

Michael S. Gogola
508 BAY ST APT 7
WAYCROSS GA 31501-6306

February 10, 2005

Appeal Number: 05-10668-DD

Case Style: Michael S. Gogola v. James Zingale

District Court Number: 04-00417 CV-FTM-29-DNF

TO: Michael S. Gogola

CC: Sheryl L. Loesch

CC: Joseph Hwan-Yul Lee

CC: Charlie Crist

CC: Administrative File

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

For rules and forms visit
www.call.uscourts.gov

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THIS CIVIL APPEAL IS GOVERNED BY MORE STRINGENT PROCEDURES FOR REQUESTING EXTENSIONS OF TIME TO FILE BRIEFS AND RECORD EXCERPTS. RULES PROVIDE FOR DISMISSAL WITHOUT FURTHER NOTICE WHEN A BRIEF OR RECORD EXCERPTS IS NOT FILED OR CORRECTED WITHIN THE TIME PERMITTED. PLEASE SEE THE CIRCUIT RULES AT WWW.CALL.USCOURTS.GOV.

The referenced case was docketed in this court on February 9, 2005. Please use the appellate docket number noted above when making inquiries. An appeal may be dismissed for failure to comply with the Federal Rules of Appellate Procedure and the rules of this court. Motions for extensions of time to file a brief are frowned upon by the court.

Pursuant to 11th Cir. R. 12-1, the record in this appeal was deemed completed and filed on the date the appeal was docketed in this court. Eleventh Circuit Rule 31-1 requires that **APPELLANT'S BRIEF AND RECORD EXCERPTS BE SERVED AND FILED WITHIN FORTY (40) DAYS FROM THE DATE THE APPEAL WAS DOCKETED IN THIS COURT.** This is the only notice you will receive concerning the due date for filing briefs and record excerpts. (In cross-appeals pursuant to Fed.R.App.P. 28(h), the party who first files a notice of appeal is the appellant unless the parties otherwise agree.) See Fed.R.App.P. 28, 30, 31 and 32, and the corresponding circuit rules, for further information on preparing briefs and record excerpts.

In addition to providing the required number of paper copies of briefs, all parties (except pro se parties) are required, additionally, to provide briefs in electronic format as described in 11th Cir. R. 31-5 and the enclosed instructions. Electronic briefs must be in Adobe Acrobat® PDF file format. The electronic brief must be completely contained in one PDF file, i.e., cover page through and including the certificate of service. The address wrapper accompanying this letter contains counsel's individual identification number (User ID) for electronic brief uploading. When uploading a brief for the first time, you will be prompted to create a password known only by you for all future uploads.

Counsel who wish to participate in this appeal must complete and return an appearance form within fourteen (14) days. Appearance forms are available on the Internet at www.call.uscourts.gov. The clerk may not accept motions or other filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-1(d).

Sincerely,

The Federal Rules of Appellate Procedure (FRAP), the Eleventh Circuit Rules, and the Internal Operating Procedures (IOPs) are available on the Internet at

www.ca11.uscourts.gov

The court's web site also contains answers to Frequently Asked Questions, and checklists and tables showing FORMAT, COLOR, QUANTITY, TIME, and other requirements for briefs, record excerpts, petitions for rehearing, and petitions for rehearing en banc.

Please see the **Notice of Privacy Policy** on the reverse of this page.

Amendments to the Eleventh Circuit Rules took effect on April 1, 2003, and on January 1, 2003. The revised rules are available on the Internet at **www.ca11.uscourts.gov**. Among the revised circuit rules are provisions that:

- require that the Certificate of Interested Persons (CIP) in the second and all subsequent briefs filed must include only persons and entities omitted from the CIP contained in the first brief filed (and in any other brief that has been filed). See 11th Cir. R. 26.1-1.

Consistent with FRAP 39 and 11th Cir. R. 39-1, the court has established the following maximum rates for taxing the costs of producing necessary copies of a brief, record excerpts, or appendix:

Commercial copying supported by receipts: 25¢ per page or actual cost, whichever is less;

Any other form of copying, no receipt required: 15¢ per page or actual cost, whichever is less.

Pursuant to 11th Cir. R. 39-1, unless advance approval for additional copies is secured from the clerk, costs will be taxed only for the number of copies of a brief, record excerpts, or appendix required by the rules to be filed and served, plus two copies for each party signing the brief.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Notice of Eleventh Circuit Privacy Policy In Compliance with the Judicial Conference Privacy Policy and the E-Government Act of 2002

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

- a. **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- b. **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- c. **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
- d. **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

A party filing a document containing the personal data identifiers listed above shall file a redacted document for the public file and an unredacted document under seal. Both of these documents shall be retained by the court as part of the record.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading for compliance with this rule.

In addition to the foregoing, a party should exercise caution when filing documents that contain the following:

- Personal identifying number, such as driver's license number;
- medical records, treatment and diagnosis;
- employment history;
- individual financial information; and
- proprietary or trade secret information.

BRIEFS CHECKLIST

CASE NUMBER:

Pro Se IFF: 4 copies Other: Original + 6 copies (7 total)

FORMAT	Appellant Blue	Appellee Red	Aple/X-Aplt Opening Red	Aplt/X-Apte Response Red	Reply Gray	Amicus Green
Cover Colors						
Securely Bound and No Exposed Metal						
Durable Covers						
Length	30/14,000/1,300	30/14,000/1,300	30/14,000/1,300	30/14,000/1,300	15/7,000/650	15/7,000/650
Pages Numbered						
Typeface (14 pt. proportional or 10.5/inch)						
Type Style (plain, roman)						
Double Spacing (except quotes, headings, footnotes)						
Margins (1 inch all 4 sides)						
CONTENTS						
Cover Page:						
Court Name/Case #						
Title of the Case						
Appealed From						
Title of Brief/Who Filed						
Attorney Information						
Certificate of Interested Persons				NO	NO	
Statement Regarding Oral Argument	Wants O/A?	Wants O/A?	Wants O/A?	NO	NO	NO
Table of Contents (w/page references)						
Table of Citations (w/page references)						
Statement re Adoption (option)						
Statement of Jurisdiction				NO	NO	NO
*Statement of the Issues				NO	NO	
Statement of the Case				NO	NO	NO
Summary of the Argument				NO	NO	
Argument/Citations of Auth.						
Conclusion				NO	NO	
Certificate of Compliance (if necessary)						
Certificate of Service						
Date checked and by Whom:						

page and type-volume limitations begin here and continue through Conclusion.

RECORD EXCERPTS CHECKLIST

- | | |
|---|--|
| <input type="checkbox"/> Prisoner Pro Se: None required | <input type="checkbox"/> Durable White Covers (front & back) |
| <input type="checkbox"/> Pro Se IFP: 1 copy required | <input type="checkbox"/> Index |
| <input type="checkbox"/> Other: 5 copies required | <input type="checkbox"/> Indexing Tabs |
| | <input type="checkbox"/> Certificate of Service |

DISTRICT COURT AND TAX COURT APPEALS:

- _____ 1. District Court or Tax Court docket sheet (including bankruptcy docket sheet)
- _____ 2. Indictment, information, complaint or petition as amended
- _____ 3. Answer, response, counterclaim, cross-claim, and replies thereto
- _____ 4. Parts of any pretrial order relative to issues on appeal
- _____ 5. Judgment or interlocutory order appealed from
- _____ 6. Other order(s) sought to be reviewed (including bankruptcy orders)
- _____ 7. Supporting opinion, findings of fact and conclusions of law filed or delivered orally by the court
- _____ 8. Jury instruction (if correctness in issue)
- _____ 9. Magistrate's report and recommendation, when appealing a court order adopting same in whole or in part
- _____ 10. Findings and conclusions of administrative law judge, when appealing a court order reviewing administrative agency determination
- _____ 11. Relevant parts of any document ... whose interpretation is central to the issues on appeal

AGENCY:

- _____ 1. Agency docket sheet or index of documents comprising the record, if one exists
- _____ 2. Order sought to be reviewed
- _____ 3. Supporting opinion, findings of fact and conclusions of law filed by the agency, board, commission or officer

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT
FORMAT CHECKLIST**

- _____ Alphabetical listing
- _____ One column
- _____ Double-spaced
- _____ Court of Appeals docket number at top of *each* page
- _____ Short style at top of *each* page
- _____ Pagination indicates total number of pages comprising Certificate

Date Checked: _____

Checked by: _____

INSTRUCTIONS ON MAKING PROPER RECORD REFERENCES

11th Cir. R. 28-4, References to the Record, provides that "References to the record in a brief shall be to volume number (if available), document number, and page number. A reference may (but need not) contain the full or abbreviated name of a document."

Record references to pleadings and other court papers may be made by referring to the volume number (if available), document number, and page number within the document. Volume numbers (if available) and document numbers (which are sequential and entered near the left margin) are shown on the district court docket sheet. If any of the document numbers are circled, only those documents which have circled numbers are included in the record sent to the court of appeals. If no document numbers are circled, all filings bearing document numbers are included in the record sent to the court of appeals. For example:

If volume numbers *are* available, the reference R4-9-6 indicates:

R	4	-	9	-	6
Record	Volume		Document		Page
Reference	Number		Number		Number

If volume numbers are not available, the reference should be to the Document Number and the Page Number. For example, Doc 47 - Pg 5 indicates Document Number 47, Page 5.

If the district court docket sheet indicates that the court *has* assigned volume numbers to transcripts, record references to transcripts may be cited by referring to the volume number assigned by the court and written in the margin next to the docket entry filing the transcript, and the page number. For example, the reference R8-32 indicates:

R	8	-	32
Record	Volume		Page
Reference	Number		Number

[NOTE: DO NOT REFER TO TRANSCRIPTS BY THE VOLUME NUMBER WHICH WAS ASSIGNED BY THE COURT REPORTER. Only use the volume number assigned by the court and written in the margin next to the docket entry filing the transcript.

Transcript volume numbers usually follow in sequence after the final volume of pleadings and other court papers, and are numbered in chronological order by date of hearing.]

If volume numbers have not yet been assigned to transcripts by the court, record references to transcripts should be to the document number and page number. For example, Doc 83 - Pg 65 indicates Document Number 83 (a transcript), Page 65.

Use the designation SR preceded by the supplement number when referencing a Supplemental Record (e.g., 1SR, 2SR, etc.).

SAMPLE CERTIFICATE OF COMPLIANCE REQUIRED BY FRAP 32(a)(7)(C)

If your principal brief exceeds 30 pages or your reply brief exceeds 15 pages, you must include a certificate of compliance within the brief, immediately preceding the certificate of service. You may use the following certificate:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains _____ words.

Or, if you are using a monospaced face, you may instead use the following certificate:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief uses a monospaced face and contains _____ lines of text.

With either certificate, you must fill in the blank line; you may rely on the word or line count of the word-processing system used to prepare the brief. _____

11th Cir. R. 42-1 Dismissal of Appeals.

(a) Dismissal by Appellant or Petitioner. Such motions to dismiss shall indicate whether the dismissal is sought with or without prejudice. If an appellant or petitioner files an unopposed motion to dismiss an appeal or agency review proceeding without prejudice, the clerk may dismiss the appeal or petition and in such circumstances will issue a copy of the order as and for the mandate.

(b) Dismissal for Failure to Prosecute. Except as otherwise provided for briefs and record excerpts in civil appeals in 11th Cir. R. 42-2 and 42-3, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to seek such relief by filing timely an appropriate motion will result in dismissal for want of prosecution.

The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or record excerpts, but if the court denies such leave after the expiration of the due date for filing the brief and record excerpts, the clerk shall dismiss the appeal forthwith. The clerk shall not dismiss an appeal during the pendency of a timely filed motion to file documents out of time or otherwise remedy the default which is accompanied by the brief or other required papers, but if the court denies such leave the clerk shall dismiss the appeal forthwith.

If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action against counsel in lieu of dismissal.

(c) Mandate. A copy of an order dismissing an appeal for want of prosecution shall be issued to the clerk of the district court as the mandate.

11th Cir. R. 42-2 Dismissal in a Civil Appeal for Appellant's Failure to File Brief or Record Excerpts by Due Date.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals. A civil appeal is any appeal that is not a direct appeal of a judgment or sentence in a criminal case. Civil appeals include bankruptcy appeals, Tax Court appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered.

(b) Notice of Due Date for Filing Brief and Record Excerpts. Eleventh Circuit Rule 31-1 establishes the due date for filing a brief and record excerpts. To facilitate compliance, the clerk will send counsel and pro se parties a notice confirming the due date for filing appellant's brief and record excerpts consistent with 11th Cir. R. 31-1, including therein a reminder of the consequences of default. However, delay in or failure to receive such notice does not affect the obligation of counsel and pro se parties to file a brief within the time permitted by the rules.

(c) Dismissal Without Further Notice. When an appellant has failed to file the brief or record excerpts by the due date as established by 11th Cir. R. 31-1 and set forth in the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to file appellant's brief or record excerpts, but if the court denies such leave after the expiration of the due date for filing the brief or record excerpts, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the timely filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required brief and record excerpts. Such a motion showing extraordinary circumstances, accompanied by the required brief and record excerpts, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required brief and record excerpts, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in

(f) Failure of Appellee to File Brief by Due Date. When an appellee fails to file a brief by the due date as established by 11th Cir. R. 31-1, or, if the due date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

11th Cir. R. 42-3 Dismissal in a Civil Appeal for Appellant's Failure to Correct a Deficiency in Briefs or Record Excerpts Within 14 Days of Notice.

(a) Applicability of Rule. The provisions of this rule apply to all civil appeals. A civil appeal is any appeal that is not a direct appeal of a judgment or sentence in a criminal case. Civil appeals include bankruptcy appeals, Tax Court appeals, appeals in cases brought pursuant to 28 U.S.C. §§ 2254 and 2255, review of agency orders, and petitions for extraordinary writs when briefing has been ordered.

(b) Notice to Correct a Deficiency in Briefs or Record Excerpts. If briefs or record excerpts do not comply with the rules governing the form of briefs and record excerpts, the clerk will send counsel and pro se parties a notice specifying the matters requiring correction, along with a reminder of the consequences of failure to correct timely all deficiencies. A complete corrected set of replacement briefs or record excerpts must be filed in the office of the clerk within 14 days of the date of the clerk's notice.

(c) Dismissal Without Further Notice. When an appellant has failed to correct the brief or record excerpts within 14 days of the clerk's notice, or, if the due date has been extended by the court, within the time so extended, an appeal shall be treated as dismissed for failure to prosecute on the first business day following the due date. The clerk thereafter will enter an order dismissing the appeal and mail a copy of that order to counsel and pro se parties. If an appellant is represented by appointed counsel, the clerk may refer the matter to the Chief Judge for consideration of possible disciplinary action in lieu of dismissal.

(d) Effect of Pending Motion to Extend Time. The clerk shall not dismiss an appeal during the pendency of a timely filed motion for an extension of time to correct a deficiency in appellant's brief or record excerpts, but if the court denies such leave after the expiration of the due date for correcting a deficiency in the brief or record excerpts, the clerk shall dismiss the appeal.

(e) Motion to Set Aside Dismissal and Remedy Default. An appeal dismissed pursuant to this rule may be reinstated only upon the filing of a motion to set aside the dismissal and remedy the default showing extraordinary circumstances, accompanied by the required corrected brief or record excerpts. Such a motion showing extraordinary circumstances, accompanied by the required corrected brief or record excerpts, must be filed within 14 days of the date the clerk enters the order dismissing the appeal. The timely filing of such a motion, accompanied by the required corrected brief or record excerpts, and a showing of extraordinary circumstances, is the exclusive method of seeking to set aside a dismissal entered pursuant to this rule. An untimely filed motion to set aside dismissal and remedy default must be denied unless the motion demonstrates extraordinary circumstances justifying the delay in filing the motion, and no further filings shall be accepted by the clerk in that dismissed appeal.

(f) Failure of Appellee to File Corrected Brief Within 14 Days of Notice. When an appellee fails to file a corrected brief within 14 days of the clerk's notice, or, if that date has been extended by the court, within the time so extended, the appeal will be submitted to the court for decision without further delay, and the appellee will not be heard at oral argument (if oral argument is scheduled to be heard) unless otherwise ordered by the court.

* * * *

END OF ENCLOSURE