or denial of a stay of execution ~~shall~~ must include:

2057 (a) A statement of the case delineating precisely the procedural history of the case;

2058 (b) With respect to state habeas corpus petitions brought pursuant to 28 U.S.C. § 2254, a
2059 statement of exhaustion with respect to each issue presented to the district court indicating
2060 whether it has been exhausted and if not, what circumstances exist that may justify an exception
2061 to the exhaustion requirement.

2062 (c) The parties ~~shall~~ must fully address every issue presented to this court. Supplemental
2063 briefing will be permitted only by order of this court.

2064 Source: 1988 Court Rule 29.4

2065 Cross-references: None

2066 Committee Comments: Prior Court Rule 29.4 has no counterpart in F.R.A.P. and is
2067 therefore classified as Miscellaneous. Except where necessary to
2068 reflect the expansion of this rule to reach federal prisoners, no
2069 substantive change from prior Court Rule 29.4 is intended.

2070 **111.6 Consideration of Merits**

2071 The panel to which an appeal has been assigned ~~shall~~ must consider and expressly rule on
2072 the merits before vacating or denying a stay of execution.

2073 Source: 1988 Court Rule 29.5

2074 Cross-references: None

2075 Committee Comments: None

2076 **111.7 Determination of Causes by the Court En Banc**

2077 (a) Filing. The filing of petitions seeking hearing or rehearing by the court en banc ~~shall~~
2078 ~~be~~ is governed by F.R.A.P. 35 and 3rd Cir. L.A.R. 35. However, because of the difficulty of
2079 delivering petitions seeking hearing or rehearing by the court en banc to the judges of the court, t
2080 he parties are hereby notified that due to these logistical considerations any such petition filed
2081 within 48 hours of a scheduled execution may not be delivered to the judges of the court in
2082 sufficient time for adjudication prior to the time of the scheduled execution. Petitions for
2083 rehearing by the court en banc filed within 48 hours of a scheduled execution ~~shall~~ will be
2084 processed and distributed by the normal means of delivery used by the court unless the panel
2085 handling the case has entered an order for expedited voting in accordance to subsection (b) of
2086 this rule.

2087 (b) Consideration. Consideration of a petition seeking hearing or rehearing by the court
2088 en banc will be in accordance with the procedures specified in the court's Internal Operating
2089 Procedures except that if an execution is scheduled, the original panel which has determined the
2090 matter may, upon a majority vote, direct that the time normally allowed for voting to request
2091 answers or to grant the petition may be reduced to a time specified by the panel. Upon the entry
2092 of an order by the panel reducing the time for voting, the clerk ~~shall~~ must immediately transmit
2093 the petition and the order to the court by the most expedient means available.

2094 (c) Stays. Generally the court will not enter a stay of execution solely to allow
2095 additional time for counsel to prepare, or for the court to consider, a petition for rehearing or for
2096 rehearing by the court en banc except as follows:

2097 (1) A stay may be granted in order to allow time for counsel to prepare, or for the
2098 court to consider, a petition for rehearing upon majority vote of the original panel. Such a vote
2099 will be based upon a determination that there is a reasonable possibility that a majority of the
2100 active members of the court would vote to grant rehearing by the court en banc and whether
2101 there is a substantial possibility of reversal of its decision, in addition to a likelihood that
2102 irreparable harm will result if the decision is not stayed.

2103 (2) In the event that four judges vote to direct the filing of answers to a petition
2104 seeking rehearing by the court en banc, the presiding judge of the merits panel will enter a stay.

2105 (3) A stay entered in accordance with 3rd Cir. L.A.R. 8.2 in a direct appeal of a
2106 conviction or sentence in a criminal case in which the district court has imposed a sentence of
2107 death will remain in effect until the court's mandate issues. The mandate will ordinarily not
2108 issue until such time that the time for filing a petition for rehearing has expired, or if such a
2109 petition has been filed, until the petition has been determined.

2110 (d) No petition for rehearing ~~shall~~ may be filed from the denial of a petition seeking
2111 authorization under 28 U.S.C. § 2244 or §2255 to file a second or successive habeas corpus
2112 petition under § 2254 or motion to vacate sentence under § 2255.

- 2113 Source: 6th Cir. Rule 28(k), 11th Cir. IOP 35-11.8 [L.A.R. Misc. 111.7(a)];
 2114 4th Cir. IOP 22.3(b) [L.A.R. Misc. 111.7(c)]; 5th Cir. IOP 8.11
 2115 [L.A.R. Misc. 111.7(c)(1)]
- 2116 Cross-References: F.R.A.P. 35 and 40; 3rd Cir. L.A.R. 35; Third Circuit Internal
 2117 Operating Procedures, Chapter 9 (1994)
- 2118 Committee Comments: New Provision in 1995. Although the extraordinary nature of
 2119 death penalty cases is recognized, this section must be read in
 2120 conjunction with 3rd Cir. L.A.R. 35.4 in which it is emphasized
 2121 that the court does not favor requests for hearing or rehearing en
 2122 banc. Because 28 U.S.C. § 2244(b)(3)(D) prohibits the filing of a
 2123 petition for rehearing from the denial of an application seeking
 2124 permission to file a second or successive § 2254 or § 2255 petition,
 2125 there is no conflict with Rule 25(a), F.R.A.P., which states that the
 2126 clerk may not reject a paper “solely because it is not presented in
 2127 proper form.” The rejection of such a petition for rehearing is not
 2128 for form, but is required by statute.

2129 **111.8 Post-Judgment Motions**

2130 (a) Mandate: The panel may order that the mandate of the court issue forthwith or after
 2131 such time as it may fix.
 2132

2133 (b) Stays of Execution: In ruling on a motion for stay to permit the filing and
 2134 consideration of a petition for writ of certiorari, the panel ~~shall~~ must determine whether there is a
 2135 reasonable probability that the United States Supreme Court would consider the underlying
 2136 issues sufficiently meritorious to grant the petition.

2137 Source: 1988 Court Rule 29.6

2138 Cross-references: None

2139 Committee Comments: No substantive change from prior Court Rule 29.6 is intended.

2140 **111.9 Second or Successive Petitions**

2141 The procedures of L.A.R. 22.5 ~~shall~~ apply to the filing of a petition seeking
 2142 authorization under 28 U.S.C. § 2244 or 2255 to file a second or successive habeas corpus
 2143 petition under § 2254 or motion to vacate sentence under § 2255 in a death penalty case.

2144 Source: L.A.R. 22.5

2176 Cross-reference: | 48 U.S.C. § 1613.

2177 **112.2 Petition for Writ of Certiorari - How Sought**

2178 (a) In both civil and criminal cases, a review of final decisions of the Supreme Court of
2179 the Virgin Islands may be sought pursuant to 48 U.S.C. § 1613 by filing a petition for a writ of
2180 certiorari with the Clerk of the United States Court of Appeals for the Third Circuit within thirty
2181 (30) days from the entry of judgment on the docket of the Supreme Court of the Virgin Islands.

2182 (b) Unless a rule specifies a different procedure for a cross-petition for certiorari, the
2183 rules for a petition for certiorari apply to cross-petitions.

2184 (c) Petitioner must file, with proof of service, an original and three copies of the petition
2185 for writ of certiorari. Petitioner must serve one copy of the petition for writ of certiorari on each
2186 of the parties to the proceedings in the Supreme Court of the Virgin Islands. When filing the
2187 petition, petitioner must pay the docketing fee, which shall be is the same as the fees charged for
2188 an original proceeding such as a petition for writ of mandamus or petition for review of an
2189 agency order, in the Court of Appeals. Counsel for the petitioner must enter an appearance
2190 within ten days of case opening. Parties interested jointly or otherwise may file a joint petition.
2191 A petitioner not shown on the petition at the time of filing may not later join in that petition.

2192
2193 (d) A cross-petition for a writ of certiorari may be filed within twenty-one (21) days
2194 after the first petition was filed. When filing the cross-petition, cross-petitioner must pay the
2195 docketing fee. The cross-petitioner must serve one copy of the petition on each of the parties to
2196 the proceedings in the Supreme Court of the Virgin Islands.

2197 (e) If a petition for rehearing of the final decision of the Supreme Court of the Virgin
2198 Islands is timely filed pursuant to the Rules of the Supreme Court of the Virgin Islands or if that
2199 court appropriately entertains an untimely petition for rehearing or sua sponte considers
2200 rehearing, the time for filing the petition for writ of certiorari shall run from entry of the order
2201 denying the petition or, if rehearing is granted, from entry of the order on rehearing.

2202 (f) A circuit judge, for good cause shown, may extend the time for filing a petition for
2203 writ of certiorari or cross-petition for a period not exceeding sixty (60) days. Any application for
2204 extension of time within which to file a petition for writ of certiorari must set out the grounds on
2205 which the jurisdiction of this court is invoked, must identify the judgment sought to be reviewed
2206 and have appended thereto a copy of the opinion, and must set forth with specificity the reasons
2207 justifying an extension. An application for extension of time to file a petition for certiorari must
2208 be submitted at least ten (10) days before the specified final filing date and will not be granted,
2209 except in the most extraordinary circumstances, if filed less than ten (10) days before that date.

2210 Source: | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2211 Guam Supreme Court

2212 Cross-reference: | 48 U.S.C. § 1613.

2213 **112.3. Denominating Parties**

2214 (a) The party petitioning for the writ of certiorari shall will be denominated the
2215 petitioner; petitioner's denomination in the appeal or other proceeding before the Supreme Court
2216 and the Superior Court of the Virgin Islands must be included in the petition.

2217 (b) All parties to the proceeding in the court whose judgment is sought to be reviewed
2218 are deemed parties in this court and shall will be denominated respondents, unless the petitioner
2219 notifies the clerk of this court in writing of petitioner's belief that one or more of the parties
2220 below has no interest in the outcome of the petition. A copy of such notice must be served on all
2221 parties to the proceeding in the Supreme Court of the Virgin Islands. Parties noted as no longer
2222 interested may remain a party by notifying the clerk in writing within ten (10) days from the date
2223 of service of petitioner's notice, with service on all other parties, that they have an interest in the
2224 petition. Each respondent's denomination in the proceedings before the Supreme Court and the
2225 Superior Court of the Virgin Islands must be included in the petition for writ of certiorari. Any
2226 respondent who supports the position of a petitioner must meet the time schedule for filing
2227 responsive papers.

2228 Source: | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2229 Guam Supreme Court

2230 Cross-reference: | 48 U.S.C. § 1613.

2231 **112.4 The Petition for Writ of Certiorari**

2232 (a) The petition for writ of certiorari must contain, in the order here indicated:

2233 (1) a table of contents;

2234 (2) a table of authorities including citations to the constitutional provisions,
2235 treaties, statutes, ordinances, and regulations which the case involves;

2236 (3) a concise statement of the ground on which the jurisdiction of this court is
2237 invoked showing the date on which the judgment sought to be reviewed was entered, the date of
2238 any orders respecting rehearing, and, in the case of a cross-petition for a writ of certiorari, the
2239 date of the filing of the petition for a writ of certiorari;

2240 (4) the questions presented for review, expressed concisely in relation to the
2241 circumstances of the case. The statement of the questions should be short and concise and
2242 should not be argumentative or repetitious. The statement of a question presented will be
2243 deemed to comprise every subsidiary question fairly included therein. Only the questions set
2244 forth in the petition or fairly included therein will be considered by the court;

2245 (5) A concise statement of the case containing the facts material to the
2246 consideration of the questions presented. The statement of the case must specify, with
2247 appropriate citation to the record, the stage in the proceedings, both in the Superior Court and the
2248 Supreme Court of the Virgin Islands, at which the questions sought to be reviewed were raised
2249 and the ruling thereon;

2250 (6) a direct and concise argument amplifying the reasons relied on for the
2251 allowance of the writ;

2252 (7) a short conclusion, which must include a statement of the specific relief
2253 requested if the writ of certiorari is granted.

2254 (b) All contentions in support of a petition for writ of certiorari must be set forth in the
2255 body of the petition, as provided by this rule. No separate brief in support of a petition for a writ
2256 of certiorari will be received, and the clerk will refuse to file any petition for a writ of certiorari
2257 to which is annexed or appended any supporting brief.

2258 (c) Any reason for expedited treatment or request for interim relief must be made by
2259 separate motion. The requirement in Rule 8, F.R.A.P., that a request for stay or injunction
2260 pending appeal must first be made to the court below will be strictly enforced. Any motion for
2261 stay or injunction must attach the order of the Supreme Court of the Virgin Islands disposing of
2262 the motion for stay or injunction made to it in the first instance.

2263 Source: Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2264 Guam Supreme Court

2265 Cross-reference: 48 U.S.C. § 1613.

2266 **112.5 Appendix**

2267 (a) An original and three copies of an appendix must be filed with the petition. The
2268 appendix must contain in the following order:

2269 (1) copies of all docket entries, opinions, orders, findings of fact, and
2270 conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the
2271 rendering of the judgment or decree by the Supreme Court of the Virgin Islands; and

2272 (2) copies of any applicable local statutes, ordinances, and regulations

2273 **Source:** | | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2274 Guam Supreme Court

2275 **Cross-reference:** | | 48 U.S.C. § 1613.

2276 **112.6 Brief in Opposition - Reply - Supplemental Briefs**

2277 (a) Within thirty (30) days of receipt of a petition for writ of certiorari, a respondent may
2278 file an original and three copies, with certificate of service, of an opposing brief.

2279 (b) No motion by a respondent to dismiss a petition for writ of certiorari will be
2280 received. Objections to the jurisdiction of the court to grant the writ of certiorari may be
2281 included in the brief in opposition.

2282 (c) Petitioner may file an original and three copies, with certificate of service, of a reply
2283 brief addressed to arguments first raised in the brief in opposition within fourteen (14) days of
2284 receipt of respondent's brief.

2285 (d) Motions for extensions of time to file a brief are governed by Third Circuit L.A.R.
2286 31.4

2287 (e) No supplemental filings may be made by any party except as provided in Rule 28(j),
2288 F.R.A.P.

2289 **Source:** | | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2290 Guam Supreme Court

2291 **Cross-reference:** | | 48 U.S.C. § 1613.

2292 **112.7 Format and Length** | |

2293 (a) The typeface, page size, margins, line spacing, binding, and text style of a petition for
2294 writ of certiorari and responses must be in compliance with Rule 32, F.R.A.P. and Third Circuit
2295 Local Rule 32. The cover of a petition for writ of certiorari must be blue; the cover of
2296 respondent's brief must be red; the cover of a reply brief must be gray.

2297 (b) A proportionately spaced petition for a writ of certiorari and response must not
2298 exceed 5,600 words, exclusive of the table of contents and table of authorities. A reply brief
2299 must not exceed 2,300 words.

2300 **Source:** | | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2301 Guam Supreme Court
2302

2303 **Cross-reference:** | | 48 U.S.C. § 1613.

2304 112.8 Disposition of a Petition for Writ of Certiorari

2305 (a) The petition and any responses shall will be referred to a motions panel for
2306 disposition. If a petition for writ of certiorari is granted, the clerk will issue a briefing schedule
2307 and the case shall will proceed as other appeals.

2308 Source: | | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2309 Guam Supreme Court

2310 Cross-reference: | | 48 U.S.C. § 1613.

2311 112.9 Record on Review

2312 (a) The record on review shall consists of the record presented to the Supreme Court of
2313 the Virgin Islands.

2314 (b) Within thirty (30) days of an order granting a writ of certiorari, the Clerk of the
2315 Supreme Court of the Virgin Islands must file a certified copy of the docket entries in lieu of the
2316 record with the Clerk of the Court of Appeals. The filing of the certified docket entries with the
2317 Court of Appeals indicates that the Court of Appeals considers the record filed.

2318 Source: | | Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from
2319 Guam Supreme Court
2320

2321 Cross-reference: | | 48 U.S.C. § 1613.

2322 112.10 Rehearings

2323 (a) Rules 35 and 40, F.R.A.P. govern petitions for rehearing an order denying a petition
2324 for writ of certiorari.

2325 (b) The grounds for a petition for rehearing of an order denying a petition for writ of
2326 certiorari are limited to intervening circumstances of substantial or controlling effect or to other
2327 substantial grounds not previously presented. A petitioner must certify that the petition is
2328 restricted to the grounds specified in this paragraph and that it is presented in good faith and not
2329 for delay. This certification is in lieu of that required by Third Circuit L.A.R. 35.1;

2330 (c) No response to a petition for rehearing will be received unless requested by the court,
2331 but no petition will be granted without an opportunity to submit a response.

2332 (d) Consecutive petitions for rehearings will not be received.

2333 **Source:** | | **Former Ninth Circuit Local Rule 6-1 to 6-2 governing appeal from**
2334 **Guam Supreme Court**

2335 **Cross-reference:** | | **48 U.S.C. § 1613.**

2336 **112.11 Costs**

2337 (a) Each side will bear its own costs in a proceeding seeking a writ of certiorari, unless
2338 the court either sua sponte or by motion directs that costs be taxed under Rule 38, F.R.A.P., for a
2339 vexatious or frivolous petition. If the writ is granted and the case proceeds to briefing and
2340 decision, costs may be taxed as in Rule 39, F.R.A.P.

2341 **112.12 Applicability of the Federal Rules of Appellate Procedure**

2342 (a) The Federal Rules of Appellate Procedure, to the extent that they are not inconsistent
2343 with any statutory provisions or these rules, may be applied to a proceeding seeking a writ of
2344 certiorari.

2345 **L.A.R.MISC. 113 ELECTRONIC FILING**

2346 **113.1 Scope of Electronic Filing**

2347 (a) Except as otherwise prescribed by local rule or order, all cases will be assigned to the
2348 court's electronic filing system. Case-initiating documents in original proceedings in the court
2349 of appeals must be filed in paper format. Except as otherwise prescribed by this local rule or
2350 court order, all briefs, motions, petitions for rehearing, and all other documents (other than
2351 appendices) subsequently filed in any case with the court by a Filing User registered as set forth
2352 under Rule 113.2 must be filed electronically using the electronic filing system.

2353 (b) Paper copies of briefs and appendices must be filed on the same day as, or the next
2354 business day after, the date of electronic transmission, within three days as provided in L.A.R.
2355 31.1. No paper copies of any other documents shall be filed unless authorized by this rule or
2356 ordered by the court.

2357 (c) Upon the court's request, a Filing User must promptly provide the clerk, in a format
2358 designated by the court, an identical electronic version of any paper document previously filed in
2359 the same case by that Filing User.

2360 (d) Upon motion and a showing of good cause, the court may exempt a Filing User from
2361 the provisions of this Rule and authorize filing by means other than use of the electronic filing
2362 system.

2363 **Source:** | | Model Local Rules

2364 **Comments:** This Local Appellate Rule is not intended to supplant the
2365 requirements of F.R.A.P.31(b) or any local rule or procedure
2366 requiring counsel to provide additional paper copies of filings to
2367 the court

2368 **113.2 Eligibility, Registration, Passwords**

2369 (a) Attorneys who intend to practice in this court, including attorneys authorized to
2370 represent the United States without being admitted to the bar of this court, must register as Filing
2371 Users of the court's electronic filing system. Registration requirements will be defined by the
2372 court and may include training as a prerequisite to registration as a CM/ECF Filing User.

2373 (b) A defendant in a criminal case, or an incarcerated party in a civil case, who is not
2374 represented by counsel may not register as a Filing User in the electronic filing system, but
2375 instead must file paper documents, and be served with paper documents, as required by the
2376 FRAP and these rules. A non-incarcerated party to a pending civil case who is not represented
2377 by an attorney may register as a Filing User in the electronic filing system solely for purposes of
2378 that case. Filing User status will be terminated upon termination of the case. If a pro se party in
2379 a civil case retains an attorney, the attorney must advise the clerk by filing an entry of
2380 appearance pursuant to L.A.R. 46.2.

2381 (c) Registration as a Filing User constitutes consent to electronic service of all
2382 documents as provided in these rules and with the Federal Rules of Appellate Procedure.

2383 (d) Filing Users agree to protect the security of their passwords and immediately notify
2384 the PACER Service Center and the clerk if they learn that their password has been compromised.
2385 Filing Users may be sanctioned for failure to comply with this provision. The clerk may
2386 terminate without notice the electronic filing privileges of any Filing User who abuses the
2387 system by excessive filings, either in terms of quantity or length. The clerk may order that
2388 overlength or repetitive filings will not be available electronically.

2389 (e) Upon motion showing extraordinary circumstances, the clerk may grant an
2390 exemption from electronic filing.

2391 **Source:** Model Local Rules

2392 **Cross-reference:** L.A.R. 46

2393 **113.3 Consequences of Electronic Filing**

2394 (a) Electronic transmission of a document to the electronic filing system consistent with
2395 these rules, together with the transmission of a Notice of Docket Activity from the court,
2396 constitutes filing of the document under the Federal Rules of Appellate Procedure and the local

2397 rules of this court, and constitutes entry of the document on the docket kept by the clerk under
2398 **F.R.A.P. 36 and 45(b). If the court requires a party to file a motion for leave to file a document,**
2399 both the motion and document at issue should be submitted electronically; the underlying
2400 document will be filed if the court so directs.

2401 (b) Before filing a document with the court, a Filing User must verify its legibility and
2402 completeness. Documents created by the filer and filed electronically must be in PDF text
2403 format. When a document has been filed electronically, the official record is the electronic
2404 document stored by the court, and the filing party is bound by the document as filed. Except in
2405 the case of documents first filed in paper form and subsequently submitted electronically under
2406 **Rule 113.1, a document filed electronically is deemed filed at the date and time** received by the
2407 clerk, as stated on the Notice of Docket Activity from the court.

2408 (c) Filing must be completed by 11:59 p.m. Eastern Time to be considered timely filed
2409 that day.

2410 **Source:** Model Local Rules

2411 **113.4 Service of Documents by Electronic Means**

2412 (a) The Notice of Docket Activity that is generated by the court's electronic filing system
2413 **constitutes service of the filed document on all Filing Users.** Whether a counsel or party is a
2414 Filing User will be indicated on the court's appellate docket and on the court's prior Notices of
2415 Docketing Activity. **Parties who are not Filing Users must be served with a paper** copy of any
2416 document filed electronically in accordance with the Federal Rules of Appellate Procedure and
2417 the local rules.

2418 (b) **If the document is not filed and served** **available** electronically through the court's
2419 electronic filing cm/ecf system, the filer must use an alternative method of service prescribed by
2420 FRAP 25(c).

2421 (c) The Notice of Docket Activity generated by the court's electronic filing system does
2422 **not replace the certificate of service required by F.R.A.P. 25.** The certificate of service must
2423 state (a) that the other party is a Filing User and therefore will be served electronically by the
2424 Notice of Docket Activity and/or (b) the other party will be served with paper document(s)
2425 pursuant to FRAP 25(c).

2426 **Source:** Model Local Rules

2427 **Cross-references:** L.A.R. 27.2 and 31.1

2428 **Comments:** The electronic filing system generates a Notice of Docket Activity
2429 at the time a document is filed with the system. The Notice
2430 indicates the time of filing, the name of the party and attorney

2431 filing the document, the type of document, and the text of the
2432 docket entry. It also contains an electronic link (hyperlink) to the
2433 filed document, if one was attached to the filing, allowing anyone
2434 receiving the notice by e-mail to retrieve the document
2435 automatically. The system sends this Notice to all case
2436 participants registered as Filing Users of the electronic filing
2437 system. Under the amendments to F.R.A.P. 25, a court may, by
2438 local rule, provide that the court's automatically generated Notice
2439 of Docket Activity constitutes service of the document on all
2440 Filing Users in the case.

2441 Parties who are not Filing Users have not consented to electronic
2442 service via the Notice of Docket Activity. They must be served in
2443 some other way authorized by F.R.A.P. 25.

2444 If the document is not filed electronically through the court's
2445 [electronic filing cm/ecf](#) system, the filer must use an alternative
2446 method of service prescribed by FRAP 25(c).

2447 F.R.A.P. 26 provides that the three additional days to respond to
2448 service by mail will apply to electronic service as well. This
2449 provision is intended to account for technical problems that can
2450 arise during electronic service and to encourage parties to consent
2451 to electronic service.

2452 **113.5 Entry of Court-Issued Documents**

2453 (a) Except as otherwise provided by local rule or court order, all orders, decrees,
2454 **judgments, and proceedings of the court relating to cases filed and maintained in the court's**
2455 **[electronic filing CM/ECF](#)** system will be filed in accordance with these rules, which will
2456 constitute entry on the docket kept by the clerk under F.R.A.P. 36 and 45(b). Court orders,
2457 decrees, judgments, and other documents filed by the court will contain an electronic signature.
2458 Any order or other court issued document filed electronically without a hand-written signature of
2459 a judge or authorized court personnel has the same force and effect as if the judge or clerk had
2460 signed a paper copy of the order.

2461 (b) Orders also may be entered as "text-only" entries on the docket, without an attached
2462 document. Such orders are official and binding.

2463 **Source:** Model Local Rules

2464 **113.6 Attachments and Exhibits to Motions and Other Filings Original Proceedings**

2465 (a) Filing Users must submit in electronic form all documents referenced as exhibits or

2466 attachments. A Filing User must submit as exhibits or attachments only those excerpts of the
2467 referenced documents that are directly germane to the matter under consideration by the court.
2468 Excerpted material must be clearly and prominently identified as such. The court may require
2469 parties to file additional excerpts or the complete document.

2470 (b) Filing Users may not submit appendices in electronic form unless a motion to do so is
2471 granted by the court. Parties must not file in electronic form presentence investigation reports,
2472 the criminal judgment's statement of reasons for the sentence, or any other documents sealed
2473 pursuant to L.A.R. 106.1. Such documents should be filed and served only in paper format as
2474 provided in L.A.R. 30.3, 106.1, and/or 113.7.

2475 **Source:** Model Local Rules

2476 **Comments:** In many instances, only a small portion of a much larger document
2477 might be relevant to a matter before the court, therefore only an
2478 excerpt of the larger, original document should be submitted. The
2479 court retains the authority to require the filer to provide additional
2480 portions or the complete document, and other parties may
2481 supplement the filed excerpts or provide the entire document in
2482 support of their responsive pleadings.

2483 **113.7 Sealed Documents**

2484 (a) A motion to file documents under seal under L.A.R. 106.1 may be filed electronically
2485 unless prohibited by law, local rule, or court order.

2486 (b) If the court grants the motion, the order of the court authorizing the filing of
2487 documents under seal may be filed electronically unless prohibited by law.

2488 (c) Documents ordered placed under seal may only be filed traditionally and served in
2489 paper format, unless otherwise or electronically, as authorized by the court. A If filed
2490 traditionally, a paper copy of the authorizing order must be attached to the documents under seal
2491 and delivered to the clerk. Presentence investigation reports, a criminal judgment's statement of
2492 reasons for the sentence, grand jury materials, and other documents that are sealed pursuant to
2493 L.A.R. 106.1 similarly may only be filed in paper format with proper notation of their sealed
2494 nature as provided by L.A.R. 30.3(c) and 106.1.

2495 (d) Ex parte motions, e.g. to file a document under seal, must be filed in paper form only.

2496 **Source:** Model Local Rules

2497 **Comments:** The court's electronic filing system is capable of accepting sealed
2498 documents electronically from filing users, either directly into a
2499 sealed case in which the attorney is a participant or as a sealed

2500 filing in an otherwise unsealed case. See L.A.R. Misc. 113.4,
2501 which addresses service of sealed documents filed electronically.
2502 See L.A.R. Misc. 113.12 for other provisions addressing privacy
2503 concerns arising from electronic filing. Attorneys must not include
2504 private and/or confidential information in their motions to file a
2505 document under seal and must fulfill their obligations under
2506 L.A.R. Misc. 113.12.

2507 **113.8 Retention Requirements**

2508 If the court orders that certain documents Documents that are electronically filed and
2509 require original signatures other than that of the Filing User, those documents must be
2510 maintained in paper form by the Filing User until two (2) years after the issuance of the mandate
2511 or order closing the case, whichever is later. If counsel withdraws and an new attorney enters an
2512 appearance, documents that require original signatures must be transferred to the new attorney of
2513 record. On request of the court, the Filing User must provide original documents for review.

2514 **Source:** Model Local Rules

2515 **Comments:** Because electronically filed documents do not include original,
2516 handwritten signatures, it is necessary to provide for retention of
2517 certain signed documents in paper form in case they are needed as
2518 evidence in the future. The Rule addresses the retention
2519 requirement for “verified documents” (in which a person verifies,
2520 certifies, affirms, or swears under oath or penalty of perjury)
2521 bearing original signatures of persons other than the person who
2522 files the document electronically.

2523 **113.9 Signatures**

2524 (a) The user log-in and password required to submit documents to the electronic filing
2525 system serve as the Filing User’s signature on all electronic documents filed with the court.
2526 They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the
2527 local rules of court, and any other purpose for which a signature is required in connection with
2528 proceedings before the court.

2529 (b) The name of the Filing User under whose log-in and password the document is
2530 submitted must be preceded by an “s/” and typed in the space where the signature would
2531 otherwise appear. Alternatively, an electronic signature may be used.

2532 (c) No Filing User or other person may knowingly permit or cause to permit a Filing
2533 User’s log-in and password to be used by anyone other than an authorized agent of the Filing
2534 User. Documents requiring signatures of more than one party must be electronically filed either

2535 by:

2536 (1) submitting a scanned document containing all necessary signatures;

2537 (2) submitting a statement representing the consent of the other parties on the
2538 document;

2539 (3) identifying on the document the parties whose signatures are required and
2540 submitting a notice of endorsement by the other parties no later than three business days after
2541 filing; or

2542 (4) in any other manner approved by the court. Electronically represented
2543 signatures of all parties and Filing Users as described above are presumed to be valid signatures.
2544 If any party, counsel of record, or Filing User objects to the representation of his or her signature
2545 on an electronic document as described above, he or she must, within 10 calendar days, file a
2546 notice setting forth the basis of the objection.

2547 **Source:** Model Local Rules

2548 **Comments:** An electronic signature, or the The “s/” preceding a typed name,
2549 indicates that the electronically filed document was endorsed by
2550 that party or Filing User.

2551
2552 This Rule does not require a Filing User to personally file his or
2553 her own documents. The task of electronic filing may be delegated
2554 to an authorized agent, who may use the log-in and password to
2555 make the filing. Use of the log-in and password to make the filing
2556 constitutes a signature by the Filing User under the Rule, even
2557 though the Filing User does not perform the physical act of filing.

2558
2559 Issues arise when documents being electronically filed have been
2560 signed by persons other than the filer, *e.g.*, stipulations and
2561 affidavits. For documents signed by individuals without logins
2562 and passwords (non-Filing Users), the Rule provides that the
2563 signature must appear as “s/” or as a scanned image. Under
2564 L.A.R. Misc. 113.8 above, the Filing User must retain a paper
2565 copy with the original signature of any such document filed by the
2566 Filing User.

2567 **113.10 Notice of Court Orders and Judgments**

2568 Immediately upon the entry of an order or judgment in a case assigned to the electronic

2569 filing system, the clerk will electronically transmit a Notice of Docket Activity to Filing Users in
2570 the case. Electronic transmission of the Notice of Docket Activity constitutes the notice and
2571 service of the opinion required by F.R.A.P. 36(b) and 45 (c). The clerk must give notice in paper
2572 form to a person who is not a Filing User. has not consented to electronic service.

2573 **Source:** Model Local Rules

2574 **113.11 Technical Failures**

2575 A Filing User whose filing is untimely as the result of a technical failure may seek
2576 appropriate relief from the court.

2577 **Court personnel are not responsible for assisting Filing Users in the remedying of**
2578 **technical problems.**

2579 **Source:** Model Local Rules

2580 **113.12 Public Access**

2581 **(a) A filing party Parties must exclude, refrain from including, or must partially redact where**
2582 **the party believes inclusion is necessary, the following personal data identifiers from all documents**
2583 **filed with the court, including exhibits thereto, whether filed electronically or in paper, unless the**
2584 **document is filed under seal or unless otherwise ordered by the court:**

2585 (1) Social Security numbers. If an individual's Social Security number must be
2586 included, only the last four digits of that number should be used.

2587 (2) Names of minor children. If the involvement of a minor child must be
2588 mentioned, only the initials of that child should be used.

2589 (3) Dates of birth. If an individual's date of birth must be included, only the year
2590 should be used.

2591 (4) Financial account numbers. If financial account numbers are relevant, only the
2592 last four digits of these numbers should be used.

2593 (5) Home addresses. In criminal cases, if a home address must be included, only the
2594 city and state should be listed.

2595 **(b) In compliance with the E-Government Act of 2002, a party who believes that it is**

2596 necessary to include the complete wishing to file a document containing the personal data identifiers
2597 listed above may:

2598 (1) File an un-redacted paper version of the document under seal, or

2599 (2) File a document complying with subsection (a), and also file a separate reference
2600 list in paper format under seal. The reference list must contain the complete personal data
2601 identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the
2602 case to the redacted identifiers included in the reference list will be construed to refer to the
2603 corresponding complete personal data identifier. The reference list must be filed under seal, and
2604 may be amended as of right.

2605 (c) The un-redacted version of the document or the reference list must be retained by the
2606 court as part of the record. The court may, however, still require the party to file a redacted copy
2607 for the public file.

2608 (d) The responsibility for redacting these personal identifiers rests solely with counsel and
2609 the parties. The clerk will not review each pleading for compliance with this rule.

2610 **Source:** Model Local Rules

2611 **Comments:** It is each filer's responsibility to redact information from documents
2612 submitted by the filer. Documents containing prohibited personal
2613 identifiers must be redacted by the parties so as not to include
2614 un-redacted Social Security numbers, financial account numbers,
2615 names of minor children, or dates of birth. In criminal cases, home
2616 addresses also must be redacted. Information should be provided in
2617 shortened form, rather than completely omitted, with Social Security
2618 numbers represented as XXX-XX-1234, financial account numbers
2619 reduced to the last four digits, names of minor children represented
2620 as initials, dates of birth represented by year, and home addresses
2621 listed only by city and state.

2622 Parties should consult the "Guidance for Implementation of the
2623 Judicial Conference Policy on Privacy and Public Access to
2624 Electronic Criminal Case Files." This Guidance explains the policy
2625 permitting remote public access to electronic criminal case file
2626 documents and sets forth redaction and sealing requirements for
2627 documents that are filed. The Guidance also lists documents for
2628 which public access should not be provided. A copy of the Guidance
2629 is available at the court's website. For further information on privacy
2630 issues, see the Judicial Conference policies on privacy and public

2631 access to documents filed in civil, criminal, and bankruptcy cases, as
2632 well as section 205(c) of the E-Government Act of 2002, Pub. L. No.
2633 107-347, 116 Stat. 2899, 2914, as amended by Pub. L. No. 108-281,
2634 118 Stat. 889 (2004).

2635 **113.13 Hyperlinks**

2636 (a) **Electronically filed documents may, but are not required to,** contain the following types
2637 of hyperlinks:

2638 (1) Hyperlinks to other portions of the same document; and

2639 (2) Hyperlinks to a location on the Internet or PACER that contains a source
2640 document for a citation.

2641 (b) Hyperlinks to cited authority may not replace standard citation format. Complete
2642 citations must be included in the text of the filed document. A hyperlink, or any site to which it
2643 refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for
2644 accessing material cited in a filed document. The court accepts no responsibility for, and does not
2645 endorse, any product, organization, or content at any hyperlinked site, or at any site to which that
2646 site might be linked. The court accepts no responsibility for the availability or functionality of any
2647 hyperlink.

2648 **Source:** Model Local Rules

2649 **Comments:** Hyperlinks are a connection from one point of electronic data to
2650 another. Because hyperlinks might be to sites outside the control of
2651 the court, the court cannot take responsibility for the viability of
2652 those links, nor does it take responsibility for the content of any
2653 linked site. Because hyperlinks are not considered part of the record,
2654 the fact that a hyperlink ceases to work or directs the user to some
2655 other site does not affect the content of the filed document.

2656 Hyperlinks are a convenient means of accessing material cited in
2657 electronic documents. Any electronically filed document that
2658 contains a hyperlink must also contain the standard citation to the
2659 same material. This requirement ensures that anyone working with
2660 a printed version of the document has the necessary citation, and that
2661 subsequent failure of a hyperlink will not preclude finding the cited
2662 material.

2663 Just as the complete text of a document cited in a brief or other filing
2664 in support of a legal proposition, unless specifically quoted, is not
2665 considered part of the brief, the hyperlink and the site to which it
2666 refers are not considered part of the brief. Thus, they will not be
2667 considered part of the court's record.

2668 **113.14 Changes**

2669 The clerk may make changes to the procedures for electronic filing to adapt to changes in
2670 technology or to facilitate electronic filing. Any changes to procedures will be posted on the court's
2671 internet website.

2672 **Source:** None

2673 **Cross-reference:** L.A.R. 28.4

2674