

REQUIREMENTS FOR COMPLIANT BRIEFS AND APPENDICES

BRIEFS

Typeface:

FRAP 32(a)(5)

Briefs must be produced using either:

- 14 point, proportional typeface, such as Times New Roman, or
- 12 point, monospaced typeface, such as Courier.

*Sans-serif type, such as Arial, may not be used except in captions and headings.

Length:

FRAP 32(a)(7)

A principal brief must not exceed:

- 30 pages (unless accompanied by a certificate of compliance); *or*
- 14,000 words; *or*
- 1,300 lines (line count may be used ONLY for briefs prepared in monospaced type.)

A reply brief must not exceed:

- 15 pages (unless accompanied by a certificate of compliance); *or*
- 7,000 words; *or*
- 650 lines (line count may be used ONLY for briefs prepared in monospaced type.)

*Headings, footnotes and quotations count towards the word and line limitations. The corporate disclosure statement, table of contents, table of authorities, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count towards the length limitations.

Certificate of Compliance:

FRAP 32(a)(7)(C)

A principal brief that exceeds 30 pages *and* a reply brief that exceeds 15 pages *must* include a certificate of compliance certifying that the brief complies with the typeface and length limitations of FRAP 32(a)(7). The certificate must contain the exact word or line count.

Reproduction:

FRAP 32(a)(1)

- A brief must be reproduced by a process that yields a clear black image on light paper, that is opaque and unglazed.
- Only one side of the paper may be used.

Paper Size, Line Spacing, and Margins:

FRAP 32(a)(4)

- Briefs must be on 8 ½ by 11" paper.
- 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 margins, but no text may appear there.

Appellant's brief must contain, under the appropriate heading and in the order indicated:

FRAP 28(a), Local Rule 28.0

- **Corporate Disclosure Statement**, if required by Rule 26.1.
 - **Table of Contents**, with page references.
 - **Table of Authorities**, cases (alphabetically arranged), statutes, and other authorities - with references to pages of the brief where they are cited.
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- **Jurisdictional Statement**, including (i) the basis for the district court's or agency's subject matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction; (ii) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction; (iii) the filing dates establishing the timeliness of the appeal or the petition of review; and (iv) an assertion that the appeal is from a final order or judgment that disposes of all the parties' claims or information establishing the court of appeals' jurisdiction on some other basis.
 - **Statement of the Issues**, presented for review.
 - **Statement of the Case**, briefly indicating the nature of the case, the course of the proceedings, and the disposition below.
 - **Statement of Facts**, relevant to the issues submitted for review with appropriate references to the record.
 - **Summary of the Argument**, which must contain a succinct, clear and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings.
 - **Argument**. The argument section is comprised of the standard of review and the discussion of the issues.
 - **Standard of Review**. For each issue, a concise statement of the applicable standard of review must be included. This statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues.
 - **Discussion of the Issues**. Appellant's contentions and the reasons for them, with citations to the authorities and appendix references on which appellant relies.
 - **Conclusion**, briefly stating the precise relief sought.
 - **Certificate of Compliance**, if required by Rule 32(a)(7).
 - **Certificate of Service**, with addresses.

- **Addendum.** The brief of the Appellant *must* include an addendum containing the following:
 The judgments, decisions, rulings or orders appealed from, including supporting explanation (e.g., a written or transcript opinion), and in addition, where the district court or agency whose decision is under review was itself reviewing or acting upon the decision of a lower-level decision-maker, that lower-level decision as well (e.g., a recommended decision by a magistrate judge or an initial decision by an administrative law judge). If the decision appealed from is a text-only entry upon a docket report, a copy of the relevant entry or page of the docket report should be provided.
 Parties are encouraged, but not required, to include the following additional materials in the addendum:
 Other items or short excerpts from the record that are either the subject of an issue on appeal (e.g., disputed jury instructions or disputed contractual provisions) or necessary for understanding the specific issues on appeal, up to 25 pages in total. Statutes, rules, regulations, etc. included as part of the addendum pursuant to Fed. R. App. P. 28(f) do not count towards this page limit.
 - * Submit sealed or non-public items - - including a presentence investigation report or statement of reasons in a judgment of criminal conviction - - in a separate, sealed addendum.
 - * The addendum shall be bound at the rear of the appellant's brief. It must begin with a table of contents.
 - * The appellee's brief may include an addendum to incorporate materials omitted from the appellant's addendum, subject to the same limitations on length and content.

Appellee's brief must contain, under the appropriate heading and in the order indicated: FRAP 32(b)

- **Corporate Disclosure Statement**, if required by Rule 26.1
- **Table of Contents**
- **Table of Authorities**
- **Summary of the Argument**
- **Argument**
- **Conclusion**
- **Certificate of Compliance**, if required by Rule 32(a)(7).
- **Certificate of Service**, with addresses.

A Reply Brief must contain: FRAP 32(c)

- **Table of Contents**, with page references.
- **Table of Authorities**, with page references.
- **Certificate of Compliance**, with typeface and length limitations of FRAP 32(a).
- **Certificate of Service**, with addresses.

APPENDICES

Organization:

FRAP 30

- The appellant must file an appendix containing all portions of the record necessary for review of the matters presented.
- References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix.
 - When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages.
Example: [8] 12 → (page 8 being the transcript page, page 12 being the appendix page)
- Only one side of the paper may be used in the reproduction of the appendix.

Contents:

FRAP 30

- **Table of Contents**, with page numbers.
- **Relevant Docket Entries**
- **Relevant portions of the pleadings, charge, findings, or opinion**
- **Judgment, Order, or Decision in question**
- **Other parts of the record to which the parties wish to direct the court's attention**

Deferred Appendix:

FRAP 30(c)

The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

GENERAL PROVISIONS

Sealed Materials:

Local Rule 11.0

Briefs are public documents and will not be sealed absent timely motion. Sealed or non-public documents - - including a presentence investigation report or statement of reasons in a judgment of criminal conviction - - should not be included in a public addendum. Briefs and appendices including such materials will be deemed noncompliant. However, these materials may be filed in a separate volume clearly marked "SEALED."

Cover:

FRAP 32 (a); FRAP 32 (b)

Briefs and appendices must have covers, which are color coded as follows:

- **Appellant's Brief:** Blue
- **Appellee's Brief:** Red
- **Reply Brief:** Gray
- **Appendix:** White
- **Intervenor's or Amicus Curiae's:** Green
- **Supplemental Brief:** Tan

The front cover of the brief and appendix must be labeled with the following information:

- **Number of the Case**, centered at the top
- **Name of Court**
- **Title of Case**
- **Nature of the proceeding and the name of court, agency, or board below**
- **Title of the Brief or Appendix**, identifying the party or parties for whom the brief or appendix is filed.
- **Name, address, and telephone number of counsel representing the party for whom the brief or appendix is filed.**

Binding:

FRAP 32 (a)(3)

- Briefs and appendices must be bound in a manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

Copies:

FRAP 31; Local Rules 30.0, 31.0 and 32.0

- **Represented parties:** 9 paper copies of the brief and a computer readable disk containing the entire brief in a single electronic file in Portable Document Format (PDF). 5 copies of the appendix.
- **Represented parties proceeding in forma pauperis and/or with CJA counsel:** Same as above, except that an appendix is not required.
- **Pro se parties:** 10 paper copies of the brief. 5 copies of the appendix.
- **Pro se parties proceeding in forma pauperis:** 4 paper copies of the brief. An appendix is not required.

Disk:

Local Rule 32.0

- When a party is represented by counsel, one copy of its brief must be submitted on a computer readable disk.
- The disk shall contain the entire contents of the brief, cover to cover, in a single electronic file.
- The brief on disk must be in Portable Document Format (PDF).
- The disk must contain a label identifying the case name, docket number, brief being filed, and file format.

Joinder:

FRAP 28(i)

In a case involving multiple appellants or appellees, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply.

Cross-Appeals:

FRAP 28.1

- When there are cross-appeals filed in a single case, the party who first files a notice of appeal, or in the event that notices are filed on the same day, the PLAINTIFF in the proceedings below, is the APPELLANT unless the parties otherwise agree or the Court otherwise orders.

A sample cross-appeal briefing schedule with format and content requirements follows:

BRIEF	BRIEF COVER Fed. R. App. P. 28.1(d)	LENGTH LIMIT Fed. R. App. P. 28.1(e)	DUE DATE Fed. R. App. P. 28.1(f)
<u>First Brief</u> Appellant/Cross-Appellee's PRINCIPAL BRIEF	Blue	30 PAGES <i>or</i> 14,000 WORDS/ 1,300 LINES (monospaced text only)	40 days after record is complete or date set by Clerk's Office
<u>Second Brief</u> Appellee/Cross-Appellant's PRINCIPAL/RESPONSE BRIEF	Red	35 PAGES <i>or</i> 16,500 WORDS/ 1,300 LINES (monospaced text only)	30 days later
<u>Third Brief</u> Appellant/Cross-Appellee's RESPONSE/REPLY BRIEF	Yellow	30 PAGES <i>or</i> 14,000 WORDS/ 1,300 LINES (monospaced text only)	30 days later
<u>Fourth Brief</u> Appellee/Cross-Appellant's REPLY BRIEF	Grey	15 PAGES <i>or</i> 7,000 WORDS/ 650 LINES (monospaced text only)	14 days later

Amicus Curiae Brief:

FRAP 29

When Permitted:

- (1) The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an Amicus Curiae without consent of the parties or leave of the court.
- (2) Consent by all parties, or
- (3) Leave of the court:
The motion requesting leave to file an Amicus Curiae brief must state:
 - (i) the movant's interest, and
 - (ii) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

An Amicus Curiae brief need not comply with Rule 28, but must include:

- **Table of Contents**, with page references;
- **Table of Authorities**, cases (alphabetically arranged), statutes and other authorities, with references to the pages of the brief where they are cited;
- **Concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;**
- **Argument**, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and
- **Certificate of Compliance**, if required by Rule 32(a)(7).

Length: An amicus brief may not exceed 15 pages or 7,000 words/650 lines (monospaced text only).

Time for Filing:

- An amicus curiae must file its brief no later than 7 days after the principal brief of the party being supported is filed.
- An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed.

Reply Brief: Except by the court's permission, an amicus curiae may not file a reply brief.

Oral Argument: An amicus curiae may participate in oral argument only with the court's permission.

Intervenor's Brief:

FRAP 28

- Unless a statute provides another method, a motion for leave to intervene must be filed with the court of appeals. The motion to intervene should indicate on which side the movant proposes to intervene.
 - ★ The intervenor's brief should be filed at the same time as the side on whose behalf they have intervened.
 - ★ **Form and Content:** The intervenor's brief shall comply with the same rules for an appellant or appellee depending on which side the parties has intervened.

- **NOTE:** A party who appeared as an intervenor in a lower court proceeding shall not be considered an intervenor in this court, but rather a party to the appeal.

Motions to enlarge time to file briefs or to file briefs in excess of applicable length limitations are discouraged. Any such request must be made by a motion filed well before the deadline for filing the brief, and, in the case of motions for leave to file an oversized opening brief, must be filed at least ten calendar days in advance, see Loc. R. 32.4.

The following, however, are examples of motions that may accompany briefs:

- **Motions to Accept Brief Instanter:** If a deadline has passed, a party may submit the brief accompanied by a motion asking permission to accept brief out of time for good cause shown.
- **Motions to File a Supplemental Appendix:** If the appellee needs to include additional parts of the record in the appendix, a motion to file a supplemental appendix must be filed, certifying that all the material included in the appendix is a part of the record.
- **Motions to file an Oversized Addendum:** If an addendum exceeds the 25 page limit (exclusive of the judgments, decisions, rulings or orders appealed from; any lower-level decisions; and statutes, rules, regulations, etc. included pursuant to Fed. R. App. P. 28(f)), a motion to file an oversized addendum must accompany the brief.