

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NOTICE OF PROPOSED AMENDMENTS TO FIFTH CIRCUIT RULES

Pursuant to 28 U.S.C. § 2071, we give notice the court is considering adoption of the following amendments to 5TH CIR. R. 27.3 and 27.4 concerning emergency motions.

We must receive written comments on the proposed changes to 5TH CIR. R. 27.3 and 27.4 no later than December 1, 2007. 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 proposed amendments are at the enclosure.

Charles R. Fulbruge III
Clerk of Court

ENCLOSURE

To address the problem of last minute motions and the ability of the court to respond timely, Rules 27.3 and 27.4 are redrafted to give adequate time for the court to consider and decide motions a party characterizes as “emergencies.”

FIFTH CIRCUIT RULE 27.3

27.3 *Emergency Motions.* *Matters requiring a ruling shortly after filing impose a burden on the court’s resources. Such matters, if improvidently filed, may be subject to sanctions as stated below. Emergency motions in capital cases in which the execution has been scheduled are governed by 5TH CIR. R. 8.10. The court will give emergency consideration in other cases only when counsel sets forth in detail why a ruling is necessary within 7 calendar days of filing. Any motion requesting emergency consideration should be preceded by a telephone call to the clerk’s office advising of the intent to file an emergency motion, and the motion **must** be received in the clerk’s office by 2:00 p.m. Central Time on the day of filing.*

Emergency motions must:

be labeled “Emergency Motion;”

state the nature of the emergency and the irreparable harm the movant will suffer;

certify that the facts supporting emergency consideration of the motion are true;

provide the date by which action is necessary.

If the court finds counsel’s reasons do not constitute good cause, counsel may be subject to sanctions.

Counsel filing emergency motions must make every possible effort to have the motion served in person; if this is not possible, counsel must notify opposing counsel promptly by telephone or electronic transmission.

If the emergency motion raises any issue raised in a district court, counsel for the moving party must furnish copies of all pleadings, briefs, memoranda or other papers he or she filed in the district court, and copies of any district court order or memorandum on the matter. If counsel cannot comply with this requirement due to time restraints or otherwise, counsel must state the reason for noncompliance.

Counsel ordinarily should file emergency motions with the clerk rather than an individual judge. When time does not permit filing a motion or application by mail or hand delivery, counsel may contact the clerk by telephone and request permission to file by facsimile, or such electronic means as the clerk may permit. If these means are impractical, the clerk may, in extraordinary cases, accept and forward to the court a telephone communication. Thereafter, counsel must file the motion in writing as promptly as possible (whether or not previously faxed or transmitted electronically).

27.3.1 Emergency Stays of Deportation. *The court will give emergency consideration to stays of deportation **only** where the petitioner has a scheduled removal date and is in custody. Petitioners and counsel are responsible for obtaining accurate information about the custody status of their clients, as well as confirming the scheduled removal date. Emergency stays where petitioners have an imminent scheduled deportation date and are in custody will be processed in accordance with rule 27.3 above.*

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). If there is serious need for a ruling on the motion by a specific time, the motion must so state and shall explain the particular nature of the need and the facts supporting that need.*