

**THE QUICK GUIDE SERIES**

**United States Court of Appeals**

**FOR THE FIFTH CIRCUIT**



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**GUIDELINES**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

*Louisiana, Mississippi and Texas*

**INTRODUCTION**

This serves only as a quick reference guide for filing Briefs and Record Excerpts. **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 paralegal staff 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.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

April 2004  
Record Press Inc.

Natasha R. Monell, Esq.  
*Staff Counsel*

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<b>THE QUICK GUIDE SERIES</b>	
<b>NEW YORK SUPREME COURT</b> Appellate Division—First Department Appellate Division—Second Department Appellate Division—Third Department Appellate Division—Fourth Department Appellate Term—First Department Appellate Term—Second Department	<b>UNITED STATES COURT OF APPEALS</b> 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
<b>NEW YORK STATE COURT OF APPEALS</b>	<b>UNITED STATES SUPREME COURT</b>

# TABLE OF CONTENTS

	PAGE
INTRODUCTION .....	i
OUR COMPANY .....	ii
TABLE OF CONTENTS .....	iii
RECORD EXCERPTS .....	1
Mandatory Contents .....	1
Optional Contents .....	1
Length.....	2
Form .....	2
BRIEFS.....	3
Appellant’s Brief .....	3
Appellee’s Brief .....	3
Reply Brief .....	3
Electronic Briefs.....	4
Form of Briefs.....	4
REQUIREMENTS FOR TYPOGRAPHY IN BRIEFS.....	7
TIME SCHEDULE .....	10
FILING AND SERVICE.....	10
SPECIFICATION CHART .....	11
SAMPLE COVER .....	12
APPELLATE SERVICES.....	13

## **RECORD EXCERPTS**

### **5TH CIRC. R. 30**

Record excerpts shall be filed in lieu of the appendix prescribed by FRAP 30. Four copies of the record excerpts must accompany the appellant's brief. The appellant shall serve a copy of the excerpts on counsel for each of the parties separately represented. With its brief, the appellee may submit additional record excerpts consistent herewith.

#### **Mandatory Contents**

The record excerpts must contain copies of the following portions of the district court record:

- (a) The docket sheet;
- (b) The notice of appeal;
- (c) The indictment in criminal cases;
- (d) The verdict of the jury in all cases;
- (e) The judgment or interlocutory order appealed;
- (f) Any other orders or rulings sought to be reviewed;
- (g) Any relevant magistrate judge's report and recommendation;
- (h) Any supporting opinion or findings of fact and conclusions of law filed, or transcript pages of any such delivered orally; and
- (i) A certificate of service.

#### **Optional Contents**

The record excerpts may also include those parts of the record, referred to in the briefs, which might assist in achieving the stated purposes, including:

- (a) Essential pleadings or relevant portions thereof;
- (b) The parts of FRAP 16(e) pretrial order relevant to any issue on appeal;
- (c) Any jury instruction given or refused that presents an issue on appeal, together with any objection and the court's ruling, and any other relevant part of the jury charge;

- (d) Findings and conclusions of the administrative law judge, if the appeal is of a court order reviewing an administrative agency determination;
- (e) A copy of the relevant pages of the transcript when the appeal challenges the admission or exclusion of evidence or any other interlocutory ruling or order; and
- (f) The relevant parts of any written exhibit (including affidavits) that present an issue on appeal.

### **Length**

The optional contents of the record excerpts shall not exceed 40 pages unless authorized by the court.

### **Form**

The record excerpts shall:

- (a) Have a numbered table of contents, with citation to the record, beginning with the lower court docket sheet;
- (b) Be on letter-size, white paper, reproduced by any process that results in a clear black image, with care being taken to reproduce fully the document filing date column on the docket sheet;
- (c) Tabbed to correspond to the numbers assigned in the table of contents;
- (d) Bound so as to expose fully the filing date columns and allow the document to lie reasonably flat when opened, with a durable white cover. NOTE: While the court accepts perfect binding, spiral binding is the preferred format.

The documents that constitute the record excerpts need not be certified, but if the clerk's "filed" markings are either absent or not clearly legible, the accurate filing information should be typed or written thereon.

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

**BRIEFS**  
**5TH CIRC. R. 28**

**Appellant's Brief**

- (1) Certificate of interested persons (Mandatory for all corporate and individual parties)
- (2) Statement regarding oral argument
- (3) Table of contents
- (4) Table of authorities
- (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
- (11) Conclusion (Signature of counsel required)
- (12) Certificate of service
- (13) Certificate of compliance

**Appellee's Brief**

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(13).

**Reply Brief**

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

## **5th Circ. R. 31 Electronic Briefs**

Where a party is represented by counsel and generates his or her brief by computer, one computer-readable disk containing a copy of the brief must be filed with the clerk, and a second computer-readable disk copy served on each party separately represented by counsel. The disk must contain nothing more than the brief. The brief must be prepared in Portable Document File (PDF) format. The disk's label must include the case name and the docket number and it must further identify the brief. The brief must be on a 3½-inch disk. The certificate of service must indicate service in both paper and electronic form.

## **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**

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. While the Court accepts perfect binding, spiral binding is the preferred format.

**(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 may be 12 point or larger in proportionally spaced typeface, or 12½ characters per inch or larger in monospaced typeface (5th Cir. R. 32.1).

## **(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**

### **5TH CIRC. R. 31**

Appellant's brief must be sent to the clerk not later than 40 days after the date of the briefing notice. Appellee has 33 days from the date of the certificate of service to place the brief in the mail or to give it to a third-party commercial carrier for delivery within 3 calendar days. This rule may not be combined with the additional time provisions of FRAP 26(c) to give the appellee 36 days to file a brief. Reply briefs must be filed within 17 days from the date of the certificate of service of the appellee's brief.

## **FILING AND SERVICE**

### **FRAP 25**

Service and filing of briefs and record excerpts 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.

## SPECIFICATION CHART

<b>Document</b>	<b>Color</b>	<b>Limitation</b>	<b>Serve</b>	<b>File</b>
<b>Record Excerpts</b>	<b>white</b>	<b>no limit</b>	<b>1</b>	<b>4</b>
<b>Brief of Appellant or Appellant-Cross-Appellee</b>	<b>blue</b>	<b>14,000 words</b>	<b>2</b>	<b>7</b>
<b>Brief of Appellee or Appellee-Cross-Appellant</b>	<b>red</b>	<b>14,000 words</b>	<b>2</b>	<b>7</b>
<b>Reply Brief of Appellant- Cross-Appellee</b>	<b>red</b>	<b>14,000 words</b>	<b>2</b>	<b>7</b>
<b>Reply Brief of Appellant</b>	<b>gray</b>	<b>7,000 words</b>	<b>2</b>	<b>7</b>
<b>Reply Brief of Appellee- Cross-Appellant</b>	<b>gray</b>	<b>7,000 words</b>	<b>2</b>	<b>7</b>
<b>Amicus Brief</b>	<b>green</b>	<b>7,000 words</b>	<b>2</b>	<b>7</b>
<b>Petition for Rehearing</b>	<b>white</b>	<b>15 pages</b>	<b>2</b>	<b>4</b>
<b>Petition for Rehearing En Banc</b>	<b>white</b>	<b>15 pages</b>	<b>2</b>	<b>20</b>

**SAMPLE COVER**

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IN THE  
**United States Court of Appeals**  
FOR THE FIFTH CIRCUIT

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

—v.—

ALL OTHER PARTIES, *Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

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**BRIEF FOR DEFENDANTS-APPELLEES**

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LAW FIRM  
*Attorneys for Defendants-Appellees*  
Address  
Phone

*Of Counsel:*

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