

## **FRAP 46. Attorneys**

### **(a) Admission to the Bar.**

- (1) Eligibility.** An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).
- (2) Application.** An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

**“I, \_\_\_\_\_, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.”**

- (3) Admission Procedures.** On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

### **(b) Suspension or Disbarment.**

- (1) Standard.** A member of the court's bar is subject to suspension or disbarment by the court if the member:
  - (A)** has been suspended or disbarred from practice in any other court; or
  - (B)** is guilty of conduct unbecoming a member of the court's bar.
- (2) Procedure.** The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.
- (3) Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

- (c) Discipline.** A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

**(As amended Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)**

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11th Cir. R. 46-1 Bar Admission and Fees. Only attorneys admitted to the bar of this court may practice before the court, except as otherwise provided in these rules. Admission is governed by FRAP 46 and this Eleventh Circuit Rule, and attorneys must also meet the requirements of 11th Cir. R. 46-7. To request admission to the bar, an attorney must complete an application form, available on the court's website. The application form must be accompanied by a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1). Upon admission, the attorney must pay the non-refundable attorney admission fee, which is composed of: (1) the national admission fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913; and (2) the local admission fee prescribed pursuant to FRAP 46(a)(3) and posted on the court's website. Failure to pay the fee within 14 days of admission will require that the attorney submit a new application form. All attorneys must apply for admission and submit attorney admission fees through PACER.

Each member of the bar has a continuing obligation to keep this court informed of any changes to addresses, phone numbers, fax numbers, and e-mail addresses.

The clerk is authorized to admit attorneys to the bar of this court in such circumstances as determined by the court when the attorney has applied for admission, paid the required fee, and otherwise meets the requirements for admission in FRAP 46 and the accompanying circuit rules.

11th Cir. R. 46-2 Renewal of Bar Membership; Inactive Status. Each attorney admitted to the bar of this court shall pay the bar membership renewal fee prescribed by the court and posted on the court's website every five years from the date of admission. A new certificate of admission will *not* issue upon payment of this fee. During the first week of the month in which an attorney's renewal fee is due, the clerk shall send by mail, e-mail, or other means a notice to the attorney using the contact information on the roll of attorneys admitted to practice before this court (attorney roll), and advise the attorney that payment of the renewal fee is due by the last day of that month. If the notice is returned undelivered due to incorrect or invalid contact information, no further notice will be sent. If the renewal fee is not paid by the last day of the month in which the notice is sent, the attorney's membership in the bar of this court will be placed in inactive status for a period of 12 months, beginning on the first day of the next month. An attorney whose bar membership is in inactive status may not practice before the court. To renew a bar membership, including one in inactive status, an attorney must complete a bar membership renewal form, available at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). The renewal form must be accompanied by the non-refundable bar membership renewal fee. All attorneys must use the court's Electronic Case Files (ECF) system to submit their renewal forms and payments.

After 12 months in inactive status, if an attorney has not paid the bar membership renewal fee, the clerk shall strike the attorney's name from the attorney roll. An attorney whose name is stricken from the attorney roll due to nonpayment of the renewal fee who thereafter wishes to practice before the court must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

11th Cir. R. 46-3 Admission for Particular Proceeding. The following attorneys shall be admitted for the particular proceeding in which they are appearing without the necessity of formal application

or payment of the admission fee: an attorney appearing on behalf of the United States, a federal public defender, an attorney appointed by a federal court under the Criminal Justice Act, and any attorney appointed by this court.

11th Cir. R. 46-4 Pro Hac Vice Admission. A non-appointed attorney who is representing a client on a pro bono basis, is otherwise eligible for admission to the bar pursuant to FRAP 46 and these rules, and also meets the requirements of 11th Cir. R. 46-7, may apply to appear pro hac vice in a particular proceeding. The following items must be provided:

- a completed Application to Appear Pro Hac Vice form, available at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov), with proof of service;
- a certificate of good standing issued within the previous six months establishing that the attorney is admitted to practice before a court described in FRAP 46(a)(1); and
- a non-refundable pro hac vice application fee prescribed by the court and posted on the court's website.

An attorney may apply to appear before this court pro hac vice only two times.

To practice before the court, an attorney who is not representing a client on a pro bono basis or who has two times previously applied to appear before this court pro hac vice, must apply for admission to the bar pursuant to 11th Cir. R. 46-1, unless the attorney is eligible to be admitted for a particular proceeding pursuant to 11th Cir. R. 46-3.

The clerk is authorized to grant an application to appear pro hac vice in an appeal not yet assigned or under submission, in such circumstances as determined by the court, when an attorney meets the requirements of the rules.

11th Cir. R. 46-5 Entry of Appearance. Every attorney, except one appointed by the court for a specific case, must file an Appearance of Counsel Form in order to participate in a case before the court. The form must be filed within 14 days after the date on the notice from the clerk that the Appearance of Counsel Form must be filed. With a court-appointed attorney, the order of appointment will be treated as the appearance form.

Except for those who are court-appointed, an attorney who has not previously filed an Appearance of Counsel Form in a case will not be permitted to participate in oral argument of the case until the appearance form is filed.

11th Cir. R. 46-6 Clerk's Authority to Accept Filings.

(a) Filings from an Attorney Who Is Not Authorized to Practice Before this Court.

(1) Subject to the provisions of this rule, the clerk may conditionally file the following papers received from an attorney who is not authorized to practice before this court, unless the attorney has been suspended or disbarred from practice before this court or has been denied admission to the bar of this court:

- a petition or application that initiates a proceeding in this court;

- an emergency motion as described in 11th Cir. R. 27-1(b);
- a motion or petition that is treated by the clerk as “time sensitive” as that term is used in 11th Cir. R. 27-1(b).

(2) Upon filing the petition, application, or motion, the clerk will notify the attorney that in order to participate in the appeal the attorney must submit an appropriate application for admission, renewal form, or application to appear pro hac vice within 21 days from the date of such notice.

(3) Within the 21-day notice period, the clerk may conditionally file motions and other papers received from the attorney, subject to receipt of an appropriate application or renewal form within that period. At the expiration of the 21-day notice period, if an appropriate application or renewal form has not been received, the motions and other papers may be clerically stricken and treated as though they were never filed. The clerk may stay further proceedings in the appeal for 60 days, if necessary, to allow the attorney’s client to seek new counsel.

(4) When an appropriate application is received within the 21-day notice period, the clerk may continue to conditionally file motions and other papers received from the attorney, subject to the court’s approval of the attorney’s application or renewal form. If the attorney’s application or renewal is denied, the motions and other papers may be clerically stricken and treated as though they were never filed. The clerk may stay further proceedings in the appeal for 60 days, if necessary, to allow the attorney’s client to seek new counsel.

(b) Filings from an Attorney Who Has Not Filed an Appearance of Counsel Form Within 14 Days After Notice is Mailed by the Clerk. When an attorney fails to file a required Appearance of Counsel Form within 14 days after notice of that requirement is mailed by the clerk, the clerk may not accept any further filings (except for a brief) from the attorney until the attorney files an Appearance of Counsel Form. When an attorney who has not filed an Appearance of Counsel Form tenders a brief for filing, the clerk will treat the failure to file an Appearance of Counsel Form as a deficiency in the form of the brief. An Appearance of Counsel Form need not be accompanied by a motion to file out of time.

11th Cir. R. 46-7 Active Membership in Good Standing with State Bar Required to Practice; Changes in Status of Bar Membership Must Be Reported. In addition to the requirements of FRAP 46 and the corresponding circuit rules, and Addendum Eight, an attorney may not practice before this court if the attorney is not an active member in good standing with a state bar or the bar of the highest court of a state, or the District of Columbia (hereinafter, “state bar”). When an attorney’s active membership in good standing with a state bar lapses for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees, or failure to complete continuing education requirements, the attorney must notify the clerk of this court within 14 days. That notification must also list every other state bar and federal bar of which the attorney is a member, including state bar numbers and the attorney’s status with that bar (e.g., active, inactive, retired, etc.). Members of the Eleventh Circuit bar have a continuing obligation to provide such notification, and attorneys appearing pro hac vice in a particular case or appeal must provide such notification while that case or appeal is pending. Upon receipt of that notification, the court may take any action it deems appropriate, including placing the attorney’s bar membership in inactive

status until the attorney provides documentation of active membership in good standing with a state bar.

11th Cir. R. 46-8 Certificate of Admission. Upon admission to the bar of this court, the clerk will send the attorney a certificate of admission. A duplicate certificate of admission is available for purchase upon payment of the fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.

11th Cir. R. 46-9 Attorney Discipline. This court has adopted rules governing attorney conduct and discipline. See Addendum Eight.

11th Cir. R. 46-10 Appointment or Withdrawal of Counsel.

(a) Appellate Obligations of Retained Counsel. Retained counsel for a criminal defendant has an obligation to continue to represent that defendant until successor counsel either enters an appearance or is appointed under the Criminal Justice Act, and may not abandon or cease representation of a defendant except upon order of the court.

(b) Habeas Corpus or 28 U.S.C. § 2255 Pauper Appeals. When any pro se appeal for either habeas corpus or 2255 relief is classified for oral argument, counsel will normally be appointed under the Criminal Justice Act before the appeal is calendared. The non-argument panel that classifies the appeal for oral argument will advise the clerk who will then obtain counsel under the regular procedure.

(c) Relieving Court Appointed Counsel on Appeal. Counsel appointed by the trial court shall not be relieved on appeal except in the event of incompatibility between attorney and client or other serious circumstances.

(d) Criminal Justice Act Appointments. The Judicial Council of this circuit has adopted the Eleventh Circuit Plan under the Criminal Justice Act and Guidelines for Counsel Supplementing the Eleventh Circuit Plan under the Criminal Justice Act. See Addendum Four.

(e) Non-Criminal Justice Act Appointments. This court has adopted rules governing Non-Criminal Justice Act Appointments. See Addendum Five.

11th Cir. R. 46-11 Appearance and Argument by Eligible Law Students.

(a) Scope of Legal Assistance.

(1) Notice of Appearance. An eligible law student, as described below, acting under a supervising attorney of record, may enter an appearance in this court on behalf of any indigent person, the United States, or a governmental agency in any civil or criminal case, provided that the party on whose behalf the student appears and the supervising attorney of record has consented thereto in writing. The written consent of the party (or the party's representative) and the supervising attorney of record must be filed with this court.

(2) Briefs. An eligible law student may assist in the preparation of briefs and other documents to be filed in this court, but such briefs or documents must be reviewed, approved entirely, and signed by the supervising attorney of record. Names of students participating in the preparation of briefs may, however, be added to the briefs.

(3) Oral Argument. Except, on behalf of the accused, in a direct appeal from a criminal prosecution, an eligible law student may also participate in oral argument, but only in the presence of the supervising attorney of record.

(b) Law Student Eligibility Requirements.

In order to appear before this court, the law student must:

(1) Be enrolled in a law school approved by the American Bar Association;

(2) Have completed legal studies for which the student has received at least 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

(3) Be certified by the dean of the law student's law school as qualified to provide the legal representation permitted by this rule. This certification, which shall be filed with the clerk, may be withdrawn by the dean at any time by mailing a notice to the clerk or by termination by this court without notice or hearing and without any showing of cause;

(4) Neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent these entities from making proper charges for its services;

(5) Certify in writing that the student has read and is familiar with the Code of Professional Responsibility of the American Bar Association, the Federal Rules of Appellate Procedure, and the rules of this court; and

(6) File all of the certifications and consents necessary under this rule with the clerk of this court prior to the submission of any briefs or documents containing the law student's name and the law student's appearance at oral argument.

(c) Supervising Attorney of Record Requirements.

(1) The supervising attorney of record must be a member in good standing of the bar of this court.

(2) With respect to the law student's appearance, the supervising attorney of record shall certify in writing to this court that he or she:

- (A) consents to the participation of the law student and agrees to supervise the law student;
- (B) assumes full, personal professional responsibility for the case and for the quality of the law student's work;
- (C) will assist the student to the extent necessary; and
- (D) will appear with the student in all written and oral proceedings before this court and be prepared to supplement any written or oral statement made by the student to this court or opposing counsel.

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*I.O.P. -*

1. Admissions. *There is no formal swearing-in ceremony.*

2. Payment Returned or Denied for Insufficient Funds. *When a payment of a fee is returned unpaid or denied by a financial institution due to insufficient funds, counsel must thereafter pay the fee by money order or cashier's check made payable to the same entity or account as the returned check or denied payment. In addition, counsel must also remit by separate money order or cashier's check the returned-or-denied-payment fee prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913, payable to Clerk, U.S. Court of Appeals, Eleventh Circuit.*

3. Components of Attorney Admission Fee. *The attorney admission fee is composed of two separate fees. A national admission fee has been prescribed by the Judicial Conference of the United States in the Court of Appeals Miscellaneous Fee Schedule issued pursuant to 28 U.S.C. § 1913. This fee is remitted to the federal judiciary. A local admission fee has been prescribed by this court pursuant to FRAP 46(a)(3), and is posted on the court's website. This fee is deposited in the court's non-appropriated fund account to be used for the benefit of the bench and bar in the administration of justice.*