

Local Rules Relating to the Organization of the Court

§0.11. Name

The name of the court, as fixed by 28 U.S.C. § 41, 43(a), is "United States Court of Appeals for the Second Circuit."

§0.12. Seal

The seal of the court shall contain the words "United States" on the upper part of the outer edge; and the words "Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "Second Circuit" in two lines, in the center, with a dash beneath.

§0.13. Terms

One term of this court shall be held annually at the City of New York commencing on such day in August or September as the court may designate. It shall be adjourned to such times and places as the court may from time to time direct.

§0.14. Quorum

- (a) Two judges shall constitute a quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any judge who does attend or, in the absence of any judge, the clerk may adjourn the court for such time as may be appropriate. Any judge attending when less than a quorum is present or at any time when the court is in recess may make any necessary procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. (See Part 2, Local Rule 27(f)).
- (b) Unless directed otherwise, a panel of the court shall consist of three judges. If a judge of a panel of the court which has heard argument or taken under submission any appeal, petition or motion shall be unable to continue with the consideration of such matter by reason of death, illness, resignation, or incapacity, or shall be relieved of such consideration at the judge's request, the two remaining judges will determine the matter if they are in agreement and neither requests the designation of a third judge. If they are not in agreement or either requests such a designation, the Chief Judge will designate another circuit judge to sit in place of the judge who has become unable to continue or has been relieved. The Chief Judge shall advise the parties of such designation, but no further argument will be had or briefs received unless otherwise ordered.

§0.15. Disclosure of Interested Parties [Superceded by FRAP 26.1]

§0.16. Clerk (See generally Federal Rule 45 of the Federal Rules of Appellate Procedure.)

- (a) The clerk's office shall be kept at the United States Court House, 40 Foley Square, New

York City, and shall be open from 9:00 o'clock A.M. until 5:00 o'clock P.M. daily, except Saturdays, Sundays and legal holidays.

- (b) The clerk may permit any original record or paper to be taken from the courtroom or from the office upon such statement of need as the clerk may require, and upon receipt for such record or paper.
- (c) When it is required that the record be certified to the Supreme Court of the United States, the clerk if possessed of the original papers, exhibits, and transcript of proceedings of the district court or agency and a copy of the docket entries of that court or agency shall certify and transmit them and the original papers filed in this court.

§0.17. Clerk's Fees

Fees to be paid to clerks of courts of appeals (except that no fees are to be charged for services rendered on behalf of the United States).

Except in those cases where the party seeking review is by law exempt from prepayment of fees, there shall be prepayment of fees to the clerk before service is rendered as prescribed by the schedule hereinafter set forth:

1. For docketing a case on appeal or review, or docketing any other proceeding, \$100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. 1292(b), unless the appeal is allowed.
2. For every search of the records of the court and certifying the results of the same, \$15.
3. For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, \$5.
4. For reproducing any record or paper 50 cents per page. This fee shall apply to paper copies made from either (1) original documents, or (2) microfiche or microfilm reproductions of the original records. The fee does not include certification.
5. For comparing with the original thereof any copy of any transcript or record, entry, record or paper, when such copy is furnished by a person requesting certification, \$2 per page or fraction thereof. This fee is in addition to the fee for certification.
6. For reproduction of magnetic tape audio recordings, either cassette or reel-to-reel, \$15 including the cost of materials.

7. For reproduction of the record in an appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), Federal Rules of Appellate Procedure, a flat fee of \$25.
8. For a copy of a slip opinion of the court, 20 cents per page not to exceed \$10 per opinion, except that no charge shall be assessed for a copy of an opinion furnished to a party of record or to persons whose names appear on a "Public Interest List" established by this court, and that copy of each opinion shall be furnished to persons entering into a subscription for such opinions at an annual fee established from time to time by this court.
9. For each microfiche or microfilm copy of any court record, where available, \$3.
10. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$25.
11. For a check paid into the court which is returned for a lack of funds, \$25.
12. The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.
13. The clerk shall assess a charge of up to three percent for the handling of registry funds, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

§0.18. Entry of Orders by the Clerk

The clerk shall prepare, sign and enter the following without submission to the court or a judge unless otherwise directed:

- (1) orders for the dismissal of an appeal under Rule 42(b) or pursuant to an order of the court or a judge;
- (2) procedural orders on consent;
- (3) orders on mandate from the Supreme Court of the United States;
- (4) judgments in appeals from the United States Tax Court based on a stipulation of the parties;
- (5) orders and judgments on decisions by the court in motions and appeals. (See Rule 36 of Federal Rules of Appellate Procedure.)

- (6) orders scheduling the docketing of the record and filing of briefs and argument, which may include a provision that, in the event of default by the appellant in docketing the record or filing the appellant's brief, the appeal will be dismissed by the clerk;
- (7) orders dismissing appeals in all cases where a brief for the appellant has not been filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.

§0.19. Process

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

§0.20. Opinions of the Court

- (a) **Delivery.** Opinions will be delivered at any time, whether the court is in session or not, and are delivered by handing them to the clerk to be recorded.
- (b) **Preservation of Original Opinions.** The original opinions of the court shall be filed with the clerk for preservation.

§0.21. Library

The library of this court shall be open to members of any court of the United States and their staffs, to law officers of the Government, and to members of the bar of this court. It shall be open during such hours as reasonable needs require and be governed by such regulations as the librarian, with the approval of the court, may prescribe. Books shall not be removed from the building.

§0.22. Judicial Conference of the Second Circuit

1. **Purpose.** There shall be held annually, at such time and place as shall be designated by the chief judge of the circuit, a conference of all the circuit, district and bankruptcy judges, and magistrate judges, of the circuit for the purpose of considering the state of business of the courts and ways and means of improving the administration of justice within the circuit. It shall be the duty of each circuit and district judge in the circuit, in active service, and each bankruptcy judge serving for a term pursuant to 28 U.S.C. § 152, to attend the conference unless excused by the chief judge. The circuit justice shall be invited to attend.
2. **Sessions.** A portion of the conference, to be known as the "executive session" shall be for the judges alone and shall be devoted to a discussion of matters affecting the state of the dockets and the administration of justice throughout the circuit. At other sessions of the conference, members of the bar, to be chosen as

set forth in the succeeding paragraph, shall be members of the conference and shall participate in its discussions and deliberations.

3. **Members of the Bar.** Members of the conference from the bar shall be selected to reflect a cross-section of lawyers who currently practice before federal courts in this circuit; members should be willing and able to contribute actively to conference purposes. In order to assure that fresh views are represented, no judge may invite the same individual more than two years out of any five. The membership shall be composed of the following:
 - (a) The presidents of the state bar associations of the three states of the circuit and a member from each of such associations to be designated by their respective presidents with a view to giving appropriate representation to various areas of the state.
 - (b) Each United States Attorney of the circuit or an Assistant United States Attorney designated by the United States Attorney.
 - (c) The Public Defender (or an assistant designated by the Public Defender) for any district within the circuit, and a representative of a community defender organization, authorized to act generally in any district, designated by the president of such organization.
 - (d) Such number of invitees by the circuit justice, and the active and senior circuit and district judges, as the judicial council may determine for each conference.
 - (e) Such additional number of lawyers as shall be selected jointly by the chief judge and the conference chairperson in light of their competence and interest in the subject or subjects to be considered at the conference. These conference members also shall be selected to reflect a cross-section of lawyers who currently practice before federal courts in this circuit, and may include:
 - (i) Members of county and local bar associations in the circuit, selected in consultation with their respective presidents, reflecting the geography and the relative size and activity in federal litigation of those associations;
 - (ii) The dean, or other representative of the faculty of law schools within the circuit;
 - (iii) Members of State/Federal Judicial Councils within the circuit (including especially state court chief judges or chief justices);

- (iv) Members of the United States Senate and House of Representatives with a particular interest in the work of the federal courts;
 - (v) Former presidents of the American Bar Association residing or practicing in the Second Circuit; the current member of the Board of Governors of the American Bar Association from the Second Circuit; the current member of the Standing Committee on the Federal Judiciary of the American Bar Association from the circuit; the chairperson of such committee if residing or practicing in the circuit; and the president, former presidents, and the executive director of the American Law Institute if residing or practicing in the circuit;
 - (vi) Members of the staff of federal courts within the circuit not enumerated elsewhere in this rule.
- (f) Any retired Justice of the Supreme Court of the United States residing within the circuit, any present or former Attorney General of the United States residing or practicing within the circuit, and any circuit or district judge of the circuit who has resigned such office.
 - (g) The Director (or, if the Director is unable to attend, the Director's designee) of the Administrative Office of the United States Courts, and the Director (or designee) of the Federal Judicial Center.
 - (h) The circuit and district court executives and clerks of the courts within the circuit.
 - (i) Members of the committee provided for in paragraph 4 of this Rule, and past chairpersons and executive secretaries of such committee.
- 4. Committee.** To assist in the conduct of the conference (other than the executive session), the chief judge shall appoint annually, subject to the approval of the judicial council, members of a committee to be known as the Planning and Program Committee. The committee, whose members shall be appointed to staggered three-year terms, shall include the presidents of the state bar associations of the three states of the circuit and such number of judges and members of the bar of the circuit as the chief judge may determine.
- 5. Chairperson.** The chief judge may also appoint a conference chairperson to be selected from among the active judges of the circuit.

6. Representative to the Judicial Conference of the United States.

- (a) Three months before the date of the Judicial Conference of the Second Circuit at which the district judge member of the Judicial Conference of the United States from the Second Circuit is to be chosen, the chief judges of the district courts of the circuit, acting together as a nominating committee, shall nominate no more than three active district judges of the circuit (not excluding one of their own number) as candidates for the office of district judge member from the Second Circuit. The names of the nominees will be mailed to all the judges of the circuit and to the clerk of the court of appeals, who is the secretary of the conference, at least thirty days before the date of the executive session of the Circuit Judicial Conference.
- (b) Additional active district judges may be put in nomination (i) from the floor at the executive session in replacement of any nominee of the chief judges who is disabled or declines to stand, and (ii) from the floor at the executive session by written nomination signed by at least one-fourth of the judges of the circuit. The one-fourth requirement shall not include vacant judgeships or judgeships for which commissions have been signed but the nominees have not been sworn and have not taken office at the time the nominating petition is signed. No judge may sign more than one such nomination and such nomination may not include more than one judge.
- (c) The judge receiving a plurality of the votes of the active judges of the circuit will be the circuit's choice. Voting will be by secret, written ballot. Any judge who expects to be absent from the meeting may send in a judge's ballot unsigned and enclosed in an inner, sealed envelope, to the secretary of the conference provided that the ballot reaches the secretary before the executive meeting is convened.
- (d) No judge may succeed himself or herself to a second successive term by election and no judge of any district court may succeed a judge from the same district unless at least three years have elapsed since the expiration of such earlier judge's term; however, in the case of a judge who is a member of the Executive Committee of the Judicial Conference of the United States, such judge may be elected to a second successive term in order to continue eligibility to serve on the Executive Committee.
- (e) In the event that it is not convenient to conduct at a Judicial Conference the election referred to herein, such election may be conducted by mail ballot following action by the nominating committee, according to such procedures as that body may establish.

§ 0.23. Dispositions in Open Court or by Summary Order

The demands of an expanding case load require the court to be ever conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition will be made in open court or by summary order.

Where a decision is rendered from the bench, the court may deliver a brief oral statement, the record of which is available to counsel upon request and payment of transcription charges. Where disposition is by summary order, the court may append a brief written statement to that order. Since these statements do not constitute formal opinions of the court and are unreported or not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before this or any other court.

§0.24. Complaints With Respect to Conduct of Judges

[Superseded July 1, 1987 by the Rules of Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §372(c). See Court's website, Forms page].

§0.25. Equal Access to Justice Act Fees

Applications authorized by 28 U.S.C. §2412(d)(1)(B) shall be filed within 30 days of this court's judgment, and petitions for review authorized by 5 U.S.C. §504(c)(2) shall be filed within 30 days of the agency's fee determination. Applications and petitions shall be filed with the clerk of this court (original and four copies), served on all parties, and submitted on form AO 291. (A T1080 Motion Information Statement is also required.)

§0.26. Permissive Review After Appeal of a Magistrate's Judgment to the District Court

Petitions for leave to appeal authorized by 28 U.S.C. §636(c)(5) shall be filed with the clerk of this court (original and four copies) within 30 days of the District Court's judgment and shall be served on all parties.

§0.27. Certification of Questions of State Law

Where authorized by state law, this Court may certify to the highest court of a state an unsettled and significant question of state law that will control the outcome of a case pending before this Court. Such certification may be made by this Court sua sponte or on motion of a party filed with the clerk of this Court. Certification will be in accordance with the procedures provided by the state's legislature or highest state court rules, e.g. Conn. Public Act No. 85-111; New York Court of Appeals Rule 500.7. Certification may stay the proceedings in this Court pending the state court's decision whether to accept the certification and its decision of the certified question.

§0.28. Death Penalty Cases.

This rule describes the administration of capital cases in this Court. Capital case, as used in this rule, means any application in this Court, to which the person under sentence is a party, that challenges, defends, or otherwise relates to the validity or execution of a death sentence that has been imposed. Capital cases ordinarily will be heard by panels composed in the manner described herein. The Court, however, may deviate from these procedures; their publication does not give any litigant a right to require that they be followed.

- (1) Certificate of Death Penalty Case. Upon the filing of any proceeding in a district court of this circuit or in this Court challenging a sentence of death imposed pursuant to a federal or state court judgment, each party in such proceeding must file a Certificate of Death Penalty Case with the Clerk of the Court of Appeals. A Certificate of Death Penalty Case must also be filed by the U.S. Attorney upon the return of a verdict recommending a sentence of death in a district court of this circuit.

The Certificate must be in the form provided as annexed to these rules, or in substantially similar form, and must set forth the names, telephone numbers and addresses of the parties and counsel; the proposed date of execution of the sentence, if set; and the emergency nature of the proceedings, if applicable.

A special tracking docket is maintained by the Clerk of this Court for all cases in which a district court of this circuit has imposed a sentence of death, and for all proceedings in a district court of this circuit or in this Court challenging a sentence of death imposed pursuant to a federal or state court judgment.

- (2) Preparation and Transmittal of the Record. Upon the filing of a notice of appeal from an order under 18 U.S.C. § 3731, 28 U.S.C. § 1291, or 28 U.S.C. § 1292(a)(1) in a death penalty case in the district court, the Clerk of the district court and appellant's counsel must immediately prepare the record for the appeal. The record must be transmitted to this Court within five days of the filing of the notice of appeal unless such order is entered within twenty-one (21) days of the date of a scheduled execution, in which case the record must be transmitted immediately by an expedited means of delivery.
- (3) Monitoring of Cases and Lodging of Relevant Documents. The Clerk of the Court of Appeals is authorized to monitor the status of scheduled executions and pending litigation in connection with any case within the geographical boundaries of this circuit wherein a warrant or order setting an execution date has been entered, and to establish communications with all parties and relevant state and/or federal courts. The Clerk may direct parties to lodge with this Court five copies of (1) all relevant portions of previous state and/or federal court records, or the entire record, and (2) all pleadings, briefs, and transcripts of any ongoing proceedings. The Clerk may docket such materials in advance of this Court's jurisdiction, under a miscellaneous docket, pending receipt of a notice of appeal or application in such case. This miscellaneous docket case is closed upon the opening of a

regularly docketed case in this Court, or upon other final disposition of the case without its reaching this Court (for example, a reversal of the sentence or conviction which is not appealed, or a carrying out of the execution).

(4) Capital Case Pool and Panels.

- (a) Capital Case Pool. The capital case pool of judges consists of all active judges of the Court and those senior judges who have filed with the Clerk a statement of willingness to serve on capital case panels.
- (b) Capital Case Panel. Upon receipt of a notice of appeal from the district court, an application for a certificate of appealability, or other application to this Court for relief in a capital case, the Clerk docket the case and assigns it to a capital case panel (except as provided in paragraph 5 of this rule). A capital case panel consists of three judges, of whom at least one is an active judge of the Court.
- (c) Selection. Judges are assigned to capital case panels by random drawing from the capital case pool. If a judge is unable to serve, that judge's name is returned to the pool after a replacement has been drawn. In the event a random drawing results in the names of three senior judges having been selected, the name of the third such senior judge is set aside and the selection process continues until an active judge's name is drawn; after the active judge's name has been drawn, the third senior judge's name is returned to the pool.
- (d) Rotation. A judge drawn from the capital case pool to serve on a capital case panel is not returned to the pool until the pool is exhausted. When the pool has been exhausted, the Clerk prepares a new capital case pool and selects capital case panels from the pool in like manner.
- (e) Replacement. If any judge serving on a capital case panel is unable to continue to serve, a replacement is drawn from the capital case pool, and the judge ceasing to serve on the panel is returned to the pool.
- (f) Duties of Capital Case Panel. A capital case panel assigned to a particular capital case handles all matters pertaining to that case, including but not limited to the merits of a direct appeal and of all petitions for collateral review, motions for stay of execution, motions to vacate a stay of execution, applications for a certificate of appealability, motions for an order authorizing the district court to consider a second or successive application for habeas corpus, appeals from subsequent petitions, and remands from the United States Supreme Court.

When practical, a capital case panel hearing a direct appeal from a death

sentence imposed in federal court hears together with it the direct appeals of co-defendants, at least to the extent they involve issues in common with the appeal of the person sentenced to death. Non-common issues in the appeals of co-defendants may be severed and assigned to an ordinary panel.

- (g) Applications for Certificate of Appealability. Applications for a certificate of appealability are referred initially to a single judge of the capital case panel, who has authority to grant the certificate. If the single judge does not grant the certificate, the application is referred to the full panel for disposition by majority vote.
- (5) Original Petitions. All original applications for habeas corpus relief filed in the Clerk's office in a capital case are referred to a judge on the capital case panel in accordance with the approved operating procedures of this Court. Such an application ordinarily is transferred to the appropriate district court.
- (6) Ruling on Certificate of Appealability. This Court may rule on a certificate of appealability whether or not a formal request is made of this Court, either as a preliminary matter or as part of a merits review of the case.
- (7) Stays of Execution and Motions to Vacate Orders Granting Stay of a Federal or State Court Judgment.
 - (a) Limits on Stays of Execution. Notwithstanding any provision of this paragraph 7, stays of execution are not granted, or maintained, except in accordance with law. Thus, the provisions of this paragraph 7 for a stay are ineffective in any case in which such stay would be inconsistent with the limitations of 28 U.S.C. § 2262, or any other governing statute.
 - (b) Emergency Motions. Emergency motions or applications are filed with the Clerk of the Court of Appeals. If time does not permit the filing of a motion or application in person or by mail, counsel may communicate with the Clerk and obtain the Clerk's permission to file the motion by telefacsimile. Counsel are encouraged to communicate with the Clerk by telephone as soon as it becomes evident that emergency relief will be sought from this Court. The motion or application must contain a brief account of the prior actions, if any, of this Court and the name of the judge or judges involved in such prior actions.
 - (c) Documents Required for Motions for Stay or to Vacate Stay. The party moving for a stay of execution of a sentence of death or to vacate a stay must file the original and four (4) copies (a total of five) of the motion and serve all parties. A copy of the documents listed below must be attached to the original and to each copy of the motion. If time does not permit, the

motion may be filed without attachments, but the movant must file the necessary copies as soon as possible. (If the respondent (the State or the U.S. Attorney) has indicated to the petitioner that it does not seek to oppose the stay immediately and the petitioner states this fact in the petition, these documents need not be filed with the application but must be filed within ten (10) days after the application is filed.)

- (i) The indictment or other accusatory instrument;
 - (ii) The judgment of conviction containing the sentence of death;
 - (iii) The petition or complaint filed in the district court;
 - (iv) The opinion of the district court setting forth the reasons for granting or denying relief;
 - (v) The district court judgment granting or denying relief;
 - (vi) The district court order granting or denying a stay, and the statement of reasons for its action;
 - (vii) The certificate of appealability or order denying a certificate of appealability;
 - (viii) A copy of each state or federal court opinion or judgment bearing on the issues presented in the motion in cases in which appellant was a party;
 - (ix) A copy of the docket entries of the district court; and
 - (x) A copy of the notice of appeal.
- (d) Automatic Stays. In any case in which a sentence of death has been imposed by a district court of this circuit, or by a state court within the circuit, execution of the sentence of death is automatically stayed upon the filing of a notice of appeal from the judgment of conviction or a notice of appeal from the denial of the first application in federal court seeking relief from the sentence of death. The clerk must promptly enter an order implementing the stay. Unless vacated or modified, the stay provided by this subparagraph remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of conviction or of the denial of such first application. The stay may be modified or vacated by the assigned panel at any time.

- (e) Other Stays. A stay of any duration up to that specified in subparagraph 7(f)(i) may be ordered in any case by the assigned capital case panel, upon the affirmative vote of any judge of that panel.
- (f) Duration of Stays: Terminology. Use of the following terminology to specify the duration of a stay denotes the durations specified below:
 - (i) If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the standard duration" under this rule, this signifies that, unless vacated or modified, the stay remains in effect until the expiration of all proceedings available to the person sentenced to death (including review by the United States Supreme Court) as part of the direct review of the judgment of the district court, or of the Court of Appeals in the case of an original petition filed there.
 - (ii) If, in granting a stay of execution of a sentence of death, the Court or judge indicates that the stay shall be in effect "for the duration of the appeal," this signifies that, unless vacated or modified, the stay remains in effect until the Court's mandate issues. Absent an order to the contrary preceded by timely notice to counsel, the mandate does not issue until the time for filing a petition for rehearing has expired, or, if such a petition has been filed, until the petition and any petition for rehearing in banc have been determined.
- (g) Stays in Relation to Petitions for Rehearing.
 - (i) Petitions for rehearing accompanied by petitions for rehearing in banc are circulated to all judges of the capital case pool simultaneously with the circulation of the petition for rehearing to the assigned capital case panel. Judges participating in the petition for rehearing in banc may vote on a stay of execution of a sentence of death immediately, without waiting for the action of the assigned panel as to the petition for rehearing.
 - (ii) A stay of execution of a sentence of death pending disposition of the petition for rehearing and the petition for rehearing in banc is granted upon the affirmative vote of any two judges eligible to participate in a rehearing in banc.
- (h) All stay applications must be filed with the Clerk of the Court. In each case in which the Court orders a stay of execution, the Clerk of the Court

issues a written order in the name of the Court specifying the duration of the stay.

- (i) During non-business hours, emergency stay applications must be directed to an assigned representative of the Clerk (the duty clerk), whose telephone number is left with the courthouse security officers. The duty clerk must immediately advise the members of the assigned panel of the filing of an emergency stay application.
- (j) In the event the members of the assigned panel cannot be reached by the duty clerk, the duty clerk advises the judge of the court assigned at that time to hear emergency applications of the filing of an off-hours emergency stay application. Notwithstanding the provisions of subparagraphs 7(e) and 7(g)(ii), the applications judge may stay an execution until such time as the application can be placed before the assigned panel or the Court in banc.

