



**4TH CIRCUIT COURT OF APPEAL'S
PRO SE HANDBOOK
VOLUME 2: INITIAL REQUIREMENTS**

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4TH CIRCUIT COURT OF APPEALS'
PRO SE HANDBOOK

VOLUME 2 INITIAL REQUIREMENTS

CHAPTER 1 NEW APPEALS & PETITIONS

ITEMS 2.1.01 through 2.1.11

DATE 12/1/2023



2.1.01 | FINAL JUDGMENT RULE

In general, appeal may be taken only from a final judgment or order disposing of all claims against all parties, and leaving nothing for the district court to do but execute the judgment. 28 U.S.C. § 1291. The principal exceptions to the requirement of a final judgment are:

- **Collateral Order Doctrine**

Under the collateral order doctrine established in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949), an order that determines a right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated can be immediately appealed.

- **Rule 54(b) Appeal from Partial Judgment Made Final Under Rule 54(b)**

When more than one claim for relief is presented in an action, the district court may direct the entry of a final judgment as to one or more but fewer than all the claims or parties upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment to permit appeal to be taken from the claims as to which final judgment was entered.

- **Interlocutory Appeals from Injunctive Orders**

Under 28 U.S.C. § 1292(a)(1), interlocutory orders granting, denying or modifying injunctions are appealable.

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



2.1.02 | CIVIL APPEALS

The timely filing of a notice of appeal in civil cases is mandatory and jurisdictional. Unlike the criminal appeal period, which appears only in the rules of procedure, the civil appeal period is set by statute in 28 U.S.C. § 2107 and is therefore mandatory and jurisdictional. See *Bowles v. Russell*, 551 U.S. 205 (2007).

- **Appeal Period**

Notice of appeal in a civil case must be filed "within 30 days after the date of entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1). When the United States, its agency, or officer is a party, the time within which any party may file a notice of appeal is increased to 60 days. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice of appeal was filed, or within the time otherwise prescribed for a civil appeal, whichever is later. Fed. R. App. P. 4(a)(3).

- **Entry of Judgment**

A judgment or order is entered for purposes of appeal when the judgment or order is entered in the civil docket under Fed. R. Civ. P. 79(a). In addition, if Fed. R. Civ. P. 58(a) requires a separate document, the judgment or order is not entered for purposes of appeal until it is set forth on a separate document or until 150 days have run from entry of the judgment or order in the civil docket in accordance with Fed. R. Civ. P. 79(a). A separate document is not required for orders disposing of the post-judgment motions listed in Fed. R. Civ. P. 58(a). A failure to set forth a judgment or order on a separate document when required by Fed. R. Civ. P. 58(a) does not affect the validity of an appeal from that judgment or order. Fed. R. App. P. 4(a)(7).

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry. Fed. R. App. P. 4(a)(2).



- **Post-Judgment Motions**

A notice of appeal filed prior to, or during the pendency of the following motions does not divest the district court of jurisdiction to rule on the motion. The appeal is valid but does not proceed until after disposition of the timely post-judgment motion. The time for filing the notice of appeal from final judgment does not begin to run until disposition of the post-judgment motion. If appellant wishes to also appeal the district court action on the post-judgment motion, appellant must timely file an amended notice of appeal. Fed. R. App. P. 4(a)(4).

- Motions for judgment under Fed. R. Civ. P. 50(b) filed within 28 days of entry of judgment;
- Motions to amend or make additional findings of fact under Fed. R. Civ. P. 52(b) filed within 28 days of entry of judgment;
- Motions to alter or amend the judgment or to grant a new trial under Fed. R. Civ. P. 59 filed within 28 days of entry of judgment;
- Motions for attorney's fees under Fed. R. Civ. P. 54 filed within 14 days of entry of judgment if a district court extends the time for appeal under Rule 58;
- Motions for relief under Fed. R. Civ. P. 60 if the motion is filed within 28 days of entry of judgment.

- **Extension of Appeal Period**

Upon a showing of excusable neglect or good cause, the district court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after expiration of the appeal period. Fed. R. App. P. 4(a)(5).

- **Reopening of Appeal Period**

In addition, under Fed. R. App. P. 4(a)(6), if the district court finds that a party did not receive notice under Fed. R. Civ. P. 77(d) of the entry of judgment within 21 days after entry and that no party would be prejudiced by reopening the time to appeal, upon motion



filed within 180 days after entry of judgment or within 14 days after the moving party receives or observes written notice of entry, whichever is earlier, the district court may reopen the time for appeal for a period of 14 days from entry of the order reopening the time for appeal.

- **Appeal from a Final Decision of the Magistrate Judge**

If the parties consent to the magistrate judge's conduct of all proceedings including entry of judgment in a civil matter, an appeal from the magistrate judge's final judgment is taken in the same manner as an appeal from any other judgment of a district court. 28 U.S.C. § 636(c)(1)-(3); Fed. R. App. P. 3(a)(3).

If the district court designates a magistrate judge to conduct hearings, including evidentiary hearings, and to submit proposed findings of fact and recommendations for disposition, any party may, within 14 days after being served with a copy of the magistrate judge's findings and recommendations, file in the district court objections thereto. 28 U.S.C. § 636(b)(1)(B)-(C). Filing of objections in the district court is essential to preserve review in the court of appeals.

- **Appeal in a Bankruptcy Case**

An appeal to the court of appeals from a final judgment of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal. Fed. R. App. P. 6(a). An appeal to the court of appeals pursuant to 28 U.S.C. § 158(d)(1) from a final judgment of a district court exercising appellate jurisdiction pursuant to 28 U.S.C. § 158(a) is taken as any other civil appeal, although with some variation in procedure, as provided in Fed. R. App. P. 6(b). The Fourth Circuit has not established panels of three bankruptcy judges to hear appeals from bankruptcy courts pursuant to 28 U.S.C. § 158. Internal Operating Procedure 6.1.

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



2.1.03 | CRIMINAL APPEALS

Because the criminal appeal period is set only by rule, and not by statute, a timely criminal appeal is a "claims processing" rather than a jurisdictional requirement and can be waived. See United States v. Urutyan, 564 F.3d 679 (4th Cir. 2009).

- **Appeal Period**

The defendant's notice of appeal must be filed within 14 days after entry on the docket of the judgment or order appealed from. Fed. R. App. P. 4(b). When an appeal by the Government is authorized by statute, the Government must file its notice of appeal within 30 days after entry of judgment. A defendant may file a cross appeal within 14 days after the filing of a notice of appeal by the Government. Fed. R. App. P. 4(b). The Government may file a cross appeal within 30 days of filing of a notice of appeal by the defendant.

- **Filing Before Entry of Judgment**

A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry. Fed. R. App. P. 4(b)(2).

- **Post-Trial Motions**

If the defendant makes a timely post-trial motion, an appeal from a judgment of conviction must be taken within 14 days after entry of the order disposing of the last such motion outstanding, or within 14 days after entry of the judgment of conviction, whichever is later. Fed. R. App. P. 4(b). A notice of appeal filed after the court announces a sentence but before it disposes of one of these motions is ineffective until the date of entry of the order disposing of the last such motion outstanding, or until the date of entry of the judgment of conviction, whichever is later. A valid notice of appeal is effective without amendment to appeal from an order disposing of any of the motions.

- Motion for judgment of acquittal filed under Fed. R. Crim. P. 29 within 14 days after guilty verdict;



- Motion for arrest of judgment filed under Fed. R. Crim. P. 34 within 14 days after verdict or plea of guilty;
- Motion for a new trial on any ground other than newly discovered evidence filed under Fed. R. Crim. P. 33 within 14 days after guilty verdict;
- Motion for a new trial based on the ground of newly discovered evidence if the motion is made before or within 14 days after entry of judgment.

- **Motion to Correct Sentence**

The filing of a motion to correct a sentence under Fed. R. Crim P. 35 does not toll the time to appeal the judgment of conviction. Fed. R. App. P. 4(b)(5).

- **Extension of Appeal Period**

Upon a finding of excusable neglect, the district court may - before or after the time has expired, with or without motion and notice - extend the time for filing a notice of appeal for a period not to exceed 30 days from expiration of the prescribed time. Fed. R. App. P. 4(b)(4).

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

2.1.04 | CONTENT OF NOTICE OF APPEAL

The notice of appeal must:

- specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";
- designate the judgment, order, or part thereof being appealed; and
- name the court to which the appeal is taken.

A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise. A pro se notice of appeal must be signed, but the absence of a signature may be remedied by filing a corrected notice of appeal after the appeal period has expired. Becker v. Montgomery, 532 U.S. 757 (2001). In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

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



2.1.05 | JURISDICTION OF DISTRICT COURT PENDING APPEAL

As a general rule, an appeal divests the district court of power to modify its judgment or take other action affecting the cause without permission from the court of appeals, except insofar as a statute or rule expressly reserves the district court's jurisdiction in aid of appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). If, however, the appeal is from an interlocutory order, the district court retains jurisdiction to act on matters not involved in the appeal unless an order is entered staying the remainder of the proceedings. See Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 378-79 (1985). The district court also retains jurisdiction to act in aid of the appeal, including acting on the following matters:

- Act on timely post-judgment motions, as provided in Fed. R. App. P. 4(a)(4) & 4(b);
- Correct clerical mistake in civil judgment or order as provided in Fed. R. Civ. P. 60(a) before appeal is docketed in appellate court, and thereafter while appeal is pending with leave of appellate court;
- Deny Fed. R. Civ. P. 60(b) motions filed more than 28 days after judgment; issue an indicative ruling under Fed. R. Civ. P. 62.1 stating that a Rule 60(b) motion filed more than 28 days after judgment raises a substantial issue or would be granted; grant such a motion on a remand from the court of appeals under Fed. R. App. P. 12.1;
- Correct arithmetical, technical, or other clear error in sentence within 14 days of imposition of sentence as provided in Fed. R. Crim. P. 35;
- Act on motions to extend time to appeal pursuant to Fed. R. App. P. 4(a)(5) or 4(b) and to reopen the time to appeal pursuant to Fed. R. App. P. 4(a)(6);
- Act on motions for stay or injunction pending appeal as provided in Fed. R. App. P. 8 and require the filing of an appeal bond under Fed. R. App. P. 7;
- Act on motions for bail pending appeal as provided in Fed. R. App. P. 9(b);
- Act on requests for transcript at government expense under 28 U.S.C. § 753(f) and under the Criminal Justice Act;



- Rule on appellee's request to require appellant to order transcript under Fed. R. App. P. 10(b)(3);
- Settle the record where no transcript is available under Fed. R. App. P. 10(c) or approve an agreed statement of facts in lieu of the record under Fed. R. App. P. 10(d);
- Act on motions to correct, modify, or supplement the record pursuant to Fed. R. App. P. 10(e) and Local Rule 10(d);
- Issue or deny certificates of appealability in orders denying relief under 28 U.S.C. §2254 and 2255, if no ruling was included in final judgment, as required by Rule 11 of the Rules for § 2254 Cases or § 2255 Cases;
- Tax certain costs on appeal under Fed. R. App. P. 39(e);
- Dismiss appeal on stipulation of parties under Fed. R. App. P. 42(a), if appeal has not yet been docketed in court of appeals.

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



2.1.06 | PETITIONS FOR PERMISSION TO APPEAL AND ANSWERS TO PETITION

- **Controlling Question of Law**

Under 28 U.S.C. § 1292(b), a district judge may certify that an interlocutory order in a civil action involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Upon application made to the court of appeals within 10 days of entry of the order, the court of appeals may, in its discretion, permit an appeal to be taken from such order. See Fed. R. App. P. 5; Local Rule 5.

- **Direct Bankruptcy Appeals**

A petition for permission to appeal an order of the bankruptcy court directly to the court of appeals may be filed if a timely notice of appeal was filed in the bankruptcy court (within 14 days of entry of the order as provided in Bankr. R. 8002), and if a motion for certification of the order has been filed within 60 days of entry of the order. The order must be certified by the bankruptcy court (before docketing of the appeal), by the district court (after docketing of the appeal), or by all appellants and appellees:

- to involve a question of law as to which there is no controlling decision of the court of appeals or Supreme Court or that involves a matter of public importance;
- to involve a question of law requiring resolution of conflicting decisions; or
- that an immediate appeal may materially advance the progress of the case.

28 U.S.C. § 158(d)(2). A petition for permission to appeal may be filed in the court of appeals within 30 days after certification of the order. Bankr R. 8006.

- **Class Action Certification Orders**

Under Fed. R. Civ. P. 23(f), a party may apply to the court of appeals for leave to appeal within 14 days of entry of an order granting or denying class action



certification, and the court of appeals may, in its discretion, permit an appeal to be taken from such order.

- **Class Action Remand Orders**

Under 28 U.S.C. § 1453(c), a petition for permission to appeal may be filed within 10 days of entry of an order granting or denying a motion to remand a class action to the state court from which it was removed. If the court of appeals grants permission to appeal under FRAP 5, the appeal under § 1453(c) must be decided within 60 days of the order granting permission to appeal. See Citifinancial v. Lightner, No. 07-200 (4th Cir. Aug. 2, 2007).

- **Content and Format**

The petition must include the facts necessary to understand the question presented; the question itself; the relief sought; the reasons why the appeal should be allowed and is authorized. Copies of the opinion and order authorizing an interlocutory appeal and a disclosure statement must be attached. 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. Fed. R. App. P. 5(b) & (c).

- **Answer or Cross-Petition**

A party may file an answer in opposition or a cross-petition within 10 days after service of a petition for permission to appeal. 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. Fed. R. App. P. 5(b) & (c).

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2.1.07 | MANDAMUS PETITIONS AND ANSWERS

Under 28 U.S.C. § 1651, the Supreme Court and all courts established by Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. Petitions for writs of mandamus, prohibition, and other extraordinary relief are governed by Fed. R. App. P. 21.

- **Content and Format**

The petition must state the relief sought, the issues presented, the facts necessary to understand the issues presented, and the reasons why the writ should issue. Any parts of the record necessary to understand the matters set forth and a corporate disclosure statement must be attached. The petition must 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. Fed. R. App. P. 21(d).

- **Answers to Mandamus Petitions**

The court may deny the petition without an answer. Otherwise, it must order the respondent to answer within a fixed time. The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals. Fed. R. App. P. 21(b).

The answer must 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. Fed. R. App. P. 21(d).

- **Crime Victims' Rights Act**

Under the Crime Victims' Rights Act, the district court must permit a victim to be heard at any public proceeding



involving release, plea, sentencing, or parole of a criminal defendant. If this right is denied, the victim or the government may file a mandamus petition in the court of appeals, which the court of appeals must decide within 72 hours of filing. To facilitate the court of appeals' resolution of the petition within the 72-hour deadline, the petitioner is required to provide the clerk's office with advance notice of the filing of the petition, identify the petition as one asserting crime victims' rights pursuant to 18 U.S.C. § 3771(d)(3), and arrange for immediate service of the petition on the relevant parties. Local Rule 21(d).

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



2.1.08 | MOTIONS FOR AUTHORIZATION TO FILE SUCCESSIVE POST-CONVICTION APPLICATIONS

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. 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. The court of appeals must decide motions for authorization within 30 days of filing. If the court of appeals requires a response to the motion for authorization to file a successive application, it will request a response within no more than 7 days of the date requested. Local Rule 22(d).

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



2.1.09 | PETITIONS FOR REVIEW

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)



2.1.10 | APPLICATIONS FOR ENFORCEMENT AND ANSWERS

- **National Labor Relations Board**

There is no time limit on filing an application for enforcement of or a petition for review from an order of the National Labor Relations Board. 29 U.S.C. § 160.

- **Answer to Application for Enforcement**

Within 21 days after an application for enforcement is filed, the respondent must file an answer to the application. If the respondent fails to answer in time, the court will enter judgment for the relief requested upon the filing of an application for default judgment.

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



2.1.11 | TAX COURT APPEALS

Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered. If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later. If sent by mail the notice is considered filed on the postmark date. Fed. R. App. P. 13.

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



4TH CIRCUIT COURT OF APPEALS'
PRO SE HANDBOOK

VOLUME 2 INITIAL REQUIREMENTS

CHAPTER 2 APPEAL FEES AND INDIGENT STATUS

ITEMS 2.2.01 through 2.2.10

DATE 12/1/2023



2.2.01 | FEE PAYMENTS

Notices of appeal filed in the district court should be accompanied by a \$605 fee paid to the Clerk, U.S. District Court. Fed. R. App. P. 3(e). Petitions for review and mandamus filed in the court of appeals should be accompanied by a \$600 fee paid to the Clerk, U.S. Court of Appeals and may be paid by credit card. Fed. R. App. P. 15(e).

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



2.2.02 | CRIMINAL APPEALS & CRIMINAL JUSTICE ACT STATUS

If a party proceeded under the Criminal Justice Act in the district court and that status was never terminated, CJA status continues on appeal and no fee or further application is required. 18 U.S.C. § 3006a; Fourth Circuit Plan in Implementation of the Criminal Justice Act. Otherwise, the appellant is required to pay the district court the required \$605 appeal fee upon filing of the notice of appeal.

If the fee is not paid upon filing of the notice of appeal, the court of appeals notifies appellant when a criminal appeal is docketed that the fee must be paid to the district court or a CJA 23 application must be filed in the court of appeals.

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



2.2.03 | PRISONER CIVIL APPEALS & PRISON LITIGATION REFORM ACT STATUS

When a prisoner notes an appeal in a civil case, the court of appeals notifies the prisoner that the appeal fee must be paid in full or the prisoner must consent to payment of the fee in installments under the Prison Litigation Reform Act by filing the required forms with the court of appeals. 28 U.S.C. § 1915(b); Local Rule 24.

These procedures apply to civil appeals filed by persons detained or incarcerated after accusation of or conviction for violations of criminal law, but do not apply to appeals in 28 U.S.C. § 2241, 2254, 2255, or other cases attacking the criminal conviction.

The court of appeals assesses an initial partial filing fee of twenty percent of the greater of the average monthly deposits to the prisoner's account or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal. After payment of the initial partial fee, the custodian at the prisoner's institution must withhold twenty percent of the preceding month's income credited to the prisoner's account and forward payments from the account to the clerk of the district court each time the amount in the account exceeds \$10 until the \$605 fee is paid in full. 28 U.S.C. § 1915(b)(1); Local Rule 24. Collection of fees in multiple cases is simultaneous, not sequential. Bruce v. Samuels, 136 S. Ct. 627 (2016).

A prisoner will not be allowed to proceed without the full prepayment of the fee in a civil case if, on three or more prior occasions while incarcerated in any facility, the prisoner has brought an action or appeal in federal court that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could be granted unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g); Local Rule 24.

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



2.2.04 | CIVIL APPEALS & IN FORMA PAUPERIS STATUS

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.

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



2.2.05 | PETITIONS FOR PERMISSION TO APPEAL

No fee is charged for filing a petition for permission to appeal. If permission to appeal is granted, the appellant must pay the \$605 appeal fee to the district court. Fed. R. App. P. 5. For a petition for permission to take a direct appeal from the bankruptcy court, a \$298 fee for is paid to the bankruptcy clerk, when the notice of appeal is filed, and an additional \$307 is paid to the bankruptcy clerk if the court of appeals grants permission to appeal.

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2.2.06 | PETITIONS FOR REVIEW OF AGENCY ACTION

The petitioner must pay the \$600 fee to the court of appeals when the petition for review is filed. If the fee is not paid upon filing of the petition, the court of appeals notifies the party that the fee must be paid or an application to proceed in forma pauperis must be filed with the court of appeals.

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



2.2.07 | TAX COURT APPEALS

The appellant must pay the \$600 appeal fee to the U.S. Tax Court upon filing of the notice of appeal. If the fee is not paid upon filing of the notice, the court of appeals notifies the party that the fee must be paid to the tax court or an application to proceed in forma pauperis must be filed with the court of appeals.

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



2.2.08 | PETITIONS FOR MANDAMUS, PROHIBITION & EXTRAORDINARY RELIEF

The petitioner must pay the \$600 fee to the court of appeals when the petition for mandamus, prohibition, habeas corpus, or other extraordinary relief is filed. If the fee is not paid upon filing of the petition, the court of appeals notifies the petitioner that the fee must be paid or an application to proceed in forma pauperis must be filed with the court of appeals.

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



2.2.09 | PRISONER PETITIONS FOR MANDAMUS, PROHIBITION & EXTRAORDINARY RELIEF

Prisoners bringing mandamus or other extraordinary writ petitions are required to pay the \$600 fee to the court of appeals when the petition is filed or apply to pay the fee in installments under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b). The PLRA procedures apply to petitions filed by persons detained or incarcerated after accusation of or conviction for violations of criminal law, but do not apply to petitions relating to criminal cases or to 28 U.S.C. § 2241, 2254, or 2255 cases.

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



2.2.10 | MOTIONS FOR AUTHORIZATION TO FILE SUCCESSIVE HABEAS CORPUS APPLICATIONS

No fee is charged for filing a motion for authorization under 28 U.S.C. § 2244 to file a successive 28 U.S.C. § 2254 or 2255 application.

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CHAPTER 3 APPOINTMENT OF COUNSEL IN CRIMINAL CASES

ITEMS 2.3.01 through 2.3.03

DATE 12/1/2023



2.3.01 | DUTY TO CONTINUE REPRESENTATION

Under the Fourth Circuit's Plan in Implementation of the Criminal Justice Act, every attorney, including retained counsel, who represented a defendant in the district court must continue to represent the client after termination of those proceedings, unless relieved of further responsibility by the court of appeals. If there is a judgment of conviction or an order revoking probation, counsel must inform the defendant of his right to appeal and his right to have counsel appointed on appeal. If requested by the defendant, counsel must file a timely notice of appeal and take appropriate and timely steps to perfect the appeal. CJA Implementation Plan, Part V.1.

In most direct criminal appeals, counsel who represented the defendant in the district court is automatically appointed upon docketing of the appeal. Upon appointment by this court, counsel must complete the appeal and, if appellant so requests and there are grounds for seeking such review, file a petition for writ of certiorari in the Supreme Court. If counsel believes a petition for writ of certiorari would be frivolous, counsel may file a motion to withdraw in the court of appeals. The motion must reflect that counsel served the defendant with the motion and advised the defendant of his right to file a response within 7 days. CJA Implementation Plan, Part V.2; Local Rule 46(d).

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2.3.02 | MOTIONS TO WITHDRAW

An attorney who does not desire to continue the representation must file a motion to withdraw with the court of appeals promptly after filing the notice of appeal, with a copy served on the defendant as well as on opposing counsel. The court gives due consideration to counsel's request to withdraw from representation recognizing that while there are benefits to continuity of representation, the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. CJA Implementation Plan, Part II.8. If counsel's motion is granted, withdrawing counsel must apprise successor counsel of all information relevant to the defendant's appeal.

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2.3.03 | COMPENSATION AND REIMBURSEMENT OF EXPENSES

A \$8,600 limitation, exclusive of expenses, applies to the compensation payable to appointed counsel in this court. In appeals of post-trial motions, revocations of probation, or collateral proceedings, a \$2,600 limitation, exclusive of expenses, applies. Payment in excess of either limitation may be made to provide fair compensation in cases involving extended or complex representation, upon approval by the chief judge of the court of appeals.

CJA vouchers must be submitted within 60 days of final disposition of the case or, if a certiorari petition is prepared, within 60 days of filing the petition for writ of certiorari. The voucher must be supported by the attorney's time records, broken down according to the categories required by the voucher, and by detailed receipts for expenses. Counsel should use the worksheets provided by the clerk at the time of appointment. CJA vouchers are submitted electronically in the Fourth Circuit CJA eVoucher system.

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CHAPTER 4 APPEARANCE, DISCLOSURE & DOCKETING STATEMENTS

ITEMS 2.4.01 through 2.4.03

DATE 12/1/2023



2.4.01 | APPEARANCE OF COUNSEL

Counsel is required to file an appearance of counsel form within 14 days after the appeal is docketed or within 14 days after being retained or appointed, using a form provided by the clerk's office. Only attorneys admitted to the Fourth Circuit bar and registered as ECF filers may enter an appearance in a case. If an attorney is not admitted to practice before the court, counsel must file an application for admission under Local Rule 46(b) and register as an electronic filer in CM/ECF. An attorney no longer participating in a case should promptly inform the clerk's office of that fact. Loc. R. 46(c).

Once an appearance has been filed, an attorney may not withdraw from representation without notice to the party he or she is representing and consent of the court. A motion to withdraw should state fully the reason for the request. Substitution of counsel may be affected by submitting a counsel of record form for new counsel, along with existing counsel's motion to withdraw. Loc. R. 46(c).

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2.4.02 | DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

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 must file a disclosure statement. A corporate amicus curiae is also required to file a disclosure statement.

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. This information is used by the judges to determine their disqualifications. Loc. R. 26.1.

If earlier papers are submitted by the parties, such as a motion for stay or injunction pending appeal, they must be accompanied by a disclosure statement. The disclosure statement must also be included in front of the table of contents in a party's principal brief.

A negative disclosure statement is also required, and all parties are under an affirmative duty to amend disclosure statements when necessary to maintain their current accuracy. Loc. R. 26.1.

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

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2.4.03 | DOCKETING STATEMENT

Counsel filing a notice of appeal or petition for review is required to complete a docketing statement. Counsel's filing of the docketing statement also satisfies the requirement that the attorney filing the notice of appeal file a statement within 14 days identifying the parties the attorney represents on appeal. The form requests basic information on the parties, counsel, trial and appellate court jurisdiction, the procedural history of the case, the issues on appeal, and the existence of previous or related cases. In civil cases, docketing statements are reviewed by a circuit mediator to determine if the case should be assigned to the circuit mediation program under Local Rule 33.

Upon docketing an appeal or petition for review filed by counsel, the court of appeals notifies counsel that a docketing statement must be filed in the office of the clerk within 14 days. Loc. R. 3(b). The docketing statement must be accompanied by a copy of the transcript order and served on opposing counsel.

The attorney filing the notice of appeal is responsible for filing the docketing statement even if different counsel will handle the appeal. Multiple appellants joining in one notice of appeal shall file a joint docketing statement, but a separate docketing statement must be filed for a cross-appeal or additional appeal.

The nature of proceedings and relief sought should be stated summarily. The docketing statement should not contain argument or procedural motions. Effort should be made to include all the issues to be presented, but a party will not be precluded from raising additional issues later. Failure to file a docketing statement will cause the court of appeals to initiate the process of dismissal for failure to prosecute.

An opposing party who concludes that the docketing statement is in any way inaccurate or incomplete may so inform the clerk's office in writing, including additions or corrections, within 10 days of service.

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CHAPTER 5 TRANSCRIPT & RECORD ON APPEAL

ITEMS 2.5.01 through 2.5.19

DATE 12/1/2023



2.5.01 | TRANSCRIPT ORDER

Federal and Local Rule 10 and the Guidelines for Preparation of Appellate Transcripts in the Fourth Circuit set forth the responsibilities and time frames for ordering transcript. The appellant (or cross-appellant) must order necessary transcript from the court reporter within 14 days after filing the notice of appeal. The court's notice of docketing notifies appellant that a copy of the transcript order must be attached to the docketing statement and that the statement of issues in the docketing statement satisfies the statement of issues requirement of Fed. R. App. P. 10(b) if less than the full transcript is ordered. Failure to order transcript or make satisfactory financial arrangements may lead to dismissal of the appeal. Loc. R. 10(c)(2).

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2.5.02 | DESIGNATION OF ADDITIONAL PARTS OF TRANSCRIPT

If the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the docketing statement and transcript order, file and serve on the appellant a designation of additional parts to be ordered.

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2.5.03 | ORDERING ADDITIONAL PARTS OF TRANSCRIPT

If the appellee designates additional parts of the transcript, the appellant may order the additional parts and notify appellee. If the appellant does not order the additional parts within 14 days, appellee may either order the additional parts within the next 14 days or move in the district court for an order requiring the appellant to do so.

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2.5.04 | CROSS-APPEALS

In cross-appeals, each party must order those parts of the transcript pertinent to the issues of such appeals. The parties are encouraged to agree upon those parts of the transcript jointly needed and to apportion the cost, with additional portions being ordered and paid for by the party considering them essential to that party's appeal. Loc. R. 10(c)(1).

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2.5.05 | TRANSCRIPT DEADLINES

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. Although Fed. R. App. P. 11(b) requires that transcripts be completed within 30 days from the purchase order date, the Fourth Circuit uses the time limits set forth in Local Rule 11(b), which establishes a 60-day period for preparation of transcripts, with the following exceptions:

- (1) criminal transcripts of less than 1000 pages must be filed within 30 days;
- (2) criminal transcripts of more than 1000 pages, and bail, death penalty and expedited case transcripts must be filed within the time set by the clerk.

If the court reporter needs an extension of time to complete the transcript, the reporter may file a motion for extension at least 10 days prior to the due date. If the transcript is filed late without an extension having been granted, a 10% fee reduction sanction is imposed. If the transcript is filed more than 30 days late, a 20% fee reduction sanction is imposed.

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2.5.06 | TRANSCRIPT FORMAT

The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) must be clearly indicated at the top of each page of the appendix where the witness's testimony appears. This requirement applies to in-court testimony and deposition testimony. Loc. R. 30(b). The court will not accept "condensed" transcript, wherein several pages of transcript appear on a single sheet, for inclusion in the appendix, considering the smaller pages not sufficiently legible under Fed. R. App. P. 32(b)(2).

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2.5.07 | TRANSCRIPT REDACTION

Upon filing of a transcript in the district clerk's office, counsel (or a pro se party) has 7 days to file a notice of redaction with the district clerk setting forth his or her intention to direct the redaction of personal data identifiers from the electronic transcript. Unless otherwise ordered by the court, attorneys must review the following transcript:

- (1) opening and closing statements made on the party's behalf;
- (2) statements of the party;
- (3) the testimony of any witnesses called by the party;
- (4) sentencing proceedings; and
- (5) any other portion of the transcript as ordered by the court.

Where counsel has given notice of redaction, counsel must, within 21 days of filing of the transcript, submit to the court reporter a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter must, within 31 days of filing of the transcript, perform the requested redactions and file a redacted version of the transcript. Judicial Conference Policy on Privacy and Public Access to Electronic Case Files (March 2008).

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2.5.08 | STATEMENT OF THE EVIDENCE WHEN NO TRANSCRIPT IS AVAILABLE

If a record or transcript is unavailable, the appellant may prepare a statement of evidence from the best available means, including the appellant's recollection. Appellant shall serve the statement on appellee, who may serve objections or proposed amendments within 14 days after service. Appellant's statement and any objections or proposed amendments are then submitted to the district court for settlement and approval, and as settled and approved are included in the record on appeal. Fed. R. App. P. 10(c).

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2.5.09 | COMPILATION OF THE RECORD

The record consists of the original case papers and exhibits filed in the district court, transcripts, and a certified copy of the docket entries. Fed. R. App. P. 10(a). The preparation of the record on appeal is the obligation of the clerk of the lower court, board or agency, and any questions concerning form or content should be addressed to the trial forum in the first instance. Parties should be sure that everything relevant to the issues on appeal is included initially in the record on appeal in order to obviate the need to supplement the record.

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2.5.10 | DISTRICT COURT RECORD IN PRO SE CASES

In pro se cases, the assembled electronic record, and any sealed or paper record, are transmitted to the court of appeals at the time the notice of appeal is transmitted.

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2.5.11 | DISTRICT COURT RECORD IN COUNSELED CASES

In counseled cases, the record is not transmitted unless requested by the court of appeals. When transmitting the notice of appeal, the district court clerk certifies to the court of appeals that the record of docket entries is available upon request. The district court clerk also notifies the court of appeals of the subsequent filing of any transcript in the case.

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2.5.12 | ACCESS OF COUNSEL TO DISTRICT COURT RECORD

Counsel desiring to use an existing paper record on appeal in preparing their case should make arrangements with the clerk of the district court in which the record is held pursuant to Local Rule 10(a). Records transmitted to the court of appeals may be withdrawn upon proper application and returned to the trial court for counsel's review. Loc. R. 11(d). Most district court records are available in electronic form on the district court's CM/ECF docket. Record documents can be accessed individually or selected and combined for creation of an electronic appendix.

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2.5.13 | EXHIBITS

If bulky documents and physical exhibits are required by a party for oral argument, the party must make advance arrangements with the clerks of both the district court and the court of appeals for their transportation and receipt. Such arrangements are best made after the completion of briefing and receipt of notice of oral argument. Loc. R. 11(c).

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2.5.14 | AGREED STATEMENT OF THE RECORD ON APPEAL

In lieu of the record on appeal, the parties may prepare and sign a statement of the court setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the district court may consider necessary, shall be approved by the district court and certified as the record on appeal. Copies of the agreed statement may be filed as the appendix required by Rule 30. Fed. R. App. P. 10(d).

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2.5.15 | SUPPLEMENTAL RECORDS, MODIFICATION OR CORRECTION

Under Fed. R. App. P. 10(e) and Local Rule 10(d), disputes concerning the accuracy or composition of the record on appeal should be resolved in the trial court in the first instance, although the court of appeals has the power, either on motion or of its own accord, to require that the record be corrected or supplemented. The record may be supplemented by the parties by stipulation or by order of the district court at any time during the appellate process, without need to seek permission from the court of appeals. Loc. R. 10(d).

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2.5.16 | ADMINISTRATIVE RECORD IN SOCIAL SECURITY DISABILITY APPEALS AND IMMIGRATION REVIEW CASES

In social security disability cases appealed from the district court, the record on appeal may be composed of both the agency and the district court records. If the agency record has been filed with the district court, it may be contained within the district court record when it's transmitted to the court of appeals. If the agency record was not transmitted to the district court by the agency, it's not necessary for the agency to file the administrative record with the court of appeals.

In immigration review cases, the agency files an electronic or paper copy of its administrative record in the court of appeals within 40 days after issuance of the notice requesting the record.

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2.5.17 | RECORD IN OTHER AGENCY REVIEW CASES

In other agency review and enforcement cases, the agency files its original record in the court of appeals 40 days after issuance of the notice requesting the record. The court of appeals returns the original record to the agency upon issuance of the mandate.

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2.5.18 | CERTIFIED LIST

In lieu of filing the entire record in an agency case, the agency may file a certified list of what is encompassed in the record. Fed. R. App. P. 17(b). The parties may also stipulate to dispense with the filing of the certified list. All parts of the record retained by the agency remain part of the record on review. In enforcement proceedings, the agency need not file a record unless the respondent contests enforcement by filing a response or the court otherwise orders.

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2.5.19 | TAX COURT RECORDS

The tax court files the record within 14 days of issuance of the briefing schedule. The tax court record is returned to the tax court upon issuance of the mandate.

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CHAPTER 6 MEDIATION

ITEMS 2.6.01 through 2.6.03

DATE 12/1/2023



2.6.01 | LOCAL RULE 33

Under Local Rule 33, all civil and agency cases in which all parties are represented by counsel on appeal will be reviewed by a circuit mediator after the filing of the docketing statements required by Local Rule 3(b). The circuit mediator will determine whether a mediation conference may assist either the court or the parties. Counsel for a party may also request a conference if counsel believes it will be of assistance to the court or the parties. Counsel's participation is required at any scheduled conference. Mediation conferences will generally be conducted by telephone but may be conducted in person at the discretion of a circuit mediator. Conferences may be adjourned from time to time by the circuit mediator. Purposes of the conference include:

- (a) Jurisdictional review;
- (b) Simplification, clarification, and reduction of issues;
- (c) Discussion of settlement; and
- (d) Consideration of any other matter relating to the efficient management and disposition of the appeal.

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2.6.02 | BRIEFING

The time allowed for filing of briefs is not automatically tolled during the mediation proceedings. If the parties wish to pursue, or are engaged in, settlement discussions, counsel for any party may move to suspend the briefing schedule. The circuit mediator, through the clerk, may enter orders which control the course of proceedings and, upon agreement of the parties, dispose of the case.

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2.6.03 | CONFIDENTIALITY

Statements and comments made during mediation conferences and papers or electronic information generated during the process are not included in court files except to the extent disclosed by orders entered under Local Rule 33. Information disclosed in the mediation process shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the mediation program participants. The mediator, attorneys, and other participants in a mediation shall not disclose any statements, documents, or discussions without prior approval of the Standing Panel on Attorney Discipline. Any alleged violations of the confidentiality requirements of Local Rule 33 shall be referred to the Standing Panel on Attorney Discipline for a determination of whether imposition of discipline is warranted.

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APPENDIX



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