

Focus on Local Practice:

New Certification Required in 2nd Circuit

By Hal Odom, Jr.

The 2nd Circuit Court of Appeal has adopted a new rule for briefs filed in that court. Effective May 31, 2017, the new rule states:

Local Rule 15. BRIEFS – Certification for attachments

All appeal briefs shall contain the following certification:

I hereby verify that all attachments to this brief have previously been duly filed and/or accepted into evidence in the lower court, to the best of my knowledge, information and belief. I understand that failure to comply with this local rule may result in the refusal to consider said attachments. *WILLFUL FAILURE TO COMPLY WITH THIS LOCAL RULE MAY SUBJECT ME TO PUNISHMENT FOR CONTEMPT OF COURT.*

The court has concurrently amended Local Rule 2-5, “Rejection of briefs not in compliance with URCA,” to provide that the 2nd Circuit clerk of court may reject a brief for noncompliance with Local Rule 15. Further, if a brief is rejected and the party subsequently corrects the insufficiency and resubmits the brief for filing within *seven days* from the date of rejection or by the current brief due date, whichever is greater, the brief will be considered timely for purposes of oral argument only. Previously, the resubmission time was only five days.

“This certification is required, even if there are no attachments to the brief,” said 2nd Circuit Clerk of Court Lillian Evans Richie. While she would not call it a serious problem, there have been “situ-

ations in which attachments to briefs are not in evidence in the record. This has been done in the past by attorneys and pro se litigants alike.”

Rule 15 is intended to effectuate the principle that appellate courts are “courts of record and may not review evidence that is not in the appellate record, or receive new evidence.” *Denoux v. Vessel Mgmt. Servs. Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84. Legislative authority is drawn from La. C.C.P. art. 2164, authorizing the appellate court to render any judgment “which is just, legal, and proper *upon the record on appeal*” (emphasis added).

The 2nd Circuit has recently noted that documents attached to memoranda do not constitute evidence and cannot be considered as such on appeal. *Zeno v. Great Southern Coaches of Ark.*, 51,370 (La. App. 2 Cir. 5/17/17), ___ So.3d ___; *Gilley v. Gilley Enters. Inc.*, 51,328 (La. App. 2 Cir. 5/2/17), ___ So.3d ___; *Swaggart v. Doe*, 50,739 (La. App. 2 Cir. 4/5/17), ___ So.3d ___.

There is no equivalent rule in either the Uniform Rules of Courts of Appeal or in the local rules of any other court of appeal.

Richie said that, as of May 31, 2017, the clerk’s office began screening all briefs for the certificate and would reject any that leave it out. She added, however, “We will *not* examine attachments for compliance — hence the certification. The new rule puts the burden on the filer and provides possible consequences.”

Practitioners who anticipate coming to the 2nd Circuit should add this certificate to their checklist and save Local Rule 15’s text to their standard language file. The complete local rules can be accessed at www.la2nd.org/local_rules.

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