

HOW TO APPEAL AS A PRO SE PARTY TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Rev. 08-22

INTRODUCTION

The Court has prepared materials to assist a pro se party who has a case pending in the Court. This document describes general information for pro se cases. In addition, there are instructions for each type of case that can be appealed - Civil, Criminal, Agency, and Prisoner Claims. Also, there are forms that a pro se party must submit to the Court to proceed with the appeal. The instructions and forms are available on the Court's website www.ca2.uscourts.gov. One copy of the Instructions and forms are sent by mail to the pro se party at the beginning of the case. Use these materials to prepare the appeal.

A pro se party is a person who is not represented by an attorney. An incorporated business, including a corporation held by one person, may not appear as a pro se party in this Court. A corporation must be represented by counsel in order to participate in an appeal.

If a lawyer files a case on his or her own behalf as a pro se matter, the Court will treat the case as a counseled appeal. Accordingly, the lawyer must seek admission to this Court, register as Filing User to file all documents electronically, and file an acknowledgment and notice of appearance.

Every person who files a case in this Court must follow the Federal Rules of Appellate Procedure ("FRAP"), the Court's Local Rules ("LR") and applicable statutes and case law. FRAP, the LRs, and all relevant Court forms are available on the Court's website www.ca2.uscourts.gov.

If a question arises in this case, first check the instructions. If the answer does not appear in the instructions, call the case manager assigned to your case. The name and contact information is on the docketing notice sent to each party at the beginning of the case.

STARTING THE CASE

A pro se party appealing from a district court decision must file a notice of appeal and pay the docket fee or file for *in forma pauperis* ("IFP") status in the district court as described in the Instructions for the type of case being appealed. The pro se party is called the "appellant" in such matters.

A pro se party challenging an administrative agency final decision must file a petition for review and pay the docket fee or file for IFP status in the Court of Appeals, as described in the instructions for Agency cases. The pro se party is called the "petitioner" in such matters.

A pro se appellant or petitioner must file Form B or Form D-P. A pro se party does not file Form C or C-A, however, because a case that involves a pro se party is not eligible for the pre-argument mediation process known as CAMP.

In a case in which the appellant or petitioner is pro se, the district court clerk or agency files the record on appeal, including the transcript if required. Note that in an appeal from the district court decision, if the case requires a transcript and IFP status is not granted, the appellant must pay for the transcript.

Within 14 days of receiving the Court of Appeals docketing notice, a pro se party must file with the Court an Acknowledgment and Notice of Appearance Form according to the directions provided in the Instructions.

A pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case. A pro se party who is permitted to file documents electronically in CM/ECF must notify the Court of a change to the user's mailing address, business address, telephone number, or e-mail. To update contact information, a Filing User must access PACER's Manage My Appellate Filer Account, <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. The Court's records will be updated within 1 business day of a user entering the change in PACER.

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

PRO SE INMATE INSTITUTIONAL MAIL RULE

If a pro se party who is an inmate is confined in an institution that has a system designed for handling legal mail, a notice of appeal and any other paper the inmate may file with the Court and serve by mail on the adversary is timely if it is deposited in the institution's internal mail system on or before the last day for filing. In addition, the paper mailed to the Court and the adversary must either (1) include a notarized statement or declaration stating under penalty of perjury the date of deposit with the internal mail system and that first-class postage is being prepaid, or (2) bear evidence such as a postmark or date stamp showing the date of deposit and prepaid postage. If not provided, the Court in its discretion may permit the inmate to file the statement or declaration later. Form 7, Declaration of Inmate Filing, which suggests a form for the declaration, can be found on the Court's website.

DISCLOSURE OF ATTORNEY ASSISTANCE

At any point during the case, a pro se party who submits a paper that an attorney has drafted in whole or substantial part must include at the beginning of the paper the following statement: "This document was drafted in whole, or substantial part, by an attorney." Unless the Court orders otherwise, the pro se party does not have to disclose the attorney's identity and address.

PROCEDURES FOR FILING A BRIEF AND APPENDIX

Within 14 days after the appellant or petitioner receives the completed transcript or certifies that no transcript will be ordered in the case, the appellant must file with the Court a scheduling notification advising the Court when appellant or petitioner's brief and appendix will be filed. LR 31.2.

The instructions explain how to file the scheduling notification, prepare the brief and appendix, and file the documents with the Court.

It is important to file the brief and appendix by the date given in the scheduling notification. The Court does not grant requests to extend the time to file a brief or appendix unless the reason for the request is extraordinary.

PROCEDURES TO REINSTATE AN APPEAL DISMISSED ON DEFAULT

An appeal may be dismissed by order if the appellant fails to file certain forms, a brief, or pay the required filing fee.

If an appeal is dismissed for failure to file Form B or D-P, a Notice of Appearance, or a Prisoner Authorization Form, the appellant must file a motion to reinstate the appeal. The completed form(s) and motion to reinstate must be filed by the date indicated on the order.

If the appeal is dismissed for failure to file a motion to proceed in forma pauperis or pay the filing fee, a certificate of appealability, or successive application, the appellant must file a motion to reinstate. The motion to reinstate and the completed motion or application must be filed by the date indicated on the order.

If the appeal is dismissed for failure to file a timely brief, the appellant must file a motion to reinstate the appeal. The motion to reinstate must include as an exhibit the brief and appendix that caused the default and must be filed within 14 days of the order dismissing the appeal. L.R. 27.1(i).

If the mandate has issued, the appellant must file a motion to recall the mandate and reinstate the appeal along with the completed form(s), motion(s), or application(s) that caused the default.

PROCEDURES FOR ORAL ARGUMENT

Within 14 days after the last appellee or respondent's brief is filed, each party, including a pro se party, must file with the Court an Oral Argument Statement. LR 34.1(a).

The Court may choose to determine any case on the submission of the briefs, i.e., without oral argument. When the Court decides to hear an appeal on submission, the clerk informs the parties. Certain types of immigration appeals are routinely determined by the Court on submission of the briefs.

Each set of instructions explains the Court's practices regarding oral argument.

PROCEDURES FOLLOWING THE COURT'S DECISION

When the Court issues (1) an opinion pursuant to which a final judgment is entered or (2) a summary order and judgment disposing of the appeal, a party may file a petition asking that the panel of three judges rehear the case. A party also may file a petition for rehearing en banc which asks that all the active judges on the Court rehear the case.

When the Court disposes of an appeal by a final three-judge order without entry of a separate judgment, a party may file a motion for panel reconsideration and a motion for reconsideration en banc. See LR 40.2. The motion must comply with the requirements for filing a petition for rehearing or rehearing en banc.

Also, within 14 days after the Court files the decision in a case, the winning party may seek costs of bringing or defending the appeal against the losing party. If the United States is a party in the case, costs may be assessed only if authorized by law.

Within 90 after the Court files the judgment or denies a petition for rehearing, a party may file a petition for a writ of certiorari with the United States Supreme Court.

The Court's authority to handle a case, called jurisdiction, ends when the Court issues the mandate to the district court or agency. The mandate usually issues either 21 days (52 days in a civil case if the United States is a party) after the decision is filed or, if a petition for rehearing is filed, 7 days after the petition for rehearing is denied.

Each of these procedures is explained in the instructions.