

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE FIRST CIRCUIT



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GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

*Maine, Massachusetts, New Hampshire,
Puerto Rico and Rhode Island*

INTRODUCTION

This serves only as a quick reference guide for filing Briefs and Appendices for civil appeals. **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.ca1.uscourts.gov.

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Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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APPENDIX

FRAP 30

Contents of Appendix

The appellant shall prepare and file an appendix to the briefs which shall contain: (1) the relevant docket entries in the proceeding below; (2) the relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; and (4) other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law should not be included in the appendix. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. The appendix shall be printed two-sided. Condensed transcript is not allowed.

Determination of Contents

The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 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 the appellant intends to present for review. The appellee may, within 14 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.

In cases where appellant is represented by counsel, the district courts will no longer transmit the full record except upon the rare request of the circuit clerk. Accordingly, counsel should ensure that the addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal. At the same time, the appendix should not be unduly large. Pursuant to Fed. R. App. P. 30(a)(2), counsel may cite to parts of the record not included in the appendix.

BRIEFS

FRAP 28

Appellant's Brief

- (1) Corporate disclosure statement (Mandatory for all corporate parties)
- (2) Table of contents
- (3) Table of authorities
- (4) Jurisdictional statement
- (5) Statement of issues presented for review
- (6) Statement of the case
- (7) Statement of the facts
- (8) Summary of argument
- (9) Argument (Statement of the standard of review)
- (10) Conclusion (Signature of counsel required)
- (11) Certificate of compliance
- (12) Certificate of service
- (13) Addendum (*See* Loc.R. 28.0)

Appellee's Brief

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(13), except that a jurisdictional statement, statements of the issues, case, facts and standard of review need not be made unless the appellee is dissatisfied with the statements of the appellant. An addendum is optional.

Reply Brief

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

Reproduction of Statutes, Rules, Regulations, etc.

If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

Loc.R. 28.0 Addendum to Briefs

(a) Contents. In addition to the requirements of Fed. R. App. P. 28, for the court's convenience, the brief of the appellant must include an addendum containing the following items:

- (1) Required.** The judgments, decisions, rulings, or orders appealed from, including any 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).

Note: 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.

- (2) Optional, but encouraged.** The addendum may also include 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.

(b) Form. The addendum shall be bound at the rear of the appellant's brief. The addendum must begin with a table of contents identifying the page at which each part begins.

- (1) The appellee's brief may include such an addendum to incorporate materials omitted from the appellant's addendum, subject to the same limitations on length and content.
- (2) Material included in the addendum need not be reproduced in the appendix also.

(c) Sealed Items. Notwithstanding the above, sealed or non-public items—including a presentence investigation report or statement of reasons in a judgment of criminal conviction—should not be included in a public addendum. Rather, where sealed items are to be included, they should be filed in a separate, sealed addendum.

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; any reply brief, gray; and any supplemental, tan. 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.

(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.

NOTE: Spiral binding is preferred.

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

NOTE: Footnotes shall be printed in the same type utilized in the text.

(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 Rules 28.1(e)(2) or 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.

FRAP 32(d) Signature

Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

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

LOC.R. 31

Brief of Petitioner/Appellant	within 40 days after the date record is filed
Brief of Respondent/Appellee	within 30 days after service of appellant's brief
Reply Brief	within 14 days after service of 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.

NOTE: Filing of papers, except a brief or appendix, will not be deemed timely filed unless the clerk receives the papers within the time fixed for filing.

CASE MANAGEMENT/ ELECTRONIC CASE FILES SYSTEM

Except as otherwise prescribed by local rule or order, all cases will be assigned to the court's electronic filing system. All documents filed by counsel must be filed electronically using the electronic filing system unless counsel obtains an exemption.

A brief (including addenda, exhibits or attachments) must be filed electronically and paper copies of briefs are required to be filed. The clerk's office will review the electronically filed brief and, if the brief is compliant with the rules, will send a notification requiring counsel to electronically file nine identical paper copies so that they are received by the court within seven days or less of the notification. At the time a

brief is filed electronically, it must be served on all other parties. Parties do not need to serve the brief again when identical paper copies are filed with the court.

Registration as an ECF Filer constitutes consent to electronic service of all documents. The Notice of Docket Activity that is generated by the court's electronic filing system constitutes service of the filed document on all ECF Filers. Parties who are not registered as ECF Filers must be served with a copy of any electronically filed document in some other way authorized by Fed. R. App. P.25(c)(1). However, paper copies of briefs filed electronically and already served on all parties do not need to be served. The Notice of Docket Activity does not replace the certificate of service. ECF Filers must include certificates of service with any electronically filed document which state whether the parties being served are ECF Filers being served electronically by the Notice of Docket Activity or whether they are being served using an alternate method of service.

Appendices must be filed and served in paper form at the time the electronic version of the brief is filed. The following types of documents must be filed in paper form only: case initiating documents (petitions for review, petitions for permission to appeal), motions to seal, sealed documents and appendices to briefs. Paper copies of other electronically filed documents (including petitions for rehearing or rehearing en banc) are not required and should not be filed unless specifically requested by the clerk.

Documents must be formatted for electronic filing by converting the original word processing document into Portable Document Format (resulting in a "native PDF" or "text PDF"). PDF images created by scanning paper documents do not comply. However, exhibits which are submitted as attachments to an electronically filed pleading may be scanned and attached if the filer does not possess a word-processing file version of the document. The user login and password required to submit documents to the electronic filing system serve as the ECF Filer's signature on all electronic documents filed with the court. The name of the ECF Filer under whose login and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

SPECIFICATION CHART

Document	Color	Limitation	Serve	File
Appendix	white	no limit	1	5
Appellant's Brief	blue	14,000 words	1*	9
Appellee's Brief	red	14,000 words	1*	9
Reply Brief	gray	7,000 words	1*	9
Amicus Brief	green	7,000 words	1*	9
Supplemental Brief	tan	—	1*	9
Petition for Rehearing	white	15 pages	1*	9
Petition for Rehearing En Banc	white	15 pages	1*	9
Motion	—	20 pages	1*	4
Appellant's Principal Brief[†]	blue	14,000 words	1*	9
Appellee's Principal & Response Brief[†]	red	16,500 words	1*	9
Appellant's Response & Reply Brief[†]	yellow	14,000 words	1*	9
Appellee's Reply Brief[†]	gray	7,000 words	1*	9

† Cross-Appeals.

* Paper copies of briefs electronically filed and served do not need to be served. However, parties who are not registered as ECF Filer must be served with a paper copy of any electronically filed document.

SAMPLE COVER

00-0000

IN THE
United States Court of Appeals
FOR THE FIRST CIRCUIT

RECORD PRESS, INC.,

Plaintiff-Appellant,

—v.—

ALL OTHER PARTIES,

Defendants-Appellees.

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

BRIEF FOR PLAINTIFF-APPELLANT

LAW FIRM

Attorneys for Plaintiff-Appellant

Address

Phone

Of Counsel:

APPELLATE SERVICES

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

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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.