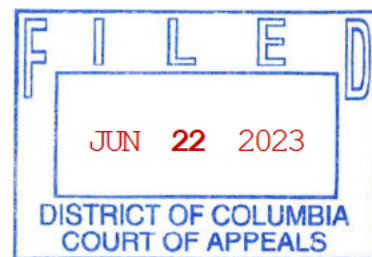


District of Columbia
Court of Appeals



No. M279-23

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly, McLeese, Deahl, Howard, AliKhan, and Shanker, Associate Judges.

ORDER

(FILED – June 22, 2023)

In March 2023, the court issued a public notice (attached) about possible rule changes relating to emergency and expedited cases. The comment period has closed, and the court received three comments.

One commenter suggests two minor changes relating to timing issues. First, the commenter suggests revising “on the following calendar day” to “on the calendar day following the filing of the motion” in R. 25.1(b)(1)(C), to clarify the timing requirements in juvenile interlocutory appeals. Second, the commenter suggests adding “of filing the notice of appeal” to R. 25.1(c)(1)(A)(ii), to clarify what event starts the 10-day period within which transcript must be ordered. The court has decided to adopt both of those suggestions, with a minor wording change.

The Legal Aid Society of the District of Columbia submitted a comment supporting its previous recommendation that the court automatically expedite public-benefit cases. Legal Aid indicates that delays in the handling of such cases are substantial and can have devastating consequences and that unrepresented litigants in such cases may have practical difficulty filing motions to expedite. In addition to recommending that public-benefit cases automatically be expedited, Legal Aid recommends that the court automatically grant in forma pauperis (IFP) status in public-benefit cases and revise the mediation process in such cases to avoid delays attributable to mediation.

The Office of the Attorney General for the District of Columbia (OAG) submitted a comment largely supporting the proposed rule changes but disagreeing with Legal Aid’s proposal that the court automatically expedite public-benefit cases.

On that topic, OAG indicates that: (a) if all such cases were expedited, OAG likely would need to seek routine extensions, which would undermine the purpose of expedition; (b) some public-benefit cases (such as cases involving back benefits for short periods) do not warrant expedition; (c) cases actually warranting expedition can be expedited upon motion by the claimant or by the court sua sponte; and (d) other steps short of automatic expedition can be taken to reduce delay in the decision of public-benefits cases.

The court has carefully considered the comments from Legal Aid and OAG. The court recognizes the importance of reducing delay in public-benefit cases. On balance, however, the court is not persuaded at this time that automatic expedition of all such cases is warranted. The court does intend to consider the suggestions for other steps to reduce delay in such cases, such as (a) making it easier for unrepresented litigants to file requests for expedition, by notifying litigants of that option and perhaps creating a form motion; (b) sua sponte expediting such cases where warranted; (c) granting automatic IFP status in public-benefit cases; and (d) revising the mediation process to prevent delay in the processing of such cases. We note that the local IFP statute (D.C. Code § 15-712) already provides for automatic IFP status for recipients of certain public benefits. That provision was recently amended, and this court is in the process of considering appropriate revisions to IFP rules, forms, and procedures.

Except as noted, the court has decided to adopt the changes reflected in the March 2023 notice. Clean and track-changes versions of the rules as amended are attached to this order. These amendments will go into effect sixty days from the date of this order.

PER CURIAM

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Rule 4. Appeal as of Right — When taken.

~~(c) Expedited and Emergency Appeals.~~

~~—(1) Expedited Appeals.~~

~~—(A) These appeals include, but are not limited to: government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1) (2001), and appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g) (2001). Additionally, any party may file a motion with this court requesting that an appeal be expedited.~~

~~—(B) The appellant or counsel for appellant must:~~

~~—(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court.~~

~~—(ii) Within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4).~~

~~—(C) Upon completion of the record, the Clerk will issue a briefing order, and the case will be given priority in calendaring.~~

~~—(2) Emergency Appeals.—~~

~~—(A) These appeals include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324 (2001), juvenile interlocutory appeals, D.C. Code § 16-2328 (2001), government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d) (2001), and extradition appeals, D.C. Code § 23-704 (2001).~~

~~—(B) The appellant or counsel for appellant must:~~

~~—(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.~~

~~—(ii) Timely file a notice of appeal in the Superior Court and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal, the nature of the emergency appeal, the names and telephone numbers of all parties or their attorneys, and any transcript needed for the appeal.~~

~~—(iii) Immediately order the necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.~~

~~—(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally serve a copy on the other parties. The motion must be accompanied by a copy of the order being appealed from and any other documents filed in the Superior Court which counsel believes~~

~~essential for the court's consideration.~~

~~—(C) Opposing counsel must submit and personally serve a written response or cross motion in compliance with Rule 4 (c)(2)(B)(iv).~~

~~—(D) The Clerk will advise the assigned division of this court of the pendency of the emergency appeal so that the case may be promptly decided or scheduled for argument where appropriate.~~

~~—(E) In the case of a juvenile interlocutory appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.~~

(~~d~~e) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4 (d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was deposited and that postage was prepaid; or

(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4 (d)(1)(A)(i).

(2) If an inmate files the first notice of appeal under this Rule 4 (d), the 14-day period provided in Rule 4 (a)(3) for another party to file a notice of appeal runs from the date when the Superior Court docketed the first notice.

(~~e~~d) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

(~~f~~e) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41 (e).

Rule 8. Stay or Injunction Pending Appeal.

(a) Motion for Stay.

(1) Initial Motion in the Superior Court. A party must ordinarily move first in the Superior Court for the following relief:

(A) a stay of the judgment or order;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals. A motion for the relief mentioned in Rule 8 (a)(1) may be made to this court.

(A) The motion must:

(i) show that moving first in the Superior Court would be impracticable; or

(ii) state that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested, and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record, including the judgment or order being appealed.

(C) The moving party must give reasonable notice of the motion to all parties. If a ruling is requested before the normal time for responses will expire, the parties must comply with Rule ~~4 (e)(2)(B)~~[25.1 \(b\)\(1\) \(Emergency Cases\)](#).

Rule 9. Release or Detention in a Criminal Case.

The Superior Court must state in writing, or orally on the record, the reasons for any order detaining a defendant in a criminal case. If the Superior Court orders the release of a defendant and the prosecution indicates an intent to appeal that decision, the judge must state reasons for the action taken. A request for relief by this court from an order of detention must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing each point enumerated in Form 6. Additionally:

(a) Release or Detention Before Judgment of Conviction. A party appealing from an order regarding detention or release before a judgment of conviction must follow the procedures stated in Rule ~~4 (e)(2)~~25.1 (b)(1) (Emergency ~~Cases~~Appeal). Following reasonable notice to the appellee, the court will determine the appeal promptly on the basis of the ~~papers~~filings and parts of the record that the parties present or the court requires. In appropriate cases, the court may order oral argument on an emergency basis.

(b) Release or Detention After Judgment of Conviction. A party requesting review of an order regarding release or detention after a judgment of conviction, including orders granting or denying compassionate release, must file a notice of appeal from that order in the Superior Court, or a motion in this court if the party has already filed a notice of appeal from the judgment of conviction. The party must then follow the relevant procedures stated in Rule ~~4 (e)(1)~~25.1 (c)(1) (Expedited ~~Cases~~Appeals). The ~~papers~~documents filed must include a copy of the judgment of conviction.

Rule 15. Review of Agency Orders.

(f) To the extent applicable, Rule ~~4-(e)(1)~~25.1 (Emergency and Expedited Cases Appeals) governs review of appeals from an certain agency orders or decisions ~~of the Public Service Commission. See D.C. Code § 34-605 (2001).~~

Rule 25.1 Emergency and Expedited Cases.

(a) In general. By statute, by rule, or as a matter of court policy, some cases are automatically granted emergency or expedited consideration. The specific procedures in such cases may depend on applicable requirements and may be further established by court order in a particular case. A party may also file a motion requesting such consideration. In addition, the court may provide for such consideration by order. Emergency or expedited consideration may be warranted, for example, based on the immediacy of the relief needed or if a particularly important interest is at stake and expedited or emergency treatment is necessary for the matter to be resolved before that interest becomes moot.

(b) Emergency Cases. Emergency cases will be given immediate attention and priority in decision making.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court or petition for review in this court, and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal or petition for review; the nature of the emergency case; the names, email addresses, and telephone numbers of all parties or their attorneys; and any transcript or other record materials needed to decide the case.

(iii) In an emergency appeal, immediately order any necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally or electronically serve a copy on the other parties. The motion must be accompanied by a copy of the order under review and any other documents filed in the Superior Court or before the agency which counsel believes essential for the court's consideration.

(B) Opposing counsel must submit and personally or electronically serve a written response or cross-motion in compliance with Rule 25.1 (b)(1)(A)(iv). If necessary, the court may abbreviate the time within which a response or cross-motion must be filed.

(C) In the case of a juvenile interlocutory appeal, government appeal from an intra-trial order, or extradition appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the calendar day following the filing of the motion, unless these times are shortened by court order.

(D) The Clerk will advise the assigned division of this court of the pendency of the emergency cases so that the case may be promptly decided or scheduled for argument where appropriate.

(E) In appropriate cases, the court may order oral argument on an emergency basis.

(2) Examples. Emergency cases include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324, juvenile interlocutory appeals, D.C. Code § 16-2328, government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d), and extradition appeals, D.C. Code § 23-704.

(c) Expedited Cases. Expedited cases will be given priority over other cases.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court, or timely file a petition for review in this court.

(ii) In case of an expedited appeal, within 10 days of the filing of the notice of appeal, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4). In case of an expedited petition for review, the court will notify the agency that the record must be filed within thirty days from the date the petition for review is served or within such other time as is set by the court.

(B) Upon completion of the record, the Clerk will issue a briefing order. Parties also may file motions for summary disposition under Rule 27 (c). Cases that are not decided by motion will be placed on the next available calendar after the case is ready to be submitted and will be given priority in the decision of cases.

(C) In appropriate cases, the court may order oral argument on an expedited basis.

(2) Examples. Expedited cases include, but are not limited to:

(A) government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1);

(B) appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g);

(C) petitions for review of certain determinations by the Board of Elections, D.C. Code § 1-309.06 (f)(3)(C), § 1-1001.08 (o)(2), and § 1-1001.17 (k)(2);

(D) appeals from decisions under enforcement provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4603.14;

(E) appeals from certain orders or decisions of the Public Service Commission, D.C. Code § 34-605 (a) and § 34-1313.18;

(F) requests for review of an order regarding release or detention after a judgment of conviction, Rule 9 (b);

(G) mandamus petitions, Rule 21 (b)(6); and

(H) appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, D.C. Code § 17-301 (b).

Rule 33. Calendaring of Cases.

(a) Calendar. Each month the Chief Judge, with the assistance of the Clerk, will prepare and post a calendar of cases to be argued in the second month after the posting. ~~In placing cases on the calendar, the Clerk must give preference to~~ will place those expedited cases ~~appeals that have been expedited by statute or order of this court~~ on the next available calendar after the case is ready to be submitted. The calendar will indicate the docket number, the short title of the case, the names of counsel, if any, for each party, and whether the case has been placed on the regular or the summary calendar. The Clerk will notify the parties that the case has been calendared. Because the calendar will be posted in the public office of the Clerk as well as on the court's website, and because it will be published in the Daily Washington Law Reporter, the failure of counsel or a party to receive another notice will not excuse a failure to appear when the case is called for argument.

[INTERNAL OPERATING PROCEDURES]

V. Calendaring of Cases

A. Cases will be calendared as provided in Part I. A. and B. After the briefs are filed, the clerk will inform the parties of the probable month(s) during which oral argument in a regular calendared case may be scheduled. The clerk's notice will solicit from the parties the days in the months of probable calendaring when counsel or a party pro se will be unavailable for oral argument due to other commitments. The clerk will endeavor to schedule a case on the regular calendar so as to avoid conflicts identified by the counsel or party pro se. The specific date and time of oral argument will be included in the monthly calendars (regular and summary) published by the clerk approximately thirty days before the first day of that month. Cases which are ready for argument will be calendared in the order in which appellees' briefs were filed, as far as practicable, except ~~for those that~~ cases which are entitled to expedited consideration and are not decided by motion by law or by court rule, policy or practice will be placed on the next available calendar after the case is ready to be submitted.

VIII. Post-Argument Conference and Opinion Writing

F. The following procedures govern the drafting and circulation of opinions:

7. Priority in opinion writing, as far as practicable, will be given to emergency and expedited cases~~appeals~~ in accordance with D.C. App. R. 9, 15, 21 (b)(6), and 25.1.~~to:~~

~~(a) emergency appeals, including, but not limited to, pre-trial bail or detention appeals, see D.C. Code § 23-1324 (2001); juvenile interlocutory appeals, see D.C. Code § 16-2328 (2001); and government appeals from mid-trial rulings in criminal cases, see D.C. Code § 23-104 (b), (d) & (e) (2001); and~~

~~(b) expedited appeals, including but not limited to, government appeals from pre-trial orders in criminal cases, see D.C. Code § 23-104 (a)(1) (2001); appeals from orders of the Family Court terminating parental rights or denying adoption petitions, see D.C. Code § 11-721 (g) (2001 & Supp. 2006); extradition appeals, see D.C. Code § 23-704 (2001); and appeals from orders in juvenile custody cases holding an individual in contempt and imposing the sanction of imprisonment, see D.C. Code § 11-721 (f) (2001).~~

After emergency and expedited cases~~appeals~~, priority in opinion writing ordinarily will be given to appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision, *see* D.C. Code § 16-2329 (2001), and to other appeals involving child custody; to interlocutory appeals, *see generally* D.C. Code § 11-721 (a)(2) & (d) (2001); and to appeals

involving certified questions of law, *see* D.C. Code § 11-723 (2001). ~~Further, as provided in D.C. Code § 34-605 (a) (2001), appeals from orders or decisions of the Public Service Commission “shall have precedence over any civil cause of a different nature.”~~

Subject to the foregoing order of precedence, priority in opinion writing will be given:

(a) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions and to opinions in en banc cases;

(b) to ~~cases~~appeals in the order in which they were submitted to the division for disposition. Cases which have been pending before the division for over one year will be given the utmost priority whenever possible.

~~**EFS 8: Paper copies of documents filed electronically.** Except for expedited and emergency filings, only two paper copies of documents filed electronically must be submitted. The paper copies may, within two business days of filing, be either hand delivered to the court or deposited in the mail for delivery to the court. Although emergency and expedited filings may be filed electronically, paper copies of emergency and expedited filings must also be submitted and served on the date of filing, as required by Rules 4 (c), 25 (c)(2), 27, and 28, except that the electronic filing shall be treated as the original for purposes of determining the number of copies that must be submitted.~~

Rule 4. Appeal as of Right — When taken.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4 (d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was deposited and that postage was prepaid; or

(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4 (d)(1)(A)(i).

(2) If an inmate files the first notice of appeal under this Rule 4 (d), the 14-day period provided in Rule 4 (a)(3) for another party to file a notice of appeal runs from the date when the Superior Court docketed the first notice.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

(e) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41 (e).

Rule 8. Stay or Injunction Pending Appeal.

(a) Motion for Stay.

(1) Initial Motion in the Superior Court. A party must ordinarily move first in the Superior Court for the following relief:

(A) a stay of the judgment or order;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals. A motion for the relief mentioned in Rule 8 (a)(1) may be made to this court.

(A) The motion must:

(i) show that moving first in the Superior Court would be impracticable; or

(ii) state that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested, and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record, including the judgment or order being appealed.

(C) The moving party must give reasonable notice of the motion to all parties. If a ruling is requested before the normal time for responses will expire, the parties must comply with Rule 25.1 (b)(1) (Emergency Cases).

Rule 9. Release or Detention in a Criminal Case.

The Superior Court must state in writing, or orally on the record, the reasons for any order detaining a defendant in a criminal case. If the Superior Court orders the release of a defendant and the prosecution indicates an intent to appeal that decision, the judge must state reasons for the action taken. A request for relief by this court from an order of detention must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing each point enumerated in Form 6. Additionally:

(a) Release or Detention Before Judgment of Conviction. A party appealing from an order regarding detention or release before a judgment of conviction must follow the procedures stated in Rule 25.1 (b)(1) (Emergency Cases). Following reasonable notice to the appellee, the court will determine the appeal promptly on the basis of the filings and parts of the record that the parties present or the court requires. In appropriate cases, the court may order oral argument on an emergency basis.

(b) Release or Detention After Judgment of Conviction. A party requesting review of an order regarding release or detention after a judgment of conviction, including orders granting or denying compassionate release, must file a notice of appeal from that order in the Superior Court, or a motion in this court if the party has already filed a notice of appeal from the judgment of conviction. The party must then follow the relevant procedures stated in Rule 25.1 (c)(1) (Expedited Cases). The documents filed must include a copy of the judgment of conviction.

Rule 15. Review of Agency Orders.

(f) To the extent applicable, Rule 25.1 (Emergency and Expedited Cases) governs review of certain agency orders or decisions.

Rule 25.1 Emergency and Expedited Cases.

(a) In general. By statute, by rule, or as a matter of court policy, some cases are automatically granted emergency or expedited consideration. The specific procedures in such cases may depend on applicable requirements and may be further established by court order in a particular case. A party may also file a motion requesting such consideration. In addition, the court may provide for such consideration by order. Emergency or expedited consideration may be warranted, for example, based on the immediacy of the relief needed or if a particularly important interest is at stake and expedited or emergency treatment is necessary for the matter to be resolved before that interest becomes moot.

(b) Emergency Cases. Emergency cases will be given immediate attention and priority in decision making.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court or petition for review in this court, and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal or petition for review; the nature of the emergency case; the names, email addresses, and telephone numbers of all parties or their attorneys; and any transcript or other record materials needed to decide the case.

(iii) In an emergency appeal, immediately order any necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally or electronically serve a copy on the other parties. The motion must be accompanied by a copy of the order under review and any other documents filed in the Superior Court or before the agency which counsel believes essential for the court's consideration.

(B) Opposing counsel must submit and personally or electronically serve a written response or cross-motion in compliance with Rule 25.1 (b)(1)(A)(iv). If necessary, the court may abbreviate the time within which a response or cross-motion must be filed.

(C) In the case of a juvenile interlocutory appeal, government appeal from an intra-trial order, or extradition appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the calendar day following the filing of the motion, unless these times are shortened by court order.

(D) The Clerk will advise the assigned division of this court of the pendency of the emergency cases so that the case may be promptly decided or scheduled for argument where appropriate.

(E) In appropriate cases, the court may order oral argument on an emergency basis.

(2) Examples. Emergency cases include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324, juvenile interlocutory appeals, D.C. Code § 16-2328, government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d), and extradition appeals, D.C. Code § 23-704.

(c) Expedited Cases. Expedited cases will be given priority over other cases.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court, or timely file a petition for review in this court.

(ii) In case of an expedited appeal, within 10 days of the filing of the notice of appeal, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4). In case of an expedited petition for review, the court will notify the agency that the record must be filed within thirty days from the date the petition for review is served or within such other time as is set by the court.

(B) Upon completion of the record, the Clerk will issue a briefing order. Parties also may file motions for summary disposition under Rule 27 (c). Cases that are not decided by motion will be placed on the next available calendar after the case is ready to be submitted and will be given priority in the decision of cases.

(C) In appropriate cases, the court may order oral argument on an expedited basis.

(2) Examples. Expedited cases include, but are not limited to:

(A) government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1);

(B) appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g);

(C) petitions for review of certain determinations by the Board of Elections, D.C. Code § 1-309.06 (f)(3)(C), § 1-1001.08 (o)(2), and § 1-1001.17 (k)(2);

(D) appeals from decisions under enforcement provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4603.14;

(E) appeals from certain orders or decisions of the Public Service Commission, D.C. Code § 34-605 (a) and § 34-1313.18;

(F) requests for review of an order regarding release or detention after a judgment of conviction, Rule 9 (b);

(G) mandamus petitions, Rule 21 (b)(6); and

(H) appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, D.C. Code § 17-301 (b).

Rule 33. Calendaring of Cases.

(a) Calendar. Each month the Chief Judge, with the assistance of the Clerk, will prepare and post a calendar of cases to be argued in the second month after the posting. The Clerk will place expedited cases on the next available calendar after the case is ready to be submitted. The calendar will indicate the docket number, the short title of the case, the names of counsel, if any, for each party, and whether the case has been placed on the regular or the summary calendar. The Clerk will notify the parties that the case has been calendared. Because the calendar will be posted in the public office of the Clerk as well as on the court's website, and because it will be published in the Daily Washington Law Reporter, the failure of counsel or a party to receive another notice will not excuse a failure to appear when the case is called for argument.

[INTERNAL OPERATING PROCEDURES]

V. Calendaring of Cases

A. Cases will be calendared as provided in Part I. A. and B. After the briefs are filed, the clerk will inform the parties of the probable month(s) during which oral argument in a regular calendared case may be scheduled. The clerk's notice will solicit from the parties the days in the months of probable calendaring when counsel or a party pro se will be unavailable for oral argument due to other commitments. The clerk will endeavor to schedule a case on the regular calendar so as to avoid conflicts identified by the counsel or party pro se. The specific date and time of oral argument will be included in the monthly calendars (regular and summary) published by the clerk approximately thirty days before the first day of that month. Cases which are ready for argument will be calendared in the order in which appellees' briefs were filed, as far as practicable, except that cases which are entitled to expedited consideration and are not decided by motion will be placed on the next available calendar after the case is ready to be submitted.

VIII. Post-Argument Conference and Opinion Writing

F. The following procedures govern the drafting and circulation of opinions:

(7) Priority in opinion writing, as far as practicable, will be given to emergency and expedited cases in accordance with D.C. App. R. 9, 15, 21 (b)(6), and 25.1.

After emergency and expedited cases, priority in opinion writing ordinarily will be given to appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision, *see* D.C. Code § 16-2329 (2001), and to other appeals involving child custody; to interlocutory appeals, *see generally* D.C. Code § 11-721 (a)(2) & (d) (2001); and to appeals involving certified questions of law, *see* D.C. Code § 11-723 (2001).

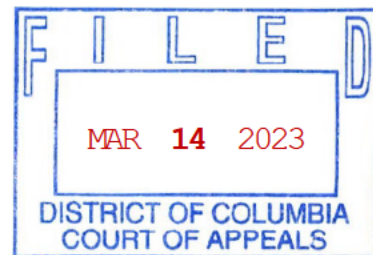
Subject to the foregoing order of precedence, priority in opinion writing will be given:

(a) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions and to opinions in en banc cases;

(b) to cases in the order in which they were submitted to the division for disposition. Cases which have been pending before the division for over one year will be given the utmost priority whenever possible.

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District of Columbia
Court of Appeals



No. M279-23

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly, McLeese, Deahl, Howard, AliKhan, and Shanker, Associate Judges.

NOTICE

(FILED – March 14, 2023)

Several rules of this court address the topic of emergency and expedited cases. *See, e.g.*, D.C. App. R. 4(c), 15(f). The Court is considering creating a new Rule 25.1 to address such cases, and to make related adjustments to other rules and to the Court’s Internal Operating Procedures (IOPs). Clean and redline versions of the changes under consideration are attached. Among the changes under consideration are the following:

- Expanding and clarifying the list of cases that are automatically given emergency or expedited consideration by statute, rule, or court policy. *See* Proposed R. 25.1(b)(2), (c)(2).
- Clarifying that the court may also grant emergency or expedited consideration in other cases, either on its motion or on the motion of party, and indicating examples of circumstances in which such consideration may be warranted. *See* Proposed R. 25.1(a).
- More fully describing the procedures applicable to emergency and expedited cases. *See* Proposed R. 25.1(b)(1), 25.1(c)(1).
- Eliminating the requirement for paper filings in emergency and expedited cases. *Compare id. with* IOP XII.EFS 8 (proposed to be deleted).

- Clarifying that expedited cases not being decided by motion will be placed on the next available calendar once the case is ready to be submitted. *See* Proposed R. 33(a); Proposed IOP V.A.

Relatedly, the Court has received a proposal from the Legal Aid Society of the District of Columbia that the Court automatically expedite cases in which the appellant or petitioner seeks review of the denial of “social safety net benefits,” including unemployment-compensation benefits and benefits under programs such as Temporary Assistance for Needy Families, Program on Work Employment and Responsibility, Supplemental Nutrition Assistance Program, Medicaid, and Health Care Alliance. In support of that proposal, Legal Aid notes the importance of such benefits, the impact of the loss of those benefits while a case is on review, and the substantial time it can take to resolve cases on review. The Court also seeks comments on Legal Aid’s proposal.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Comments must be submitted by May 15, 2023. Comments may be submitted electronically to rules@dcappeals.gov, or in writing, addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. All comments submitted pursuant to this notice will be available to the public.

PER CURIAM

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Rule 4. Appeal as of Right — When taken.

~~(c) Expedited and Emergency Appeals.~~

~~—(1) Expedited Appeals.~~

~~—(A) These appeals include, but are not limited to: government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1) (2001), and appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g) (2001). Additionally, any party may file a motion with this court requesting that an appeal be expedited.~~

~~—(B) The appellant or counsel for appellant must:~~

~~—(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court.~~

~~—(ii) Within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4).~~

~~—(C) Upon completion of the record, the Clerk will issue a briefing order, and the case will be given priority in calendaring.~~

~~—(2) Emergency Appeals.—~~

~~—(A) These appeals include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324 (2001), juvenile interlocutory appeals, D.C. Code § 16-2328 (2001), government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d) (2001), and extradition appeals, D.C. Code § 23-704 (2001).~~

~~—(B) The appellant or counsel for appellant must:~~

~~—(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.~~

~~—(ii) Timely file a notice of appeal in the Superior Court and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal, the nature of the emergency appeal, the names and telephone numbers of all parties or their attorneys, and any transcript needed for the appeal.~~

~~—(iii) Immediately order the necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.~~

~~—(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally serve a copy on the other parties. The motion must be accompanied by a copy of the order being appealed from and any other documents filed in the Superior Court which counsel believes~~

~~essential for the court's consideration.~~

~~—(C) Opposing counsel must submit and personally serve a written response or cross motion in compliance with Rule 4 (c)(2)(B)(iv).~~

~~—(D) The Clerk will advise the assigned division of this court of the pendency of the emergency appeal so that the case may be promptly decided or scheduled for argument where appropriate.~~

~~—(E) In the case of a juvenile interlocutory appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.~~

(d) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4 (d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was deposited and that postage was prepaid; or

(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4 (d)(1)(A)(i).

(2) If an inmate files the first notice of appeal under this Rule 4 (d), the 14-day period provided in Rule 4 (a)(3) for another party to file a notice of appeal runs from the date when the Superior Court docketed the first notice.

(e) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

(f) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41 (e).

Rule 8. Stay or Injunction Pending Appeal.

(a) Motion for Stay.

(1) Initial Motion in the Superior Court. A party must ordinarily move first in the Superior Court for the following relief:

(A) a stay of the judgment or order;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals. A motion for the relief mentioned in Rule 8 (a)(1) may be made to this court.

(A) The motion must:

(i) show that moving first in the Superior Court would be impracticable; or

(ii) state that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested, and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record, including the judgment or order being appealed.

(C) The moving party must give reasonable notice of the motion to all parties. If a ruling is requested before the normal time for responses will expire, the parties must comply with Rule ~~4 (e)(2)(B)~~[25.1 \(b\)\(1\) \(Emergency Cases\)](#).

Rule 9. Release or Detention in a Criminal Case.

The Superior Court must state in writing, or orally on the record, the reasons for any order detaining a defendant in a criminal case. If the Superior Court orders the release of a defendant and the prosecution indicates an intent to appeal that decision, the judge must state reasons for the action taken. A request for relief by this court from an order of detention must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing each point enumerated in Form 6. Additionally:

(a) Release or Detention Before Judgment of Conviction. A party appealing from an order regarding detention or release before a judgment of conviction must follow the procedures stated in Rule ~~4 (e)(2)~~25.1 (b)(1) (Emergency ~~Cases~~Appeal). Following reasonable notice to the appellee, the court will determine the appeal promptly on the basis of the ~~papers~~filings and parts of the record that the parties present or the court requires. In appropriate cases, the court may order oral argument on an emergency basis.

(b) Release or Detention After Judgment of Conviction. A party requesting review of an order regarding release or detention after a judgment of conviction, including orders granting or denying compassionate release, must file a notice of appeal from that order in the Superior Court, or a motion in this court if the party has already filed a notice of appeal from the judgment of conviction. The party must then follow the relevant procedures stated in Rule ~~4 (e)(1)~~25.1 (c)(1) (Expedited ~~Cases~~Appeals). The ~~papers~~documents filed must include a copy of the judgment of conviction.

Rule 15. Review of Agency Orders.

(f) To the extent applicable, Rule ~~4-(e)(1)~~25.1 (Emergency and Expedited Cases Appeals) governs review of appeals from an certain agency orders or decisions ~~of the Public Service Commission. See D.C. Code § 34-605 (2001).~~

Rule 25.1 Emergency and Expedited Cases.

(a) In general. By statute, by rule, or as a matter of court policy, some cases are automatically granted emergency or expedited consideration. The specific procedures in such cases may depend on applicable requirements and may be further established by court order in a particular case. A party may also file a motion requesting such consideration. In addition, the court may provide for such consideration by order. Emergency or expedited consideration may be warranted, for example, based on the immediacy of the relief needed or if a particularly important interest is at stake and expedited or emergency treatment is necessary for the matter to be resolved before that interest becomes moot.

(b) Emergency Cases. Emergency cases will be given immediate attention and priority in decision making.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court or petition for review in this court, and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal or petition for review; the nature of the emergency case; the names, email addresses, and telephone numbers of all parties or their attorneys; and any transcript or other record materials needed to decide the case.

(iii) In an emergency appeal, immediately order any necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally or electronically serve a copy on the other parties. The motion must be accompanied by a copy of the order under review and any other documents filed in the Superior Court or before the agency which counsel believes essential for the court's consideration.

(B) Opposing counsel must submit and personally or electronically serve a written response or cross-motion in compliance with Rule 25.1 (b)(1)(A)(iv). If necessary, the court may abbreviate the time within which a response or cross-motion must be filed.

(C) In the case of a juvenile interlocutory appeal, government appeal from an intra-trial order, or extradition appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.

(D) The Clerk will advise the assigned division of this court of the pendency of the emergency cases so that the case may be promptly decided or scheduled for argument where appropriate.

(E) In appropriate cases, the court may order oral argument on an emergency basis.

(2) Examples. Emergency cases include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324, juvenile interlocutory appeals, D.C. Code § 16-2328, government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d), and extradition appeals, D.C. Code § 23-704.

(c) Expedited Cases. Expedited cases will be given priority over other cases.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court, or timely file a petition for review in this court.

(ii) In case of an expedited appeal, within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4). In case of an expedited petition for review, the court will notify the agency that the record must be filed within thirty days from the date the petition for review is served or within such other time as is set by the court.

(B) Upon completion of the record, the Clerk will issue a briefing order. Parties also may file motions for summary disposition under Rule 27 (c). Cases that are not decided by motion will be placed on the next available calendar after the case is ready to be submitted and will be given priority in the decision of cases.

(C) In appropriate cases, the court may order oral argument on an expedited basis.

(2) Examples. Expedited cases include, but are not limited to:

(A) government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1);

(B) appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g);

(C) petitions for review of certain determinations by the Board of Elections, D.C. Code § 1-309.06 (f)(3)(C), § 1-1001.08 (o)(2), and § 1-1001.17 (k)(2);

(D) appeals from decisions under enforcement provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4603.14;

(E) appeals from certain orders or decisions of the Public Service Commission, D.C. Code § 34-605 (a) and § 34-1313.18;

(F) requests for review of an order regarding release or detention after a judgment of conviction, Rule 9 (b);

(G) mandamus petitions, Rule 21 (b)(6); and

(H) appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, D.C. Code § 17-301 (b).

Rule 33. Calendaring of Cases.

(a) Calendar. Each month the Chief Judge, with the assistance of the Clerk, will prepare and post a calendar of cases to be argued in the second month after the posting. ~~In placing cases on the calendar, the Clerk must give preference to~~ will place those expedited cases ~~appeals that have been expedited by statute or order of this court~~ on the next available calendar after the case is ready to be submitted. The calendar will indicate the docket number, the short title of the case, the names of counsel, if any, for each party, and whether the case has been placed on the regular or the summary calendar. The Clerk will notify the parties that the case has been calendared. Because the calendar will be posted in the public office of the Clerk as well as on the court's website, and because it will be published in the Daily Washington Law Reporter, the failure of counsel or a party to receive another notice will not excuse a failure to appear when the case is called for argument.

[INTERNAL OPERATING PROCEDURES]

V. Calendaring of Cases

A. Cases will be calendared as provided in Part I. A. and B. After the briefs are filed, the clerk will inform the parties of the probable month(s) during which oral argument in a regular calendared case may be scheduled. The clerk's notice will solicit from the parties the days in the months of probable calendaring when counsel or a party pro se will be unavailable for oral argument due to other commitments. The clerk will endeavor to schedule a case on the regular calendar so as to avoid conflicts identified by the counsel or party pro se. The specific date and time of oral argument will be included in the monthly calendars (regular and summary) published by the clerk approximately thirty days before the first day of that month. Cases which are ready for argument will be calendared in the order in which appellees' briefs were filed, as far as practicable, except ~~for those that~~ cases which are entitled to expedited consideration and are not decided by motion by law or by court rule, policy or practice will be placed on the next available calendar after the case is ready to be submitted.

VIII. Post-Argument Conference and Opinion Writing

F. The following procedures govern the drafting and circulation of opinions:

7. Priority in opinion writing, as far as practicable, will be given to emergency and expedited cases~~appeals~~ in accordance with D.C. App. R. 9, 15, 21 (b)(6), and 25.1.~~to:~~

~~(a) emergency appeals, including, but not limited to, pre-trial bail or detention appeals, see D.C. Code § 23-1324 (2001); juvenile interlocutory appeals, see D.C. Code § 16-2328 (2001); and government appeals from mid-trial rulings in criminal cases, see D.C. Code § 23-104 (b), (d) & (e) (2001); and~~

~~(b) expedited appeals, including but not limited to, government appeals from pre-trial orders in criminal cases, see D.C. Code § 23-104 (a)(1) (2001); appeals from orders of the Family Court terminating parental rights or denying adoption petitions, see D.C. Code § 11-721 (g) (2001 & Supp. 2006); extradition appeals, see D.C. Code § 23-704 (2001); and appeals from orders in juvenile custody cases holding an individual in contempt and imposing the sanction of imprisonment, see D.C. Code § 11-721 (f) (2001).~~

After emergency and expedited cases~~appeals~~, priority in opinion writing ordinarily will be given to appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision, *see* D.C. Code § 16-2329 (2001), and to other appeals involving child custody; to interlocutory appeals, *see generally* D.C. Code § 11-721 (a)(2) & (d) (2001); and to appeals

involving certified questions of law, *see* D.C. Code § 11-723 (2001). ~~Further, as provided in D.C. Code § 34-605 (a) (2001), appeals from orders or decisions of the Public Service Commission “shall have precedence over any civil cause of a different nature.”~~

Subject to the foregoing order of precedence, priority in opinion writing will be given:

(a) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions and to opinions in en banc cases;

(b) to ~~cases~~appeals in the order in which they were submitted to the division for disposition. Cases which have been pending before the division for over one year will be given the utmost priority whenever possible.

~~**EFS 8: Paper copies of documents filed electronically.** Except for expedited and emergency filings, only two paper copies of documents filed electronically must be submitted. The paper copies may, within two business days of filing, be either hand delivered to the court or deposited in the mail for delivery to the court. Although emergency and expedited filings may be filed electronically, paper copies of emergency and expedited filings must also be submitted and served on the date of filing, as required by Rules 4 (c), 25 (c)(2), 27, and 28, except that the electronic filing shall be treated as the original for purposes of determining the number of copies that must be submitted.~~

Rule 4. Appeal as of Right — When taken.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4 (d)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was deposited and that postage was prepaid; or

(B) the court exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4 (d)(1)(A)(i).

(2) If an inmate files the first notice of appeal under this Rule 4 (d), the 14-day period provided in Rule 4 (a)(3) for another party to file a notice of appeal runs from the date when the Superior Court docketed the first notice.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal is submitted to this court, the Clerk must note on the notice the date when it was received and send it to the Clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

(e) Remand to the Superior Court. When a case is pending in this court, and the Superior Court has indicated its intention to grant a motion that will alter or amend the order, decision, judgment, or sentence that is the subject of the appeal, the movant must notify the Court of Appeals, and any party may request a remand of the case for that purpose by filing in this court a motion to remand the case stating the trial judge's intention. See Rule 41 (e).

Rule 8. Stay or Injunction Pending Appeal.

(a) Motion for Stay.

(1) Initial Motion in the Superior Court. A party must ordinarily move first in the Superior Court for the following relief:

(A) a stay of the judgment or order;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Court of Appeals. A motion for the relief mentioned in Rule 8 (a)(1) may be made to this court.

(A) The motion must:

(i) show that moving first in the Superior Court would be impracticable; or

(ii) state that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested, and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record, including the judgment or order being appealed.

(C) The moving party must give reasonable notice of the motion to all parties. If a ruling is requested before the normal time for responses will expire, the parties must comply with Rule 25.1 (b)(1) (Emergency Cases).

Rule 9. Release or Detention in a Criminal Case.

The Superior Court must state in writing, or orally on the record, the reasons for any order detaining a defendant in a criminal case. If the Superior Court orders the release of a defendant and the prosecution indicates an intent to appeal that decision, the judge must state reasons for the action taken. A request for relief by this court from an order of detention must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing each point enumerated in Form 6. Additionally:

(a) Release or Detention Before Judgment of Conviction. A party appealing from an order regarding detention or release before a judgment of conviction must follow the procedures stated in Rule 25.1 (b)(1) (Emergency Cases). Following reasonable notice to the appellee, the court will determine the appeal promptly on the basis of the filings and parts of the record that the parties present or the court requires. In appropriate cases, the court may order oral argument on an emergency basis.

(b) Release or Detention After Judgment of Conviction. A party requesting review of an order regarding release or detention after a judgment of conviction, including orders granting or denying compassionate release, must file a notice of appeal from that order in the Superior Court, or a motion in this court if the party has already filed a notice of appeal from the judgment of conviction. The party must then follow the relevant procedures stated in Rule 25.1 (c)(1) (Expedited Cases). The documents filed must include a copy of the judgment of conviction.

Rule 15. Review of Agency Orders.

(f) To the extent applicable, Rule 25.1 (Emergency and Expedited Cases) governs review of certain agency orders or decisions.

Rule 25.1 Emergency and Expedited Cases.

(a) In general. By statute, by rule, or as a matter of court policy, some cases are automatically granted emergency or expedited consideration. The specific procedures in such cases may depend on applicable requirements and may be further established by court order in a particular case. A party may also file a motion requesting such consideration. In addition, the court may provide for such consideration by order. Emergency or expedited consideration may be warranted, for example, based on the immediacy of the relief needed or if a particularly important interest is at stake and expedited or emergency treatment is necessary for the matter to be resolved before that interest becomes moot.

(b) Emergency Cases. Emergency cases will be given immediate attention and priority in decision making.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Review the applicable statute or rule to assure compliance with the controlling time requirements.

(ii) Timely file a notice of appeal in the Superior Court or petition for review in this court, and notify the Clerk of this court in person or by telephone of: the filing of the notice of appeal or petition for review; the nature of the emergency case; the names, email addresses, and telephone numbers of all parties or their attorneys; and any transcript or other record materials needed to decide the case.

(iii) In an emergency appeal, immediately order any necessary transcript or have necessary vouchers prepared and submitted to the trial judge. Any order or voucher for transcript must request overnight preparation. If transcript is ordered, the appellant must pay for it promptly upon completion.

(iv) Submit a written motion setting forth the relief sought and the grounds therefor, and personally or electronically serve a copy on the other parties. The motion must be accompanied by a copy of the order under review and any other documents filed in the Superior Court or before the agency which counsel believes essential for the court's consideration.

(B) Opposing counsel must submit and personally or electronically serve a written response or cross-motion in compliance with Rule 25.1 (b)(1)(A)(iv). If necessary, the court may abbreviate the time within which a response or cross-motion must be filed.

(C) In the case of a juvenile interlocutory appeal, government appeal from an intra-trial order, or extradition appeal, the motion must be filed no later than 4:00 pm on the next calendar day after the filing of the notice of appeal. Any opposition must be filed with the Clerk by noon on the following calendar day, unless these times are shortened by court order.

(D) The Clerk will advise the assigned division of this court of the pendency of the emergency cases so that the case may be promptly decided or scheduled for argument where appropriate.

(E) In appropriate cases, the court may order oral argument on an emergency basis.

(2) Examples. Emergency cases include, but are not limited to: pre-trial bail or detention appeals, D.C. Code § 23-1324, juvenile interlocutory appeals, D.C. Code § 16-2328, government appeals from intra-trial orders, D.C. Code § 23-104 (b) & (d), and extradition appeals, D.C. Code § 23-704.

(c) Expedited Cases. Expedited cases will be given priority over other cases.

(1) Procedure.

(A) The appellant/petitioner or counsel for appellant/petitioner must:

(i) Timely file a notice of appeal in the Superior Court and file a stamped copy of the notice with the Clerk of this court, or timely file a petition for review in this court.

(ii) In case of an expedited appeal, within 10 days, order or file an appropriate motion for preparation of the necessary transcript on an expedited basis, and make arrangements for payment as required by Rule 10 (b)(4). In case of an expedited petition for review, the court will notify the agency that the record must be filed within thirty days from the date the petition for review is served or within such other time as is set by the court.

(B) Upon completion of the record, the Clerk will issue a briefing order. Parties also may file motions for summary disposition under Rule 27 (c). Cases that are not decided by motion will be placed on the next available calendar after the case is ready to be submitted and will be given priority in the decision of cases.

(C) In appropriate cases, the court may order oral argument on an expedited basis.

(2) Examples. Expedited cases include, but are not limited to:

(A) government appeals from pre-trial orders, D.C. Code § 23-104 (a)(1);

(B) appeals from orders of the Family Court either terminating parental rights or granting or denying petitions for adoption, D.C. Code § 11-721 (g);

(C) petitions for review of certain determinations by the Board of Elections, D.C. Code § 1-309.06 (f)(3)(C), § 1-1001.08 (o)(2), and § 1-1001.17 (k)(2);

(D) appeals from decisions under enforcement provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4603.14;

(E) appeals from certain orders or decisions of the Public Service Commission, D.C. Code § 34-605 (a) and § 34-1313.18;

(F) requests for review of an order regarding release or detention after a judgment of conviction, Rule 9 (b);

(G) mandamus petitions, Rule 21 (b)(6); and

(H) appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, D.C. Code § 17-301 (b).

Rule 33. Calendaring of Cases.

(a) Calendar. Each month the Chief Judge, with the assistance of the Clerk, will prepare and post a calendar of cases to be argued in the second month after the posting. The Clerk will place expedited cases on the next available calendar after the case is ready to be submitted. The calendar will indicate the docket number, the short title of the case, the names of counsel, if any, for each party, and whether the case has been placed on the regular or the summary calendar. The Clerk will notify the parties that the case has been calendared. Because the calendar will be posted in the public office of the Clerk as well as on the court's website, and because it will be published in the Daily Washington Law Reporter, the failure of counsel or a party to receive another notice will not excuse a failure to appear when the case is called for argument.

[INTERNAL OPERATING PROCEDURES]

V. Calendaring of Cases

A. Cases will be calendared as provided in Part I. A. and B. After the briefs are filed, the clerk will inform the parties of the probable month(s) during which oral argument in a regular calendared case may be scheduled. The clerk's notice will solicit from the parties the days in the months of probable calendaring when counsel or a party pro se will be unavailable for oral argument due to other commitments. The clerk will endeavor to schedule a case on the regular calendar so as to avoid conflicts identified by the counsel or party pro se. The specific date and time of oral argument will be included in the monthly calendars (regular and summary) published by the clerk approximately thirty days before the first day of that month. Cases which are ready for argument will be calendared in the order in which appellees' briefs were filed, as far as practicable, except that cases which are entitled to expedited consideration and are not decided by motion will be placed on the next available calendar after the case is ready to be submitted.

VIII. Post-Argument Conference and Opinion Writing

F. The following procedures govern the drafting and circulation of opinions:

(7) Priority in opinion writing, as far as practicable, will be given to emergency and expedited cases in accordance with D.C. App. R. 9, 15, 21 (b)(6), and 25.1.

After emergency and expedited cases, priority in opinion writing ordinarily will be given to appeals from decisions with respect to juveniles alleged to be neglected, delinquent, or in need of supervision, *see* D.C. Code § 16-2329 (2001), and to other appeals involving child custody; to interlocutory appeals, *see generally* D.C. Code § 11-721 (a)(2) & (d) (2001); and to appeals involving certified questions of law, *see* D.C. Code § 11-723 (2001).

Subject to the foregoing order of precedence, priority in opinion writing will be given:

(a) as set forth in other provisions of these Internal Operating Procedures, to dissenting and concurring opinions and to opinions in en banc cases;

(b) to cases in the order in which they were submitted to the division for disposition. Cases which have been pending before the division for over one year will be given the utmost priority whenever possible.
