

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE THIRD CIRCUIT

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GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Delaware, New Jersey, Pennsylvania and the Virgin Islands

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.ca3.uscourts.gov.

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Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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THE QUICK GUIDE SERIES	
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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) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; (4) the notice of appeal or petition for review; and (5) any 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.

At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order and consecutively paginated.

Pursuant to FRAP 32(a), the appendix shall be printed one-sided but local rules allow for the appendix to be printed two-sided if it is voluminous. Condensed transcript is allowed but limited to four condensed transcript pages on one 8-1/2 x 11 page. A certificate of service shall be bound in the appendix as the last document.

Pursuant to LAR 30.1, counsel must electronically file the appendix. In addition to the electronic appendix, four paper copies of the appendix must be filed, unless otherwise ordered. In Virgin Island cases only, one additional copy of the brief and one additional copy of the appendix shall be filed with the clerk of the district court in the location from which the appeal is taken. (St. Thomas or St. Croix).

LAR 32.2(c) Addendum/Appendix to Briefs

Volume one of the appendix must consist only of (1) a copy of the notice of appeal, (2) the order or judgment from which the appeal is taken, and any other order or orders of the trial court which pertain to

the issues raised on appeal (3) the relevant opinions of the district court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge, or the decision of the administrative agency, if any and (4) any order granting a certificate of appealability, and (5) no more than 25 additional pages. Volume one of the appendix may be bound in the brief and will not be counted toward the page or type volume limitations on the brief. All other volumes of the appendix must be separately bound. Where there is a multi-volume appendix, counsel should specify on the cover of each volume the pages contained therein, e.g., Vol. 2, pp. 358-722.

Pursuant to L.A.R. 28(c), it is preferred that the documents listed in L.A.R. 32.2(c) be attached to the paper brief. The documents may be filed electronically in a document separate from the brief.

Determination of Contents

The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 10 days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

Options for Filing the Appendix

Pursuant to L.A.R. Misc. 113 counsel must file all documents electronically. In order to facilitate electronic filing, counsel may choose one of the following options when filing the appendix with the court.

Option A

File all volumes of the appendix in electronic form. Counsel must also send four paper copies of the appendix to the court. Service on filing users (those registered with PACER and using electronic filing) is by the notice of docket activity sent by CM/ECF. Counsel must serve non-filing users with paper copies of the appendix. Counsel must attach a certificate of service even if all opposing parties are served via CM/ECF.

Option B

Counsel may file four paper copies of the appendix without also filing an electronic version if

- (1) when citing a document in the brief, counsel cites to the appendix page and provides parallel citations to the district court document number. (For example: District Court opinion, App. p. 27; DDE # 57 at p. 5) In agency cases, parallel citations are only required if the agency record is available in electronic form.

and

- (2) counsel serves a paper copy of all volumes of the appendix on all opposing parties and includes a certificate of service.

Counsel choosing option B may file a brief that exceeds the word limit in Rule 32, F.R.A.P. by no more than 75 words without filing a motion to exceed the page limit.

BRIEFS
FRAP 28

Appellant's Brief

- (1) Corporate disclosure statement (Mandatory for all corporate parties)
- (2) Table of contents
- (3) Table of authorities
- (4) Subject Matter and Appellate Jurisdiction
- (5) Statement of issues
- (6) Statement of case
- (7) Statement of facts
- (8) Statement of related cases and proceedings
- (9) Statement of standard of review
- (10) Summary of argument
- (11) Argument
- (12) Conclusion (Signature of counsel required)
- (13) Certificate of bar membership
- (14) Certificate of compliance
- (15) Certificate of Service
- (16) Virus Certification and Identical Compliance of Brief
- (17) Appendix (See LAR 32.2)

Appellee's Brief

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(16), except that a subject matter and appellate jurisdictional statement, statements of the issues, the case, the facts, related cases and proceedings and 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 and a certificate of service.

LAR 28.3(d) Certificate of Bar Membership

Except as otherwise authorized by law, each party shall include a certification in the initial brief filed by that party with the court that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission pursuant to 3rd Cir. LAR 46.1.

CERTIFICATE OF BAR MEMBERSHIP

The undersigned hereby certifies pursuant to LAR 46.1 that the attorney(s) whose name appears on the Brief of _____, was duly admitted to the Bar of the United States Court of Appeals for the Third Circuit on _____, _____ and is presently a member in good standing at the Bar of said Court.

Dated: _____

Name
Attorney(s) for

LAR 28.4 Signature

All briefs must be signed in accordance with the provision of L.A.R. 46.4. Electronic briefs may be signed with either an electronically generated signature or “s/ typed name” in the signature location. Counsel’s state Bar number, if any, and address and phone number must be included with the signature.

Attachments to Brief

Parties are allowed to attach statutes, rules, regulations or unpublished opinions if not readily available.

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;
- (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

All papers shall be firmly bound at the left margin, and any metal fasteners or staples must be covered. All fasteners must have smooth edges. Use of backbones or spines without stapling is prohibited. Forms of binding such as perfect binding, velo binding and spiral binding are acceptable forms of binding.

(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.

(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.

LAR 32.2(a) Footnotes

Excessive footnotes in briefs are discouraged. Footnotes shall be printed in the same size type utilized in the text.

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

When the record is transmitted to the court of appeals, the clerk shall set up a briefing schedule and send a copy of the schedule to all parties to the proceeding.

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.

LAR 25.1 Electronic Filing and Service

(a) Except for original petitions such as a petition for writ of mandamus or petition for review of an agency order, counsel must file all documents electronically in accordance with the procedures of L.A.R. Misc. 113. In addition to electronically filing on **CM/ECF**, ten paper copies of briefs and four paper copies of the appendices must be filed with the clerk for the convenience of the court. No paper copies of motions or petitions for rehearing need be filed unless directed by the clerk.

NOTE: There is a 5 MB limit on size for .pdf documents. If the document exceeds 5 MB, it must be filed in separate volumes. The electronic brief must contain an electronic signature or /s/ first name last name.

(b) Service of electronically filed documents is governed by L.A.R. Misc. 113.4. If the opposing party has not consented to electronic service, the filer must use an alternate method of service prescribed FRAP 25(c). The method of service, whether electronic through the court's docketing system or by alternate means, must be specified in the certificate of service.

NOTE: Counsel who are registered on CM/ECF as a Filing User, consent to electronic service through CM/ECF. Once papers have been filed electronically, a Notice of Docket Activity is automatically sent to each Filing User. The Notice of Docket Activity is deemed sufficient service. A party or counsel who is not registered on CM/ECF is considered a Non-Filing User and must be served with paper copies unless they have consented to other form of service such as email.

SPECIFICATION CHART

Document	Color	Limitation	Serve*	File
Appendix	white	no limit	1*	4
Appellant's Brief	blue	14,000 words	1*	10
Appellee's Brief	red	14,000 words	1*	10
Reply Brief	gray	7,000 words	1*	10
Amicus Brief	green	7,000 words	1*	10
Petition for Rehearing	white	15 pages	1*	2
Petition for Rehearing En Banc	white	15 pages	1*	2
Motion	—	no limit	1*	4*
Appellant's Principal Brief[†]	blue	14,000 words	1*	10
Appellee's Principal & Response Brief[†]	red	16,500 words	1*	10
Appellant's Response & Reply Brief[†]	yellow	14,000 words	1*	10
Appellee's Reply Brief[†]	gray	7,000 words	1*	10

* See LAR 25.1 Electronic Service and Filing
[†] Cross-Appeals

SAMPLE COVER

00-0000

IN THE
United States Court of Appeals
FOR THE THIRD 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 DEFENDANTS-APPELLEES

LAW FIRM
Attorneys for Defendants-Appellees
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.