

THE 2005 STATE AND FEDERAL APPEALS CONFERENCE

Fifth Circuit Clerk's Rules and Procedures You Should Know But Nobody Ever Told You

At the beginning of October 2004, we faced hard budget choices and these affected our rules and procedures. Budget reductions forced us to cut staffing by 11 full time positions. In addition, via a November 2004 rule change, we now require attorneys to pay the shipping costs to receive the record on appeal; and we have discontinued our subscription service to printed West slip opinions. The money crisis did not affect our court alone. If you are not already a member of the Fifth Circuit Bar, or if you wish to join another federal appellate court bar, effective January 1, 2005 there is now a nationwide \$150 fee for initial admission to each federal appellate court. Further, at about the same time there was an increase in the PACER fees for electronic docket sheet information.

August 29, 2005 was a watershed date for the court. Hurricane Katrina forced the court to relocate to Houston until December 2005. All in all the court was closed from the end of August through the 21st of September for Hurricane Katrina, and then from September 22nd through the 26th for Hurricane Rita. We closed again from mid-December until January 9, 2006 to relocate the office back to New Orleans. Several court orders automatically extended filing dates during the period of court closures. Even with staggered due dates we still faced a surge of briefs and motions that we had to handle. While oral arguments continued with minor delays, the court instituted a number of new policies and procedures. Probably the most significant one for attorneys is that the court of appeals presently does not make the record on appeal available to counsel for use in writing briefs. The district courts now are holding the records and will release them to counsel after we have issued the briefing notices. Attorneys will have to work out payment for the costs of shipping with the district courts. Most courts have a process similar to the one we used before the hurricanes. We expect attorneys will have to get the record on appeal from the district courts until this summer when we should be fully moved into our new offices.

I. Move to the Hébert Building

Effective April 24, 2006, the clerk's office will relocate to the F. Edward Hébert Building at 600 S. Maestri Place, New Orleans, LA 70130. Please be sure your letters and packages are addressed to that location, not the 600 Camp Street address. We will keep our existing telephone numbers, and attorneys appearing for oral argument will continue to check-in and present argument in the John Minor Wisdom Building.

II. Staffing Issues

We lost about 10% of our staff due to the hurricane relocation when some employees declined to move to Houston, and then when some decided to stay there rather than return to New Orleans. So with fewer people and an upcoming move we ask for your help and willingness to change some of the ways you deal with our office. Specifically we need you carefully to read and comply with our instructions, to participate more fully in existing and planned electronic services, and to understand we may not have the resources to assist you as we have in the past.

III. Appellate Case Management/Electronic Case Filing (CM/ECF)

We plan to convert to the case management (CM) portion of CM/ECF in early 2007, and expect to require electronic filing in about July 2007. While many documents will have to be in electronic form, we will also require some number of hard copies of briefs, etc., to accommodate the judges' preferences, and to avoid the clerk's office from becoming a printing/copying/brief assembly center. Our funding situation and the lack of personnel, means we do not have the resources to print out copies of electronically filed pleadings. This will be a long standing issue at the national level as the various appellate courts try to find a mechanism for producing paper copies which balances costs and resources among attorneys, clerks and judges. We will be experimenting with the CM/ECF capabilities and trying to reach agreement with the other appellate courts on a form for electronic attorney filing. We think it is important that an attorney be able to follow a consistent procedure whether filing a document in this circuit or some other circuit. Unfortunately, it looks as if the appellate CM/ECF interface for attorneys will be different than the interface used by the bankruptcy and district courts. Depending on your point of view, you may see this either as an improvement to, or a distraction from, your practice.

One consensus opinion among the appellate courts and appellate judges may not be comforting to practicing attorneys. For the foreseeable future, and like us, all the other federal appellate courts will require some number of paper copies of briefs, records on appeal, joint appendices, administrative records, record excerpts, etc. This may seem counter-intuitive to the electronic filings you now perform at the bankruptcy and district courts, but ours is a court which depends on the record on appeal and the written argument in briefs. Until we are comfortable with the new technology and our abilities to decide cases from documents solely in electronic form, there will be paper required.

IV. Rules Changes

A. 5TH CIR. R. CHANGES EFFECTIVE NOVEMBER 1, 2004

Our Rules and Internal Operating Procedures (IOPs) were amended substantively as follows:

I.O.P. following Fifth Circuit Rule 27.5

MOTIONS AFTER ASSIGNMENT TO CALENDAR - AFTER CASES ARE ASSIGNED TO THE ORAL ARGUMENT CALENDAR, MOTIONS ARE CIRCULATED TO THE HEARING PANEL RATHER THAN TO THE STANDARD MOTIONS PANELS. THE SENIOR ACTIVE JUDGE ON THE PANEL IS CONSIDERED THE INITIATING JUDGE. THE CLERK ENTERS ORDERS RESPONDING TO THE MOTIONS ON BEHALF OF THE PANEL UNTIL ENTRY OF THE OPINION.

FIFTH CIRCUIT RULE 30

30.1 *Records on Appeal/Record Excerpts/Appendix - Appeals from District Courts, the Tax Court, and Agencies.* Appeals from district courts and the Tax Court are decided on the original record on appeal (ROA). The clerk is authorized to require the party receiving the ROA to pay reasonable shipping costs as a condition of receiving the record. Moreover, counsel and unrepresented parties must review the ROA within 20 days of dispatch from the clerk's office and advise electronically or in writing both the appropriate District Court (or the Tax Court, if appropriate) and Fifth Circuit clerk's offices of any errors in, or omissions from, the ROA. Failure to comply may result in a denial of any requested extension of time to file a brief due to an alleged error in, or incomplete ROA. Record excerpts are filed in lieu of the appendix prescribed by FED. R. APP. P. 30. Petitions for review or enforcement of agency orders are governed by 5TH CIR. R. 30.2, but parties may be required to pay reasonable shipping costs, and are responsible for timely review of the record and the notification requirements set out above.

30.2 *Appendix - Agency Review Proceedings.* Petitions for review or enforcement of orders of an administrative agency, board, commission or officer must proceed on the original record on review, without a FED. R. APP. P. 30 required appendix. If a party requests use of the original record, the clerk may require payment of reasonable shipping costs, and the party is responsible for timely review and notification to the agency and the Fifth Circuit clerk's office of any record deficiencies, see 5TH CIR. R. 30.1.

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, the party also must submit an electronic version of the brief to the court. The filing party

must serve unrepresented parties and counsel for separately represented parties in accordance with FED. R. APP. P. 31(b), and also must serve an electronic version of the brief on each party separately represented. However, the parties may agree in writing to waive service of paper copies of the brief and to be served with an electronic copy only. Electronic service may be in a form agreed to in writing by the parties, or by the same means as submitted to the court. The presently accepted form for submitting the court's electronic version is on a 3.5 inch diskette, but the clerk's office later may elect to allow submission on other physical media, e.g. CD, etc., or by electronic transmission, under criteria to be developed.

The electronic version must:

be prepared in a single Portable Document Format (PDF) file. (Briefs scanned into PDF are not acceptable);

contain nothing other than the brief;

have as the first page of the electronic file a brief cover page as required by FED. R. APP. P. 32(a)(2).

If submitted on a diskette, or other later authorized physical media, the electronic version must have a label containing the case name and docket number, and identifying the brief as the appellant's, appellee's, etc.

The proof of service must comply with FED. R. APP. P. 25(d)(1)(B) & (2).

I.O.P. following Fifth Circuit Rule 35.6

CAPITAL CASES - CONSISTENT WITH LONG ESTABLISHED LEGAL PRINCIPLE AND UNIFORMLY FOLLOWED PRACTICE, THE FILING OF A PETITION FOR REHEARING (OR HEARING) EN BANC DOES NOT CONSTITUTE OR OPERATE AS A STAY OF EXECUTION AND DOES NOT PRECLUDE CARRYING OUT AN EXECUTION.

TIMELY PETITIONS FOR REHEARING (OR HEARING) EN BANC WHICH ARE FILED IN A CAPITAL CASE WHILE A SCHEDULED EXECUTION DATE IS PENDING AND LESS THAN 22 CALENDAR DAYS BEFORE THE SCHEDULED DATE WILL BE PROCESSED AND DISTRIBUTED IN THE MANNER PRESCRIBED BY THE CHIEF JUDGE OR DELEGEE. THE CHIEF JUDGE OR DELEGEE MAY ORDER EXPEDITED CONSIDERATION THEREOF AND SET A TIME LIMIT FOR EACH JUDGE ELIGIBLE TO VOTE THEREON TO ADVISE THE CHIEF JUDGE OR DELEGEE WHETHER TO CALL FOR A POLL AND WHETHER (IF A POLL IS OR WERE TO BE TIMELY REQUESTED BY ANY JUDGE) THE JUDGE WOULD VOTE FOR OR AGAINST REHEARING (OR HEARING) EN BANC, AND THE PETITION FOR REHEARING (OR HEARING) EN BANC WILL BE DISPOSED OF ACCORDINGLY. IF NO POLL IS TIMELY REQUESTED, OR IF A POLL RESULTS IN NO REHEARING (OR HEARING) EN BANC, THE PANEL MAY ENTER AN ORDER DENYING REHEARING

(OR HEARING) EN BANC. IF A POLL RESULTS IN A GRANT OF REHEARING (OR HEARING) EN BANC, THE CHIEF JUDGE, OR DELEGEE, WILL ENTER AN ORDER STAYING THE EXECUTION PENDING FURTHER ORDER OF THE COURT.

I.O.P. following Fifth Circuit Rule 40.4

CAPITAL CASES - CONSISTENT WITH LONG ESTABLISHED LEGAL PRINCIPLE AND UNIFORMLY FOLLOWED PRACTICE, THE FILING OF A PETITION FOR REHEARING DOES NOT CONSTITUTE OR OPERATE AS A STAY OF EXECUTION AND DOES NOT PRECLUDE CARRYING OUT AN EXECUTION.

FIFTH CIRCUIT RULE 47

47.10.3 *The Appellate Record.*

- (e) *Counsel wishing access to, or a copy of, sealed presentence reports, or portions of such reports, may request them from the clerk's office by such means as the clerk permits. Counsel must return the copy of the presentence report, without duplicating it. Counsel should avoid disclosure of confidential matters in their public filings.*

B. FED. R. APP. P. CHANGES EFFECTIVE DECEMBER 1, 2005

Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives or observes written notice of the entry from any source, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Rule 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:

(4) As used in this rule, “legal holiday” means New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day Washington’s Birthday, 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.

Rule 27. Motions

(d) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) **Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) **Cover.** A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) **Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) **Paper size, line spacing, and margins.** The document must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) **Typeface and type styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

Rule 28. Briefs

(c) Reply Brief. The appellant may file a brief in reply to the appellee’s brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table

of contents, with page references, and a table of authorities – cases (alphabetically arranged), statutes, and other authorities – with references to the pages of the reply brief where they are cited.

Rule 28.1. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case;

(D) the statement of the facts; and

(E) the statement of the standard of review.

(4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (11). That brief must also be limited to the issues presented by the cross-

appeal.

(5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellees principal and response brief, red; the appellant's response and reply brief, yellow; and the appellee's reply brief, gray. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) **Type-Volume Limitation.**

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words;

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) **Certificate of Compliance.** A brief submitted under Rule 28(e)(2) must comply with Rule 32(a)(7)(C).

(f) Time to Serve and File a Brief. The appellant's principal brief must be served and filed within 40 days after the record is filed. The appellee's principal and response

brief must be served and filed within 30 days after the appellant's principal brief is served. The appellant's response and reply brief must be served and filed within 30 days after the appellee's principal and response brief is served. The appellee's reply brief must be served and filed within 14 days after the appellant's response and reply brief is served, but the appellee's reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(7) Length.

(C) Certificate of Compliance.

(i) A brief submitted under Rules 28.1(e)(2) or 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 Rules 28.1(e)(3) and 32(a)(7)(C)(I).

Rule 34. Oral Argument

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that

an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

- (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
- (2) the proceeding involves a question of exceptional importance.

Rule 45. Clerk's Duties

(a) General Provisions.

(2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

More and more likely is a change to the federal rules to permit citation to unpublished opinions. A **Rule 32.1. Citation of Judicial Dispositions** is being studied by the Appellate Rules Committee and could take effect in December 2006. The rule would provide:

(a) Citation Permitted. No prohibition or restriction may be imposed upon the citation of judicial opinions, orders, judgments, or other written dispositions that have been designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like, unless that prohibition or restriction is generally imposed upon the citation of all judicial opinions, orders, judgments, or other written dispositions.

(b) Copies Required. A party who cites a judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database must file and serve a copy of that opinion, order, judgment, or other written disposition with the brief or other paper in which it is cited.

C. 5TH CIR. R. CHANGES EFFECTIVE DECEMBER 1, 2005

FIFTH CIRCUIT RULE 10.2

10.2 Form of Record. *The district court must furnish the record on appeal to this court in paper form, and in electronic form whenever available. The paper and electronic records on appeal must be consecutively numbered and paginated. The paper record must be bound in a manner that facilitates reading.*

I.O.P. following Fifth Circuit Rule 27

Is deleted because of the change to FED. R. APP. P. 27(d)(1)(E).

FIFTH CIRCUIT RULE 28.4

The rule is deleted and the other subsections of the rule are renumbered.

FIFTH CIRCUIT RULE 32.6

The rule is deleted.

FIFTH CIRCUIT RULE 35.6

35.6 Determination of Causes En Banc and Composition of En Banc Court. *A cause shall be heard or reheard en banc when it meets the criteria for en banc set out in FED. R. APP. P. 35(a).*

The en banc court shall be composed of all active judges of the court plus any senior judge of the court who participated in the panel decision who elects to participate in the en banc consideration. This election is to be communicated timely to the chief judge and clerk. Any judge participating in an en banc poll, hearing, or rehearing while in regular active service who subsequently takes senior status may elect to continue participating in the final resolution of the case.

I.O.P. following Fifth Circuit Rule 35.6

AFFIRMATIVE POLL

IF A MAJORITY OF THE JUDGES IN ACTIVE SERVICE WHO ARE NOT DISQUALIFIED, VOTE FOR EN BANC HEARING OR REHEARING, THE CHIEF JUDGE INSTRUCTS THE CLERK AS TO AN APPROPRIATE ORDER....

D. PENDING CHANGE TO BE EFFECTIVE APRIL 2006.

FIFTH CIRCUIT RULE 3

Filing Fee. When the notice of appeal is filed, the \$455 fees established by 28 U.S.C. §§ 1913 and 1917 must be paid to the district court clerk

V. New Fees

A. Admission Fee

Effective January 1, 2005, the Judicial Conference of the United States approved an amendment to the Court of Appeals Miscellaneous Fee Schedule, promulgated under 28 U.S.C. §1913. Two new fees were added which affect attorneys in the Fifth Circuit. The first is a \$150.00 fee to be assessed “for original admission of attorneys to practice” in each of the federal appellate courts. The second is a \$15 fee “for a duplicate certificate of admission.” While there is some good news on the horizon - we anticipate that in January 2007, we will reduce the our court’s \$25 readmission fee - there will be increased costs to practitioners overall.

B. PACER Fee Increase

Also on January 1, 2005, The PACER (Public Access to Electronic Records) fees were increased from seven to eight cents per page for access through a federal judiciary Internet site, with the total cost not to exceed \$2.40 for any document (excluding transcripts of federal court proceedings). Attorneys of record and pro se litigants can receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. As in the past, no fee is owed until an account holder accrues charges of more than \$10.00 in a calendar year.

C. Appellate Filing Fee

See pending change to 5TH CIR. R. 3 above. The Deficit Reduction Act of 2006 increased filing fees at all federal courts. The fee for appeals went from \$250 to \$450. However, by operation of 28 U.S.C. § 1917 there is an additional \$5 fee the district court is entitled to receive making the total cost \$455.

VI. Practice Tips

1. Briefs. Our briefing notices advise counsel to provide us with an electronic copy of their briefs in Adobe Acrobat Portable Document Format (PDF). Compliance with this requirement has been better over the last year, but still needs improvement. If you are

having problems with PDF files, we have some basic information available on our website <www.ca5.uscourts.gov> under the clerk's office link. With the new **5TH CIR. R.31.1**, **your briefs must be in a single PDF file and your electronic copy of the brief must have a "cover" sheet identical to the one on the hard copy of your brief.**

Other problems with briefs include:

1. Caption (minor mistakes which indicates attorneys are not reading the briefing notice);
2. Certificate of Interested Parties (for intervenor and amicus briefs);
3. Certificate of Service (briefs are sent in without signatures, are not dated, or are incomplete);
4. Incorrect color of covers in cross-appeal cases, see FED. R. APP. P. 28.1;
5. Record excerpts which exceed the page limits.

2. Your responsibility to review the record on appeal. We continue to see last minute requests for extensions of time to file briefs because counsel "just discovered" that the record on appeal which he or she has had for 30+ days is missing some important material. Counsel have an obligation to review the record immediately on receipt and to notify us and the district court **within 20 days**, *see* **5TH CIR. R. 30.1 and 30.2**, of any errors or missing portions. Your failure to promptly act generally will result in a denial of your extension request. At the point when we can offer an electronic version of the record, there will be even less of an excuse for counsel not checking the record.

3. Internet access to published and unpublished opinions. We have posted current and historical published and unpublished opinions on our Internet website, and offer a service which allows you to receive an e-mail notification whenever new opinions are issued.

4. Your use of electronic records on appeal. We have reached agreement with almost all of our district courts to develop a consecutively paginated electronic record on appeal. When all the district courts come on line with this service we will begin sending you a notice with the briefing schedule and advise you how to access the record electronically for use in writing briefs. Except in extraordinary instances, we would not send you the hard copy of the record.

5. Letter briefs. Occasionally our court will request a "letter" brief from the United States or state attorney general's office in a prisoner habeas case etc. Following the Supreme Court's *Booker* decision, any of you who handle direct criminal cases may receive a request

to file a “supplemental” letter brief. If you have never done one before, you naturally look in the FED. R. APP. P. and 5TH CIR. R. and IOPs for guidance. You will find nothing. A letter brief is a creation of the court in instances where a formal brief is not required. It requires no cover, much less a colored cover, even if it is a “supplemental” letter brief. Although there may be other restrictions, in general a letter brief is a single-spaced letter addressed to the court and somewhere between five to ten pages in length. Frequently the court will ask you to address a specific topic in the letter brief. There is no specified format, you do not need a certificate of interested parties, certificate of compliance, or separate table of authorities, or statement regarding oral argument, etc., but you do need to serve the opposing party. Really this is a pretty easy and informal matter, but if you have questions do not hesitate to contact the clerk’s office.

6. Documents Received from the Court. In part to save money and in part to get you the record on appeal as quickly as possible, we will send both the briefing notice and the record on appeal to you in a single package. Formerly, we often sent the briefing notice in a separate envelope. At least one attorney has come to the court asking for an extension of time to file the brief because, although he received the record in a box, he had not received a separate letter with the briefing notice. He elected not to open the box, anticipating he would receive a separate letter. The moral of the story is to open whatever you get from us when you get it.