

FRAP 23

CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

(a) Transfer of custody pending review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court, justice or judge rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or release of prisoner pending review of decision failing to release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon the prisoner's recognizance, with or without surety, as may appear fitting to the court or justice or judge rendering the decision, or to the court of appeals or to the Supreme Court, or to a judge or justice of either court.

(c) Release of prisoner pending review of decision ordering release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon the prisoner's recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court shall otherwise order.

(d) Modification of initial order respecting custody. An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern review in the court of appeals and in the Supreme Court unless for special reasons shown to the court of appeals or to the Supreme Court, or to a judge or justice of either court, the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

CIRCUIT RULE 23-1

CUSTODY OF FEDERAL PRISONERS PENDING APPEALS IN PROCEEDINGS TO VACATE SENTENCE

Pending an appeal from the final decision of any court or judge in a proceeding attacking a sentence under 28 U.S.C. 2255, or an appeal from an order disposing of a motion made under Rules 33 or 35 of the Federal Rules of Criminal Procedure or any other proceeding in which a question of interim release is raised, the detention or release of the prisoner shall be governed by FRAP 23(b), (c) and (d).

FRAP 24

PROCEEDINGS IN FORMA PAUPERIS

(a) Leave to proceed on appeal in forma pauperis from district court to court of appeals. A party

to an action in a district court who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed, together with an affidavit, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party's belief that party is entitled to redress, and a statement of the issues which that party intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal in forma pauperis is denied by the district court, or if the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

(b) Leave to proceed on appeal or review in forma pauperis in administrative agency proceedings. A party to a proceeding before an administrative agency, board, commission or officer (including, for the purpose of this rule, the United States Tax Court) who desires to proceed on appeal or review in a court of appeals in forma pauperis, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of (a) of this Rule 24.

(c) Form of briefs, appendices and other papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July 1, 1986.)

CIRCUIT RULE 24-1 EXCERPTS OF RECORD WAIVER

Prisoners who have been granted leave to proceed in forma pauperis and who are not represented by counsel are relieved of the requirement to file excerpts of record.

Cross Reference: Circuit Rule 30-1, Excerpts of Record.

FILING AND SERVICE

(a) Filing. Papers required or permitted to be filed in a court of appeals shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note thereon the date of filing and shall thereafter transmit it to the clerk. A court of appeals may, by local rule, permit papers to be filed by facsimile or other electronic means, provided such means are authorized by and consistent with standards established by the Judicial Conference of the United States.

(b) Service of all papers required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991.)

Cross Reference: FRAP 26(c), Additional Time after Service by Mail; FRAP 40(a), Time for Filing Petition for Rehearing.

CIRCUIT RULE 25-1

PRINCIPAL OFFICE OF CLERK

The principal office of the Clerk shall be in the United States Court of Appeals, 121 Spear Street, San Francisco, California. The duties of the clerk are set forth in FRAP 45.

CIRCUIT RULE 25-2

COMMUNICATIONS TO THE COURT

All communications to the court, including papers to be filed, shall comply with FRAP 32 and

shall be addressed to the Clerk at the United States Court of Appeals, Post Office Box 193939, San Francisco, California 94119-3939. When it is intended that a communication come to the personal attention of a judge or judges, sufficient copies, not including the original, shall be supplied to the Clerk so that the Clerk can furnish a copy to each judge.

Cross Reference: Circuit Rules 27-1, 27-2, 27-3, and 27-6, Motions Practice; Introduction, Pages xv - xx.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 25-2

The address for same day or overnight mail delivery is Clerk, United States Court of Appeals, 121 Spear Street, San Francisco, California 94105.

CIRCUIT RULE 25-3

FACSIMILE FILING

25-3.1 Direct Filing.

The Court does not accept for filing documents transmitted directly by telephone facsimile machine ("fax"), except in extreme emergencies. Parties may transmit documents directly to the court only upon request and with permission of court personnel. Any party who transmits a document to the court without authorization may be sanctioned.

Any document transmitted directly to the court by fax must show service on all other parties by fax or hand delivery, unless another form of service is authorized by the court. Unless otherwise instructed, the filing party shall assure that a signed original and necessary copies are filed in the office of the Clerk on or before the next business day.

25-3.2 Third Party Filing.

The court accepts for filing documents transmitted to third parties by fax and subsequently delivered by hand to the court. Documents filed in this fashion must comply with all applicable rules, including requirements for service, number of copies and colors of covers.

The filing party shall designate one copy of the filed document as the "fax original." It shall be of laser quality and shall bear the notation "fax original." Other copies shall not bear that notation.

A party filing a document by third party fax shall not send the signed original of the document to the court. Rather the filing party shall retain the signed original in its files until issuance of the court's mandate in the case. If a party is unable, upon request by the court, to produce the signed original of a document that is filed by fax, the document may be stricken from the record.

FRAP 26

COMPUTATION AND EXTENSION OF TIME

(a) Computation of time. In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) Enlargement of time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

(c) Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, 3 days shall be added to the prescribed period.

Updated January 1, 1993

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991.)

CIRCUIT RULE 26-1

FILING DEADLINES FOR THE DISTRICTS OF GUAM AND THE NORTHERN MARIANA ISLANDS

Except as provided by order of the court, or by FRAP 26(b) and 31, all deadlines for filing set forth in FRAP or these rules are extended by 7 days in cases arising from the Districts of Guam and the Northern Mariana Islands.

FRAP 26.1

CORPORATE DISCLOSURE STATEMENT

Any non-governmental corporate party to a civil or bankruptcy case or agency review

proceeding and any non-governmental corporate defendant in a criminal case shall file a statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public. The statement shall be filed with a party's principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever first occurs, unless a local rule requires earlier filing. The statement shall be included in front of the table of contents in a party's principal brief even if the statement was previously filed.

FRAP 27

MOTIONS

(a) Content of motions; response. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)] within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) Determination of motions for procedural orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

(c) Power of a single judge to entertain motions. In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

(d) Form of papers; number of copies. All papers relating to motions may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

CIRCUIT RULE 27-1

FILING OF MOTIONS

All motions must be filed with the Clerk in San Francisco. Except in cases of emergency motions under Circuit Rule 27-3, counsel should not contact a circuit judge regarding any

motion. Each motion shall contain a clear statement of the relief sought. A separate proposed order is not required.

Parties shall file an original and 4 copies of motions, responses to motions and any supporting papers and appendices.

Cross Reference: Circuit Rule 25-2, Communications to the Court.

CIRCUIT ADVISORY COMMITTEE NOTE TO CIRCUIT RULE 27-1

(1) **Motions Acted on by a Single Judge.** Under FRAP 27(c), a single judge may grant or deny any motion which by order or rule the court has not specifically excluded, but a single judge may not dismiss or otherwise effectively determine an appeal or other proceeding. Thus, a single judge may not grant or deny motions for summary disposition, dismissal, or remand. A single judge is not authorized to grant or deny in its entirety a motion for stay or injunction pending appeal, but may grant or deny temporary relief in emergency situations pending full consideration of the motion by a motions panel. (See *infra*.) In addition, some types of motions may be ruled on by a single judge by virtue of a particular rule or statute. For example, a single judge is authorized to grant a certificate of probable cause. (See 28 U.S.C. 2253; FRAP 22; Circuit Advisory Committee Note Regarding Habeas Corpus Procedures, following FRAP 22.)

Under procedures adopted by the clerk's office, single-judge motions are referred to the duty judge. (See (2) *infra*.) Judges of the court are assigned by the Chief Judge on a rotating basis to serve as duty judge.

(2) Motions Acted on by Motions Panels

(a) **Motions Heard by the Motions Panels.** The motions panel rules on all substantive motions, including motions to dismiss, motions for summary affirmance, bail and similar motions.

(b) **Selection of Motions Panels.** Judges are assigned to the three- judge motions panel on a rotating basis by the clerk for a term of one month. The panels are normally composed of three circuit judges in active service, but any senior circuit judge who is willing to serve may be assigned to the panel. The three judges serving on the motions panel rotate as lead judge, second judge and third judge. A single motions panel is appointed for the entire circuit.

(c) **Procedures for Disposition of Motions by the Motions Panel.** All three judges of the motions panel rule on motions that are dispositive of the appeal. If the motion is not dispositive of the appeal, it is first referred to the lead judge and the second judge; if in agreement, they decide the motion. The third judge participates only if (i) one of the other members of the panel is disqualified or is otherwise unavailable; (ii) the other members of the panel disagree on the disposition of a motion; or (iii) he or she is requested to participate by the other members of the panel.

The motions panel sits in San Francisco approximately every ten days. Motions are presented orally to the panel by the motions attorneys or court law clerks when the panel sits. For complex motions, the motions attorneys or court law clerks may prepare and transmit to the panel in

advance bench memoranda, the moving papers and relevant portions of the record.

Motions are referred by the clerk's office to the motions attorneys, who transmit them to the judges of the motions panel. If necessary, emergency motions are acted on by telephone (See Cir. R. 27-3 through 27-4 and Advisory Committee Notes thereto).

(d) Motions for Bail. Despite the provisions of FRAP 27(c), conferring broad powers upon single judges to dispose of motions and the power granted "any judge or justice" to grant bail or other relief, see 18 U.S.C. 3041, the court has determined that in the interest of uniformity, motions for bail are neither granted nor denied by one judge. Therefore, it is required that motions for bail be routed through the clerk's office and considered by a motions panel. (See Cir. R. 9-1.1 and 9-1.2 as to the required form and content of motions for bail pending trial or appeal.)

(3) Motions for Clarification, Reconsideration or Rehearing. A motion for clarification of an order entered by a single judge is referred to that judge. A motion for reconsideration or rehearing of an order entered by a single judge (including the duty judge) is referred to the current motions panel.

A motion for clarification, rehearing or reconsideration of an order issued by a motions panel is referred to the panel that entered the order, unless the case has been assigned to a panel on the merits. (In the latter case, the motion is referred to the merits panel.) Clarification, reconsideration or rehearing of the order of a single judge or a motions panel may be granted by the motions panel sua sponte or upon motion filed by a party.

Motions for clarification, reconsideration or rehearing of a motion are disfavored by the Court and are rarely granted. The filing of such motions is discouraged. (See Circuit Rule 27-10 as to time limits on filing motions for reconsideration.)

(4) Motions to Expedite Criminal Appeals for Defendants Not on Bail. A defendant who is serving a term of confinement should consider moving for an expedited briefing schedule immediately after the docketing of the notice of appeal in the appellate court (1) where defendant contends that the valid guideline term of confinement does not extend beyond nine (9) months from the filing of the notice of appeal; or (2) where the projected release date occurs within nine (9) months from the filing of the notice of appeal.

The motion should state the status of transcript preparation, include a proposed briefing schedule and, if possible, indicate the position of opposing counsel on the proposed schedule.

Upon a showing of good cause, the court may grant motions to expedite the appeals of defendants serving of terms of custody that exceed nine (9) months.

Cross-references: See Advisory Committee Note regarding Habeas Corpus procedures See Advisory Committee Note to Rule 27-3 regarding emergency motions.

CIRCUIT RULE 27-2

MOTIONS FOR STAYS PENDING APPEAL

If a district court stays an order or judgment to permit application to the Court of Appeals for a stay pending appeal, an application for such stay shall be filed in the Court of Appeals within 5 days after issuance of the district court's stay.

Cross Reference: Circuit Rule 27-3, Emergency Motions; and FRAP 8, Stay or Injunction Pending Appeal.

CIRCUIT RULE 27-3

EMERGENCY MOTIONS

If a movant certifies that to avoid irreparable harm relief is needed in less than 21 days, the motion shall be governed by the following requirements:

(1) before filing the motion, the movant shall make every practicable effort to notify the Clerk and opposing counsel, and to serve the motion, at the earliest possible time.

(2) the motion shall be filed with the Clerk in San Francisco, unless counsel for the movant certifies that relief is required on the day the motion is filed or the next day, and that counsel has not been dilatory in seeking it. In such case, the motion may be filed in a divisional clerk's office or, if there is no office in the district, with an individual circuit judge. Counsel must also transmit a copy of the motion, by overnight mail delivery, to the Clerk in San Francisco.

If it appears that same day or next day relief is not necessary, or if it appears in a case not involving imminent execution of a sentence of death that counsel has been dilatory in requesting relief, the moving party will be directed to file the motion in San Francisco.

(3) Any motion under this Rule shall have a cover page bearing the legend "Emergency Motion Under Circuit Rule 27-3" and the caption of the case.

A certificate of counsel for the movant, entitled "Circuit Rule 27-3 Certificate," shall follow the cover page and shall contain:

(i) The telephone numbers and office addresses of the attorneys for the parties;

(ii) Facts showing the existence and nature of the claimed emergency; and

(iii) When and how counsel for the other parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

(4) If the relief sought in the motion was available in the district court, the motion shall state whether all grounds advanced in support thereof in this court were submitted to the district court, and, if not, why the motion should not be remanded or denied.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-3

(1) Procedures for Motions: When an emergency motion is filed with the Clerk in San Francisco, it is immediately referred to the appropriate motions unit. A motions attorney will contact the lead judge of the motions panel, or, if he or she is unavailable, the second judge and then the third judge of the motions panel. (See Advisory Committee Note to Rule 27-7.) That judge then may either grant temporary relief or convene the motions panel (usually by telephone) to decide the motion.

When a motion requiring "same day" or "next day" action is accepted for filing in a divisional clerk's office pursuant to Circuit Rule 27-3(2), that clerk's office will immediately refer the motion to the appropriate motions unit or to a member of the current motions panel.

When a judge at a location in which there is no clerk's office is contacted by a party with an emergency motion requesting same day or next day relief, and the judge determines that action is required that day or the next day, the judge shall, if practicable, consult with the lead judge of the motions panel. The single judge may either grant or deny temporary relief pending full consideration of the motion by a motions panel.

(2) Emergency Telephone Number. The clerk's office provides 24-hour telephone service for calls placed to the main clerk's office number, (415) 744- 9800. Messages left at times other than regular office hours are recorded and monitored on a regular basis by the motions attorneys.

Messages should be left only with regard to matters of extreme urgency that must be handled by the court before the next business day. Callers should make clear the nature of the emergency and the reasons why next-business-day treatment is not sufficient.

CIRCUIT RULE 27-4

EMERGENCY CRIMINAL INTERLOCUTORY APPEALS

If emergency treatment is sought for an interlocutory criminal appeal, motions for expedition, summary affirmances or reversal, or dismissal may be filed pursuant to Circuit Rule 27-3. To avoid delay in the disposition of such motions, counsel should include with the motion all material that may bear upon the disposition of the appeal, including: a copy of the notice of appeal; district court docket sheet, moving papers of the parties and any responses thereto filed in the district court; the district court's order at issue; information concerning the scheduled trial date; information regarding codefendants; and information concerning other counts contained in the indictment but not in issue.

Cross Reference: FRAP 4(b), Appeals in Criminal Cases, FRAP 22, Habeas Corpus Proceedings, and Circuit Rules 22-1 to 22-6.

CIRCUIT RULE 27-5

EMERGENCY MOTIONS FOR STAY OF EXECUTION OF SENTENCE OF DEATH

[Abrogated]

Cross Reference: Circuit Rules 22-1 to 22-6.

CIRCUIT RULE 27-6

NO ORAL ARGUMENT UNLESS OTHERWISE ORDERED

Motions may be considered and decided in chambers, and no oral argument will be allowed unless requested by the Court. If the Court requests oral argument, 15 minutes shall be allowed to each side unless otherwise ordered.

CIRCUIT RULE 27-7

DELEGATION OF AUTHORITY TO ACT ON MOTIONS

With the approval of the Court, the Chief Judge may delegate to the Clerk or a designated deputy clerk authority to decide unopposed motions that are subject to disposition by a single judge and do not dispose of the appeal. The order shall be subject to reconsideration by a judge of the Court if exception is received within 10 days after it is entered.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-7

(1) Motions Acted on by Clerk's Office Personnel

(a) Procedural Motions. All non-dispositive procedural motions in appeals or other proceedings that have not yet been calendared are acted on by clerk's office personnel under the supervision of the duty judge according to guidelines adopted by the court. (Once an appeal or other proceeding has been calendared to be heard on the merits, all motions, substantive and procedural, relating to that proceeding are referred to the merits panel.) Clerk's office personnel may act on procedural motions whether opposed or unopposed, but if there is any question under the guidelines as to what action should be taken on the motion, it is referred to the duty judge.

Procedural motions that are acted on by clerk's office personnel under the supervision of the duty judge include motions for extension of time to file a brief, motions to consolidate appeals and motions to file a brief exceeding page limits.

(b) Orders of Dismissal. The Clerk is authorized to enter orders of dismissal in civil cases where the parties to an appeal or other proceeding have signed and filed with the Clerk an agreement that the proceeding be dismissed, specifying terms as to the payment of costs. (See FRAP 42(B).)

(c) Motions for Clarification, Reconsideration or Rehearing. A motion for clarification, reconsideration or rehearing of an action taken by clerk's office personnel is decided by the duty judge. Opposition to a motion received after action has been taken by clerk's office personnel is treated as a motion for reconsideration. A motion for reconsideration of a prebriefing conference attorney's order is decided by the administrative judge for the unit from which the matter arose.

CIRCUIT RULE 27-8

REQUIRED RECITALS IN CRIMINAL CASES

Every motion in a criminal appeal shall recite any previous application for the relief sought and the bail status of the defendant.

CIRCUIT RULE 27-9

MOTIONS TO DISMISS CRIMINAL APPEALS

27-9.1 Voluntary Dismissals

Motions or stipulations for voluntary dismissals of criminal appeals shall, if made or joined in by counsel for appellant, be accompanied by appellant's written consent thereto, or counsel's explanation of why appellant's consent was not obtained.

Cross Reference: FRAP 42, Voluntary Dismissal.

27-9.2 Involuntary Dismissals

Motions by appellees for dismissal of criminal appeals, and supporting papers, shall be served upon both appellant and appellant's counsel, if any. If the ground of such motion is failure to prosecute the appeal, appellant's counsel, if any, shall respond within 7 days. If appellant's counsel does not respond, the clerk will notify the appellant of the court's proposed action.

If the appeal is dismissed for failure to prosecute, the court may impose sanctions on appellant's counsel. Counsel will be provided with 10 days notice and an opportunity to respond before sanctions are imposed.

CIRCUIT RULE 27-10

MOTIONS FOR RECONSIDERATION

Unless the time is shortened or enlarged by order of this court, a motion for clarification, reconsideration, or rehearing of an order entered by a motions panel must be filed within 14 days of the date of the order, except a prisoner not represented by an attorney shall have 60 days.

A party seeking relief under this rule shall state with particularity the points of law or fact which, in the opinion of the movant, the court has overlooked or misunderstood. Changes in legal or factual circumstances which may entitle the movant to relief also shall be stated with particularity.

No answer to a motion will be filed unless requested by the court, but ordinarily the court will not grant a motion without such a request.

A party may file only one motion for clarification, reconsideration or rehearing of an order

entered by a motions panel. Except by permission of the Court, a motion for clarification, reconsideration or rehearing shall not exceed 10 pages.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-10

Motions for clarification, reconsideration or rehearing are not favored by the Court and should be utilized only where counsel believes that the Court has overlooked or misunderstood a point of law or fact, or where there is a change in legal or factual circumstances after the order which would entitle the movant to relief.

Motions for clarification, reconsideration or rehearing of orders issued pursuant to FRAP 27(b) and Ninth Circuit Rule 27-7 are subject to the reconsideration provisions of Ninth Circuit Rule 27-7.