

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE TENTH CIRCUIT

**Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
www.ca10.uscourts.gov**



GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming

INTRODUCTION

This serves only as a quick reference guide for filing Briefs and Appendices. **THE QUICK GUIDE SERIES** outlines procedures on how documents should be sequenced, paginated, indexed, titled, printed and bound. In addition, it contains formatting requirements for Briefs as well as information on service and filing deadlines. Please call Record Press for clarification, and our expert staff of attorneys and paralegals will assist you. For a comprehensive reference, consult the actual rules of the court, which can be downloaded from the court's Website at www.ca10.uscourts.gov.

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Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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NEW YORK SUPREME COURT Appellate Division—First Department Appellate Division—Second Department Appellate Division—Third Department Appellate Division—Fourth Department Appellate Term—First Department Appellate Term—Second Department	UNITED STATES COURT OF APPEALS First Circuit Second Circuit Third Circuit Fourth Circuit Fifth Circuit Sixth Circuit Seventh Circuit Eighth Circuit Ninth Circuit Tenth Circuit Eleventh Circuit Federal Circuit District of Columbia Circuit
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APPENDIX

10th Circ. R. 30 and R. 10.3

The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record because the entire record is available to the Court. This paragraph applies also to a cross-appellant and a cross-appellee. The appellant must file an appendix sufficient for considering and deciding the issues on appeal.

The appendix must include: index of documents in the appendix; district court docket entries; last amended complaint and answer, in criminal appeals the indictment; pretrial order; pertinent written reports and recommendations, findings, opinions and orders; in a social security appeal—the entire administrative record; jury instructions; any other parts of the record to which the parties wish to direct the particular attention of the court; decision, order or judgment appealed from; and the notice of appeal. Memoranda of law and certificates of service should not be included without the court's permission.

Documents should be arranged in chronological order according to the filing date. Exhibits and transcript excerpts should be at the end. A copy of the district court's docket entries should always be the first document in the appendix. Copies of the documents should show the district court's file or electronic stamp, but they need not be certified. The appendix must be paginated consecutively and must include an index of documents, with the page numbers where they appear. Copies of documents under seal in the district court, such as presentence reports, should be filed in a separate volume, under seal.

The appellant must file two separately bound copies of the appendix with the opening brief. One copy of the appendix must be served on every other party to the appeal.

An appellee who believes that the appellant's appendix omits items that should be included may file a supplemental appendix. No other appendix may be filed except by order of the court.

Pursuant to FRAP 32(a), the appendix shall be printed one-sided.

10th Cir. R. 10

In appeals in which any appellant is represented by appointed counsel—including companion and consolidated appeals—a designation of record must be filed in the district court. No Rule 30.1 appendix is required.

BRIEFS FRAP 28

Appellant's Brief

- (1) Corporate disclosure statement (Mandatory for all corporate parties)
- (2) Table of contents
- (3) Table of authorities
- (4) Statement of related cases
- (5) Jurisdictional statement
- (6) Statement of issues presented for review
- (7) Statement of the case
- (8) Statement of the facts
- (9) Summary of argument
- (10) Argument (Standard of Review)
- (11) Conclusion (Signature of counsel required)
- (12) Statement regarding oral argument
- (13) Certificate of compliance
- (14) Certificate of Digital Submission
- (15) Certificate of service
- (16) Addendum (See 10th Cir. R. 28.2(A))

Appellee's Brief

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(16), except that a jurisdictional statement, statements of the issues, case, facts or standard of review need not be made unless the appellee is dissatisfied with the statements of the appellant.

Reply Brief

All reply briefs shall contain a certificate of compliance (if over 15 pages), a table of contents, a table of authorities, certificate of digital submission and certificate of service.

10th Cir. R. 28 Covers for Briefs

The front cover of each party's first brief must state whether oral argument is requested. If argument is requested, a statement of the reasons why argument is necessary must follow the brief's conclusion. The front cover of each brief must contain the name of the court and the judge whose judgment is being appealed.

10th Cir. R. 28.2 Addendum to Briefs

- (A) Appellant's brief. In addition to all other requirements of the Federal Rules of Appellate Procedure and these rules, the appellant's brief must include the following (even though they are also included in the appendix):
- (1) copies of all pertinent written findings, conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge (if the district court adopts a magistrate's report and recommendation, that report must also be included);
 - (2) if any judicial pronouncement listed in (1) is oral, a copy of the transcript pages;
 - (3) in social security cases, copies of the decisions of the administrative law judge and the appeals council; and
 - (4) in immigration cases, a copy of the transcript from the Immigration Judge's oral ruling, plus copies of the written rulings of the Immigration Judge and the Board of Immigration Appeals.
- (B) Appellee's brief. If the appellant's brief fails to include all the rulings required by (A), the appellee's brief must include them.

FRAP 32(a) Form of Briefs

(1) Reproduction

- (A) The paper must be opaque and unglazed. Only one side of the paper may be used.

- (B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
- (C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover

The cover of the appellant's brief must be blue; the appellee's red; an intervenor's or amicus curiae's green; and reply brief gray. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case;
- (D) the nature of the proceeding and the name of the court, agency or board below;
- (E) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

NOTE: See 10th Cir. R. 28 regarding additional information needed on the cover.

(3) Binding

The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins

The brief 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.

(5) Typeface

Either a proportionally spaced (i.e. Times Roman) or a monospaced (i.e. Courier) typeface may be used.

(A) A proportionally spaced typeface must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced typeface must be 14-point or larger.

NOTE: The court prefers 14 point type, but 13-point type is acceptable (10th Cir. R. 32.1).

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) Type Styles

A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length

(A) *Page limitation* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) *Type-volume limitation*

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

- (iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.
- (C) *Certificate of compliance* A brief submitted under Rule 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:
 - (i) the number of words in the brief; or
 - (ii) the number of lines of monospaced type in the brief.

REQUIREMENTS FOR TYPOGRAPHY IN BRIEFS

Federal Rule of Appellate Procedure 32(a) contains detailed requirements for the production of briefs. FRAP 32(a) is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of a brief. The following information may help you better understand FRAP 32(a) and associated local rules.

1. FRAP 32(a)(1)(B) requires text to be reproduced with “a clarity that equals or exceeds the output of a laser printer.” The resolution of a laser printer is expressed in dots per inch. First generation laser printers broke each inch into 300 dots vertically and horizontally, creating characters from this 90,000-dot matrix. Second generation laser printers use 600 or 1200 dots per inch in each direction and thus produce a sharper, more easily readable output; commercial typesetters use 2400 dots per inch.

Any means of producing text that yields 300 dots per inch or more is acceptable. Daisy-wheel, typewriter, commercial printing, and many ink-jet printers meet this standard, as do photocopies of originals produced by these methods. Dot matrix printers and fax machines use lower resolution, and their output is unacceptable.

2. FRAP 32(a)(5) distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. A monospaced face, by contrast, uses the same width for each character. Most typewriters produce monospaced type, and most computers also can do so using fonts with names such as “Courier” or “Courier New.” The rule leaves to each lawyer the choice between proportional and monospaced type.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. The next line shows two characters enlarged for detail. The first has serifs, the second does not.



Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of briefs to serif type, although sans-serif type may be used in headings and captions.

This sentence is in New Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, Georgia, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial, Eurostile, Trebuchet, Univers, and Verdana are other common sans-serif faces.

Type must be large enough to read comfortably. For a monospaced face, this means type approximating the old “pica” standard used by typewriters, 10 characters per horizontal inch, rather than the old “elite” standard of 12 characters per inch. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, FRAP 32(a)(5)(B) allows up to 10½ characters per inch, including punctuations and spaces.

Proportionally spaced characters vary in width, so a limit of characters per line is not practical. Instead FRAP 32(a)(5)(A) requires a minimum of 14-point type. Local rules may vary. “Point” is a printing term for the height of a character. Word processing and page layout programs can expand or condense the type using tracking controls, or you may have access to a condensed version of the face. Do not use these. Condensed type is prohibited by FRAP 32(a)(6). It offers no benefit to counsel under an approach that measures the length of briefs in words rather than pages, and it is to your advantage to make the brief as legible as possible.

This is 9-point type.

This is 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

3. FRAP 32(a)(6) provides that the principal type must be a plain, roman style. In other words, the main body of the document cannot be bold, italic, capitalized, underlined, narrow, or condensed. This helps to keep the brief legible. Italics or underlining may be used only for case names or occasional emphasis. Boldface and all-caps text should be used sparingly.

4. FRAP 32(a)(7) determines the maximum length of a brief. The variability of proportionally spaced type makes it necessary to express this length in words rather than pages.

Lawyers who choose monospaced type may avoid word counts by counting lines of type. Unless the brief employs a lot of block quotes or footnotes it will be enough to count pages and multiply by the number of lines per page. (Fifty pages at 26 lines per page is 1,300 lines.) The line-count option is not available when the brief uses proportional type.

For most courts, principal briefs of 30 pages or less, and reply briefs of 15 pages or less, need not be accompanied by a word or line count. Think of FRAP 32(a)(7)(A) as a safe harbor. Lawyers who need more should use FRAP 32(a)(7)(B). A brief that meets the type volume limitations of FRAP 32(a)(7)(B) is acceptable without regard to the number of pages it contains, as long as it is accompanied by a signed certificate of compliance.

TIME SCHEDULE

10th Cir. R. 31

The court of appeals clerk does not issue a scheduling order for the parties. The parties must calculate the due dates. In cases where all parties are represented by retained counsel, appellant's opening brief must be filed within 40 days after the date on which the district court clerk notifies parties and the court of appeals clerk that the record is complete for purposes of appeal. The appellee's brief is due within 30 days after service of the appellant's brief. Reply brief is due within 14 days of service of the appellee's brief.

FILING AND SERVICE

FRAP 25

Service and filing of briefs and appendices may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days. Filing and service by mail or by commercial carrier is complete on mailing or delivery to the carrier. If the documents are sent by mail or third-party commercial carrier, three days shall be added to the service date.

ELECTRONIC FILING

10th Cir. R. 25.5

As authorized by Fed. R. App. P. 259(a)(2)(d), the court adopts an Electronic Case Filing system. All counsel are required to submit all pleadings as attachments to emails to esubmission@ca10.uscourts.gov. The only exceptions will be appendices (including those filed per 10th Circuit Rule 9.2(B)), supplemental appendices, and addenda filed under Federal Rule of Appellate Procedure 28(f).

All pleadings must be filed in Portable Document Format (PDF or Acrobat format, sometimes referred to as Native PDF). Native PDF files are generated from original word processing files and are text

searchable. PDF images created by scanning documents will not be accepted. Digital Submitters should be aware there is a 45 megabyte limit per email (including all text, attachments etc.).

Briefs

Counsel must furnish the full contents of briefs (from cover through conclusion) in digital form. Any attachment(s) to a brief available in digital form (native PDF) must be included with the brief in the same document (that is, if the attachments required under 10th Cir. R. 28.2 are in Native PDF they may be included with the brief in a single document and e-filed). Required attachments to briefs that are not available in Native PDF may be submitted in scanned PDF format. In that instance, however, the attachments should be forwarded as a single, separate PDF document. If some of the attachments are available in Native PDF and some are not, all the attachments should be scanned as one document and attached separately in the e-submission. If a brief has PDF attachments the cover page must so state. The cover must also state whether the attachments are included in Native PDF or scanned PDF. Within 2 business days of submitting the brief via e-filing, counsel must also file an original and 7 hard copies of the brief with the clerk's office. Briefs may contain hyperlinks to cases and authorities.

All other pleadings

Counsel must submit all other pleadings via email as well. This includes all preliminary pleadings and materials, motions, notices, petitions for rehearing, cost bills and submissions per Federal Rule of Appellate Procedure 28j. The only materials which may not be submitted via email are appendices and addenda. Documents attached to pleadings that are not available in Native PDF may be submitted in scanned PDF format. Those materials should be included in the e-submission as a single separate attachment. If the only attachments are in Native PDF they may be emailed as a single document with the pleading. Within 2 business days of submitting a pleading under this section via e-filing, counsel must also submit a single hard copy of the document to the clerk's office unless the pleading is a Petition For Rehearing or Petition For Rehearing En Banc. With panel petitions, counsel must

follow up by filing an original and 3 hard copies with the clerk's office within 2 business days. For en banc petitions, an original and 18 hard copies must be filed, also within 2 business days.

Appendices and Addenda

Unlike other pleadings, counsel must file these materials in hard copy format (only) per Federal Rules of Appellate Procedure 10 and 30 and 10th Circuit Rules 10 and 30. The court will not accept appendix materials via esubmission (including appendices filed per 10th Cir. R. 9.2(B)). Filers must submit the original hard copy and one additional copy of these materials.

Sealed Materials

Sealed documents shall be filed only in hard copy paper format. Counsel must file a single hard copy of all sealed pleadings and materials with the Clerk, with the exception of briefs. Counsel must file an original and 7 hard copies of briefs submitted under seal. Motions to submit materials under seal shall also be filed in hard copy format. A single hard copy of the motion must be filed.

E-Submission of Materials

All pleadings and briefs filed pursuant to this Order must be furnished to the Clerk via e-mail to esubmission@ca10.uscourts.gov. The subject line of the email must include the case name and docket number (including, where appropriate, all case numbers consolidated or cross appeals). Counsel and pro se parties must include a signature block on all email submissions which includes the attorney or pro se party's name, address, telephone number and email address.

Digital Signatures and Certification

A. Digital Signatures

All submissions requiring an attorney or pro se party's signature shall be signed in the following manner:

s/ Attorney or Pro Se Party
Street Address
Telephone Number
Email address

B. Certification of Digital Submissions

In addition to the certificate of service required by the Federal Rules of Appellate Procedure and Tenth Circuit Rules, all Counsel must certify that: (1) all required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and; (2) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program (naming the program, version, and the date of the most recent update) and, according to the program, are free of viruses.

Service Requirements

Counsel shall serve copies of the materials submitted to the court on all parties to the proceeding. Where email is available parties may serve pleadings and briefs through that method. All certificates of service must reflect that proper service was made and must delineate the method used. If a party receives an exemption from this order or is a pro se party who does not have email access, all service must be made via regular mail or commercial carrier. The court will serve parties exclusively via email where it has an email address for counsel or a pro se party. Where an email address is not available the court will serve counsel and pro se parties via regular mail.

SPECIFICATION CHART

Document	Color	Limitation	Serve	File
Appendix	white	no limit	1	2
Appellant's Brief	blue	14,000 words	2	8
Appellee's Brief	red	14,000 words	2	8
Reply Brief	gray	7,000 words	2	8
Amicus Brief	green	7,000 words	2	8
Petition for Rehearing	white	15 pages	2	4
Petition for Rehearing En Banc	white	15 pages	2	19
Motion	white (optional)	20 pages	1	4
Appellant's Principal Brief[†]	blue	14,000 words	2	8
Appellee's Principal & Response Brief[†]	red	16,500 words	2	8
Appellant's Response & Reply Brief[†]	yellow	14,000 words	2	8
Appellee's Reply Brief[†]	gray	7,000 words	2	8

[†] Cross-Appeals.

NOTE: The United States Court of Appeals for the Tenth Circuit will also accept white covers for the briefs.

SAMPLE COVER

00-00000

IN THE
United States Court of Appeals
FOR THE TENTH CIRCUIT

RECORD PRESS, INC., *Plaintiff-Appellant,*

—v.—

ALL OTHER PARTIES, *Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____
HONORABLE _____

BRIEF OF DEFENDANTS-APPELLEES

Law Firm
Attorneys for Defendants-Appellees
Address
Phone

Of Counsel:

**ORAL ARGUMENT REQUESTED/NOT REQUESTED
EXHIBITS IN NATIVE/NON-NATIVE PDF**

APPELLATE SERVICES

Paralegal Services

Our experienced paralegals offer procedural assistance to any federal or state appellate court, so your appeal is always in compliance.

In-Court Work

We transmit, subpoena, retrieve or copy court's files on request.

Document Production

Our paralegals thoroughly review, organize, and index your record/appendix documents in compliance with each court's requirements.

Typographical Services

Our composition department is experienced with proper formatting of briefs for every appellate court.

Scanning and Electronic Pagination

Custom-made imaging and document-management software is used to scan documents and store them electronically for more efficient pagination and revisions.

Working with Proofs

We produce a courtesy proof of your record/appendix within 72 hours—providing you with a final opportunity to make corrections.

Finalizing and Printing

Since your documents are stored electronically, we are able to quickly finalize and print the necessary copies of your record/appendix and brief.

Service and Filing

We serve and file your documents with any of the state and federal appellate courts.

CaseMonitor®

Technology which allows our staff to electronically monitor the Court Calendar for the New York State, Appellate Division First and Second Departments and notify you when your appeal is scheduled for oral argument.

Website

Your legal practice will benefit from fast access to information and rules on the Internet. Our goal at Record Press is to present you with the most informative and useful Website in the industry.