

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NOTICE OF PROPOSED REVISIONS TO 5TH CIRCUIT RULES

Pursuant to 28 U.S.C. § 2071, we give notice the court is considering adoption of the following changes to the 5TH CIR. R. The enclosed proposed rule changes are made to conform to *expected* substantive and linguistic changes to the FED. R. APP. P. We anticipate the changes shown to the FED. R. APP. P. will become effective on December 1, 2002, but it is possible the language may change before adoption. For your convenience, you can review selected proposed changes to the FED. R. APP. P., which will affect proposed changes to this court's rules, and the proposed 5TH CIR. R., at our website <www.ca5.uscourts.gov>.

Proposed new language in the rules is shown with a shaded background if viewed in paper copy, or in "redline text" if viewed in certain word processing software. Deleted language is stricken through.

We must **receive** written comments on the proposed changes to the 5TH CIR. R. no later than April 15, 2002. The address to use is:

Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
ATTN: Rule Changes
600 Camp Street
New Orleans, LA 70130

You may also offer comments in electronic form to <Rules_Changes@ca5.uscourts.gov>

The following changes are proposed:

1. **5TH CIR. R. 5.** Amended FED. R. APP. P. 5(c) will set clear page limits on petitions for permission to appeal. Thus, most of the current 5th Cir. R. 5 becomes unnecessary and is stricken. Because we use a certificate of interested persons, rather than a "corporate disclosure statement," we make clear the certificate of interested persons does not count in the page limit for petitions for permission to appeal.
2. **5TH CIR. R. 8.10.** FED. R. APP. P. 26 will change the way time limits of less than 11 days are computed. We suggest changing 5TH CIR. R. 8.10 to eliminate the words "exclusive of Saturdays, Sundays and holidays" as unnecessary.
3. **5TH CIR. R. 9.5.** We have eliminated the word "calendar" in the second line of the

rule. Our intent is to make our proposed rules as consistent as possible with the calculation of time under proposed FED. R. APP. P. 26. We have kept to a minimum the number of instances where we count time limits under 11 days with calendar days. There are three notable exceptions. We insure the mandate issues on the eighth calendar day; we allow counsel to move for an extension of time to file a brief 7 calendar days before the brief is due, rather than the minimum of 9 days which would occur if we did not specify calendar days; and, similarly we allow a party desiring to waive oral argument to file a motion at least 7 calendar days before the hearing date.

4. **5TH CIR. R. 15.1.** We recommend amending this rule to require the filing party of an agency review petition to attach a copy of the order or orders to be reviewed at the time the petition for review is filed. This recommended change would expedite the court's processing by insuring we have a copy of the order early in the life of the case.

5. **5TH CIR. R. 21.** FED. R. APP. P. 21(d) will specify clear length limits for writs of mandamus, etc. We recommend deleting the length limits in our 5TH CIR. R. and making clear what items required by the rule are not counted in the page limit. We also recommend an editorial change in the second paragraph of the rule to make plural the words "memorandum" and "brief."

6. **5TH CIR. R. 25.** The rule is substantially rewritten to anticipate electronic filing of papers with the court. In the rule we seek to make clear that facsimile filing is handled differently than other "electronic filing." We limit "fax" filing because of the strain on our telephone resources and because of the sometimes poor quality of the documents received. Thus, we continue to restrict fax filing except when authorized specifically by the clerk.

Rules 25.2 and 25.3 are new. They are written broadly to give the court and the clerk flexibility to permit electronic filing. Consistent with the Administrative Office of the U.S. Courts' current Case Management/Electronic Case Filing (CM/ECF) system guidance, we state that Adobe Acrobat PDF is the preferred standard format for electronically filed documents.

7. **5TH CIR. R. 26.1.** This rule is modified to establish the timeliness of briefs and record excerpts if electronic filing is permitted.

8. **5TH CIR. R. 27.1.** The last sentence of this rule requiring the movant to state that he or she has contacted or attempted to contact the opposing parties, is moved to the last sentence of 5TH CIR. R. 27.4. That rule is captioned "Form of motions" and appears to be a better location for this requirement.

9. **5TH CIR. R. 27.1.17.** This rule is eliminated as unnecessary. SUP. CT. R. 12.7 and

19.4 specify when the clerk of an appellate court certifies and transmits records to the Supreme Court. The remaining three sections of Rule 27.1 are renumbered.

10. **5TH CIR. R. 28.** Our rule is based upon “alternative 2” of the proposed amendment to FED. R. APP. P. 26.1, as approved by the Committee on Rules of Practice and Procedure. In the event “alternative 1” is adopted, there should be no change required in our local rule.

Rule 28.2.1 is changed to be consistent with the changes to FED. R. APP. P. 26.1(b) which require the supplementation of the information required in a “corporate disclosure statement” whenever the information changes. We have added a parallel requirement in rule 28.2.1 governing supplementation of certificates of interested persons.

Rule 28.3 (l) is amended to delete the reference to 5TH CIR. R. 28.6 as authority for the requirement that briefs be signed. The amended FED. R. APP. P. 32(d) is substituted.

Rule 28.6 is changed because FED. R. APP. P. 32 will require signatures on briefs and other papers. Thus, we strike the first three sentences of the current rule. Instead we refer to the federal rule provision and allow the current “broad” interpretation of the signature requirement as articulated in our present rule.

11. **5TH CIR. R. 30.1.2.** To accommodate the possibility of electronic filing of record excerpts, we propose giving the clerk authority to allow their filing on a computer diskette “or otherwise as the clerk may direct.” Further, we continue to require the appellant to serve a paper copy of the record excerpts on opposing counsel, but would allow the parties to agree in writing to serve the record excerpts by such electronic means as the parties may agree upon.

12. **5TH CIR. R. 31.**

Rule 31.1 is amended to allow for flexibility in the electronic filing of briefs with the court. The change requires certain briefs to be filed with the court on a computer diskette, but leaves open the possibility that other methods of electronic filing may be permitted. We recommend requiring use of the Adobe Acrobat PDF format for several reasons. First, the Case Management/Electronic Filing (CM/ECF) system, which will replace our current Appellate Information Management System (AIMS), specifies PDF format. Second, the PDF software to create a document is inexpensive, and many other software packages, i.e. WordPerfect, allow the “publication” of a

document in PDF format without purchasing any additional software. Third, other appellate courts have either adopted the PDF format in their existing rules, or have proposed a change similar to ours. We continue to require the parties to serve a computer readable diskette copy of the brief on each other, but allow counsel to agree in writing to another method of electronic service. Finally, we add a citation to FED. R. APP. P. 25(d)(1)(B)(iii) as authority for the requirement that the certificate of service must reflect service of briefs and other papers to an electronic address, if appropriate.

Rule 31.3 adds a provision concerning the timing of the electronic filing of an appellee's brief, if permitted. The appellee would have 33 days to place the brief in the mail, give it to a commercial carrier or to file the brief with the court electronically.

13. 5TH CIR. R. 32.

Rule 32.3 is changed to refer to Form 6 in the Appendix of Forms to the federal rules, rather than to our current certificate of compliance form.

Rule 32.5 is deleted as unnecessary because the amendment to FED. R. APP. P. 32(d) requires a signature.

The remaining rule sections are renumbered.

14. 5TH CIR. R. 45.3. We recommend deleting the word “officially” before “designated.” As a matter of practice, this court has limited staff present on many “official” holidays because we have UPS and FedEx deliveries.

15. 5TH CIR. R. 46.1. The rule incorporates the court order limiting admission to the bar of this court to five years, and requiring periodic readmission.

16. 5TH CIR. R. 47.8.2(a). We delete the last sentence because “Form A.O. 291” no longer exists.

Charles R. Fulbruge III
Clerk of Court

Enclosure

FRAP 5. APPEAL BY PERMISSION

- (c) **Form of Papers; Number of Copies.** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

FIFTH CIRCUIT RULE 5

Length. ~~A petition for permission to appeal must not exceed 20 pages and any answer to the petition must not exceed 10 pages. The certificate of interested persons, corporate disclosure statement, proof of service and the accompanying documents required by FED. R. APP. P. 5(b)(1)(E) do~~ **required by 5TH CIR. R. 28.2.1 does** not count toward the page limit.

FIFTH CIRCUIT RULE 8

8.10 Time Requirements for Habeas Petitions. Habeas petitioners sentenced to death who wish to appeal an adverse judgment by the district court on a first petition for writ of habeas corpus, or who seek permission to file a successive petition, must exercise reasonable diligence in moving for a certificate of appealability or for permission to file a second or successive habeas petition, and a stay of execution with the clerk of this court at least 5 days ~~(exclusive of Saturdays, Sundays and holidays)~~ before the scheduled execution. Counsel who seek a certificate of appealability or permission to file a successive petition less than 5 days before the scheduled execution must attach to the proposed filing a detailed explanation stating under oath the reason for the delay. If the motions are filed less than 5 days before the scheduled execution, the court may direct counsel to show good cause for the late filing. If counsel cannot do so, counsel will be subject to sanctions.

If the state asks this court to vacate a district court order staying an execution, counsel for the state will file the state's appeal and application for relief from the stay as soon as practicable after the district court issues its order. Any unjustified delay by the state's counsel in seeking relief in this court will subject counsel to sanctions.

FIFTH CIRCUIT RULE 9

9.5 Response. The opposing party must file a written response to all requests for release within 7 ~~calendar~~ days after service of the memorandum or application.

FIFTH CIRCUIT RULE 15

15.1 Docketing Fee and Copy of Orders - Agency Review Proceedings. Parties

~~filing~~ *At the time a party files a petition for review under FED. R. APP. P. 15, the party must:*

- (a) ~~p~~ *Pay the filing fee to the clerk at the time they file the petition for review.; and*
- (b) *Attach a copy of the order or orders to be reviewed.*

FRAP 21. WRITS OF MANDAMUS AND PROHIBITION, AND OTHER EXTRAORDINARY WRITS

- (d) ***Form of Papers; Number of Copies.*** All papers must conform to Rule 32(c)(2). ~~Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C).~~ An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

FIFTH CIRCUIT RULE 21

Petition for Writ. ~~The petition must contain a certificate of interested persons as described in 5TH CIR. R. 28.2.1. The petition for writ must not exceed 20 pages and any answer to the petition must not exceed 10 pages. The certificate of interested persons; corporate disclosure statement and the items required by FED. R. APP. P. 21 and 5TH CIR. R. 21 do not count toward the page limit.~~

~~In addition to the items required by FED. R. APP. P. 21, the application must contain a copy of any memoranda or briefs filed in the district court supporting the application to that court for relief and any memoranda or briefs filed in opposition, as well as a transcript of any oral reasons the district judge court gave for his or her its action.~~

FRAP 25. FILING AND SERVICE

- (c) ***Manner of Service.***

- (1) Service may be **any of the following:**
 - (A) personal, **including delivery to a responsible person at the office of counsel;**
 - (B) by mail;
 - (C) by third-party commercial carrier for delivery within 3 calendar days;
or
 - (D) **by electronic means, if the party being served consents in writing.**

- (2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).
- (3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.
- (4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. **Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.**

(d) Proof of Service.

- (1) A paper presented for filing must contain either of the following:
 - (A) an acknowledgment of service by the person served; or
 - (B) proof of service consisting of a statement by the person who made service certifying:
 - (i) the date and manner of service;
 - (ii) the names of the persons served; and
 - (iii) their **mail or electronic** addresses, **facsimile numbers**, or the addresses of the places of delivery, **as appropriate for the manner of service.**
- (2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.
- (3) Proof of service may appear on or be affixed to the papers filed.

FIFTH CIRCUIT RULE 25

25.1 Facsimile Filing. *The clerk may accept, for filing, papers sent by facsimile in situations the clerk determines are emergencies or that present other compelling circumstances.*

25.2 Electronic Filing. *In cases or classes of cases that the court may select, the clerk may allow a moving party to file a required document electronically. (Facsimile filing is distinguished from "electronic" filing and is covered by Rule 25.1 above.) If electronic*

filing is permitted, the clerk shall advise the parties of acceptable formats and procedures. Adobe Acrobat PDF format is the preferred standard. Any account name and password the clerk issues to facilitate an electronic filing shall be kept confidential and used solely for electronic filings of such papers and briefs as the clerk may permit. The electronic image of the document constitutes the original document for all court purposes. Filing is complete when the document is received in the clerk's database.

To each electronically filed document, the filer must add a certificate verifying that the original paper document was signed by the attorney or party shown as the filer. The filer must maintain the signed original paper document at least until the appellate process is complete, including action on any petition for writ of certiorari to the United States Supreme Court. Upon request, the signed original paper document must be provided to other parties or to the court.

The clerk may allow a district court clerk to transmit the notice of appeal and other required docketing documents electronically.

The clerk may require paper copies of any documents filed electronically. See 5th Cir. R. 30 and 32 for instructions regarding the procedures for electronic filing of record excerpts and briefs, if permitted.

25.3 Electronic Noticing. *In cases or classes of cases that the court may select, the clerk is authorized to serve all papers, including opinions, electronically on any party who consents to such manner of service. Parties who agree to accept electronic notice must agree the electronic notice will be the only notice provided by the clerk.*

FRAP 26. COMPUTING AND EXTENDING TIME

- (a) Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:
- (1) Exclude the day of the act, event, or default that begins the period.
 - (2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.
 - (3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or — if the act to be done is filing a paper in court — a day on which the weather or other conditions make the clerk's office inaccessible.
 - (4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the

state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

- (b) **Extending Time.** For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:
- (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or
 - (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.
- (c) **Additional Time after Service.** When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. **For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.**

FIFTH CIRCUIT RULE 26

26.1 Computing Time. *Except for briefs and record excerpts, all other papers, including petitions for rehearing, are not timely unless the clerk actually receives them within the time fixed for filing. Briefs and record excerpts are deemed filed on the day sent to the clerk electronically where permitted by 5TH CIR. R. 30 and 32, by a third-party commercial carrier for delivery within 3 calendar days, or on the day of mailing if the most expeditious form of delivery by mail is used. The additional 3 days after service by mail, by electronic means, or after delivery to a commercial carrier for delivery within 3 calendar days referred to in FED. R. APP. P. 26(c), applies only to matters served by a party and not to filings with the clerk of such matters as petitions for rehearing under FED. R. APP. P. 40, petitions for rehearing en banc under FED. R. APP. P. 35, and bills of costs under FED. R. APP. P. 39.*

26.2 Extensions of Time. *The court requires timely filing of all papers within the time period allowed by the rules, without extensions of time, except for good cause. Appeals which are not processed timely will be dismissed for want of prosecution without further notice under 5TH CIR. R. 42. If the parties or counsel waive their right to file a reply brief, they must immediately notify the clerk to expedite submitting the case to the court.*

FIFTH CIRCUIT RULE 27

27.1 Clerk May Rule on Certain Motions. *Under FED. R. APP. P. 27(b), the clerk has discretion to act on, in accordance with the standards set forth in the applicable rules, or*

to refer to the court, the procedural motions listed below. The clerk's action is subject to review by a single judge upon a motion for reconsideration made within the 14 or 45 day period set by FED. R. APP. P. 40. **All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed.**

~~27.1.17 To transmit records to the Supreme Court for use in connection with petitions for writs of certiorari.~~

27.1.187 To proceed in forma pauperis, see FED. R. APP. P. 24 and 28 U.S.C. § 1915;

27.1.198 To appoint counsel or to permit appointed counsel to withdraw;

27.1.2019 To obtain transcripts at government expense.

27.4 Form of Motions. Parties or counsel must comply with the requirements of FED. R. APP. P. 27 including the length limits of FED. R. APP. P. 27(d)(2). Except for purely procedural matters, motions must include a certificate of interested persons as described in 5TH CIR. R. 28.2.1. Where a single judge or the clerk may act only an original and 1 copy need be filed. All motions requiring panel action require an original and 3 copies. **All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed.**

FIFTH CIRCUIT RULE 28

28.2.1 *Certificate of Interested Persons.* The certificate of interested persons required by this rule is broader in scope than the corporate disclosure statement contemplated in FED. R. APP. P. 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate corporate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. If a large group of persons or firms can be specified by a generic description, individual listing is not necessary. Each certificate must also list the names of opposing law firms and/or counsel in the case. The certificate must include all information called for by FED. R. APP. P. 26.1(a). **Counsel and unrepresented parties must supplement their certificates of interested persons whenever the information that must be disclosed changes.**

28.3 Brief - Order of Contents. The order of contents of the brief is governed by FED. R. APP. P. 28 and this rule and shall be as follows:

- (l) A signature of counsel or a party as required by ~~5TH CIR. R. 28.6~~ **FED. R. APP. P. 32(d)**;

28.6 Signing the Brief. ~~All pleadings, motions, and briefs must be signed by an attorney or a party appearing pro se. The signing of documents is important because it constitutes a certificate by the attorney or party that he or she has read the pleading or brief. This is particularly important for briefs, to ensure that counsel or the party signing the brief has read the brief and checked it to ensure it complies with the rules. See FED. R. APP. P. 32(d).~~ The **signature** requirement is interpreted broadly, and the attorney of record may designate another person to sign the brief for him or her. Where counsel for a particular party reside in different locations, it is not necessary to incur the expense of sending the brief from one person to another for multiple signatures.

FIFTH CIRCUIT RULE 30

30.1.2 Filing. Four **paper** copies of excerpts of the district court record must accompany the appellant's brief, see 5TH CIR. R. 30.1.4 and 30.1.5. **In addition, if the clerk permits electronic filing of the record excerpts, they may be filed on a computer diskette as specified in 5TH CIR. R. 31.1, or otherwise as the clerk may direct.** The appellant must serve a **paper** copy of the excerpts on counsel for each of the parties separately represented and on any party proceeding pro se. **If the party being served agrees in writing, service of a paper copy may be waived and made by such electronic means as the parties agree upon.** The appellee may submit additional record excerpts with his or her brief. **Four paper copies of any additional record excerpts must be filed with the clerk. In addition, if the clerk permits, the additional record excerpts may be filed electronically (instead of in paper copy) as the clerk may direct.**

FRAP 31. SERVING AND FILING BRIEFS

- (b) **Number of Copies.** Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on **each unrepresented party and on** counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on **each unrepresented party and on** counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

FIFTH CIRCUIT RULE 31

31.1 Briefs - Number of Copies; Computer Generated Briefs. Only 7 paper copies of briefs need be filed. Where a party is represented by counsel and generates his or her brief by computer, **and unless the clerk permits electronic filing in another method, the party must file one computer readable diskette copy of the brief must be filed with the clerk, and The filing party must also serve a second computer readable diskette copy served on each party**

separately represented by counsel, *unless counsel agree in writing to another method of electronic service*. The *diskette filed with the court* must contain nothing more than the brief. *The brief must be prepared in Portable Document File (PDF) format*. The *diskette's* label must include the case name, docket number, identify the brief, i.e. appellant's brief, appellee's brief, etc., ~~and specify the word processing software and version used to prepare the brief~~. The brief must be on a 3½ inch *diskette*. ~~If available, the court greatly prefers the use of WordPerfect 5.1 or greater to insure compatibility with our systems~~. The certificate of service must indicate service in both paper and electronic form, see *FED. R. APP. P. 25(d)(1)(B)*.

31.3 Briefs - Time for Mailing or Delivery to a Commercial Carrier. The appellant must send his or her brief to the clerk not later than 40 days after the date of the briefing notice. Pursuant to *FED. R. APP. P. 26(c)*, the appellee has 33 days from the appellant's *date of the certificate of service* to place the appellee's brief in the mail, *file it with the clerk electronically where permitted*, or to give it to a third-party commercial carrier for delivery within 3 calendar days. This rule may *not* be combined with the additional time provisions of *FED. R. APP. P. 26(c)* to give the appellee 36 days to file a brief. The certificate of service required by *FED. R. APP. P. 25(d)* is placed in the brief as specified in *5TH CIR. R. 28.3*, and must be dated. See *5TH CIR. R. 39.2* for limitations on recovery of certain mailing and commercial delivery costs.

FRAP 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

(a) Form of a Brief.

(2) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; **and any supplemental brief, tan**. The front cover of a brief must contain:

(7) **Length.**

(C) Certificate of compliance.

(i) A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

! the number of words in the brief; or

! the number of lines of monospaced type in the brief.

- (ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rule 32(a)(7)(C)(i).

(c) **Form of Other Papers.**

- (1) **Motion.** The form of a motion is governed by Rule 27(d).
- (2) **Other Papers.** Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:
 - (A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.
 - (B) Rule 32(a)(7) does not apply.

(d) **Signature.** Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) **Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

FIFTH CIRCUIT RULE 32

32.1 Typeface. Must comply with FED. R. APP. P. 32(a)(5), except that footnotes may be 12 point or larger in proportionally spaced typeface, or 12½ characters per inch or larger in monospaced typeface.

32.2 Type Volume Limitations. See FED. R. APP. P. 32(a)(7)(B)(iii). The certificate of interested parties also does not count toward the limitation. A "Brief for Appellee/Cross-Appellant" and a "Brief for Cross-Appellee and Reply Brief for Appellant" are considered principal briefs for purposes of the page length and word-volume length limitations.

32.3 Certificate of Compliance. See ~~FED. R. APP. P. 32(a)(7)(C)~~. ~~A form of the certificate is available from the clerk's office.~~ Form 6 in the Appendix of Forms to the FED. R. APP. P. A material misrepresentation in the certificate of compliance may result in striking the brief and in sanctions against the person signing the brief.

32.4 Motions for Extra-Length Briefs. A motion to file a brief in excess of the page

length or word-volume limitations must be filed at least 7 days in advance of the brief's due date. The court looks upon such motions with great disfavor and will grant them only for extraordinary and compelling reasons. If a motion to file an extra-length brief is submitted, a draft copy of the brief must be submitted with the motion.

~~**32.5 Signing.** Every brief (originals and copies) must be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, by the party. See 5TH CIR. R. 28.6.~~

32.65 Rejection of Briefs and Record Excerpts. If all copies of briefs and record excerpts do not conform to 5TH CIR. R. 28 and 30 and all provisions of FED. R. APP. P. 32, the clerk will file the briefs and record excerpts, but is authorized to return all nonconforming copies. An extension of 10 days is allowed for resubmission in a conforming format. The court may strike briefs and record excerpts if the party fails to submit conforming briefs or record excerpts within 10 days. If at any time the clerk believes the non-conformance is egregious or in bad faith, the clerk, in the alternative to filing the nonconforming matters, may submit them to a single judge, who can reject them and direct that they be returned unfiled. Failure to submit conforming briefs or record excerpts may result in imposition of sanctions.

32.76 Color of Covers of Briefs in Cross-Appeals.

When the appellee has filed a cross appeal the brief color cover is as follows:

Brief for Appellant - Blue

Brief for Appellee-Cross-Appellant - Red

Brief for Cross-Appellee and Reply Brief for Appellant - Red

Reply Brief of Cross-Appellant - Gray

FIFTH CIRCUIT RULE 45

45.3 Office To Be Open. The clerk's office is open for business on all days except Saturdays, Sundays, ~~officially~~ designated federal holidays, and Mardi Gras.

FIFTH CIRCUIT RULE 46

46.1 Admission and Fees. Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in FED R. APP. P 46(a)(1) to be admitted and continue to practice before this court. Admission is governed by FED. R. APP. P. 46 and this rule. *Effective January 1, 2002, newly admitted attorneys are admitted for a period of 5 years. At the conclusion of the 5 year period, and upon notice from the clerk, they will have to reapply for admission. Attorneys who were admitted prior to*

January 1, 2002, are required, following 5 years after their admission and upon notice from the clerk, to reapply for admission for a 5 year period. Each attorney must pay the clerk an admission and readmission fee fixed by court order. An attorney appointed to represent an appellant in forma pauperis and an attorney who appears on behalf of the United States must have all other qualifications for admission, but is admitted in this court without paying an admission fee.

46.2 Suspension or Disbarment. *In addition to FED. R. APP. P. 46(b), attorneys may be suspended or removed from the roll of attorneys permitted to practice before this court if the appropriate law licensing authority withdraws or suspends the attorney's license to practice law, or the license to practice lapses.*

46.3 Entry of Appearance. *Attorneys admitted to the bar of this court must enter their appearance in each case in which they participate at the time the case is docketed or upon notice by the clerk. A form for entry of appearance is provided by the clerk. In addition to other pertinent information, the form requires counsel to cite all pending related cases and any cases on the docket of the Supreme Court, or this or any other United States Court of Appeals, which involve a similar issue or issues. Counsel must update such information at the time of briefing. Counsel must also indicate on the form whether the appeal is in a category of cases requiring preference in processing and disposition as set out in 5TH CIR. R. 47.7.*

FIFTH CIRCUIT RULE 47

47.8.2 Attorney's Fees and Expenses Under the Equal Access to Justice Act. *This rule implements the provisions of the Equal Access to Justice Act, Public Law No. 96-481, 94 Stat. 2325 (1980).*

- (a) *Applications to the Court of Appeals. An application for an award of fees and expenses pursuant to 28 U.S.C. § 2412(d)(1)(B) must identify the applicant and the proceeding for which an award is sought. The application must show the nature and extent of services provided in this court and that the applicant has prevailed, and must identify the position of the United States or an agency thereof that the applicant alleges was not substantially justified. ~~The party applying must submit the required information on Form A.O. 291, available from the clerk of court.~~*
- (b) *Petitions by Permission. A petition for leave to appeal pursuant to 5 U.S.C. § 504(c)(2) must be filed with the clerk of the court of appeals within 30 days after the entry of the agency's order, with proof of service on all other parties to the agency's proceedings.*