

**Revisions to the Handbook of Practice and Internal Procedures  
(effective June 1, 2015)**

**PREFACE**

~~[Delete ¶ 4] Cases in the Case Management/Electronic Case Files (CM/ECF) system are governed by the Court's Administrative Order, effective June 8, 2009. ECF filers must consult and comply with the Administrative Order and CM/ECF procedures posted on the Court's web site.~~

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**I. INTRODUCTION TO THE COURT**

**A. PHYSICAL FACILITIES**

The United States Court of Appeals for the District of Columbia Circuit is located in the E. Barrett Prettyman United States Courthouse and William B. Bryant Annex on Constitution Avenue between Third Street and John Marshall Park, Northwest, Washington, D.C. The mailing address is: E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001-2866. The principal facilities of the Court are the judges' chambers, the courtrooms, the Office of the Circuit Executive, the Office of the Clerk (which includes the Legal Division), and the Circuit Library. ~~The judges' chambers are located on the third and fifth floors of the Courthouse. The Circuit Library is located on the third floor. The Office of the Circuit Executive is located on the fourth floor. The Office of the Clerk and the Legal Division are located on the fifth and third floors, respectively.~~

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**1. *Chambers***

Access to the area of the judges' chambers, the Office of the Circuit Executive, and the Legal Division is limited to court personnel and others with legitimate reasons for visiting. All persons visiting these areas must be admitted through the security system on the third, fourth, and fifth floors. Visitors should make advance arrangements with the judges' chambers, the Circuit Executive's Office, or the Legal Division.

**2. *Office of the Circuit Executive***

The Office of the Circuit Executive is located in Room ~~4726~~ 4712 on the fourth floor of the Prettyman Courthouse. ~~Automation staff is in Room 5836.~~ Mediation sessions ~~set up~~ scheduled by the Circuit Executive Chief Circuit Mediator are held in ~~Rooms A, B, and C of Room 5720, or in lawyer conference rooms, if needed~~ Mediation Rooms A, B, and C located on the fifth floor of the Prettyman Courthouse.

### 3. *Office of the Clerk*

The public Office of the Clerk is located in Room ~~5523~~ 5205. This is where the dockets — the official records of cases before the Court — are kept, all paper filings with the Court are made, and orders of the Court are issued. The file room where the public may inspect filings also is located in Room ~~5523~~ 5205. Both the file room and the public office are open between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays and any other day designated by the Chief Judge. A filing depository, available 24 hours a day, 7 days a week, is located inside the William B. Bryant Annex on the Third Street entrance to side of the Courthouse. See *infra* Part II.C.2.

### 4. *Legal Division*

The Legal Division is located ~~in Room 3529 on the third floor of the Courthouse~~. Conferences convened by the Director of the Legal Division are held in Room 3535.

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## B. PERSONNEL

### 2. *Judges' Staffs*

~~All of the Circuit Judges are authorized to hire a total of five staff members. Typically, active judges employ one secretary or judicial assistant and up to four law clerks. In addition, the Chief Judge usually hires a Special Assistant for the duration of his or her term. No contact relating to court business is permitted between the judges' law clerks, or judicial assistants, or secretaries and attorneys or other persons outside the Court. All communications must be made through the Clerk's Office.~~

### 3. *Legal Division*

The Legal Division is part of the Office of the Clerk. The Court's central legal staff consists of the Director, an Assistant to the Director, staff attorneys, and support staff. The office also occasionally hires attorneys for the court's Legal Fellows Program; these positions are temporary and unpaid. employs law student interns. Staff attorneys are hired either on a permanent basis or for two-year terms on a staggered basis. Their primary duties of the staff attorneys fall into three broad categories: (1) screening and classifying cases and pleadings filed in the Court; (2) making recommendations to panels and preparing proposed dispositions in all contested motions and emergency matters; and (3) making recommendations and preparing proposed dispositions in cases decided without oral argument, pursuant to Circuit Rule 34(j).

#### 4. *Circuit Executive*

The Circuit Executive is appointed by the Circuit Judicial Council and serves the United States Court of Appeals, the United States District Court, and the United States Bankruptcy Court in the D.C. Circuit. ~~While the clerks' offices within the Circuit handle case processing and other "line" responsibilities, the Circuit Executive facilitates these traditional functions by providing a bridge between each of these offices. The Circuit Executive works on projects with other court units and with judges and chambers staff, and works closely with the Administrative Office, the Federal Judicial Center, and Executive Branch agencies. As secretary to the Council, the Circuit Executive serves as the executive officer of the Council and is responsible for implementing Council policies, developing circuit-wide programs, organizing and staffing Council committees, and other duties mandated by the Judicial Conference of the United States or Congress.~~

~~The Circuit Executive handles other responsibilities as well. He or she creates and implements alternative dispute resolution programs throughout the Circuit; oversees space and facilities projects and food service and mailroom operations in the Courthouse; and is responsible for developing and implementing security and emergency preparedness plans. In addition, the Circuit Executive carries out a wide variety of responsibilities for the Chief Judge of the Court of Appeals, such as preparing the annual budget for the Court; assisting with investitures, portrait unveilings, and other official ceremonies; administering the Court's non-appropriated fund; assisting in the resolution of personnel problems; and planning programs for visiting judges and other dignitaries.~~

~~As Secretary to the Historical Society of the District of Columbia Circuit, the Circuit Executive maintains the records and supports the operations of the Society.~~

~~As Secretary to the D.C. Circuit Judicial Conference, the Circuit Executive plans, administers, and records the conference.~~

~~As Secretary to the Circuit Judicial Council, the Circuit Executive serves as the executive officer of the Council. These duties include assisting with the development of new Court-related operations and handling problems that arise in such areas as space and facilities, and court and personnel management.~~

The Circuit Executive's Office is relatively new in the federal judiciary having been created in 1971 to improve the judicial process throughout the Circuit and to reduce the administrative burden on the judges. Circuit-wide responsibilities include:

Program management for: the judicial conduct and disability program; district and appellate court mediation programs; mailroom services; special events and ceremonies; occupant emergency plan; contract for cafeteria services; temporary emergency personnel fund; security coordination; space and facilities; and the circuit

rent budget.

Program support for: senior judge designations; senior judge certifications; bankruptcy judge selection; federal public defender selection; and judges serving on committees of the Judicial Conference.

Serves as: Secretary to the Circuit Judicial Council; Secretary to the Circuit Judicial Conference; Secretary to the Historical Society of the D.C. Circuit; and Secretary to the D.C. Circuit's Court Security Committee and Facility Security Committee.

Generally, the Circuit Executive provides support and advice to the Chief Judges of the Court of Appeals and the District Court on issues affecting the courts in the Circuit.

The Circuit Executive's Office is also responsible for coordinating nonjudicial aspects of the Court of Appeals operations such as: budget development and oversight for appropriated and non-appropriated funds; emergency preparedness coordination including the continuity of operations; IT management and systems administration; management of the employment dispute resolution program and the equal employment opportunity program; property management; and administrative support for court advisory committees. Generally, the Circuit Executive works closely with the appellate court executives and the Circuit Chief Judge on administrative matters affecting the Court of Appeals.

The Circuit Executive's Office staff includes the Circuit Executive, a Deputy Circuit Executive, an Assistant Circuit Executives for Space and Facilities, an Assistant Circuit Executive for IT, a Budget Analyst, a Space and Facilities Specialist, two Administrative Specialists, IT staff, an Emergency Preparedness Coordinator, administrative analysts, and support staff. In addition, the staff includes a Chief Circuit Mediator, and a Circuit Mediator assisted by volunteer mediators.

## **5. Clerk's Office**

The Clerk's Office is composed of an administrative division, ~~a case administration~~ an operations division, and a legal division. . . .

The Clerk's Office also provides the Court with statistical, fiscal, personnel, training, and property and procurement services, as well as other administrative support services. ~~The Clerk is also responsible for processing complaints of judicial misconduct or disability.~~ The Clerk's Office assists with investitures, portrait ceremonies, and other ceremonies, presentations, and special events.

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## II. PRELIMINARY MATTERS

### A. ADMISSION TO PRACTICE

(See Fed. R. App. P. 46; D.C. Cir. Rule 46.)

#### 1. *When Required*

[¶ 3] . . . The attorney who wishes to argue *pro hac vice* must arrive at the courtroom, accompanied by a sponsoring attorney who is a member of the bar of this Court, at least 20 minutes prior to the start of argument for the ~~day~~ scheduled session and immediately notify the courtroom deputy clerk, who will furnish appropriate forms and advise counsel of the procedures for admission *pro hac vice*. . . .

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### B. REQUESTS FOR INFORMATION

#### 3. *Electronic Public Access to Information*

The Court's Internet web site provides additional court information to the public. The site is located at: [www.cadc.uscourts.gov](http://www.cadc.uscourts.gov). The site allows on-line viewing and printing of court forms; the Circuit Rules, Handbook, and ~~Frequently Asked Questions (FAQs)~~ CM/ECF procedures; the oral argument calendar; court opinions that are not sealed; and other information concerning the Court. Case information is also available on the PACER web site to individuals having a PACER account. . . .

[¶ 3] Under the Court's CM/ECF system, attorneys and pro se litigants who have registered as ECF filers will receive electronic notification of docket activity. Only pro se parties, and attorneys who have entered an appearance and are listed on the Court's docket will receive electronic notices in a particular case. To register as an ECF filer, consult the PACER Service Center's web site at [http://pacer.psc.uscourts.gov/announcements/general/ca\\_filer.html](http://pacer.psc.uscourts.gov/announcements/general/ca_filer.html). Additional information on the CM/ECF system is available on the Court's web site.

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#### 7. *Pending Cases*

It is the strict policy of the Court that telephone calls to judges' chambers, or to judges' law clerks or ~~secretaries~~ judicial assistants, concerning the status of any pending case or motion will not be accepted. All such calls will be immediately referred to the Clerk or to the Legal Division.

If the inquiry as to a pending case involves procedural questions or matters of public record, it should be made in accordance with the instructions above. If counsel is

experiencing a more specialized problem with a case, he or she should call the Clerk, the Chief Deputy Clerk, ~~the Operations Manager of the Clerk's Office~~, or the Director of the Legal Division. . . .

## **8. Disclosure of Panels and Dates**

### **(a) Merits Panels**

~~Ordinarily, the Court discloses merits panels to counsel. It is the policy of the Court not to disclose the identity of the merits panel in the order setting the case for oral argument. In criminal appeals, unlike most civil appeals, the panel usually will not be disclosed until after the parties have filed briefs. This is because the Court does not make the tentative decision to schedule oral argument in most criminal cases until after both the appellant's and appellee's briefs have been filed. The composition of the merits panel will be posted on the Court's internet site, usually 30 days before the date of oral argument, and will not be disclosed before that time.~~

~~In addition, the Clerk's Office posts in the Court's public office and on the Court's web site, the calendar for a sitting period approximately 2 months in advance. The panel is subject to unannounced change when regularly scheduled judges recuse themselves or otherwise become unavailable to sit.~~

~~The timing of disclosure of the merits panel w~~When the court determines a case is will be decided without oral argument pursuant to Circuit Rule 34(j), parties will learn the identity of the panel from the order notifying them of that determination depends on whether the case had been calendared for argument. If the case had originally scheduled been calendared for argument, the panel (subject to substitutions) will be the one announced in the order setting the case for argument that was assigned to hear the case (posted on the Court's internet site 30 days before the scheduled argument date). If the case has not been calendared for argument, counsel will learn the identity of the panel from the order stating that the case will be decided without argument.

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## **C. FILINGS**

### **1. Compliance with Rules**

[¶ 2] Pursuant to Federal Rule of Appellate Procedure 25(a)(2)(D) and 25(c), the Court has authorized the filing and service of documents by electronic means. *See* D.C. Cir. Rule 25(a), (c). ~~Cases in the CM/ECF system are governed by the Court's Administrative Order, effective June 8, 2009.~~ ECF filers must consult and comply with the Administrative Order and circuit rules governing the CM/ECF system and with the CM/ECF procedures posted on the Court's web site. Upon motion and a showing of good cause, the Court may

exempt a party from the electronic filing requirements and authorize filing by means other than use of the CM/ECF system. *See* D.C. Cir. Rule 25-(b) (c)(2).

## 2. *Timeliness*

[¶ 2] A document filed electronically is deemed filed on the date and at the time stated on the Notice of Docket Activity from the Court. To be considered timely filed that day, filing must be completed before midnight Eastern Time unless a specific time is set by Court order. *See* D.C. Cir. Rule 26(a). Unless the Court has ordered filing by hand or other means, ECF filers may file paper copies of non-emergency documents by first-class mail, or other class of mail that is at least as expeditious, within 2 business days of the electronic filing. *See* D.C. Cir. Rules 25(d), 32(d)(4).

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[¶ 5] Any filing or brief (with the exception of emergency, confidential, or sealed documents) may be left, on the date due, in the Court of Appeals filing depository, located inside the William B. Bryant Annex on the Third Street entrance to side of the Courthouse, unless the Court has ordered that the filing be made at a time certain. . . .

[¶ 6] Under the Court's Case Management Plan, briefing schedules are usually set after the case has been screened and classified by the Legal Division, and after all outstanding procedural and dispositive motions have been resolved. In cases classified as "Regular Merits" cases, the oral argument date ~~might be included in~~ is usually announced by a separate order that is issued after the order establishing the briefing schedule, or might not be set until briefing is underway. In cases classified as potential "Rule 34(j)" cases, the briefing schedule is set in the order notifying ~~counsel~~ the parties that the case might be disposed of without oral argument under Circuit Rule 34(j). Finally, in cases classified as "Complex," or otherwise identified for management under the Case Management Plan, the briefing format and schedule are formulated by the special panel in conjunction with the Legal Division, in most cases based on the parties' responses to an order ~~to show cause concerning soliciting~~ a proposed briefing schedule and format. . . .

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## 5. *Privacy Protection*

Litigants must be aware of the federal rules and take all necessary precautions to protect the privacy of parties, witnesses, and others whose personal information appears in court filings. Sensitive personal data must be removed from documents filed with the Court and made available to the public — whether the document is filed electronically or on in paper form. All filers must comply with Federal Rule of Appellate Procedure 25(a)(5) and Circuit Rule 25(e) and must follow the guidance on redacting personal data identifiers, ~~which that~~ is posted on the Court's web site. ~~In addition, ECF filers must comply with the~~

requirements for privacy protection set out in the Administrative Order — ECF-9, effective June 8, 2009.

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**E. COMPLAINTS AGAINST JUDGES**

The procedure for filing complaints against judges is set forth in the Rules for Judicial-Conduct and Judicial-Disability Proceedings. A copy of these rules may be obtained from the ~~Clerk of the Court~~ Circuit Executive's Office or the Court's web site.

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**III. COMMENCING THE APPEAL**

**A. PRELIMINARY MATTERS — JURISDICTION**

**2. *Jurisdiction — Administrative Agency Cases***

The Court reviews final orders of many federal administrative agencies, as well as the Tax Court of the United States. In these cases, the Court's jurisdiction often depends on whether the petitioner or appellant resides, maintains its principal place of business, or does business within the Circuit. Moreover, the statutes providing for judicial review of certain agency decisions also may specify this Circuit as an alternative or a special forum, even where the petitioner or appellant has no contacts with the District of Columbia. . . .

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**C. APPEALS FROM THE DISTRICT COURT BY PERMISSION**

(*See* Fed. R. App. P. 5; D.C. Cir. Rules 5, 25(c)(3).)

**1. *How Taken***

Currently, discretionary appeals from interlocutory decisions of the district court are authorized in two instances, under 28 U.S.C. § 1292(b) and Federal Rule of Civil Procedure 23(f). *See* 28 U.S.C. § 1292(e). Under either provision, interlocutory appeals from the district court are taken by filing with the Clerk of this Court an original in paper form and 4 copies of a petition for permission to appeal, with proof of service on all parties to the action in the district court, and must be accompanied by a certificate of parties and *amici curiae* as described in Circuit Rule 28(a)(1)(A), and any disclosure statement required by Circuit Rule 26.1. *See* D.C. Cir. Rules 5(a) and (c), 25(c)(3). . . .

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**E. REVIEW OF ADMINISTRATIVE AGENCY ORDERS**

(*See* Fed. R. App. P. 15; D.C. Cir. Rules 15, 25(c)(3).)



**1. How Obtained**

To obtain review of an administrative agency order, a party must file a petition for review (or other document prescribed by the applicable statute) with the Clerk of this Court. . . . The petitioner must file an original in paper form and 4 copies of the petition for review. See D.C. Cir. Rule 25(c)(3). . . .

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**F. ENFORCEMENT OF ADMINISTRATIVE AGENCY ORDERS**

**1. How Obtained**

(*See* Fed. R. App. P. 15(b); D.C. Cir. Rule 25(c)(3).)

When authorized by statute, a party may seek enforcement of an administrative agency order by filing an application with the Clerk of this Court. A cross-application for enforcement also may be filed by a respondent to a petition for review, if the Court has jurisdiction to enforce the order. . . . The applicant must file the original of the application for enforcement in paper form, 4 copies, and a copy for each respondent. . . .

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**G. ORIGINAL PROCEEDINGS**

(*See* Fed. R. App. P. 21; D.C. Cir. Rules 21, 25(c)(3).)

**1. How Taken**

A party seeking a writ of mandamus or prohibition directed to a judge, or seeking any other extraordinary writ, must file an original in paper form and 4 copies of a petition with the Clerk of this Court, with proof of service on the respondent judge or agency, and on all parties to the action in the trial court or to proceedings before the agency. . . .

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**K. CASES WITH RECORDS UNDER SEAL**

(*See* D.C. Cir. Rules 25(c)(4), 47.1.)

~~[¶ 3] A motion to file documents under seal, including any exhibits and attachments, and all~~ Any documents containing material under seal, or containing material that a party is seeking to place under seal, may not be filed or served electronically unless the Court orders otherwise. See D.C. Cir. Rule 25(c)(4).

## VII. MOTIONS PRACTICE

### A. FORMAL REQUIREMENTS

(See Fed. R. App. P. 27; D.C. Cir. Rules 27, 32~~(b)~~.)

[¶ 6] There are certain formal requirements common to most motions. Unless a party is proceeding *in forma pauperis*, or the Court directs otherwise, non-ECF filers must submit an original and 4 paper copies of any motion, except in *en banc* cases, in which event an original and 19 copies are required. ECF filers must, in addition to the electronic original, file 4 paper copies of any motion specified in ~~the Court's Administrative Order Regarding Electronic Case Filing, ECF-6(B) Circuit Rule 32(d)(2)~~, or 19 paper copies in *en banc* cases. These motions include dispositive motions, contested procedural motions, and motions for emergency relief.

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[¶ 10] All motions must be signed by a party or by a member of the bar of the Court, with proof of service on all other parties to the proceeding before the Court. Except as prescribed by Federal Rule of Appellate Procedure 28(j), parties, other than pro se litigants proceeding *in forma pauperis*, may not plead by letter. See D.C. Cir. Rule 32~~(b)~~(f).

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## IX. BRIEFS AND APPENDIX

### A. BRIEFS

#### 1. *Timing*

Normally, the Clerk's Office establishes a briefing schedule after the case has been screened and classified by the Legal Division, and after any pending motions in the case have been resolved. In cases designated as "Regular Merits" cases, ~~counsel might receive a single order fixing the date for oral argument is announced by a separate order after the briefing order has issued. Typically, and setting the briefing dates back from the oral argument date, with the final brief usually will be due at least 50 45 days before the case is to be heard, or the argument date might not be set until after briefing has commenced the argument date.~~

If arguing counsel knows he or she will be unavailable to appear for oral argument on a date in the future, the Clerk's Office should be so advised by letter, filed electronically. The notification should be filed as soon as possible after the briefing schedule is entered and updated if a potential scheduling conflict later arises or if there is any change in availability. To the extent possible, the Clerk's Office will endeavor to schedule oral argument to avoid conflicts that have been brought to the Court's attention in advance.

In general, the appellee's or respondent's brief is due 30 days after that of the appellant

or petitioner. A reply brief is due 14 days later. To avoid repetition of factual statements or legal arguments made in the principal briefs, the Clerk's Office will stagger the briefing so that intervenors and *amici curiae* file their briefs 15 days after the brief of the party they support. A briefing schedule also will contain additional time where ~~the Court has granted~~ the parties ~~leave to file~~ utilize a deferred appendix, as provided in Federal Rule of Appellate Procedure 30(c). *See infra* Part IX.B.3.

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#### **4. *Amici Curiae and Intervenors***

[¶ 3] ~~An amendment to FRAP 29(c), which took effect December 1, 2010,~~ requires an *amicus* (other than the United States or its officer or agency, or a state) to disclose whether a party's counsel authored the *amicus* brief in whole or in part and whether a party or a party's counsel contributed money with the intention of funding the preparation or submission of the brief, and to identify every person (other than the *amicus*, its members, and its counsel) who contributed money that was intended to fund the brief's preparation or submission.

[¶ 5] . . . The principal brief of an intervenor is limited to 19 pages unless the brief complies with the type-volume limitation of 8,750 words or uses a monospaced face and contains no more than 813 lines of text. *See* D.C. Cir. Rule 32 ~~(a)(2)~~(e)(2).

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#### **5. *Number of Copies***

(*See* Fed. R. App. P. 31(b); D.C. Cir. Rule 31.)

Except when ~~the appeal~~ an unrepresented party is proceeding *in forma pauperis*, the original and 8 copies of each brief must be filed and 2 copies served on each party separately represented. ~~Unrepresented parties who are not represented by counsel and are proceeding *in forma pauperis* need file only the original brief, and the Clerk's Office will duplicate the necessary copies. If a deferred appendix is used (*see infra* Part IX.B.3), the parties are required to file only 6 copies of their briefs initially~~ one copy of the initial briefs. ECF filers ~~must~~ should submit the initial brief in electronic format only, along with 5 unless the court requests paper copies.

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#### **8. *Contents***

(*See* Fed. R. App. P. 28, 32.1; D.C. Cir. Rules 28, 32.1.)

Briefs must contain the following in the order indicated. Note, however, that intervenors and *amici* might not be required to include each of the specified items in their briefs. . . .

(h) A statement of the case setting out the facts relevant to the issues presented for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record. *See* Fed. R. App. P. 28(a)(7)(6). Appellee or respondent may omit or shorten the statement of the facts case if satisfied with that of the appellant or petitioner.

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#### **10. Briefs Containing Material Under Seal**

(*See* D.C. Cir. Rule 47.1(d).)

If it is necessary to refer in a brief to material under seal, two sets of briefs must be filed. . . . ~~Seven~~ The original and 6 copies of the sealed brief and 15 plus the original and 8 copies of the public brief must be filed, and 2 copies of the public brief and 2 copies of the brief under seal served on each party, if such party is entitled to receive the material under seal. *See, e.g.*, Fed. R. Crim. P. 6(e). Both sets of briefs must comply with the remainder of the rules, including Federal Rule of Appellate Procedure 32(a)(7) and Circuit Rule 32 (a) (e), on the length of briefs. . . .

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#### **B. APPENDIX**

(*See* Fed. R. App. P. 30; D.C. Cir. Rules 25(c)(5), 30, 32.)

##### **3. Timing; Deferred Appendix**

(*See* Fed. R. App. P. 30; D.C. Cir. Rule 30.)

[¶ 3] When parties file their briefs before the appendix has been prepared, they must nonetheless clearly cite to the record, and may do so in one of two ways. *See* Fed. R. App. P. 30(c)(2). They may cite in their briefs to the original pagination of the record (*e.g.*, "Tr. 1154"), in which case the original page numbers also must be indicated on the material reproduced in the appendix. The second and preferred procedure is to file ~~6 copies~~ an initial version of the briefs containing references to the original record. Thereafter, the parties must, in accordance with the briefing schedule, serve and file their briefs in final form, inserting references to the appendix. *See* Fed. R. App. P. 30(c); D.C. Cir. Rule 31. . . .

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#### **X. THE COURT'S CALENDAR**

The Court usually hears cases in 8 sitting periods consisting of 3-4 weeks each. Except when it is sitting *en banc*, the Court hears cases in panels of three judges. The Court usually does not hear cases on Wednesdays. Judges are usually assigned to no more than ~~one regular~~

~~merits panel during a sitting period~~ 4 sitting days during a calendar month.

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#### **D. SCHEDULING CASES FOR ARGUMENT**

Most appeals screened by the Legal Division are classified as "Regular Merits" cases. Normally, the Clerk's Office sets ~~an oral argument date and~~ a briefing schedule in these cases after all pending motions have been resolved. Thereafter, the parties are notified by separate order of the date and time of oral argument. Scheduling is done by a computer program, which automatically checks for known recusals and makes certain that the case mix both for a specific date and for that week's sitting is acceptable. As a general rule, once they become ready, cases are calendared in order of age, with the oldest cases set first.

Typically, the argument date will be a minimum of 45 days after briefing is completed. If arguing counsel knows he or she will be unavailable to appear for oral argument on a date in the future, counsel should so advise the Clerk's Office by letter, filed electronically. The notification should be filed as soon as possible and updated if a potential scheduling conflict later arises or if there is any change in availability. To the extent possible, the Clerk's Office will endeavor to schedule oral argument to avoid conflicts that have been brought to the Court's attention in advance. Counsel will not be notified of the argument date until it is established by Court order. See infra Part XI. A. Notification, B. Postponements.

Counsel are advised that whenever there are serious settlement negotiations in progress, the parties should advise the Clerk of that fact.

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#### **E. SCHEDULING IN PARTICULAR CASES**

##### ***4. Stipulated Stand-by Pool***

[¶2] In order to enter the stand-by pool, parties must: (1) stipulate that they do not object to inclusion in the stand-by pool; (2) stipulate that they will not file any dispositive motions; and (3) agree to an expedited briefing schedule. Usually, counsel will be given at least ~~50~~ 45 days' notice of the argument date and that date will be no earlier than ~~50~~ 45 days after the last brief is due. . . .

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### **XI. ORAL ARGUMENT**

#### **A. NOTIFICATION**

(See Fed. R. App. P. 34(b); D.C. Cir. Rule 34(c).)

In civil cases, parties may receive notice of the date for oral argument at the time the briefing schedule is set or after briefing has started the court's practice is to issue an order after the briefing schedule has been entered, announcing the date for oral argument. In criminal cases, the Clerk's Office ordinarily gives counsel notice of the date for oral argument after the briefs have been filed. Generally, the members of the panel of judges who will hear the case are not named in the notice order setting the date for oral argument; occasionally the panel is revealed in a later notice. The composition of the merits panel will be posted on the Court's internet site, usually 30 days before the date of oral argument, and will not be disclosed before that time.

The Clerk's Office does not confer with counsel before the calendaring order is released. Accordingly, counsel are urged to notify the Clerk's Office in advance of any potential scheduling conflicts and should do so by letter, filed electronically. The notification should be filed as soon as possible after the briefing order is entered and updated if a potential scheduling conflict later arises or if there is any change in availability. Counsel are also advised that whenever there are serious settlement negotiations in progress, the parties should advise the Clerk of that fact.

The calendaring order will contain an electronic link to Form 71 – a memorandum that provides important information on the requirements and logistics for oral argument. The notice includes a form that Subsequently, in the order allocating the amount of argument time, there will be an electronic link to Form 72, which counsel must complete and file submit to the Clerk's Office, no less than 7 days before oral argument, giving the name of the attorney or attorneys who will present the argument to the Court.

Requests by artists to sketch court proceedings should be directed to the Clerk's Office well in advance of the scheduled argument. The Court will accommodate all requests unless the panel for reasons of security decides otherwise. Additionally, if the Court receives multiple requests, space considerations may limit the number of sketch artists that can be accommodated.

## B. POSTPONEMENTS

(See Fed. R. App. P. 34(b); D.C. Cir. Rule 34(g).)

Once a case has been calendared, the Clerk's Office cannot change the argument date, and the Court will not ordinarily reschedule it. Any request to reschedule must be made by motion, which will be presented to a panel of the Court for disposition. The Court disfavors motions to postpone oral argument and will grant them only upon a showing of "extraordinary cause." Unless the panel that grants a motion to postpone argument is prepared to retain the case and hear it outside its normal sitting period, the case will have to be rescheduled for the first available date on the calendar — possibly months later than the original date. Accordingly, it is in counsel's interest to avoid seeking to postpone argument.

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## H. PROCEDURES FOR ORAL ARGUMENT

Counsel must arrive at the courtroom at least 20 minutes before the start of argument for the ~~day~~scheduled session. The identity of the panel and the order in which the cases will be heard will be posted outside the courtroom. Counsel also may call the Clerk's Office in the afternoon of the day before argument to find out the order in which the cases will be heard or consult the Court's web site. If more than one panel is sitting that morning day, the notice also will disclose the other hearing location. . . .

[¶ 3] The courtroom deputy will explain the warning light system used to signal the time remaining during the oral argument. Counsel for the appellant or petitioner also must inform the courtroom deputy whether he or she wishes to reserve time for rebuttal.

[¶ 6] Three lights — green, amber, and red — are on the lectern in front of counsel. The lectern lights also are visible to the Court. If counsel does not wish to reserve rebuttal time, the courtroom deputy will flash the amber light when there are 2 minutes remaining in the allotted time. The red light will be turned on when all the allotted time is used. Counsel wishing to reserve time for rebuttal must observe the timer and preserve the time he or she has reserved for rebuttal. ~~During rebuttal, counsel will receive no amber light warning when time is about to expire; when the time has expired, the red light will be turned on.~~

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## I. RECORDINGS AND TRANSCRIPTIONS OF ARGUMENTS

All arguments are recorded for future reference of the Court. Audio recordings of oral arguments will be available on the Court's internet site free of charge, usually by 3:00 p.m. on the same day of the oral argument. ~~Recordings are retained at the Court for a period of two years following issuance of the mandate. If counsel wishes to listen to the~~

~~recording of an oral argument or to have the recording transcribed, counsel must make the request in a letter to the Clerk. Counsel must provide in the letter the name of the case, the case number, and the date of the argument. Any person may request that a transcript of the oral argument be made. Information on how to order a transcript and current pricing is available on the Court's web site. Counsel also must make appropriate arrangements with the company that is the Court's official reporter. The Clerk will release the recording to the company for preparation of the transcript.~~ In addition, copies of oral argument recordings may be purchased upon written request *after the case has been completely closed*. This means all appeals, remands, or additional proceedings must be concluded before the recording will be reproduced.

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## **XII. MAKING THE DECISION**

### **C. PREPARATION OF OPINIONS**

[¶2] Final drafts of all opinions to be published also are circulated to all active judges on the Court. Following circulation of the drafts to the panel and the Court, the opinion is printed in house.

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## **XIII. POST-DECISION PROCEDURES**

### **B. RECONSIDERATION**

#### ***2. Rehearing En Banc***

(See Fed. R. App. P. 35; D.C. Cir. Rule 35.)

[¶ 11] In addition, a party may move for initial *en banc* consideration ~~prior to a panel decision~~. Such a petition must include a concise statement of the issue and its importance and conform to the other requirements of Federal Rule of Appellate Procedure 35(c). If a party wishes a case to be heard initially *en banc*, counsel ideally should file the petition within the first 30 days after docketing, but in no event later than the date on which the appellee's or the respondent's brief is due. A judge also may suggest *en banc* consideration prior to the panel decision; on occasion this has been done by the panel itself.

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