

**UNITED STATES COURT OF APPEALS  
for the  
SECOND CIRCUIT**

**At a Stated Term of the United States Court of Appeals for the Second Circuit,  
held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the  
City of New York, on the 27<sup>th</sup> day of August, two thousand and seven,**

**PRESENT:** Hon. Dennis Jacobs, *Chief Judge*  
Hon. Guido Calabresi  
Hon. José A. Cabranes  
Hon. Chester J. Straub  
Hon. Rosemary S. Pooler  
Hon. Robert D. Sack  
Hon. Sonia Sotomayor  
Hon. Robert A. Katzmann  
Hon. Barrington D. Parker  
Hon. Reena Raggi  
Hon. Richard C. Wesley  
Hon. Peter W. Hall  
Hon. Debra Ann Livingston

**IT IS HEREBY ORDERED**, that the Local Rules of the United States Court of Appeals for the Second Circuit are hereby amended on an interim basis effective immediately by the adoption of Interim Local Rule 34, which is set forth below (bolded text) and replaces the current Local Rule 34. The Court proposes furthermore to adopt Interim Local Rule 34 on a permanent basis following publication for notice and comment. The Clerk of Court shall publish the new Interim Rule and Proposed Permanent Rule inviting comment to be submitted by **September 27, 2007**. Anyone wishing to comment should do so, in writing, to:

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals  
40 Foley Square  
New York, NY 10007.

Local Rule 34. Oral Argument and Submission on Briefs

**(a) Party's Statement and Submission on Briefs**

- (1) Request for Oral Argument.** An opportunity for oral argument will be provided only upon request made pursuant to this subsection (a). This subsection (a) does not apply to appeals placed on the Non-Argument Calendar pursuant to Interim Local Rule 0.29.
- (2) Counseled Appeals.** For an appeal in which all parties are represented by counsel: counsel for all parties must confer (by any convenient means) and must file, within 14 days after the due date of the last brief, a joint statement indicating whether the parties—specifying which, if fewer than all—seek oral argument, or whether the parties agree to submit the case for decision on the briefs. Unless the Court directs otherwise, failure to timely file the joint statement will result in submission of the case for decision on the briefs.
- (3) Pro Se Appeals.** For an appeal in which at least one party appears pro se: after the due date of the last brief, the Clerk of Court will mail to each party a questionnaire asking whether the party would like to have the case decided on the briefs, or whether the party seeks oral argument. All parties must return the questionnaire within 14 days of its date. Failure by a party to timely return the questionnaire will be deemed to mean that the party does not seek oral argument.

**(b) Determination by Court Not to Hear Oral Argument.** If the court, acting sua sponte, contemplates deciding an appeal without hearing oral argument, each of the parties will be given an opportunity to file a statement setting forth reasons for hearing oral argument. Subject to subsection (a), oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record, shall be of the unanimous view that oral argument is not needed for one of the following reasons:

- (1) the appeal is frivolous;**
- (2) the dispositive issue or set of issues has been recently authoritatively decided; or**
- (3) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.**

**(c) Number of Counsel.** Only one counsel will be heard for each party on the argument of a case, except by leave of the court.

**(d) Time Allotments.** The judge scheduled to preside over the panel will set the time allowed for argument by each party after considering the appellant's brief and each party's request for argument time. Normally, ten or fifteen minutes will be allotted to each side. Parties on the same side of an appeal may be obliged to divide the time allotted to their side. Arguments

in pro se appeals are normally five minutes per side. The clerk will notify counsel and pro se parties of all such time allotments.

- (e) **Postponement of Argument.** Except in the event of an emergency, such as unforeseen illness of counsel, an application to postpone the date for oral argument will ordinarily not be favorably entertained. Engagement of counsel in courts (other than the Supreme Court of the United States) or administrative hearings will not be considered good cause for postponement. The date for oral argument may not be postponed by stipulation.

~~(d) — **Determination by Court Not to Hear Oral Argument.**~~

- ~~1. If the court, acting sua sponte, contemplates deciding an appeal without hearing oral argument, each of the parties will be given an opportunity to file a statement setting forth reasons for hearing oral argument. Oral argument will be allowed in all cases except those in which a panel of three judges, after examination of the briefs and record, shall be of the unanimous view that oral argument is not needed for one of the following reasons:~~
- ~~(i) the appeal is frivolous; or~~
- ~~(ii) the dispositive issue or set of issues has been recently authoritatively decided; or~~
- ~~(iii) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.~~
- ~~2. To prevent undue delay, incarcerated pro se appellants requesting oral argument shall file the above-mentioned statement of reasons at the time they file their briefs.~~

**IT IS SO ORDERED.**

FOR THE COURT:

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Catherine O'Hagan Wolfe  
Clerk of Court

Date: August 27, 2007