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**4TH CIRCUIT COURT OF APPEAL'S  
PRO SE HANDBOOK  
VOLUME 1: GENERAL PROVISIONS**

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**4TH CIRCUIT COURT OF APPEALS'**  
**PRO SE HANDBOOK**

**VOLUME**    1    GENERAL PROVISIONS

**CHAPTER**    1    ATTORNEY ADMISSION & EFILING REGISTRATION

**ITEMS**    1.1.01 through 1.1.04

**DATE**    12/1/2023



### 1.1.01 | **ADMISSION REQUIRED**

Only attorneys admitted to the bar of this court may practice before the court. The court does not admit attorneys pro hac vice.

An attorney may be named on a brief filed in this court without being admitted to the bar of the Fourth Circuit, provided that at least one lawyer admitted to practice in this court also appears on the brief. Any other document submitted by an attorney who is not a member of the bar of the Fourth Circuit will be accepted for filing conditioned on his or her qualifying for membership within a reasonable time. Loc. R. 46(b).

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



### 1.1.02 | ELIGIBILITY REQUIREMENTS

An attorney is eligible for admission "if that attorney is of good moral and professional character and admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands)." Fed. R. App. P. 46(a).

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



### 1.1.03 | APPLICATION FOR ADMISSION

To apply for admission, complete the application for admission, including signing the oath before a public notary and having a bar member sign the motion for admission. The application can be mailed to the clerk with the requisite fee, made payable to the court of appeals clerk. The application can also be submitted online with payment by credit card after the attorney seeking admission to the court has successfully registered for a Fourth Circuit Pacer account.

The fee is waived for attorneys appointed by the court to represent a party in forma pauperis, counsel for the United States and any agency thereof who has a case pending before this court, and law clerks to the judges of the court and to the district judges, magistrate judges, and bankruptcy judges within this circuit. Loc. R. 46(b).

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



#### 1.1.04 | EFILING REGISTRATION

Attorneys who wish to file documents with the court must register for a Pacer account. See Register for eFiling. If counsel is already a member of the court's bar, the account will be activated with full filing privileges. If counsel is not a member of the court's bar, their account will be activated to allow for submission of their bar application. Once their bar application is processed, filing privileges will be activated.

Users must have an upgraded PACER account before they can file documents with the Fourth Circuit. The same PACER account may be used at all federal courts that have implemented Next Gen CM/ECF, but each court must separately approve and register counsel's filing privileges. All filers must now have their own PACER account. Law firms and other organizations can set up a PACER Administrative Account (PAA) to manage their user accounts and have central billing for PACER access fees. See Upgrade PACER Account Instructions for additional information. The PACER Service Center notifies the Fourth Circuit that counsel has registered for filing privileges.

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**1.2.01 | ELECTRONIC FILING AND SERVICE BY COUNSEL**

The Fourth Circuit adopted mandatory electronic filing by counsel for all cases effective June 1, 2008. Therefore, counsel must register for electronic filing and file and serve documents through the court's CM/ECF system. Counsel unable to file electronically may request exemption for good cause shown in a particular case. Counsel appointed in the district court who wish to withdraw from CJA representation on appeal may file a motion to withdraw in paper form instead of registering for electronic filing for the sole purpose of withdrawing from the case. Electronic filing is complete at the time and date stated in the notice of docket activity.

CM/ECF automatically serves case participants who have registered with the court for electronic service; participants who do not receive electronic service through CM/ECF must be served by counsel as otherwise authorized by Fed. R. App. P. 25(c). A service preference report is available from the CM/ECF reports menu that identifies which participants counsel must serve outside CM/ECF. In addition, the notice of docket activity received upon completion of filing identifies the participants who must be served conventionally. Sealed documents, case initiating documents (e.g., petitions for review, petitions for mandamus), and manual filings (not available in electronic form) are not served through CM/ECF and must be served by counsel as otherwise authorized by Fed. R. App. P. 25(c).

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

### 1.2.02 | PAPER FILING AND SERVICE BY PRO SE LITIGANTS

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. Pro se documents filed in paper form should be addressed to: Patricia S. Connor, Clerk, United States Court of Appeals for the Fourth Circuit, 1100 E. Main Street, Suite 501, Richmond, Virginia, 23219-3517.

Filing is not timely unless the clerk receives the papers within the time fixed for filing. Fed. R. App. P. 25(a). However, a paper filed by an inmate is timely if evidence, such as a postmark, date-stamp, or 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. Briefs are timely filed if placed in first-class mail or dispatched to a third-party courier within the time fixed for filing.

Litigants who file documents in paper form, outside CM/ECF, must also serve those documents outside CM/ECF. In accordance with Fed. R. App. P. 25(c), service outside CM/ECF may be by (i) personal delivery, (ii) mail, or (iii) third-party commercial carrier for delivery within three days, or (iv) by email outside CM/ECF with the written consent of the person served.

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



### 1.2.03 | CERTIFICATES OF SERVICE

For registered users filing through CM/ECF, a certificate of service is not required if all service was through CM/ECF. If any service was accomplished outside CM/ECF, a certificate of service is required certifying the date and manner of service and the names and addresses of persons served outside CM/ECF. For sealed documents, a certificate of service is included on the Certificate of Confidentiality form for this purpose.

Parties not filing through CM/ECF must file a certificate of service with their document certifying the date and manner of service and the names and addresses of persons served outside CM/ECF. Service on a party represented by counsel must be on all counsel of record, except as provided by rule or order. Fed. R. App. P. 25(b).

If service was by fax or e-mail, the certificate must provide the fax number or e-mail address of the person served. Fed. R. App. P. 25(d). When a brief or appendix is filed by mailing or dispatch, the certificate of service must also state the date and manner by which the document was mailed or dispatched to the clerk. Fed. R. App. P. 25(d)(3).

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



#### 1.2.04 | COMPUTATION OF TIME

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).

In computing a time period stated in hours, "(A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. App. P. 26(a)(2).

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



### 1.2.05 | DEADLINES RUNNING FROM SERVICE OF A DOCUMENT

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. Fed. R. App. P. 26(c). A paper that is served electronically is treated as delivered on the date of service; thus, three days are not added to deadlines running from electronic service of a document. Fed. R. App. P. 26(c) (effective Dec. 1, 2016).

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



**1.2.06 | SPECIFIC DOCUMENTS (CHART)**

| Type of Document                                                                                                                                                                                            | How to File                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Case initiating documents-- petitions for permission to appeal, petitions for review, applications for enforcement, petitions for mandamus or prohibition, motions to authorize successive habeas petitions | Case initiating documents can be submitted to the court in any of the following ways:<br>(1) upload electronically through CM/ECF utility to submit new case; or<br>(2) mail to Clerk's Office, 1100 E. Main St., Suite 501, Richmond, VA 23219.<br>Additional copies are not required for filing, but documents must be served conventionally. |
| Notice of appeal                                                                                                                                                                                            | File electronically in district court.                                                                                                                                                                                                                                                                                                          |
| Initial forms -- appearance of counsel, disclosure statement, docketing statement, transcript order form                                                                                                    | File electronically in court of appeals.<br><br>Send copy of transcript order to court reporter and district court and attach copy to docketing statement filed in the court of appeals. In CJA cases, submit all transcript authorization requests through the district court's eVoucher system.                                               |
| Motions, responses, replies                                                                                                                                                                                 | File electronically in court of appeals. Exhibits should be filed as part of the <b>Motion</b> or <b>Response/answer</b> event, clearly identified by letter or number.                                                                                                                                                                         |



|                                                       |                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Formal briefs                                         | <p>File electronically in court of appeals using BRIEF event. Filing of paper copies is not required unless ordered by the court.</p> <p>Service of paper copies on opposing counsel is not required.</p>                                                                                                    |
| Sealed version of formal briefs                       | <p>File electronically in court of appeals using SEALED BRIEF event; also file a certificate of confidentiality.</p> <p>Filing of paper copies is not required unless ordered by the court.</p>                                                                                                              |
| Joint Appendix<br>Supplemental Appendix               | <p>File electronically in court of appeals using JOINT APPENDIX or SUPPLEMENTAL APPENDIX event.</p> <p>Service of paper copies on opposing counsel is not required.</p>                                                                                                                                      |
| Sealed joint appendix<br>Sealed supplemental appendix | <p>File electronically in court of appeals using SEALED JOINT APPENDIX or SEALED SUPPLEMENTAL APPENDIX entry; also a certificate of confidentiality.</p> <p>Filing of paper copies is not required unless ordered by the court, but sealed appendices must be served on opposing counsel outside CM/ECF.</p> |



|                                                                     |                                                                                                                                                                                                       |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Certificate of confidentiality or motion to seal                    | File electronically in court of appeals using entry Certificate of Confidentiality or MOTION/Seal.<br><br>File paper copies with any paper copies of sealed briefs or appendices ordered by the court |
| Informal briefs                                                     | File electronically in court of appeals and serve pro se litigants outside CM/ECF. Most pro se litigants are not registered as filing users and therefore must be served conventionally.              |
| Notices regarding availability for argument                         | File electronically in court of appeals                                                                                                                                                               |
| Acknowledgments of oral argument notification                       | File electronically in court of appeals                                                                                                                                                               |
| Supplemental authorities, status reports, memoranda, correspondence | File electronically in court of appeals                                                                                                                                                               |
| Petitions for rehearing and rehearing en banc                       | File electronically in court of appeals                                                                                                                                                               |



|                                               |                                                                                                              |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Bills of cost and objections to bills of cost | File electronically in court of appeals                                                                      |
| CJA and other financial vouchers              | File CJA vouchers in CJA eVoucher.<br>File assigned counsel vouchers via email to 4cca-cja@ca4.uscourts.gov. |

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**CHAPTER**    3    APPELLATE DEADLINES

**ITEMS**    1.3.01 through 1.3.05

**DATE**    12/1/2023



### 1.3.01 | CALCULATION OF DEADLINES

#### **Fed. R. App. P. 26(a) Computing Time:**

When computing deadlines, exclude the day of the event that triggers the period; count every day including Saturdays, Sundays, and legal holidays; and 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).

#### **Fed. R. App. P. 26(c) Additional Time After Service:**

When a party may or must act within a specified time after service, 3 days are added after the period would otherwise expire under Rule 26(a), 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; therefore 3 days are not added to the period allowed.

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### 1.3.02 | INITIAL DOCUMENTS

|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Notice of appeal from district court                  | <b>FRAP 4:</b> For civil cases, notice must be filed in district court within 30 days after entry of judgment (60 days if federal government a party), or within 14 days after filing of a timely notice of appeal by any other party. For criminal cases, defendant's notice must be filed in district court within 14 days after entry of judgment or within 14 days after filing of a timely appeal by the government; the government's notice of appeal must be filed within 30 days after entry of judgment or within 30 days after filing of a timely appeal by the defendant. See the rule for extensions based on post-judgment filings. |
| Notice of appeal from tax court                       | <b>FRAP 13:</b> Notice of appeal must be filed in tax court within 90 days after entry of tax court's decision or within 120 days after tax court's decision if any other party has filed a timely notice of appeal.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Petition for review of agency order                   | <b>FRAP 15:</b> Petition for review of agency order must be filed in the court of appeals within the time prescribed by law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Answer to application for enforcement of agency order | <b>FRAP 15:</b> An answer to an application for enforcement of an agency order must be served within 21 days after filing of the application.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Petition for permission to appeal from district court | <b>28 USC § 1292(b):</b> A petition for permission to appeal an order certified by the district court to involve a controlling question of law as to which there is substantial ground for difference of opinion and as to which immediate appeal would materially advance the termination of the litigation must be filed in the court of appeals within 10 days after entry of the order.                                                                                                                                                                                                                                                      |



|                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                         | <p><b>28 USC § 1453(c):</b> A petition for permission to appeal an order remanding a class action to the state court from which it was removed must be filed within 10 days after entry of the order.</p> <p><b>Fed R Civ P 23(f):</b> A petition for permission to appeal an order granting or denying class-action certification must be filed within 14 days after entry of the order.</p> <p><b>FRAP 5:</b> The petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Petition for permission to appeal from bankruptcy court | <p><b>28 USC § 158(d) (2):</b> Any request by a party that the bankruptcy court or district court certify a bankruptcy court order for direct appeal to the court of appeals on the basis that the order involves a question of law as to which there is no controlling decision, that involves a matter of public importance, that requires resolution of conflicting decisions, or as to which an immediate appeal would materially advance the progress of the case must be filed within 60 days after entry of the order.</p> <p><b>Bankr R 8002 &amp; 8006:</b> For timely filing of a petition for permission to appeal, a notice of appeal must be filed in the bankruptcy court within 14 days of entry of the order under Bankr R 8002, and a petition for permission to appeal must be filed in the court of appeals within 30 days of the date the order is certified for direct appeal to the court of appeals under Bank R 8006.</p> <p><b>FRAP 5:</b> The petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of</p> |



|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | compliance with type-volume limit is required if produced by computer.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Answer or cross-petition for permission to appeal | FRAP 5: A party may file an answer in opposition or a cross-petition within 10 days after service of the petition. The answer or cross-petition must not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer.                                                                  |
| Petition for writ of mandamus                     | FRAP 21: The rules do not prescribe a time period for filing a petition for writ of mandamus or prohibition, but state that the petition may not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer.                                                                          |
| Answer to petition for writ of mandamus           | FRAP 21: The court may deny the petition without answer or order the respondent to answer within a fixed time. The rules do not establish a time period, but the court generally uses a 10-day period. The answer may not exceed 7,800 words (30 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. |
| Application to proceed in forma pauperis          | FRAP 24: If leave to proceed in forma pauperis has not been granted by the district court, an application to proceed in forma pauperis on appeal must be filed in the court of appeals within the 15-day period set by the court's fee notice or within the subsequent 15-day period set by the court's Local Rule 45 notice.                                                                                                                                                                                                       |



|                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Appearance of counsel                                                    | Loc R 46(c): Each attorney of record must file an appearance of counsel within 14 days after docketing of the appeal or after being retained or appointed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Disclosure of corporate affiliations                                     | Loc R 26.1: 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. A corporate party in a criminal or post-conviction case, and a corporate amicus curiae, must also file a disclosure statement. Absent a showing of good cause, the government must file a disclosure statement in a criminal case in which there is an organizational victim. The disclosure statement must be filed within 14 days after docketing of the appeal unless earlier pleadings are filed for the court's consideration, in which case the disclosure statement must be filed at that time. The disclosure statement must also be included in the party's principal brief. |
| Docketing statement (civil/agency)<br><br>Docketing statement (criminal) | Loc R 3(b): Counsel filing a notice of appeal, petition for review, or application for enforcement must file a docketing statement within 14 days after docketing of the appeal. If an opposing party wishes to object to the docketing statement, such objection must be filed within 10 days after service of the docketing statement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Transcript order form                                                    | FRAP 10(b): Appellant must order any necessary transcript within 14 days of filing the appeal. The transcript order form must be transmitted to the court reporter and the district court, and attached to the docketing statement filed in the court of appeals. CJA counsel must also submit an AUTH-24 in the district court's eVoucher system within 14 days. If appellee believes additional portions of the transcript are needed, appellee must file and serve                                                                                                                                                                                                                                                                                                                                                                                                                                                           |



|                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                            | on appellant a designation of additional parts to be ordered within 14 days after service of the transcript order form. Unless appellant orders the additional parts within 14 days after service of the designation, the appellee may, within the following 14 days, either order the parts or move in the district court for an order requiring the appellant to do so.                                                  |
| Notice of constitutional challenge to state or federal statute in case in which state or federal government is not a party | FRAP 44: If a party questions the constitutionality of a federal law in a case in which the federal government is not a party, or the constitutionality of a state law in a case in which the state government is not a party, the questioning party must give written notice to the court upon filing of the record or as soon as the question is raised so that the clerk can certify that fact to the attorney general. |
| Administrative record                                                                                                      | FRAP 17: The agency must file the administrative record within 40 days after filing of the briefing order in an agency case.                                                                                                                                                                                                                                                                                               |

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



### 1.3.03 | MOTIONS

|               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Motion</p> | <p>FRAP 27: Application for an order or other relief is made by a motion, the length of which may not exceed 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. In cases in which all parties are represented by counsel, the motion must state that the other parties have been informed of the intended filing of the motion and indicate whether the other parties consent or intend to file responses in opposition. Loc R 27(a). With the following exceptions, the rules do not establish deadlines for the filing of motions.</p> <p>FRAP 16(d): A motion to intervene in an agency review proceeding must be filed within 30 days of filing of the petition for review.</p> <p>Loc R 31(c): A motion for extension of time to file a brief must be filed well in advance of the brief due date.</p> <p>Loc R 27(b): Any party adversely affected by an order of the clerk may file a motion to reconsider the clerk's action within 14 days after entry of the order.</p> <p>Loc R 27(f): A motion for summary disposition should be made only after briefs are filed. If submitted before completion of the briefing schedule, the court will defer action on the motion until the case is mature for full consideration. Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or on other procedural grounds should be filed within the time allowed for the filing of the response brief. The Court may also sua sponte summarily dispose of any appeal at any time.</p> |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | <p>Loc R 30(a): A motion for sanctions for unnecessary appendix designations must be filed within 14 days after entry of judgment, and will be considered only if counsel objected to the designation of unnecessary material in writing to opposing counsel within 14 days of the designation.</p> <p>Loc R 32(b): A motion to exceed the length limitations for briefs must be filed at least 10 days prior to the due date of the brief and must be supported by a statement of reasons. These motions are disfavored and will be granted only for exceptional reasons.</p> <p>Loc R 34(c): Any motion that would affect the argument date of a case must be filed within the 10-day period established by the notice that a case has been tentatively assigned to a particular argument session.</p> <p>Loc R 34(d): A motion for additional argument time must be filed well in advance of the hearing date and set forth the position of opposing counsel.</p> <p>Loc R 34(e): Any motion to submit on the briefs must be filed as soon as possible upon completion of the briefing schedule or within 10 days of tentative notification of argument, whichever is earlier.</p> <p>FRAP 41: Any motion to stay the mandate must be filed prior to issuance of the mandate. The mandate issues 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for rehearing or rehearing en banc, or a motion for stay of mandate.</p> |
| Response to motion | <p>FRAP 27: A response to a motion must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner. Responses must not exceed</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | 5,200 words (20 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Reply in support of motion | FRAP 27: Any reply to a response must be filed within 7 days after service of the response. The court will not ordinarily await the filing of a reply before reviewing a motion and response. If movant intends to file a reply and does not want the court to actively consider the motion and response until a reply is filed, the movant should notify the clerk in writing of the intended filing of the reply and request that the court not act until the reply is received. Replies must not exceed 2,600 words (10 pages if handwritten or typewritten), exclusive of any cover page, disclosure statement, table of contents, table of citations, signature block, certificates of counsel, and attachments. A certificate of compliance with type-volume limit is required if produced by computer. |

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



### 1.3.04 | BRIEFING & CALENDARING

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Joint Appendix                          | FRAP 30: Unless deferred under FRAP 30(c), appellant must file the joint appendix at the time of filing the opening brief. The appendix must comply with the Fourth Circuit Brief & Appendix Requirements. In court-appointed cases, the appendix cannot exceed 250 double-sided sheets without advance permission of the court.                                                                                                                                                                                 |
| Opening brief                           | FRAP 31: In civil cases, appellant's opening brief must be filed within 40 days after filing of the briefing order.<br><br>Loc R 31(a): In criminal cases, appellant's opening brief must be filed within 35 days after filing of the briefing order.<br><br>FRAP 32(a) (eff. 12/01/2016): The opening brief may not exceed 13,000 words, must be accompanied by a certificate of compliance with type-volume limit if in excess of 30 pages, and must satisfy the Fourth Circuit Brief & Appendix Requirements. |
| Response brief                          | FRAP 31: In civil cases, appellee's response brief must be filed within 30 days after service of appellant's opening brief.<br><br>Loc R 31(a): In criminal cases, appellee's response brief must be filed within 21 days after service of appellant's opening brief.<br><br>FRAP 32(a): The response brief may not exceed 13,000 words, must be accompanied by a certificate of compliance with type-volume limit if in excess of 30 pages, and must satisfy the Fourth Circuit Brief & Appendix Requirements.  |
| Opening/response brief for cross-appeal | FRAP 28.1: In civil cross-appeals, appellee's opening/response brief must be filed within 30 days after service of appellant's opening brief.<br><br>Loc R 31(a): In criminal cross-appeals, appellee's opening/response brief must be filed within 21 days after service of appellant's opening brief.                                                                                                                                                                                                          |



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|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | FRAP 28.1: The opening/response brief may not exceed 15,300 words, must be accompanied by a certificate of compliance with type-volume limit if in excess of 35 pages, and must satisfy the Fourth Circuit Brief & Appendix Requirements.                                                                                                                                                                                                                                                                                                                                       |
| Response/reply brief for cross-appeal | <p>FRAP 28.1: In civil cross-appeals, appellant's response/reply brief must be filed within 30 days after service of appellee's opening/response brief.</p> <p>Loc R 31(a): In criminal cross-appeals, appellant's response/reply brief must be filed within 21 days after service of appellee's opening/response brief.</p> <p>FRAP 28.1: The response/reply brief may not exceed 13,000 words, must be accompanied by a certificate of compliance with type-volume limit if in excess of 30 pages, and must satisfy the Fourth Circuit Brief &amp; Appendix Requirements.</p> |
| Reply brief                           | <p>FRAP 31: In civil cases, the reply brief must be filed within 21 days after service of the response brief or the response/reply brief.</p> <p>Loc R 31(a): In criminal cases, the reply brief must be filed within 10 days after service of the response brief or the response/reply brief.</p> <p>FRAP 32(a): The reply brief may not exceed 6,500 words, must be accompanied by a certificate of compliance with type-volume limit if in excess of 15 pages, and must satisfy the Fourth Circuit Brief &amp; Appendix Requirements.</p>                                    |



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| Intervenor's brief               | <p>FRAP 16(d): A person wishing to intervene in an agency review proceeding must file a motion for leave to intervene within 30 days after the petition for review is filed.</p> <p>Loc R 28(d): All parties to a side, including intervenors, are required to join in a consolidated brief unless the court grants leave to file a separate brief.</p>                                                                                                                                                                                                                                                                                                                                                      |
| Amicus brief at the merits stage | <p>FRAP 29(a): An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. The court may grant leave for later filing, specifying the time within which the opposing party may answer.</p> <p>An amicus brief at the merits stage may not exceed half the length of the party's principal brief, must be accompanied by a certificate of compliance with type-volume limit and must satisfy the Fourth Circuit Brief &amp; Appendix Requirements.</p> |
| Anders pro se brief              | <p>Anders v. California, 388 U.S. 738 (1967): If appellate counsel is convinced, after obtaining and reviewing the entire record in a criminal appeal, that the appeal is frivolous, an Anders brief is filed, raising anything in the record that could possibly support an appeal. A copy of counsel's brief is served on the defendant with a letter advising the defendant that the court will afford him time to raise any issues he may wish to pursue. The court then notifies the defendant that he has 30 days to file his pro se brief under Anders.</p>                                                                                                                                           |
| Informal opening brief           | <p>Loc R 34(b): In pro se cases, the court sets an informal briefing schedule that requires the filing of appellant's informal opening brief within 21 days of service of the briefing order. The court sets a preliminary informal briefing schedule in all non-capital cases in which a certificate of appealability is needed under FRAP 22(b). The preliminary informal briefing schedule requires the filing of an informal opening brief within 21 days of service of the</p>                                                                                                                                                                                                                          |



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|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 | briefing order for the court to use in considering whether to grant a certificate of appealability. No deadline is set for a response brief unless a certificate of appealability is granted.                          |
| Informal response brief                         | Loc R 34(b): In pro se cases, appellee may (but is not required to) file an informal response brief within 14 days after service of the informal opening brief.                                                        |
| Informal reply brief                            | Loc R 34(b): In pro se cases, appellant may file an informal reply brief within 10 days after service of the informal response brief.                                                                                  |
| Notice of conflict with proposed argument dates | Loc R 34(c): Counsel must notify the clerk of any conflict with proposed argument dates within the 10-day period established by the notice that a case has been tentatively assigned to a particular argument session. |
| Oral argument acknowledgment                    | Counsel must return the oral argument acknowledgment form identifying who will present argument within the 10-day period established by the oral argument notification.                                                |

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### 1.3.05 | POST-DECISION

|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Petition for rehearing and/or rehearing en banc</p>             | <p>FRAP 40: A petition for rehearing must be filed within 14 days after entry of judgment, but in a civil case in which the United States or its agency or officer is a party, any party may file a petition for rehearing within 45 days after entry of judgment. A petition for rehearing must not exceed 3,900 words (15 pages if handwritten or typewritten). A certificate of compliance with type-volume limit is required if produced by computer.</p> <p>Loc R 40(c): The court strictly enforces the time limits for filing petitions for rehearing. The only grounds for extension are the death or serious illness of counsel, a pro se party, or a family member of counsel or a pro se party; or an extraordinary circumstance wholly beyond the control of counsel or a pro se party.</p> <p>Loc R 35(a): A petition for rehearing en banc must be made at the same time and in the same document as a petition for rehearing.</p> <p>FRAP 35(b): A combined petition for rehearing and rehearing en banc may not exceed 3,900 words (15 pages if handwritten or typewritten). A certificate of compliance with type-volume limit is required if produced by computer.</p> |
| <p>Response to petition for rehearing and/or rehearing en banc</p> | <p>FRAP 40: Unless the court requests, no response to a petition for panel rehearing is permitted. If a response is requested, the court generally allows 10 days.</p> <p>FRAP 35: Unless the court orders, no response may be filed to a petition for rehearing en banc. If a response is ordered, the court generally allows 10 days. A response to a petition for rehearing and/or rehearing en banc may not exceed 3,900 words (15 pages if handwritten or typewritten). A certificate of compliance with type-volume limit is required if produced by computer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |



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| Amicus brief at the petition for rehearing stage    | <p>FRAP 29(b): An amicus curiae supporting a petition for rehearing or supporting neither party must file its amicus brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.</p> <p>An amicus brief at the petition for rehearing stage may not exceed 2,600 words, must be accompanied by a certificate of compliance with type-volume limit and must satisfy the Fourth Circuit Brief &amp; Appendix Requirements.</p> <p>Loc R 29(b)(2): A paper copy of the amicus brief is not required at the petition for rehearing stage.</p> |
| Bill of costs                                       | <p>FRAP 39: A prevailing party who wants costs taxed must file a bill of costs within 14 days after entry of judgment.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Objection to bill of costs                          | <p>FRAP 39: Objections to a bill of costs must be filed within 14 days after service of the bill of costs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>CJA eVoucher</p> <p>Assigned counsel voucher</p> | <p>CJA Implementation Plan: Appointed or assigned counsel's compensation voucher is due within 60 days of entry of judgment, denial of a petition for rehearing, or the filing of a petition for writ of certiorari, whichever is later.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



|                                 |                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Certiorari status form          | Loc R 46(d): To ensure compliance with the requirement that counsel receiving a written request that a certiorari petition be filed in a criminal case either file a petition for certiorari or move to withdraw on the basis that a certiorari petition would be frivolous, the court requires counsel to file a certiorari status form within 60 days after entry of judgment. |
| Petition for writ of certiorari | IOP 41.2: A petition for writ of certiorari must be filed with the Supreme Court within 90 days after entry of judgment. The time runs from issuance of the court's decision or from denial of a timely petition for rehearing or rehearing en banc, not from issuance of the mandate.                                                                                           |

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**4TH CIRCUIT COURT OF APPEALS'**  
**PRO SE HANDBOOK**

**VOLUME**    1    GENERAL PROVISIONS

**CHAPTER**    4    SEALED & CONFIDENTIAL MATERIALS

**ITEMS**    1.4.01 through 1.4.09

**DATE**    12/1/2023



#### **1.4.01 | INTERNET AVAILABILITY OF DOCKET & DOCUMENTS**

Fourth Circuit case dockets and documents are available on the Internet via the Judiciary's PACER system (Public Access to Court Electronic Records). The Fourth Circuit docket is available on the Internet even if the district court docket was sealed. If a party's name was sealed in the district court, it should be replaced by "Under Seal" or a pseudonym on appeal.

Due to the electronic availability of court documents, the federal rules prohibit including certain personal data identifiers in court filings. In addition, parties should not include any data in their filings that they would not want on the Internet. Counsel should advise their clients on this subject so that an informed decision can be made. Responsibility rests with counsel and the parties, not with the clerk.

Documents filed by the parties in immigration, social security, and railroad retirement board cases are not accessible over the Internet to the public. Public Internet access is limited to the court's docket, orders, and opinions in these cases. Parties wishing to prevent their full names from appearing in court documents, including opinions available on the Internet, may file a motion to redact their name to use only their first name and last initial rather than their full name.

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#### 1.4.02 | FEDERAL RULES OF PROCEDURE

The federal rules of procedure require filers to redact any of the following personal data identifiers (PDIs) if included in court filings:

- (1) social security and tax ID numbers must be limited to last four digits;
- (2) minor children must be identified by their initials only;
- (3) dates of birth must show the year only;
- (4) financial account numbers must be limited to the last four digits only; and
- (5) home addresses in criminal cases must be limited to city and state only.

The federal rules establish limited exceptions to these redaction requirements. See Fed. R. App. P. 25(a)(5); Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037.

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### 1.4.03 | JUDICIAL CONFERENCE PRIVACY POLICY

In addition, the judiciary's Privacy Policy for Electronic Case Files prohibits filers from including any of the following criminal documents in the public file:

- (1) unexecuted summonses or warrants;
- (2) bail or presentence reports;
- (3) statement of reasons in judgment of conviction;
- (4) juvenile records;
- (5) identifying information about jurors or potential jurors;
- (6) CJA financial affidavits;
- (7) ex parte requests to authorize CJA services; and
- (8) any sealed documents, such as motions for downward departure for substantial assistance, plea agreements indicating cooperation, or victim statements.

Any reference to substantial assistance or cooperation with the government in criminal proceedings should be sealed in the parties' briefs.

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#### **1.4.04 | LOCAL RULE 25 (C)**

Local Rule 25(c) limits the sealing of documents by requiring that sealed record material be separated from unsealed material and placed in a sealed volume of the appendix and by requiring the filing of both sealed, highlighted versions and public, redacted versions of briefs and other documents.

Since the ECF events for sealed filings make the documents accessible only to the court, counsel must serve sealed documents on the other parties outside ECF.

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#### **1.4.05 | SEALED VOLUME OF APPENDIX/SUPPLEMENTAL APPENDIX**

If sealed record material needs to be included in the appendix, it must be placed in a separate, sealed volume of the appendix and filed with a certificate of confidentiality. In consolidated criminal cases in which presentence reports are being filed for multiple defendants, each presentence report must be placed in a separate, sealed volume served only on Government counsel and counsel for the defendant who is the subject of the report.

- Use ECF event-SEALED JOINT APPENDIX (court access) and SEALED SUPPLEMENTAL APPENDIX (court access) to file sealed electronic appendix volume(s). Cover of sealed appendix volume must be marked SEALED, and paper copies must be placed in envelopes marked SEALED. Sealed volume must be served on other parties outside ECF.
- Use ECF event-Certificate of confidentiality to identify authority for treating material as sealed and to identify who may have access to sealed material. A paper copy of the certificate of confidentiality must accompany the paper copy of the sealed appendix filed with the court.
- Use ECF event-JOINT APPENDIX and SUPPLEMENTAL APPENDIX to file public electronic appendix volumes(s).

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#### 1.4.06 | SEALED VERSION OF BRIEF

If sealed material needs to be referenced in a brief, counsel must file both a sealed, highlighted version of the brief and a public, redacted version of the brief, as well as a certificate of confidentiality.

- Use ECF event-SEALED BRIEF (court access) (formal briefs under seal) to file sealed electronic version of brief in which sealed material has been highlighted. Cover of sealed brief must be marked SEALED, and paper copies must be placed in envelopes marked SEALED. Sealed version must be served on other parties outside ECF.
- Use ECF event-Certificate of confidentiality to identify authority for treating material as sealed and to identify who may have access to sealed material. A paper copy of the certificate of confidentiality must accompany the paper copy of the sealed brief filed with the court.
- Use ECF event-BRIEF (formal briefs not under seal) to file public electronic version of brief from which sealed material has been redacted.

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#### 1.4.07 | SEALED VERSION OF MOTIONS AND OTHER DOCUMENTS

If sealed material needs to be referenced in a motion or other document, counsel must file both a sealed, highlighted version and a public, redacted version, as well as a certificate of confidentiality.

- Use ECF event-SEALED DOCUMENT to file sealed electronic version of document in which sealed material has been highlighted. First page of document must be marked SEALED. Sealed version must be served on other parties outside ECF.
- Use ECF event-Certificate of confidentiality to identify authority for treating material as sealed and to identify who may have access to sealed material.
- Use the appropriate ECF event (e.g., MOTION or RESPONSE/ANSWER) to file public electronic version of document from which sealed material has been redacted.

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#### **1.4.08 | MOTIONS TO SEAL**

A certificate of confidentiality may be used to request sealing of information protected by the Privacy Policy for Electronic Case Files, or by statute, rule, regulation, or order. To request sealing of other materials, or to request sealing of an entire brief or motion due to inability to create a public, redacted version, counsel must file a motion to seal.

The motion to seal must appear on the public docket for five days. The motion must identify the document or portions thereof for which sealing is requested, the reasons why sealing is necessary, the reasons a less drastic alternative will not afford adequate protection, and the period of time for which sealing is required. If it is necessary to reference sealed material in the motion, a sealed, highlighted version and a public, redacted version of the motion must be filed.

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#### **1.4.09 | HIGHLY SENSITIVE DOCUMENTS**

The court has adopted Standing Order 21-01 implementing procedures adopted by the Federal Judiciary for the filing of highly sensitive sealed documents in paper form, accompanied by a certificate (for material sealed by the district court or other tribunal) or motion (for requests to file material under seal in the first instance).

##### **Forms:**

Certificate of Confidentiality & Certificate for Highly Sensitive Document Protection

##### **Instructions:**

How do I redact items from pleadings? (Marking out text in a word processing document using a highlighter or box tool does not remove sensitive data from the document.)

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## APPENDIX



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