

### **Rule 3. Appeal as of Right — How Taken**

#### **(a) Filing the Notice of Appeal.**

- (1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).
- (2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.
- (3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.
- (4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

#### **(b) Joint or Consolidated Appeals.**

- (1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.
- (2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

#### **(c) Contents of the Notice of Appeal.**

- (1) The notice of appeal must:
  - (A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";
  - (B) designate the judgment—or the appealable order—from which the appeal is taken; and
  - (C) name the court to which the appeal is taken.
- (2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.
- (3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

- (4) The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.
- (5) In a civil case, a notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Federal Rule of Civil Procedure 58, if the notice designates:
  - (A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or
  - (B) an order described in Rule 4(a)(4)(A).
- (6) An appellant may designate only part of a judgment or appealable order by expressly stating that the notice of appeal is so limited. Without such an express statement, specific designations do not limit the scope of the notice of appeal.
- (7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after entry of the judgment and designates an order that merged into that judgment.
- (8) Forms 1A and 1B in the Appendix of Forms are suggested forms of notices of appeal.

**(d) Serving the Notice of Appeal.**

- (1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.
- (2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.
- (3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk sends copies, with the date of sending. Service is sufficient despite the death of a party or the party's counsel.

**(e) Payment of Fees.** Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

**Local Rule 3(a). Filing and Docket Fees.**

*Upon filing a notice of appeal, appellant shall pay the clerk of the district court a fee of \$505, which includes a \$5 filing fee for the notice of appeal and a \$500 fee for docketing the appeal in this Court.*

**Local Rule 3(b). Docketing Statement.**

*To assist counsel in giving prompt attention to the substance of an appeal, to help reduce the ordering of unnecessary transcripts, to provide the Clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management, and to provide necessary information for any mediation conference conducted under Local Rule 33, counsel filing a notice of appeal, petition for review, or application for enforcement for any direct or cross-appeal must complete a docketing statement (form available at [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)) and file it with the Clerk of the Court of Appeals within 14 days of docketing of the appeal. A copy of the docketing statement must be served on the opposing party or parties.*

*The docketing statement shall have attached to it any transcript order.*

*Although a party will not be precluded from raising additional issues, counsel should make every effort to include in the docketing statement all of the issues that will be presented to the Court. Failure to file the docketing statement within the time set forth above will cause the Court to initiate the process for dismissing a case under Local Rule 45.*

*If an opposing party concludes that the docketing statement is in any way inaccurate, incomplete, or misleading, the Clerk's Office should be informed in writing of any errors and any proposed additions or corrections within 10 days of service of the docketing statement, with copies to all other parties.*

**I.O.P.-3.1. Transmission of District Court Order.**

*The clerk of the district court shall transmit to the Clerk of the Court of Appeals a copy of the order appealed from, along with copies of the materials required by FRAP 3(d)(1).*

*Former I.O.P.-3.1 redesignated Local Rule 3(a) December 1, 1995; amended November 1, 2003, April 27, 2006, and December 1, 2013.*

*Former I.O.P.-3.2 amended June 8, 1994, and September 28, 1994; amended and redesignated Local Rule 3(b) December 1, 1995; amended March 4, 1998, April 1, 2008, and December 1, 2009.*

*Former I.O.P.-3.3 redesignated I.O.P.-3.1 December 1, 1995; amended December 1, 1998.*