

Local Rule 27. Motions

(a) Form of Motion and Supporting Papers for Motion and Opposition Statement.

- (1) **Form of Motion.** A motion must be in writing, unless the court otherwise directs, and must conform to the following requirements:
 - A. The front page of the motion must follow the form of the Motion Information Statement approved by the Court (T-1080) and contain all information required by the form.
 - B. The Motion Information Statement must be followed by a memorandum which must (i) indicate the relief sought, (ii) set forth the information and legal argument supporting the motion, and (iii) if emergency relief is sought, explain the reasons for the emergency.
 - C. Formal requirements of Motion and Opposition Statement.
 - (i) 8½ by 11 inch paper;
 - (ii) Text double spaced, except for quotations, headings and footnotes;
 - (iii) Margins of one inch on all sides;
 - (iv) Pages sequentially numbered (page numbers may be placed in the margins);
 - (v) Bound or stapled in a secure manner that does not obscure text;
 - (vi) Length: no more than 20 pages, not including attachments and the Motion Information Statement;
 - (vii) Number of copies: original plus four copies;
 - (viii) Required attachments to motion:
 - a. An affidavit (containing only statements of fact, not legal argument);
 - b. If the motion seeks substantive relief, a copy of lower court opinion or agency decision;
 - c. Any exhibits necessary to determine the motion;
 - d. Proof of service.

2. **Non-Compliance Sanctions.** If the moving party has not complied with this rule, the motion may be dismissed by the clerk without prejudice to renew upon proper papers. If application is promptly made, the action of the clerk may be reviewed by a single judge. The court may impose costs and an appropriate fine against either party for failure to comply with this rule.

(b) **Motions to Be Heard at Regular Sessions of the Court.** Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the court. These include, without limitation, motions seeking bail pending appeal (see Rule 9(b)); dismissal or summary affirmance, including summary enforcement of an agency order; stay or injunction pending appeal or review (see Rules 8 and 18); certificates of appealability (see Rule 22); leave to proceed in forma pauperis (see Rule 24) except when a certificate of appealability has been granted by the district court or counsel has been assigned under 18 U.S.C. § 3006A; and assignment of counsel in cases not within subsection (e). Except as provided in subdivision (c) of this Rule, such motions will normally be noticed for a Tuesday when the court is in session, and the court will hear oral argument from any party desiring this. Motions to dismiss appeals of incarcerated prisoners not represented by counsel for untimeliness or lack of timely prosecution shall not be noticed for a date earlier than fifteen days after the date when prison officials shall certify the motion was received by the prisoner. Any party requesting an expedited hearing must set forth in writing the facts which justify the urgency. Upon appropriate showing of urgency, the clerk may set any motion for a hearing on any day the court is in session. When the clerk thus sets a hearing for a time not later than 24 hours after application to the clerk during the period Monday to Thursday, or for Tuesday morning during the period after Thursday, the clerk may endorse on the motion papers a direction that the parties will be expected to maintain the status quo and such direction shall have the effect of a stay, unless a judge on application shall otherwise direct.

Except as otherwise provided in these rules or by order of the court, all motions noticed for a Tuesday, with supporting papers, must be filed not later than the Monday of the preceding week, with notice by the movant to the adverse party to be served not later than the Thursday preceding the last date for filing, if served in person, and not later than the Monday preceding the last date for filing, if served by mail; any papers in response must be served and filed not later than seven days after service of a motion served in person, or ten days after service of a motion served by mail, but in no event later than 12 noon on the Thursday preceding the Tuesday for which the motion is noticed.

(c) **Motions to Be Heard by a Panel Which Has Rendered a Decision.** Motions addressed to a previous decision or order of the court or for the stay, recall or modification of any mandate or decision of the court or to withdraw or dismiss an appeal argued but not decided shall be referred by the clerk to the judges who heard the appeal, normally without oral argument.

(d) **Pro Se Motions by Incarcerated Prisoners Under 28 U.S.C. §§ 2253 and 2255.** Pro se motions by incarcerated prisoners under 28 U.S.C. §§ 2253 and 2255 for certificates of

appealability, leave to proceed in forma pauperis, or assignment of counsel shall be made on seven days' notice to the state or the United States, and will be taken on submission, without being calendared, at such time as the material necessary for the court's consideration shall have been assembled by the deputy clerk designated for the purpose.

- (e) **Motions for Leave to Appeal.** Motions for leave to appeal under 28 U.S.C. § 1292(b) or under § 24 of the Bankruptcy Act, 11 U.S.C. § 47 (see Rules 5 and 6), shall be submitted without oral argument.
- (f) **Motions to Be Determined by a Single Judge.** (See Rule 27(b) and (c).) Motions for procedural relief will normally be determined by a single judge without oral argument. Notwithstanding the provision of §27(a) in regard to dismissals, a single judge may include in an order granting an appellant an extension of time a provision for dismissal of the appeal by the clerk in the event of a default. These include, without limitation, motions for extension of time to file records, briefs, appendices or other papers, or for permission to make late filing in the absence of stipulation; to dispense with printing; for assignment of counsel or transcription of the record at the expense of the United States in cases governed by 18 U.S.C. § 3006A (which action shall be deemed to constitute the grant of leave to proceed in forma pauperis); for allowance of compensation and expenses under 18 U.S.C. § 3006A; for assignment of counsel when a certificate of appealability (see Rule 22) has been granted by the district court and for leave to proceed in forma pauperis in such cases; for leave to file a brief as amicus curiae (see Rule 29); for substitutions (see Rule 43); for consolidation; to intervene or to add or drop parties; for a preference; or for postponement of the argument of an appeal. When the court is not in session, certain of the motions normally returnable before a panel as provided in subdivision (a) may be heard and decided by a single judge. Arrangements for such a hearing shall be made through the clerk.
- (g) **Motions for Permission to File Briefs Exceeding Size Provided by Rule 28(g).**
 - 1. A motion for permission to file a brief exceeding the size provided by Rule 28(g) shall be accompanied by a statement of reasons therefor and a copy of the page proofs, and will be disposed of by the clerk or referred by the clerk to a judge as standing directions of the court provide.
 - 2. Such a motion shall be made not later than seven days before the brief is due in criminal cases and not later than two weeks before the brief is due in all other cases.
- (h) **Other Motions.** Any motion not provided for in this rule or in other rules of this court shall be submitted to the clerk, who will assign it for disposition in accordance with standing directions of the court or, if these are inapplicable, as directed by the judge presiding over the panel of the court in session or assigned for the hearing of motions when the court is not in session. The clerk will notify counsel if and when appearance before the court or a judge is required.

- (i) **Suggestions for In Banc Consideration of a Motion.** A suggestion by a party for in banc consideration in the first instance of a motion shall not be accepted for filing by the clerk unless the motion sought to be considered in banc has previously been ruled on by a panel of this court.

- (j) **Motions by Pro Se Appellant.** A motion filed by a pro se appellant (including, but not limited to, a motion for leave to appeal in forma pauperis, for appointment of counsel, or for a transcript at public expense) shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing that the issue has likely merit. When a motion filed by a pro se appellant does not comply with this rule, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that (1) the required identification of issues and supporting facts and reasons must be filed with the court within 21 days, and (2) if the appellant fails to file the required statement, or if the court determines on considering the appellant's statement that the appeal is frivolous, the court may dismiss the appeal. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein.

This rule was amended on October 31, 1997, to reflect "Certificate of Appealability" rather than Probable Cause.