

Certificate shall also identify the debtor, the members of the creditor's committee, any entity which is an active participant in the bankruptcy proceedings and other entities whose stock or equity value may be substantially affected by the outcome of the proceedings. Rule 26.1-2 provides that the Certificate "shall be included within the principal brief filed by any party and shall also be included within any petition, answer, motion or response filed by any party" except for motions for procedural orders contemplated by Rule 27-1(c). Rule 26.1-3 provides the format of the Certificate, which should immediately follow the cover page of all papers filed with the court. The IOP applicable to this rule provides that the court will not act on any paper requiring the Certificate, including emergency filings, until the Certificate is filed, except to prevent injustice.

Motions: FRAP 27 and Eleventh Circuit Rule 27-1 govern the filing of motions in the Eleventh Circuit. The mechanics and requirements, including

the form for motions, including emergency motions is found in Eleventh Circuit Rules 27-1(a) and (b). IOP (3) provides for expedited appeals for "good cause" shown.

Briefs: FRAP 28 and Eleventh Circuit Rule 28-1 contain the requirements of appellate briefs. Eleventh Circuit Rule 28-1(i) provides that in the statement of the case, as in all other sections of a party's brief, all assertions regarding matters in the record on appeal shall be supported by citation to that record. "[A]ppropriate statement of facts reflects a high standard of professionalism. It must state the facts accurately, those favorable and those unfavorable to the party. Inferences drawn from facts must be identified as such."¹⁵ A party's brief must contain a Certificate of Compliance, if required by rule.¹⁶ If an appellee is satisfied with the appellant's statement of certain portions of the initial brief, such as the statement of jurisdiction, issues and case, the appellee need not include those sections in her brief.¹⁷

Record Excerpts: Appeals from district courts and tax courts shall be on the original record without the requirement of an appendix as set forth in FRAP 30(a)(1).¹⁸ However, when an appellant files its initial brief, it must file five copies of Record Excerpts, the contents of which are set forth in Eleventh Circuit Rule 30-1. See IOP (1) to 11th Cir. R. 30-1 for the requirements regarding tabs to the Record Excerpts. **Failure of an appellant to file record excerpts with its initial brief may result in dismissal of the appeal.**¹⁹

Serving and Filing Briefs; Extensions: Eleventh Circuit Rule 31-1(a) sets forth the parties' briefing schedule, which may be modified based on the pendency of certain motions set forth in Rule 31-1(c). When the court issues a "jurisdictional question" which seeks written submissions as to whether it has jurisdiction the time for filing briefs is not stayed. Eleventh Circuit Rule 31-2 does provide for ex-

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Some Horror Stories . . .

by Susan W. Fox, Editor

This article, by Paul Arron and Ilyse Homer, is designed to warn you of some traps for the unwary in current practice in the 11th Circuit. This sidebar will relay a few real-life anecdotes so our readers will see what can happen when the 11th Circuit rules are not carefully followed. Unfortunately, the only way to learn of these is first-hand since published opinions usually do not explain procedural dismissals.

Almost anyone who has practiced in the 11th Circuit has seen appeals dismissed for failure to timely file briefs or record excerpts. The only instance in which I have seen the Court grant an exception to its rules was a 7-day extension by telephone requested on the date the brief was due, where the counsel had been in an automobile accident.

In contrast, a pro se claimant

(who previously had won an 11th Circuit appeal granting a motion to dismiss his § 1983 case) filed a 35 page Initial Brief, but failed to file record excerpts in his appeal of an adverse summary judgment. Upon receiving the order of dismissal, he filed record excerpts and moved to reinstate his appeal, pointing out he believed the court still had the record due to the prior appeal. Motion denied; appeal stood as dismissed.

An attorney in another case assumed the court's *sua sponte* issuance of jurisdictional questions tolled the time for filing briefs. The cover letter from the court clearly stated that brief deadlines are *not* tolled. The appeal was dismissed.

An appellant with California counsel called us to ask our help in getting a three week extension of time in an 11th Circuit appeal. We advised the California lawyer that up to seven days is available by tele-

phone if approved by the clerk, but otherwise the 11th Circuit frowned on extensions and all efforts should be made to submit a timely brief. California counsel rejected our suggestion, asked for three weeks extension, which the Court granted much to our surprise (we suspect they were swayed by names of celebrity lawyers making the request). After three weeks, the California counsel wanted our help to get a second extension. We strongly advised against such a motion, but he filed it anyway. The court did not dispose of the motion, but did dismiss the appeal. Motion to reinstate was denied.

A few words to the wise: read all of the appeal instructions sent out by the 11th Circuit, as well as their IOPs; check the website for rule changes; call the clerk assigned to your case if you have questions; and follow the filing deadlines closely and religiously.