

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NOTICE OF ADDITIONAL PROPOSED AMENDMENTS TO LOCAL RULES 25(a) & 32(b)

PLEASE TAKE NOTICE that the Court intends to further amend Proposed Local Rules 25(a) and 32(b), in light of comments received, by:

- Increasing the number of additional words allowed in principal briefs that cite to both the paper appendix and electronic record from 100 to 200; and
- Addressing the filing of the administrative record in agency review and enforcement cases and social security appeals.

The original [proposed electronic filing amendments](#), as further amended pursuant to this notice, will take effect July 2, 2012. Interested parties may submit comments on or before June 14, 2012. Comments should be addressed to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219
fax: 804-916-2726

May 14, 2012
Date

/s/ Patricia S. Connor
Clerk

Local Rule 25(a). Electronic Case Filing System.

With the exception of administrative matters, all cases filed in the Court are assigned to the Court's Case Management/Electronic Case Filing System (CM/ECF).

(1) **Scope of Electronic Filing.** Unless granted an exception for good cause or unless filing only a motion to withdraw from representation, counsel must file all documents in accordance with the requirements of this rule. Pro se litigants are not required to file documents electronically but may be authorized to file electronically in a pending case upon motion and compliance with the Court's CM/ECF registration requirements. Documents filed electronically must be filed in Portable Document Format (PDF). Text-searchable format is required for briefs and preferred for all documents. Except as provided below or ordered by the Court, paper copies of electronic documents are not required.

(A) **New Cases.** New petitions for review, applications for enforcement, petitions for permission to appeal, petitions for mandamus or prohibition, and motions to authorize successive post-conviction applications must be filed using one of the following options:

(i) **Submit New Case through CM/ECF Utilities:** File petition in electronic form by selecting "Submit New Case" under CM/ECF Utilities and uploading the petition as a new case. Paper copies are not required, but the petition must be served conventionally, outside the CM/ECF system. The petition is deemed filed as of the date the electronic document was received by the clerk's office.

or

(ii) **File in Paper Form:** File the original petition in paper form and serve the petition conventionally, outside the CM/ECF system. The petition is filed as of the date the paper document was received in the clerk's office. Additional copies are not required.

(B) **Briefs.** Formal briefs must be filed and served electronically. In addition, counsel must file the paper copies required by Local Rule 31(d). The brief is deemed filed as of the date and time stated on the notice of docket activity for the electronic brief, provided that paper copies are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office on the next business day. Service of the paper brief is not required if the brief was served electronically on counsel and on any party not represented by counsel.

(C) Administrative Records. The agency filing the administrative record in agency review or enforcement cases and in social security appeals must file the original or one certified copy of the record, either in paper form or through CM/ECF in electronic form.

(i) If the agency files the administrative record in electronic form, counsel filing the opening brief may adopt the administrative record in lieu of filing an appendix under section (D) below, file four additional paper copies of the administrative record, and cite to the AR rather than the JA. The paper copies of the administrative record must be produced using double-

sided copying, be securely bound down the left side without obscuring text, and be identified as the administrative record on white covers bound with each copy. In social security appeals, appellant's counsel must also file an appendix under section (D) below that contains any district court documents necessary for appellate review.

(ii) If the agency files the administrative record in paper form, counsel filing the opening brief must file an appendix in accordance with section (D) below.

(C)(D) Appendices. Unless electronic and paper copies of the administrative record are filed in an agency review or enforcement case under (C) above or no appendix is required because a criminal appeal is proceeding under Anders v. California, electronic ~~Electronic~~ filing of either the full appendix or an appendix excerpt is required in accordance with option (i) or (ii) below. In addition, counsel must file the paper copies required by Local Rule 30(b)(4). The appendix is deemed filed as of the date and time stated on the notice of docket activity for the electronic filing of the appendix or appendix excerpt, provided that paper copies of the appendix are mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office on the next business day. Service of the paper appendix is not required if a full electronic appendix under option (i) was served on counsel and on any party not represented by counsel. Service of the paper appendix is required if an electronic appendix excerpt is used under option (ii).

Option (i): File the full appendix in electronic form, separately filing any sealed documents as a sealed appendix.

Option (ii): File an appendix excerpt in electronic form, that begins with a list of the excerpt contents and that includes the following ~~documents~~ excerpts from the appendix, with the same pagination and in the same order in which they appear in the paper appendix:

- any sealed documents (file separately as a sealed appendix);
- any documents available only in paper form in the record;
- any documents filed by the parties in a social security case;
- any pertinent opinion, findings, or recommendations of a magistrate judge or bankruptcy court;
- the opinion and order or judgment being appealed; and
- the notice of appeal.

Additionally under option (ii), counsel must cite to both the paper appendix and the docket entry and page number of the electronic record for all record references contained in the brief. For example, material located at page 81 of the joint appendix and at district docket entry 20, page 5, would be cited as JA 81; DE 20 at 5. Counsel using option (ii) may, without motion, exceed the length limitations for opening and response briefs by up to ~~100~~ 200 words. If appellant uses option (ii), appellee may use the same option or may file the full electronic appendix under option (i)

~~(D)~~(E) **Vouchers.** Criminal Justice Act and other payment vouchers are maintained as financial records separate from the docket. The original must be filed in paper rather than electronic form, and no copies are required.

(2) **Eligibility, Registration, Passwords.** Attorneys who intend to practice in this Court should register as filing users of the Court's CM/ECF system. If permitted by the Court, a party to a pending civil case who is not represented by an attorney may register as a filing user of the Court's CM/ECF system solely for purposes of that case. A pro se party's filing user status will be terminated upon termination of the case or termination of the party's pro se status.

Completion of the Fourth Circuit Electronic Case Filer Application constitutes consent to electronic service of all documents as provided in this rule and the Federal Rules of Appellate Procedure. Filing users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. Filing users may be sanctioned for failure to comply with this provision.

A filing user may withdraw from participation in CM/ECF by providing the clerk with written notice of withdrawal. A filing user's withdrawal from participation in CM/ECF does not alter the requirement that documents be filed in compliance with this rule.

(3) **Consequences of Electronic Filing.** Electronic transmission of a document to CM/ECF consistent with this rule, together with the transmission of a notice of docket activity from the Court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the Court's local rules and constitutes entry of the document on the docket kept by the clerk under FRAP 36 and 45(b).

A document filed electronically is deemed filed at the date and time stated on the notice of docket activity from the Court. Unless otherwise directed by the Court, filing must be completed before midnight Eastern Time, as shown on the notice of docket activity, to be considered timely filed that day.

Before filing a document with the Court, a filing user must verify its legibility and completeness. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed.

If an extension of time or leave of Court is required to file a document, a filing user should file the motion to extend filing time or other appropriate motion using the motion event and the underlying document using the document event. If the Court denies the motion, it will strike the underlying document. If the Court grants the motion, the underlying document will remain on the docket.

(4) **Service of Documents by Electronic Means.** The notice of docket activity that is generated by the Court's electronic filing system constitutes service of the filed document on any registered CM/ECF users. Parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.

If a document (such as a sealed document or a new case) cannot be served electronically, the filer must serve the document conventionally, outside the CM/ECF system.

The notice of docket activity generated by the Court's electronic filing system does not replace the certificate of service required by FRAP 25(d).

(5) **Entry of Court-Issued Documents.** Except as otherwise provided by local rule or Court order, all orders, decrees, opinions, judgments, and proceedings of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with these rules, which will constitute entry on the docket kept by the clerk under FRAP 36 and 45(b).

Any order or other Court-issued document filed electronically without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.

(6) **Attachments and Exhibits to Motions and Original Proceedings.** Unless the Court permits or requires traditional paper filing, filing users must submit in electronic form all documents referenced as exhibits or attachments. Material should be excerpted to include only such portions as are germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or the complete document.

(7) **Sealed Documents.** Sealed material must be filed in accordance with Local Rule 25(c) and served conventionally, outside the CM/ECF system.

(8) **Retention Requirements.** Documents that are electronically filed and require original signatures other than that of the filing user must be maintained in paper form by the filing user for a period of three years after issuance of the Court's final mandate in the case. On request of the Court, the filing user must provide original documents for review.

(9) **Signatures.** The user log-in and password required to submit documents to the CM/ECF system serve as the filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the Court's local rules, and any other purpose for which a signature is required in connection with proceedings before the Court.

The name of the filing user under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

No filing user or other person may knowingly permit or cause to permit a filing user's log-in and password to be used by anyone other than an authorized agent of the filing user.

Documents requiring signatures of more than one party must be electronically filed either by: submitting a scanned document containing all necessary signatures; representing the consent of the other parties on the document; identifying on the document the parties whose signatures are required and submitting a notice of endorsement by the other parties no later than three business days after filing; or any other manner approved by the Court.

Electronically represented signatures of all parties and filing users as described above are presumed to be valid signatures. If any party, counsel of record, or filing user objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 days, file a notice setting forth the basis of the objection.

(10) **Notice of Court Orders and Judgments.** Immediately upon the entry of an order, judgment, or opinion in a case assigned to CM/ECF, the clerk will electronically transmit a notice of docket activity to filing users in the case. Electronic transmission of the notice of docket activity constitutes the notice and service required by FRAP 36(b) and 45(c).

The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.

(11) **Technical Failures.** A party or attorney who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.

(12) **Hyperlinks.** Electronically filed documents may contain hyperlinks to: other portions of the same document or other documents filed on appeal; documents filed in the lower court that are part of the record on appeal; and statutes, rules, regulations, and opinions.

Hyperlinks do not replace citations to the appendix, record, or legal authority and are not considered part of the appellate record. Documents must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink. The Court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.

Local Rule 32(b). Length of Briefs.

The Fourth Circuit encourages short, concise briefs. An opening or response brief that cites to both the paper appendix and the electronic record may, without motion, exceed the length limitations in FRAP 32(a)(7) [and FRAP 28.1\(e\)\(2\)](#) by up to ~~100~~ [200](#) words. Briefs may not otherwise exceed the length limitations without the Court's advance permission.

A motion for permission to submit a longer brief must be made to the Court of Appeals at least 10 days prior to the due date of the brief and must be supported by a statement of reasons. These motions are not favored and will be granted only for exceptional reasons.