

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Notice of Proposed Amendment to 5TH CIRCUIT RULES 26, 28, 29, 31 and 32

Pursuant to 28 U.S.C. § 2071, we give notice the court is considering amending 5TH CIR. R. 26, 28, 29, 31 and 32 as shown below. Additionally, the court is studying possible additional changes with respect to new word count limitations in the December 1, 2016 amendments to FRAP Rules 5, 21, 27, 28.1, 32, 35 and 40.

We will accept written comments for consideration on the proposed change through November 15, 2016:

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

or send comments electronically to Changes@ca5.uscourts.gov

Current Local Rules with Redline Proposed Changes

5th Cir. R. 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 31, by a third-party commercial carrier for delivery within 3 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 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.

5th Cir. R. 28:

28.3 (m) *A certificate of compliance if required by FED. R. APP. P. ~~32(a)(7)~~ 32(g)(1) and 5TH CIR. R. 32.3. (see FED. R. APP. P. 28(a)(10));*

5th Cir. R. 29:

29.3 Length of Briefs. *See FED. R. APP. P. ~~29(d)~~-29(a)(5).*

5th Cir. R. 31:

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 days. This rule **is effective ONLY when the appellant has effected service by mail or via delivery to a commercial carrier for delivery within 3 days and** 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.*

5th Cir. R. 32:

32.2 Type Volume Limitations. *See FED. R. APP. P. ~~32(a)(7)(B)(iii)~~ 32(f), and for cross-appeals, FED. R. APP. P. 28.1(e). The certificate of interested parties does not count toward the limitation.*

Lyle W. Cayce
Clerk of Court