

HANDBOOK OF PRACTICE

and

INTERNAL PROCEDURES

UNITED STATES COURT OF APPEALS

for the

DISTRICT OF COLUMBIA CIRCUIT

As Amended Through ~~March 2~~ June 8, 2009

PREFACE

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[¶ 3] . . . This new edition of the Handbook accompanies the Court's incorporation of the 2006 federal rules changes and the Court's adoption of procedures for electronic filing and service.

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.

II. PRELIMINARY MATTERS

B. Requests for Information

3. *Electronic Public Access to Information* [Add ¶ 4]

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/ea_filer.html. Additional information on the CM/ECF system is available on the Court's web site.

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C. Filings

2. *Timeliness*

In computing times prescribed for filings, the day of the event from which the prescribed period begins to run is not included. Furthermore, if the last day of the period falls on a Saturday, Sunday, or legal holiday, the period is extended to the next business day. All intermediate days are included, except when the period prescribed is less than 11 days, in which case Saturdays, Sundays, and legal holidays are not included, unless the period is stated in calendar days.

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. 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.

For non-ECF filers, filing of a motion may be by mail . . .

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C. Filings (continued)

3. Service

Parties or counsel filing papers must serve copies on all other parties to the case, at or before the time of filing, unless the rules provide for service by the Clerk. Service must be on counsel if a party is represented by counsel. The Notice of Docket Activity that is generated by the CM/ECF system constitutes service on all parties who are registered ECF filers but does not replace the certificate of service. Parties who are not ECF filers must be served by an alternative method of service ~~Service may be made by any method~~ authorized by Federal Rule of Appellate Procedure 25(c). . . .

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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 electronically or on paper. All filers must comply with Federal Rule of Appellate Procedure 25(a)(5) and must follow the guidance on redacting personal data identifiers, which 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.

III. COMMENCING THE APPEAL

K. Cases With Records Under Seal

Any portion of the record that was placed under seal in the district court or before an agency remains under seal in this Court unless otherwise ordered. Parties and their counsel are responsible for assuring that materials under seal remain under seal and are not publicly disclosed. Matters under seal may not be filed in the Court of Appeals drop box. ~~See supra Part H.C.2.~~ For privacy protections that govern all cases filed in this court, see supra Part II.C.5.

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[Add ¶ 3]

A motion to file documents under seal, including any exhibits and attachments, and all documents containing material under seal may not be filed or served electronically unless the Court orders otherwise.

VII. MOTIONS PRACTICE

A. Formal Requirements

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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. Generally, for motions, responses, and replies, filing is complete on *receipt* of the pleading in the Clerk's Office, *not* on mailing. A document filed electronically is deemed filed on the date and at the time stated on the Notice of Docket Activity from the Court. For incarcerated litigants, filing is complete upon deposit in the institution's internal mailing system in accordance with the federal rules. See Fed. R. App. P. 25(a)(2)(C).

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Circuit Rule 27(h)(2) establishes requirements for consulting the opposing counsel side to obtain consent to motions for extension of time and motions to exceed the page limit, and to inquire whether an opposition or other form of response will be filed. The opening paragraph of any such motion must recite the position taken by ~~other counsel~~ the opposing party, or the efforts made to obtain ~~their position~~ a response. Where the other counsel side has indicated an intention to file an opposition or other form of response, or has not been reached after reasonable effort, ~~counsel for~~ the moving party must serve the motion by personal service if the opposing party is not an ECF filer or if the motion is not filed electronically. If personal service is not feasible, ~~counsel for~~ the moving party must give ~~other counsel~~ telephone notice of the filing and serve the motion by another form of expedited service authorized by Federal Rule of Appellate Procedure 25. Where ~~counsel for~~ the moving party is unable to effect personal service or telephone notice at the time of the filing, the opening paragraph of the motion must recite the efforts made to do so.

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F. Distribution of Orders

The Clerk's Office files and distributes all orders. ~~The Clerk's Office mails a copy of the order to all unrepresented parties and attorneys who have entered their appearance in the case and whose names appear on the Court's docket. If more than one attorney is listed at the same address, only 1 copy of the order will be sent, and it will be mailed to the attorney whose name appears first on the docket sheet or the attorney who is designated as counsel of record. When an order or judgment is entered in a case assigned to the CM/ECF system, the Clerk's Office electronically transmits a Notice of Docket Activity to all parties who have consented to electronic service, and mails notice and a copy of any opinion or judgment to parties who are not ECF filers. See D.C. Cir. Rules 36(b), 45(d). The Clerk's Office maintains a record of all persons to whom copies of an order are mailed sent.~~

VIII. SPECIFIC MOTIONS

A. Motions for Stay or Emergency Relief

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Counsel or a party seeking expedition of a stay application or any other matter must communicate the request for emergency consideration in person or by telephone to the Clerk's Office and to the opposing side. If the motion is not filed electronically or if the opposing party has not consented to electronic service, the motion must be served by hand or, in the case of out-of-town counsel parties, by another form of expedited service authorized by Federal Rule of Appellate Procedure 25. The motion must describe the efforts made to notify the opposing side.

IX. BRIEFS AND APPENDIX

A. Briefs

5. Number of Copies

Except when the appeal is *in forma pauperis*, the original and ~~14~~8 copies of each brief must be filed and 2 copies served on each party separately represented. Unrepresented parties proceeding *in forma pauperis* need file only the original brief, and the Clerk's Office will duplicate the necessary copies. If the Court grants leave to file a deferred appendix (*see infra* Part IX.B.3), the parties are required to file only 7~~6~~ copies of their briefs initially. ECF filers must submit the initial brief in electronic format, along with 5 paper copies.

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B. Appendix

3. Timing; Deferred Appendix

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When parties write their briefs before the appendix has been prepared, they must nonetheless clearly cite to the record. In doing so, they may use 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. An alternative and preferred procedure is to ~~serve 7~~ file 6 copies 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, containing references to the appendix. *See* Fed. R. App. P. 30(c); D.C. Cir. Rules 30(c), 31.

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5. Number of Copies

The appellant or the petitioner must file ~~10~~ 8 copies of the appendix, and serve 1 copy on counsel for each party separately represented. When an appendix is filed electronically, 7 paper copies must be filed in addition to the electronic version, unless filing is to be deferred pursuant to FRAP 30(c). If exhibits are reproduced in a separate volume, only 4 copies of that volume need be filed.

XII. MAKING THE DECISION

E. Notice of Decisions

~~When a case is decided by an opinion, the Clerk's Office notifies counsel for each party by telephone on the day the opinion issues, and also sends them copies of the opinion by mail. In cases decided without an opinion, the Clerk's Office mails all parties a copy of the judgment and accompanying memorandum.~~

When an order or judgment is entered in a case assigned to the CM/ECF system, the Clerk's Office electronically transmits a Notice of Docket Activity to all parties who have consented to electronic service, and mails notice and a copy of any opinion or judgment to parties who are not ECF filers. For printed copies of opinions, each party (including ECF filers) will receive 2 paper copies of the decision without charge. See D.C. Cir. Rules 36(b), 45(d) and (f).

Opinions will be posted on the Court's web site, which can be accessed from a computer terminal ~~Hard copies of slip opinions will be available~~ in the public office of the Clerk's Office ~~for a fee~~. Members of the bar should call the Clerk's attention to typographical or other errors in slip opinions.
