

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, Illinois 60604

Christopher G. Conway
Clerk of Court
312-435-5850

April 12, 2024

Notice of Proposed Circuit Rule Changes and Opportunity for Comment

Notice is hereby given that the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 2071, proposes modifications to Circuit Rules 34, 47, 60, 31, and 40. Redline and clean versions of each rule are provided below. Written comments on the proposed rule changes should be sent by May 13, 2024, to:

Advisory Committee on Circuit Rules
c/o Clerk of Court
United States Court of Appeals
For the Seventh Circuit
219 South Dearborn Street, Room 2722
Chicago, IL 60604

Comments can also be made via e-mail at: USCA7_Clerk@ca7.uscourts.gov

[REDLINE] CIRCUIT RULE 34. Oral Argument.

(a) *Notice to Clerk.* The names of counsel intending to argue orally shall be furnished to the clerk not later than five business days before the argument.

(b) *Calendar.*

(1) The calendar for a particular day will generally consist of six appeals scheduled for oral argument at 9:30 a.m. The amount of time allotted for oral argument will be set based on the nature of the case. The clerk will notify counsel of the allocation approximately 21 days before the argument. The types of cases

listed below are to be given priority, though the sequence of listing here is not intended to indicate relative priority among the types of cases.

[. . .]

- (2) Consideration will be given to requests addressed to the clerk by out-of-town counsel to schedule more than one appeal for oral argument the same day in order to minimize travel time and expenses.
 - (3) Requests by counsel, made in advance of the scheduling of an appeal for oral argument, that the court avoid scheduling the oral argument for a particular day or week will be respected, if possible.
 - (4) Once an appeal has been scheduled for oral argument, the court will not ordinarily reschedule it. Requests under subparagraphs (2) and (3) of this paragraph must be submitted by letter filed electronically with the clerk's office and should ~~therefore~~ be made ~~as early as possible~~ by no later than the filing of the appellee's brief. ~~Counsel should have in mind that, when practicable, criminal appeals are scheduled for oral argument shortly after the appellant's brief is filed and civil appeals shortly after the appellee's brief is filed.~~ Counsel must specify the dates and reasons why counsel is unavailable in the letter, and counsel's signature serves as an averment of the accuracy of those statements. The court may choose not to accommodate unavailability requests made after the filing of the appellee's brief. Any request for rescheduling of oral argument must be made by formal motion in accordance with Fed. R. App. P. 34(e).
- (c) *Divided Argument Not Favored.* Divided arguments on behalf of a single party or multiple parties with the same interests are not favored by the court. When such arguments are nevertheless divided or when more than one counsel argues on the same side for parties with differing interests, the time allowed shall be apportioned between such counsel in their own discretion. If counsel are unable to agree, the court will allocate the time.
 - (d) *Preparation.* In preparing for oral arguments, counsel should be mindful that this court follows the practice of reading briefs prior to oral argument.
 - (e) *Waiver, ~~or~~ Postponement, or Presentation of Oral Argument by Telephonic or Video Communications.* Any request for waiver, ~~or~~ postponement, or remote presentation of a scheduled oral argument must be made by

formal motion, ~~with proof of service on all other counsel or parties.~~ Not later than 14 days before the argument date and after conferring with opposing counsel, a party may file a motion to waive, postpone, or present oral argument by telephonic or video-communications platforms approved by the court. The motion shall: (1) state the reason for the request; (2) indicate whether the request is opposed or unopposed; (3) if seeking postponement, state why postponement is necessary instead of oral argument by telephonic or video communications or by other counsel of record; and (4) if requesting to present oral argument by telephonic or video communications, identify which counsel wish to appear remotely. The court prefers joint motions. Postponements will be granted only in extraordinary circumstances.

- (f) *Statement Concerning Oral Argument.* A party may include, as part of a principal brief, a short statement explaining why oral argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34. This statement does not operate as a waiver of oral argument. Any request for waiver of oral argument must be made by formal motion in accordance with Fed. R. App. P. 34(e).
- (g) *Citation of Authorities at Oral Argument.* Counsel ~~may~~ should not cite or discuss a case at oral argument unless the case has been cited in one of the briefs or promptly drawn to the attention of the court and opposing counsel by a filing under Fed R. App. P. 28(j). ~~The filing may be made on the day of oral argument, if absolutely necessary, but should be made sooner.~~
- (h) *Argument by Law Student.* The court may permit a law student to present oral argument under supervision of a member of this court's bar, with the client's written approval, if the representation is ~~part of a program of an accredited law school~~ permitted under the applicable state licensure rules (e.g., Ill. Sup. Ct. R. 711; Ind. Admis. and Disc. R. 2.1; Wis. Sup. Ct. R. 50). The supervising attorney's motion must be filed at least 14 days before the date on which argument is to be held and must state the reasons why presentation of argument by a law student is appropriate.

[CLEAN REVISED] CIRCUIT RULE 34. Oral Argument.

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- (h) *Argument by Law Student.* The court may permit a law student to present oral argument under supervision of a member of this court's bar, with the client's written approval, if the representation is permitted under the applicable state licensure rules (*e.g.*, Ill. Sup. Ct. R. 711; Ind. Admis. and Disc. R. 2.1; Wis. Sup. Ct. R. 50). The supervising attorney's motion must be filed at least 14 days before the date on which argument is to be held and must state the reasons why presentation of argument by a law student is appropriate.

[REDLINE] Circuit Rule 47. Advisory Committee

The court shall appoint an Advisory Committee to provide a forum for continuing study of the procedures of the court and to serve as a conduit between members of the bar who have suggestions for change and the court, which retains ultimate responsibility for effectuating change. The committee shall consist of one district judge, one law school professor, and ~~two~~ three attorneys from each state of the circuit, Illinois, Indiana, and Wisconsin, who have demonstrated a commitment to the Seventh Circuit, and, as *ex officio* members, ~~the President and First Vice-President of the~~

~~Seventh Circuit Bar Association~~, the Circuit Executive, the Senior Staff Attorney, and the Clerk of this court. The district judges, attorneys, and law school professors on the committee shall serve three-year terms ~~with the appointments being staggered~~ and may serve for no more than a total of two terms.

The court shall appoint a chair~~man~~ from the membership of the committee. The chair shall ~~to~~ serve for a two-year term and may serve for no more than a total of two terms as chair. The advisory committee shall promulgate its own rules, and call its own meetings. The advisory committee shall arrange for notice of proposed rule changes and shall consider comments received. From time to time, as it deems necessary or advisable, ~~it~~ the advisory committee shall make recommendations to the circuit council or to the court. Suggestions for consideration by the advisory committee may be filed with the clerk of this court.

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[REDLINE] Circuit Rule 60. Seventh Circuit Judicial Conference

(a) *Purpose of the Conference.* ~~Each year~~ ~~†~~ The Chief Judge shall call a circuit judicial conference either annually or biennially in accordance with 28

U.S.C. § 333 and all applicable Judicial Conference policies and guidance for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit. ~~The Chief Judge shall designate the location of the conference and either preside at it or designate officers of the Seventh Circuit Bar Association, or others, to preside.~~

- (b) *Members of the Conference.* Each active Circuit, District, Bankruptcy, and Magistrate Judge of the Circuit shall be a member of the conference. The following shall be members of the conference and are encouraged to attend: (1) Senior Circuit, District, ~~and~~ Bankruptcy, and Magistrate Judges; (2) Circuit Executive, Deputy Circuit Executive, Senior Staff Attorney for the Seventh Circuit, staff attorneys, and law clerks to all active and senior status Circuit, District, Bankruptcy, and Magistrate Judges; (3) Clerks and Deputy Clerks of the Court of Appeals, District Courts and Bankruptcy Courts in the Circuit; (4) United States Attorneys in the Circuit and their legal staffs; (5) Federal Defenders and Community Defenders in the Circuit and their legal staffs; (6) Members of the Seventh Circuit ~~bar Bar Association~~; (7) Special guests invited by the Chief Judge ~~or by the President of the Seventh Circuit Bar Association with the approval of the Chief Judge~~; (8) United States Trustees in the Circuit and their legal staffs; and (9) at the discretion of the Chief Judge, any member of the bar of any court interested in the work of the courts and the administration of justice in the Circuit.
- (c) ~~*Planning of the Conference.* The Judicial Conference shall be planned by a committee composed of eight persons, four judges appointed annually by the Chief Judge from the active judges in the Circuit and four members of the Seventh Circuit Bar Association appointed annually by the President of the Bar Association. The Chief Judge, after consultation with the President of the Bar Association, shall designate one of the members to chair the committee.~~
- (~~d~~) *Executive Session.* All or part of one day of the conference ~~shall~~ may be designated by the Chief Judge as an executive session to be attended only by active Circuit, District, ~~and~~ Bankruptcy, and Magistrate Judges, ~~Magistrate Judges~~ and other court personnel.
- (~~e~~) ~~*Record of the Conference.* The Clerk of the Court of Appeals shall make and preserve a record of the proceedings at the Judicial Conference.~~

[CLEAN REVISED] Circuit Rule 60. Seventh Circuit Judicial Conference

- (a) *Purpose of the Conference.* The Chief Judge shall call a circuit judicial conference either annually or biennially in accordance with 28 U.S.C. §

333 and all applicable Judicial Conference policies and guidance for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit.

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- (c) *Executive Session.* All or part of one day of the conference may be designated by the Chief Judge as an executive session to be attended only by active Circuit, District, Bankruptcy, and Magistrate Judges, and other court personnel.

[REDLINE] Circuit Rule 31. Filing of Briefs and Failure to Timely File Briefs
[. . .]

(b) *Number of Briefs Required.* The clerk of this court is authorized to accept ~~15~~ **ten** copies of briefs as substantial compliance with Rule 31(b), Fed. R. App. P. Appointed counsel shall also file ~~15~~ **ten** copies.

[CLEAN] Circuit Rule 31. Filing of Briefs and Failure to Timely File Briefs
[. . .]

(b) *Number of Briefs Required.* The clerk of this court is authorized to accept ten copies of briefs as substantial compliance with Rule 31(b), Fed. R. App. P. Appointed counsel shall also file ten copies.

[REDLINE] Circuit Rule 40. Petitions for Rehearing
[. . .]

(b) *Number of Copies.* ~~Fifteen~~-**Ten** copies of a petition for rehearing shall be

filed, except that ~~30~~ fifteen shall be filed if the petitioner suggests rehearing en banc.

[CLEAN REVISED] Circuit Rule 40. Petitions for Rehearing

[...]

(b) Number of Copies. Ten copies of a petition for rehearing shall be filed, except that fifteen shall be filed if the petitioner suggests rehearing en banc.