

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 amendments to 5<sup>TH</sup> CIR. R. 28.2, 30.1.2, 31.1 and 39.

We must receive written comments on the proposed changes to the 5<sup>TH</sup> CIR. R. no later than August 10, 2007. The address to use is:

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

You may also offer comments in electronic form to:

[Rules.Changes@ca5.uscourts.gov](mailto:Rules.Changes@ca5.uscourts.gov).

The proposed amendments are at the enclosure, with explanatory comments where deemed necessary.

The court is also considering amendments to 5<sup>TH</sup> CIR. R. 27.3 on Emergency Motions. These changes are not yet finalized. If they are approved, we will distribute a separate notice and opportunity for public comments.

Charles R. Fulbruge III  
Clerk of Court

## ENCLOSURE

**Proposed Amendment to Rule 28.2.** The Chair of the Appellate Rules Committee invited the appellate courts to review their local rules regarding the contents of briefs and, where possible, to minimize imposing any requirements beyond those found in the FED. R. APP. P. Following that review, the Fifth Circuit proposes eliminating the 5<sup>TH</sup> CIR. R. 28.2 provisions concerning the “Summary of the Argument,” (Rule 28.2.2), “Statement of Jurisdiction,” (Rule 28.2.5) and “Standard of Review,” (Rule 28.2.6). The proposed revised and renumbered rule follows:

### ***FIFTH CIRCUIT RULE 28***

#### **28.2            *Briefs - Contents.***

**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.*

- (a) *Each certificate must list all persons known to counsel to be interested, on all sides of the case, whether or not represented by counsel furnishing the certificate. Counsel has the burden to ascertain and certify the true facts to the court.*
- (b) *The certificate must be in the following form:*
  - (1) *Number and Style of Case;*

- (2) *The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.*

*(Here list names of all such persons and entities and identify their connection and interest.)*

\_\_\_\_\_  
*Attorney of record for* \_\_\_\_\_

**28.2.2 Record References.** *Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found.*

**28.2.3 Request for Oral Argument.** *Counsel for appellant must include in a preamble to appellant's principal brief a short statement why oral argument would be helpful, or a statement that appellant waives oral argument. Appellee's counsel must likewise include in appellee's brief a statement why oral argument is or is not needed. The court will give these statements due, though not controlling, weight in determining whether to hold oral argument. See FED. R. APP. P. 34(a) and (f) and 5TH CIR. R. 34.2.*

**Proposed Amendment to Rule 30.** For several years the court has required counsel preparing a brief on a computer to provide an electronic copy of that brief to the court in a single PDF file. The electronic copy is a valuable resource, in the normal course of case processing, and particularly in emergency situations, (like Hurricane Katrina), where paper copies of briefs were not readily available for an extended period. We now propose an amendment requiring appellant's counsel to file an electronic copy of the "Record Excerpts," in addition to the paper copies. If the appellee's counsel chooses to file additional "Record Excerpts," they must be filed in both paper and electronic form. The proposed rule is shown below:

### **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 5<sup>TH</sup> CIR. R. 30.1.4 and 30.1.5. In addition, and until such time as the court implements the electronic case filing portion of the Case Management/Electronic Case Filing (CM/ECF) software, all appellants represented by counsel must file an electronic copy of the record excerpts on a CD, computer diskette, or such other electronic medium as the clerk may authorize. The electronic copy must be in a single Portable Document Format*

*(PDF) file; contain nothing other than the record excerpts; and have as the first page of the electronic copy an index to the contents. If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label containing the case name and docket number and state “Record Excerpts.” 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 and an electronic copy, as described above, must be filed with the clerk.*

**Proposed Amendment to Rule 31.1.** The local rule requiring counsel to file an electronic version of briefs is modified to permit specifically the use of a “CD,” in addition to a “computer diskette” given the changing nature of technology. The change to the sixth and eighth sentences of the current rule follows:

#### ***FIFTH CIRCUIT RULE 31.1***

*....The electronic copy of the brief must be filed on a CD, computer diskette, or such other electronic medium as the clerk may authorize .... If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label ....*

**Proposed Amendment to Rule 39.** FED. R. APP. P. 39(c) directs the courts of appeal to fix the maximum rate for taxing the cost of producing necessary copies of a brief, etc. The maximum rate “must not exceed” that generally charged in the area where the clerk’s office is located. Following a recent review of commercial rates, as well as in-house copying rates, the proposed rule lowers the maximum rate for copies of briefs, etc., as shown below.

#### ***FIFTH CIRCUIT RULE 39***

***39.1 Taxable Rates.*** *The cost of reproducing necessary copies of the briefs, appendices, or record excerpts shall be taxed at a rate of actual cost, or \$.15 per page, whichever is less ....*

**Advance Notice of Potential Additional Rule Amendment.** The court is also considering proposed amendments to 5<sup>TH</sup> CIR. R. 27.3, concerning Emergency Motions. However, a final version has not yet been approved. If and when it is, a separate notice and opportunity for public comment will be distributed.