

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE FOURTH CIRCUIT

**United States Courthouse Annex
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GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

*Maryland, North Carolina, South Carolina,
Virginia and West Virginia*

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.ca4.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) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order or decision in question; (4) notice of appeal; 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. 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. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

Pursuant to Local 32(a), double-sided copying of appendices is preferred. Condensed transcript is not allowed. A certificate of service shall be bound in the appendix as the last document.

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 of entry of the briefing order, 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.

Local Rule 30(a) Attorney Sanctions for Unnecessary Appendix Designations

The Court, on its own motion or on motion of any party, may impose sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary material in the appendix.

Local Rule 30(b) Appendix Contents

In designating or agreeing upon the contents of the appendix, and in assembling the appendix, the parties should avoid unnecessary duplication of materials. The appellee's designation should only include those additional parts of the record to which it wishes to direct the Court's attention that have not already been designated by the appellant.

The appendix should contain the final order or order appealed from, the complaint or petition, as finally amended (civil appeals) or indictment (criminal appeals), as well as all other parts of the record which are vital to the understanding of the basic issues on appeal. Although the entire record is available to the Court should it believe that additional portions are important to a full understanding of the issues, citations to portions of the record not included in the appendix is not favored.

The table of contents to the appendix should be sufficiently detailed to be helpful to the Court. Referring to the transcript of a trial under a single reference to "proceeding" or "trial transcript" is not sufficient. When the testimony of a witness is included in the appendix, the testimony should be clearly identified in the table of contents, beneath the proceeding in which it occurred. The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) should also be clearly indicated at the top of each page of the appendix where the witness's testimony appears. Exhibits should be listed in the table of contents by number or letter *and* by name or brief description.

In all criminal appeals seeking review of the application of the sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate sealed volume, stamped "SEALED" on the volume itself and on the envelope containing it, and be accompanied by a certificate stating that the volume contains sealed material.

Local Rule 30(c) Responsibility of Parties

Notwithstanding that FRAP 30 provides that the appellant shall prepare and file the appendix, the Court considers the coordination of preparing the appendix to be the responsibility of both sides. The failure of a side to designate does not absolve the other side from the responsibility.

Except under the most extraordinary circumstances, supplementary appendices will not be accepted. If the appellant omits from the appendix the portions designated by the appellee, the appellant will be required to file a corrected appendix incorporating such material, and to bear the cost regardless of the outcome of the appeal.

NOTE: Pursuant to the court's Internal Operating Procedure, covers for the appendix and all briefs shall list the name of the counsel of record.

BRIEFS

FRAP 28

Appellant's Brief

- (1) Corporate disclosure statement (Mandatory for all corporate and individual 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) Request for Oral Argument
- (12) Certificate of compliance
- (13) Certificate of service
- (14) Addendum (See Loc. R. 28(b))

Appellee's Brief

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(14), except that a jurisdictional statement, statements of the issues, case, facts or the statement of the standard of review need not be made unless the appellee is dissatisfied with the statements of the appellant. Counsel can include a request for oral argument.

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.

Loc.R. 28(b) Addenda and Attachments to Briefs

Each party may include, in an addendum at the end of the brief or by supplying them to the Court under separate cover, the text of the relevant portion of any statutes, rules, regulations, etc., cited in the brief if it is pertinent to the substantive issues on appeal. Each party shall also include in the addendum any unpublished opinion cited. Should a party wish to supplement the brief with matters other than those enumerated above, the additional material shall be presented to the court under separate cover, accompanied by a motion for leave to file.

Loc.R. 26.1 Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation.

- (a) **Disclosure Requirements Applicable to Parties, Including Intervenors.**
 - (1) **Who Must File.**
 - (A) **Civil, Agency, Bankruptcy, and Mandamus Cases.** A party in a civil, agency, bankruptcy, or mandamus case, other than the United States or a party proceeding in forma pauperis, must file a disclosure statement, except that a state or local government is not required to file a disclosure statement in a case in which the opposing party is proceeding without counsel.
 - (B) **Criminal and Post-Conviction Cases.** A corporate party in a criminal or post conviction case must file a disclosure statement.
 - (2) **Information to Be Disclosed by Parties, Including Intervenors.**
 - (A) **Information Required by FRAP 26.1.** A party must identify any parent corporation and any publicly held corporation that owns 10% or more of the party's stock, or state that there is no such corporation.

- (B) **Information About Other Financial Interests.** A party must identify any publicly held corporation, whether or not a party to the present litigation, that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement, or state that there is no such corporation.
 - (C) **Information About Other Publicly Held Legal Entities.** Whenever required by FRAP 26.1 or this rule to disclose information about a corporation that has issued shares to the public, a party shall also disclose information about similarly situated master limited partnerships, real estate investment trusts, or other legal entities whose shares are publicly held or traded, or state that there are no such entities.
 - (D) **Information About Trade Association Members.** A party trade association must identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member.
- (b) **Disclosure Requirements Applicable to Corporate Amicus Curiae.**
- (1) **Who Must File.** If an amicus curiae is a corporation, the amicus curiae brief must include a disclosure statement.
 - (2) **Information to Be Disclosed by Corporate Amicus Curiae.** A corporate amicus curiae must disclose the same information that sections (a)(2)(A), (B) & (C) require parties to disclose.

- (c) **Form.** The disclosure statement shall be on a form provided by the clerk. A negative statement is required if a filer has no disclosures to make.
- (d) **Time of Filing.** A party's disclosure statement must be filed within 14 days of docketing of the appeal, unless earlier pleadings are submitted for the Court's consideration, in which case the disclosure statement shall be filed at that time.
- (e) **Amendment.** Filers are required to amend their disclosure statements when necessary to maintain their current accuracy.

Pursuant to FRAP 26.1, even if the statement has already been filed, the party's principal brief must include the statement before the table of contents.

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; 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.

NOTE: Pursuant to the court's Internal Operating Procedure, covers for the appendix and all briefs shall list the name of the counsel of record. The court will interpret the listing of an attorney on a brief as a representation that he or she is capable of arguing the appeal if lead counsel is unavailable.

(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. (e.g. spiral, cheshire, perfect)

NOTE: Each bound volume should not exceed 1½ inch in thickness.

(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: All typeface requirements apply to footnotes as well as 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) and 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

Loc.R. 31(b)

The time for filing the appendix and briefs is controlled by a briefing order sent by the clerk to all the parties.

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.

ELECTRONIC FILING (CM/ECF)

Attorneys are required to file documents electronically in all cases. Appendices, vouchers, and case-initiating documents (petitions for review, mandamus, permission to appeal) are excepted from electronic filing and are to be filed in paper format. Formal briefs must be filed in both electronic and paper format. CM/ECF will electronically serve documents filed by counsel and automatically notify counsel via email of any case activity.

NOTE: Appendices are filed in paper form only; no electronic copies are filed. Counsel uses the electronic entry **Notice of paper filing** to notify the Court that paper copies of the appendix have been delivered for filing.

SPECIFICATION CHART

Document	Color	Limitation	Serve	File
Appendix	white	no limit	1	6
Exhibit Volume	white	no limit	1	4
Appellant's Brief	blue	14,000 words	1*	8
Appellee's Brief	red	14,000 words	1*	8
Reply Brief	gray	7,000 words	1*	8
Amicus Brief	green	7,000 words	1*	8
Petition for Rehearing	—	15 pages	—	—
Petition for Rehearing En Banc	—	15 pages	—	—
Motion	—	20 pages	1	4
Appellant's Principal Brief[†]	blue	14,000 words	1*	8
Appellee's Principal & Response Brief[†]	red	16,500 words	1*	8
Appellant's Response & Reply Brief[†]	yellow	14,000 words	1*	8
Appellee's Reply Brief[†]	gray	7,000 words	1*	8

[†] Cross-Appeals.

* Service of a paper copy is not required unless the recipient is not a CM/ECF Filing User and has not consented to other service.

NOTE: If the court allows a deferred appendix the parties file their page-proof brief in electronic form only. After the deferred appendix is filed, the parties file their final briefs in electronic form in addition to filing the requisite number of paper copies. The final briefs must contain proper references to the appendix.

SAMPLE COVER

00-0000

IN THE
United States Court of Appeals
FOR THE FOURTH 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

Of Counsel: Name of Counsel of Record
LAW FIRM
Attorneys for Defendants-Appellees
Address
Phone

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.

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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.

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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.