

# ADOPTED October 1, 2015

## UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AMENDMENTS TO LOCAL RULES

### **6(a), 25(a)(1)(C) & (E), 30(b)(4), 31(d), 32(a), 32(b), 34(c), and 39(c)**

PLEASE TAKE NOTICE that the Court intends to adopt Local Rule 6(a) and to amend Local Rules 25(a)(1)(C) & (E), 30(b)(4), 31(d), 32(a), 32(b), 34(c), and 39(c), as follows:

- Local Rule 6(a), Bankruptcy Records, is adopted to provide that the bankruptcy record in cases in which all parties are represented by counsel should not be transmitted to the court of appeals unless requested by the court.
- Local Rule 25(a)(1)(C), Administrative Records, is amended because four copies of the Administrative Record are required only if ordered by the court.
- Local Rule 25(a)(1)(E), Vouchers, is amended because CJA vouchers are no longer filed in paper form.
- Local Rule 30(b)(4), Number of Copies, is amended to require counsel to file only one paper copy of appendices in all cases, with additional copies being ordered by the court for oral argument or if otherwise needed.
- Local Rule 31(d), Number of Copies, is amended to require counsel to file only one paper copy of briefs in all cases, with additional copies being ordered by the court for oral argument or as otherwise needed.
- Local Rule 32(a), Reproduction of Appendices, is amended to conform with amendments to the Plan in Implementation of the Criminal Justice Act, eliminating the copy rate of \$.35 per double-sided sheet for appendices prepared by commercial printers in CJA cases.
- Local Rule 32(b), Length of Briefs, is amended to clarify that 200 additional words are allowed only when parallel citations are required because counsel is using the electronic appendix excerpt option under Local Rule 25(a)(1)(D)(ii) .
- Local Rule 34(c), Court Sessions and Notification to Counsel, is amended to clarify starting times for oral argument.
- Local Rule 39(c), Recovery of Costs in the District Court, is amended to make the docketing fee taxable if the appellant is the prevailing party, rather than if the case is reversed.

The amendments are scheduled to take effect October 1, 2015, subject to revision in light of comments received, and shall apply to all documents filed on or after October 1, 2015. Interested parties may submit comments on or before September 25, 2015, to:

Patricia S. Connor, Clerk  
U.S. Court of Appeals for the Fourth Circuit  
1100 E. Main Street, Suite 501  
Richmond, Virginia 23219

or via email to:  
[rulecomments@ca4.uscourts.gov](mailto:rulecomments@ca4.uscourts.gov)

The Fourth Circuit Rulebook is available [here](#)

August 7, 2015  
Date

s/Patricia S. Connor  
Clerk

**Local Rule 6(a). Bankruptcy Records.**

The district or bankruptcy court in possession of the record in a bankruptcy appeal in which all parties are represented by counsel shall retain the record until and unless it is requested by the court of appeals.

**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~~the required paper copies of the administrative record, and cite to the AR rather than the JA. The paper copies of the administrative record ~~must~~should be produced using double-sided copying, and must 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.
- (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 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 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 200 words. If appellant uses option (ii), appellee may use the same option or may file the full electronic appendix under option (i).

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

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**Local Rule 30(b). Appendix Contents; Number of Copies.**

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**(4) Number of Copies:**

- (A) **Filing:** ~~Six paper copies of the appendix and any supplemental appendix must be filed. Appointed counsel may file five copies of an appendix or supplemental appendix, and any party proceeding in forma pauperis who is not represented by Court-appointed counsel may file four copies. In addition, the full appendix or an appendix excerpt must be filed electronically in accordance with Local Rule 25(a)(1)(D).~~ One paper copy and one electronic copy of any joint, sealed, or supplemental appendix must be filed. The Court will order the filing of additional paper copies for oral argument or if otherwise needed by the Court.
- (B) **Service:** If the ~~full~~ electronic appendix is ~~filed electronically and~~ served on counsel and on any party not represented by counsel, service of the paper appendix is not required. One paper copy of any sealed appendix volume must be served on lead counsel for each party separately represented who is authorized to have access to the sealed volume and on any party not represented by counsel who is authorized to have access to the sealed volume. ~~If an appendix excerpt instead of the full appendix is filed electronically, one paper copy of the appendix must be served on lead counsel for each party separately represented and on any party not represented by counsel.~~
- ~~(C) **Sealed Appendix Volumes:** For sealed volumes of the appendix, four paper copies must be filed and one paper copy must be served on lead counsel for each party separately represented who is authorized to have access to the sealed volume and on any party not represented by counsel who is authorized to have access to the sealed volume.~~

**Local Rule 31(d). Number of Copies.**

- (1) **Filing:** ~~In addition to the electronic brief, each party must file eight paper copies of the brief with the clerk, except that appointed counsel may file six copies, and any party proceeding in forma pauperis who is not represented by Court-appointed counsel may file four copies.~~ One paper copy and one electronic copy of briefs must be filed. The Court will order the filing of additional paper copies for oral argument or if otherwise needed by the Court.
- (2) **Service:** Service of paper copies of briefs is not required if the brief was served electronically on counsel and on any party not represented by counsel. ~~If the brief was not served electronically, one paper copy must be served on lead counsel for each party separately represented and on any party not represented by counsel.~~ One paper copy of any sealed brief must be served on lead counsel for each party separately represented who is authorized to have access to the sealed brief and on any party not represented by counsel who is authorized to have access to the sealed brief.
- ~~(3) **Sealed Briefs:** For sealed briefs, four paper copies of the sealed version must be filed and one paper copy must be served on lead counsel for each party separately represented who is authorized to have access to the sealed version and on any party not represented by counsel who is authorized to have access to the sealed version. Filing and service of the public version of the brief are governed by (1) and (2) above.~~
- (4) **Page-Proof Briefs:** If the Court allows a deferred appendix, the parties are required to file their page-proof briefs in electronic form only. After the deferred appendix is filed, filing and service of final briefs are governed by (1) and (2) above.



**Local Rule 32(a). Reproduction of Appendices.**

Double-sided copying of appendices is preferred in all cases. ~~If an appendix is prepared by a commercial printer in a court-appointed case, the materials contained in the appendix should be reproduced on both sides of a sheet because reimbursement for copying expenses will be limited to 35 cents per double-sided sheet of the joint appendix.~~ No joint appendix in a court-appointed case should exceed ~~250 sheets~~500 pages without advance permission from the Court; unless such permission is granted, reimbursement of copy expenses will be limited to ~~250 sheets~~500 pages.

**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 [in accordance with Local Rule 25\(a\)\(1\)\(D\)\(ii\)](#) may, without motion, exceed the length limitations in FRAP 32(a)(7) and FRAP 28.1(e)(2) by up to 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.

### **Local Rule 34(c). Court Sessions and Notification to Counsel.**

The Court sits in Richmond, Virginia, to hear cases during six to eight separate argument weeks scheduled between September and June. The Court also sits at law schools within the Circuit and at other special argument sessions. The Court's oral argument schedule is available on the Court's Internet site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov).

The Court initially hears and decides cases in panels consisting of three judges with the Chief Judge or most senior active judge presiding. Each panel regularly hears oral argument in four cases each day during court week; additional cases are added as required.

Attorneys appearing for oral argument must register with the Clerk's Office on the morning of argument to learn of courtroom assignment, order of appearance, and allocation of oral argument time. Counsel not already a member of the Fourth Circuit bar will be admitted to practice before the Court at that time upon compliance with the provisions of Local Rule 46(b).

The Court generally convenes at 9:30 a.m., with the exception of ~~Friday~~, the last day of the session, when it convenes at 8:30 a.m., and with the exception of en banc oral arguments, which begin at 9:00 a.m. Counsel will receive notification from the Clerk's Office of the starting time for each panel.

Preparation for the argument calendar begins in the Clerk's Office at least two months prior to argument. Upon receiving notice that a case has been tentatively assigned to an argument session, counsel must inform the clerk, within the time provided in the notice, of any conflict or other matter that would affect scheduling of the case for that session. After a case has been scheduled for argument, any motion that would affect the argument date must show good cause for the requested relief and that the relief could not have been requested within the period set by the Court for notice of conflicts. Continuance of an established oral argument date is not granted because of a prior professional commitment. Although a case will not be removed from the calendar because of a scheduling conflict by counsel after the notification of oral argument has been issued, the Court may direct another lawyer from the same firm to argue the appeal if counsel of record cannot be present.

**Local Rule 39(c). Recovery of Costs in the District Court.**

The only costs generally taxable in the Court of Appeals are: (1) the docketing fee if the ~~case is reversed~~appellant is the prevailing party; and (2) the cost of printing or reproducing briefs and appendices, including exhibits.

Although some costs are "taxable" in the Court of Appeals, all costs are recoverable in the district court after issuance of the mandate. If the matter of costs has not been settled before issuance of the mandate, the clerk will send a supplemental "Bill of Costs" to the district court for inclusion in the mandate at a later date.

Various costs incidental to an appeal must be settled at the district court level. Among such items are: (1) the cost of the reporter's transcript; (2) the fee for filing the notice of appeal; (3) the fee for preparing and transmitting the record; and (4) the premiums paid for any required appeal bond. Application for recovery of these expenses by the successful party on appeal must be made in the district court, and should be made only after issuance of the mandate by the Court of Appeals. These costs, if erroneously applied for in the Court of Appeals, will be disallowed without prejudice to the right to reapply for them in the district court.