



**4TH CIRCUIT COURT OF APPEAL'S
PRO SE HANDBOOK
VOL. 0 CHP. 0: PRO SE PROCEDURES GUIDE**

Volume 0 | Chapter 0
Pro Se Procedures Guide

{PUBLISHED ON: 12/1/2023}

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TABLE OF CONTENTS | VOL 0 CHP 0 | PRO SE PROCEDURES GUIDE

#	Item	Title	Page
A01	0.0.00	Filing and Service	4
A02	0.0.01	New Appeals and Petitions	5
A03	0.0.02	Appeal Fees and Indigent Status	7
A04	0.0.03	Appearance, Disclosure & Docketing Statements	9
A05	0.0.04	Transcript	10
A06	0.0.05	Record on Appeal	11
A07	0.0.06	Sealed and Confidential Materials	12
A08	0.0.07	Motions, Responses & Replies	13
A09	0.0.08	Motions for Certificate of Appealability	14
A10	0.0.09	Informal Briefing	15
A11	0.0.10	Appointment of Counsel for Formal Briefing and...	16
A12	0.0.11	Opinion and Judgment	17
A13	0.0.12	Rehearing and Rehearing En Banc Petitions	18
A14	0.0.13	Costs and Attorney's Fees	20
A15	0.0.14	Mandate	21
A16	0.0.15	Pro Se Forms	22
-	n/a	Appendix	23



4TH CIRCUIT COURT OF APPEALS'
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VOLUME 0 PRO SE PROCEDURES GUIDE

CHAPTER 0 PRO SE PROCEDURES GUIDE

ITEMS 0.0.0 through 0.0.15

DATE 12/1/2016



0.0.00 | FILING AND SERVICE

Pro se litigants are not required to file documents electronically. If they wish to use electronic filing in their pending case, they may do so after completing the electronic filing registration requirements.

For pro se litigants who are filing electronically, the CM/ECF (Case Management/Electronic Case Filing) system provides service of filings on other electronic filers in the case. Pro se litigants who are filing in paper form must also serve their documents on other parties in paper form.

Documents filed by an inmate confined in an institution are timely if evidence, such as a postmark, date-stamp, or a sworn inmate declaration of date of deposit with prepaid postage, shows that the paper was deposited in the institution's internal mailing system on or before the last day for filing. Fed. R. App. P. 4(c)(1), Fed. R. App. P. 25(a)(2)(C).

In computing any time period stated in days or a longer unit of time, "(A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. App. P. 26(a)(1).

Whenever a party is required or permitted to act within a prescribed period after service of a paper upon that party, three days are added to this prescribed period unless the paper is delivered on the date of service stated in the proof of service. A paper that is served electronically is treated as delivered on the date of service. Fed. R. App. P. 26(c).

(4th Circuit Court of Appeals // December 2023)



0.0.01 | NEW APPEALS AND PETITIONS

Appeal can generally be taken only after final judgment has been entered in the district court, resolving all claims against all parties.

In civil cases, notice of appeal must be filed in the district court within 30 days after entry of judgment unless the federal government, federal agency, or federal officer is a party, in which case, the notice of appeal may be filed within 60 days of entry of judgment. The district court may grant an extension of the appeal period if a motion based on excusable neglect or good cause is filed within 30 days of the end of the appeal period. Fed. R. App. P. 4(a).

In criminal cases, notice of appeal must be filed in the district court within 14 days after entry of judgment. The district court may grant an extension of the appeal period based on excusable neglect or good cause if the notice of appeal is filed within 30 days of the end of the appeal period. Fed. R. App. P. 4(b).

The appeal period does not begin to run until the district court's judgment has been entered on the docket. A notice of appeal filed by an inmate confined in an institution is timely if evidence, such as a postmark, date-stamp, or a sworn inmate declaration of date of deposit with prepaid postage, shows that the paper was deposited in the institution's internal mailing system on or before the last day for filing.

If a motion to reconsider the judgment in a civil case is filed within 28 days of entry of judgment, an appeal from the judgment will not proceed until the district court has decided the motion for reconsideration. Fed. R. App. P. 4(a)(4).

Pro se appellants must sign the notice of appeal, but the absence of a signature can be cured after expiration of the appeal period.

A second petition under 28 U.S.C. § 2254 or 2255 will not be considered by the district court unless the petitioner has obtained authorization from the court of appeals to file a successive application. 28 U.S.C. § 2244. A motion for authorization to file a successive application may be filed in the court of appeals at any time; however, a one-year limitations period applies to the filing of all §§ 2254 and 2255 motions in the district court.

Review of final agency action is obtained by filing a petition for review with the court of appeals within the time specified by

statute. Fed. R. App. P. 15(a). The petition must name each party seeking review either in the caption or in the body of the petition. Use of such terms as "petitioners" or "et al." is not effective to name the parties to a petition for review. The petition must also name the agency as respondent and specify the order to be reviewed. Fed. R. App. P. 15(a). A copy of the order to be reviewed and a list of the respondents to be served and their addresses must also be attached. Local Rule 15(b).

- Benefits Review Board - review of a final decision of the Benefits Review Board is sought by filing a petition for review in the court of appeals within 60 days following issuance of the Board's order. 33 U.S.C. § 921(c).
- Board of Immigration Appeals - review of a final removal order is sought by filing a petition for review within 30 days of issuance of the order. 8 U.S.C. § 1252.

(4th Circuit Court of Appeals // December 2023)



0.0.02 | APPEAL FEES AND INDIGENT STATUS

Appellant must pay the district court clerk \$605 (a \$5 filing fee and \$600 docketing fee) upon filing a notice of appeal in the district court. Petitions for writ of mandamus and petitions for review of agency action are filed in the court of appeals and must be accompanied by a \$600 filing fee paid to the court of appeals clerk.

In civil appeals by non-prisoners and in appeals under 28 U.S.C. § 2241, 2254 or 2255, the standard in forma pauperis provisions of 28 U.S.C. § 1915(a) and Fed. R. App. P. 24 apply. If the appellant proceeded in forma pauperis (or CJA) below and the district court has not withdrawn its finding of indigent status or found that the appeal is not taken in good faith, appellant's in forma pauperis status continues on appeal. 28 U.S.C. § 1915(a); Fed. R. App. P. 24(a). Otherwise, appellant must file an application to proceed in forma pauperis on appeal. The court of appeals notifies appellant when the appeal is docketed that an application to proceed in forma pauperis must be filed in the court of appeals unless appellant has paid the fee to the district court or been granted leave to proceed in forma pauperis by the district court.

Criminal Justice Act (CJA) status applies to appeals arising from the criminal conviction and from post-judgment motions in the criminal case. CJA applications are filed in the court of appeals, and the court of appeals notifies the appellant of the date by which the application should be filed. 18 U.S.C. § 3006A.

Prison Litigation Reform Act (PLRA) status applies to prisoner civil appeals (excluding §§ 2254 & 2255 appeals). PLRA applications are filed in the court of appeals by the date set by the court and using the forms provided by the court. Prisoners pursuing a civil appeal must agree to pay the filing fee in installments from their prison trust account. If the appellant has had three or more cases dismissed as frivolous, malicious, or for failure to state a claim, the prisoner forfeits the ability to proceed without full prepayment of the filing fee unless the prisoner is in imminent danger of serious injury. 28 U.S.C. § 1915(b).

IFP status also applies to agency review and mandamus petitions. The IFP application is filed in the court of appeals within the date provided by the court of appeals. If the mandamus petition is filed by a prisoner and relates to a civil or civil rights case,



then the petition is subject to the PLRA, and the prisoner must complete the PLRA forms rather than file an IFP application.

Failure to pay the filing fee or apply for indigent status within the date stated by the court of appeals will result in dismissal of the appeal for failure to prosecute.

(4th Circuit Court of Appeals // December 2023)



0.0.03 | APPEARANCE, DISCLOSURE & DOCKETING STATEMENTS

A party in a civil, agency, bankruptcy, or mandamus case, other than the United States or a party proceeding in forma pauperis, must file a disclosure statement, except that a state or local government is not required to file a disclosure statement in a case in which the opposing party is proceeding without counsel. The disclosure statement must identify all parent corporations and list any publicly held company that owns 10% or more of the party's stock or has a direct financial interest in the litigation by reason of a franchise, lease, profit sharing agreement, insurance, or indemnity agreement. A negative disclosure statement is also required. This information is used by the judges to determine their disqualifications. Loc. R. 26.1.

The clerk's office provides the disclosure statement form and notifies the parties that it must be filed within 14 days.

Docketing statements are not required in pro se cases. Any attorney filing documents in a pro se case must also file an appearance of counsel form.

A disclosure statement is required by the government if there was an organizational victim of the alleged criminal activity.

(4th Circuit Court of Appeals // December 2023)



0.0.04 | TRANSCRIPT

If a transcript is necessary for consideration of an issue, appellant must order the transcript within 14 days after filing the notice of appeal, following the instructions on the transcript purchase order.

Upon receipt of a copy of the transcript order, the court of appeals will issue a transcript order acknowledgment establishing a deadline by which the court reporter must file the transcript.

Parties who qualify to proceed without prepayment of fees and costs may apply for preparation of the transcript at government expense. 28 U.S.C. § 753(f). A motion for transcript at government expense should be filed in the district court in the first instance. The motion may be renewed in the court of appeals by filing it together with the informal opening brief. The motion will be considered in light of the informal brief.

(4th Circuit Court of Appeals // December 2023)

0.0.05 | RECORD ON APPEAL

In pro se cases, the record is filed in the court of appeals. Therefore, no appendix is necessary.

(4th Circuit Court of Appeals // December 2023)



0.0.06 | SEALED AND CONFIDENTIAL MATERIALS

Fourth Circuit case dockets and documents are available to the public over the Internet through the Judiciary's PACER system (Public Access to Court Electronic Records). The PACER system protects sealed documents and party filings in social security, immigration and retirement board cases from public Internet access.

The Federal Rules of Procedure, including Fed. R. App. P. 25(a)(5), require the filing party to remove protected information prior to filing a document in federal court and specifically require redaction of the following information.

- Social security and tax ID numbers must be redacted to the last four digits.
- Names of minor children must be redacted to initials.
- Dates of birth must be redacted to year.
- Financial account numbers must be redacted to the last four digits.
- Home addresses in criminal cases must be redacted to city and state.

The Judicial Conference Privacy Policy requires that presentence reports, statement of reasons in judgments of conviction, CJA financial affidavits, and identifying information about jurors be filed under seal.

When filing a document under seal in the district court, the filer must file a "certificate of confidentiality" with the document, stating that the document was sealed in the district court. Loc. R. 25(c).

If a brief or motion filed on appeal contains sealed information, appellant must file both a sealed version and a public redacted version of the brief or motion. Loc. R. 25(c).

(4th Circuit Court of Appeals // December 2023)

0.0.07 | MOTIONS, RESPONSES & REPLIES

Motions and responses filed on appeal that are handwritten or prepared on a typewriter may not exceed 20 pages in length. Replies that are handwritten or prepared on a typewriter are limited to 10 pages. Fed. R. App. P. 27(d).

Any party may respond to a motion within 10 days of service of the motion. No party is required to file a response unless the court requests a response. Fed. R. App. P. 27(a); Loc. R. 27(d).

A reply may be filed to a response within 7 days of service of the response. A reply is not required, and the court will not await the filing of a reply before ruling on the motion. If a movant intends to file a reply, the movant should inform the court of the intent and request that the court not act until the reply is received. Fed. R. App. P. 27(a); Loc. R. 27(d).

(4th Circuit Court of Appeals // December 2023)



0.0.08 | MOTIONS FOR CERTIFICATE OF APPEALABILITY

An applicant's appeal under 28 U.S.C. §§ 2254 & 2255 cannot proceed unless a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). When a notice of appeal is filed, the district court must send the district court's order granting or denying the certificate along with the notice of appeal to the court of appeals. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals. Fed. R. App. P. 22(b).

To assist the court in resolving the certificate of appealability, the clerk issues a preliminary informal briefing order directing the appellant to file an informal opening brief but scheduling no responsive brief. The panel will determine whether the appellant has made a substantial showing of the denial of a constitutional right. If the panel denies a certificate, the appeal will be dismissed. If the panel grants a certificate, the court may direct a responsive brief from the government, or the court may appoint counsel for formal briefing and oral argument. Loc. R. 22(a).

(4th Circuit Court of Appeals // December 2023)



0.0.09 | INFORMAL BRIEFING

Local Rule 34(b) provides for informal briefing in any case in which at least one party is proceeding pro se. The informal briefing schedule calls for the filing of briefs as follows:

- Informal opening brief - within 21 days after service of the informal briefing order
- Informal response brief - within 14 days after service of the informal opening brief
- Informal reply brief - within 10 days after service of the informal response brief

Appellant's informal brief and any informal response and reply briefs filed by the parties are considered, together with the record, by the panel to which the proceeding has been referred. The court will limit its review to the issues raised in the informal brief.

The clerk provides an informal brief form to be used by the parties. The form asks for the issues on appeal and the supporting facts and argument. The parties need not limit their briefs solely to the form. An additional supporting memorandum may be attached, but the informal brief and any supporting memorandum cannot exceed the length limitations established for formal briefs (up to 30 pages if handwritten or prepared on a typewriter). It is unnecessary to attach record excerpts since the record is before the Court. It is not necessary to cite cases in an informal brief. One brief is filed with the court and copies are served on the other parties to the case. Loc. R. 34(b)

If the appellant fails to file an informal opening brief, the appeal is subject to dismissal in accordance with Local Rule 45.

(4th Circuit Court of Appeals // December 2023)

0.0.10 | APPOINTMENT OF COUNSEL FOR FORMAL BRIEFING AND ORAL ARGUMENT

Motions for appointment of counsel should be filed at the same time as the informal brief. If filed prior to the informal brief, consideration of the motion for appointment of counsel will be deferred pending filing of the briefs and review of the appeal on the merits.

Local Rule 34(a) sets out the court's pre-argument review procedure. Under Local Rule 34(a), cases are referred to randomly selected three-judge panels for review of the briefs and appendix. If all of the judges of the panel conclude that oral argument is unnecessary, they may make any appropriate disposition, without oral argument, including but not limited to, affirmance or reversal. Loc. R. 34(a).

A decision against oral argument must be unanimous, and if a case is decided without oral argument the decision on the merits must be unanimous also. IOP 34.2. Whenever at least one member of the review panel determines that oral argument would be of assistance, the panel notifies the clerk who places the case on the oral argument calendar. IOP 34.2.

If the panel reviewing an informal brief submitted by an indigent pro se litigant determines that further briefing and possible oral argument would be of assistance, counsel will be appointed and directed to file additional formal briefs. In any appeal that has been informally briefed, the Court may direct that additional briefs be filed prior to oral argument.

(4th Circuit Court of Appeals // December 2023)

0.0.11 | OPINION AND JUDGMENT

The clerk enters judgment on the court's decision on the date the opinion is filed. The clerk notifies the parties of entry of judgment and post-judgment time frames. Fed. R. App. P. 36.

A timely petition for certiorari may be filed in the U.S. Supreme Court within 90 days of entry of judgment. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of the petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. For more details, see the Petition for Writ of Certiorari Information Sheet.

(4th Circuit Court of Appeals // December 2023)



0.0.12 | REHEARING AND REHEARING EN BANC PETITIONS

A timely petition for rehearing or rehearing en banc may be filed within 14 days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. Fed. R. App. P. 40(a).

The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel. Loc. R. 40(c).

Petitions for rehearing and petitions for en banc rehearing from incarcerated persons proceeding without the assistance of counsel are deemed filed when they are delivered to prison or jail officials. All other such petitions are deemed filed only when received in the clerk's office. Loc. R. 40(c).

A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this Court, or another Court of Appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. Loc. R. 40(b). A petition for rehearing en banc must show that en banc consideration is necessary to secure or maintain uniformity of the court's decisions or that the proceeding involves a question of exceptional importance. Fed. R. App. P. 35(a). A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the Court. Fed. R. App. P. 35(d) & 40(b).

Except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court (such as a motion to stay issuance of the mandate), the clerk's office will not accept motions or other papers requesting further relief in a case after the court has denied a petition for rehearing or



the time for filing a petition for rehearing has expired. Loc. R. 40 (d) .

(4th Circuit Court of Appeals // December 2023)



0.0.13 | COSTS AND ATTORNEY'S FEES

The prevailing party can recover the costs of preparing necessary copies of formal briefs and appendices. A prevailing appellant can recover the filing fee for the appeal. Fed. R. App. P. 39. The costs of informal briefs are not recoverable under Fed. R. App. P. 39.

(4th Circuit Court of Appeals // December 2023)



0.0.14 | MANDATE

The court's mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. Fed. R. App. P. 41; Loc. R. 41.

No mandate issues in mandamus or other original proceedings.

(4th Circuit Court of Appeals // December 2023)



0.0.15 | PRO SE FORMS

See the court's Pro Se Forms page.

(4th Circuit Court of Appeals // December 2023)



APPENDIX



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