

FOURTH CIRCUIT APPEAL PROCESS

1 PRELIMINARY MATTERS



Notice of Appeal – Due within 30 days (civil cases), 60 days (civil with U.S.), 14 days (criminal).

Appointment of Counsel – CJA counsel is appointed in criminal cases.

Docketing Statement, Transcript Order Form, Appearance Form, Disclosure Statement, – Due within 14 days of opening of appeal in counseled cases.

Mediation – Civil cases with counsel are placed in mediation upon filing of docketing statement.

2 MOTIONS



Motions – Motions may be filed throughout the case; jurisdictional motions should be filed early in the case.

Responses and Replies – No response is required unless requested by the court; responses are due within 10 days unless an earlier response is requested. Replies may be filed within 7 days, but the court will not await a reply before ruling.

Submission of Motions – Motions are decided without argument. Most procedural motions are acted on by the clerk in the first instance. All substantive motions are submitted to the court. The parties may move to suspend briefing pending action on the motion.

3 BRIEFING



Briefing Order – When the record is complete, including all transcripts, the court issues a briefing schedule. In pro se cases, an informal, rather than a formal, briefing schedule is set.

Opening Brief and Joint Appendix – Due within 40 days in civil cases and within 35 days in criminal cases. In pro se cases, the informal opening brief is due within 21 days.

Response Brief – Due within 30 days in civil cases and within 21 days in criminal cases. In cross-appeals, appellee includes both its response and its opening issues. In pro se cases, an informal response brief, if filed, is due within 14 days.

Reply Brief – Due within 21 days in civil cases and within 10 days in criminal cases. In cross-appeals, appellant files a response and reply within 30 or 21 days, and appellee then replies within 14 or 10 days. In pro se cases, an informal reply brief, if filed, is due within 7 days.

4 PRE-ARGUMENT REVIEW AND SUBMISSION ON THE BRIEFS



Pre-Argument Review – The court reviews the briefs prior to scheduling a case for argument to determine whether the case can be decided on the briefs or requires argument. If all three judges on the pre-argument review panel agree on the disposition of the case and that argument is not needed, the panel will proceed to a decision on the briefs. If any judge requests argument, the case will be argued.

Submission on the Briefs – After agreeing upon the disposition and that argument is not required, the pre-argument review panel files its opinion in the case. Pro se cases are decided on the briefs unless the panel determines that argument is needed, in which case counsel will be appointed to brief and argue the case on behalf of the pro se litigant.

5 CALENDARING AND ORAL ARGUMENT



Calendaring – The court schedules argument during 6 regular court sessions in September, October, December, January, March, and May, and at special sessions throughout the year. For cases requiring argument, notice is sent 8-10 weeks in advance that a case has been tentatively scheduled for a particular court session. Counsel is required to notify the court of any conflicts or file any motions affecting argument within 10 days. The court issues the final calendar about 6 weeks in advance of the session.

Argument – The court schedules argument in four cases per day before five randomly drawn panels during each 3-4 day court session. Each side is allotted 20 minutes of argument time except that 15 minutes are allowed in specific case types identified in Local Rule 34(d), and 30 minutes are allowed in en banc cases. The identity of the panel is not disclosed until the morning of argument.

6 DECISION AND POST-DECISION

Opinion and Judgment – The court files its opinion and judgment and notifies the parties of the time frames for rehearing, bill of costs, mandate, and certiorari.

Petition for Rehearing and Rehearing En Banc – Due within 14 days of judgment, except any party may file within 45 days in civil cases in which the U.S. is a party. No response is filed unless requested by the court.

Bill of Costs – The prevailing party in a civil case may file a bill of costs within 14 days of judgment seeking copy costs for the brief and appendix and, if there was an appellate filing fee, payment of the fee.

Mandate – Unless stayed, the court's mandate issues 7 days after denial of a timely petition for rehearing or rehearing en banc or motion to stay the mandate, or 7 days after the rehearing period expires.

Petition for Certiorari – Due within 90 days of judgment; or within 90 days of denial of a timely petition for panel or en banc rehearing.