

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE NINTH CIRCUIT

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GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

*Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana,
Nevada, The Northern Mariana Islands, Oregon and Washington*

INTRODUCTION

This serves only as a quick reference guide for filing Briefs and Excerpts of Record. **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.ca9.uscourts.gov.

April 2008
Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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NEW YORK STATE COURT OF APPEALS	UNITED STATES SUPREME COURT

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EXCERPTS OF RECORD CIRCUIT RULE 30-1

Purpose

- (a) In the Ninth Circuit the appendix prescribed by FRAP 30 is not required. Instead, Circuit Rule 30-1 requires the parties to prepare excerpts of record. All members of the panel assigned to hear the appeal ordinarily will not have the entire record. The purpose of the excerpts of record is to provide each member of the panel with those portions of the record necessary to reach a decision. The parties should ensure that in accordance with the limitations of Rule 30-1, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts.

Required Contents of the Excerpts of Record

- (a) In all appeals the excerpts of record shall include:
 - (i) notice of appeal
 - (ii) trial court docket sheet
 - (iii) judgment or interlocutory order appealed from
 - (iv) any opinion, findings of fact or conclusions of law relating to the judgment or order appealed from
 - (v) any other orders or rulings, including minute orders, sought to be reviewed
 - (vi) any jury instruction given or refused which presents an issue on appeal
 - (vii) except as provided in Circuit Rule 30-1.4(b)(ii), where an issue on appeal is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue

- (viii) except as provided in Circuit Rule 30-1.4(b)(ii), where an issue on appeal is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest
 - (ix) where an issue on appeal is based upon a challenge to the allowance or rejection of jury instructions, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the instructions at issue, including the ruling or order, and objections
 - (x) where an issue on appeal is based on written exhibits (including affidavits), those specific portions of the exhibits necessary to resolve the issue
 - (xi) any other specific portions of any documents in the record that are cited in appellant's briefs and necessary to the resolution of an issue on appeal
- (b) In addition to the items required by Circuit Rule 30-1.4(a), in all criminal appeals and motions for relief under 28 U.S.C. § 2255 the excerpts of record shall also include:
- (i) the final indictment
 - (ii) where an issue on appeal concerns matters raised at a suppression hearing, change of plea hearing or sentencing hearing, the relevant portions of reporter's transcript of that hearing
- (c) In addition to the items required by Circuit Rule 30-1.4(a), in civil appeals the excerpts of record shall also include:
- (i) the final pretrial order, or, if the final pretrial order does not set out the issues to be tried, the final complaint and answer, petition and response, or other pleadings setting out those issues

- (ii) where the appeal is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on appeal
- (iii) where the appeal is from a district court order reviewing an agency's benefits determination, the entire reporter's transcript of proceedings before the administrative law judge if such transcript was filed with the district court

Items Not to Be Included in the Excerpts of Record

The excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor.

Format of Excerpts of Record

- (a) Excerpts of record that exceed 75 pages

The first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the district, magistrate, bankruptcy judge, bankruptcy appellate panel, and, in proceedings governed by 28 U.S.C. § 2254, the state reviewing court disposition, that relate to the issues being appealed. All additional documents shall be included in subsequent volumes of the excerpts. The documents in the first volume of the excerpts normally shall be arranged by file date in reverse chronological order beginning with the document with the most recent file date. The documents in subsequent volumes also normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter's transcripts or portions thereof shall be placed according to the date of the hearing. The trial court docket shall always be the last document in the excerpts. The five (5) copies of the excerpts are to be reproduced on letter size light paper by

any duplicating or copying process capable of producing a clear black image. Each copy must be securely bound on the left side and must have a white cover styled as described in FRAP 32(a), except that the wording “Excerpts of Record” shall be substituted for “Brief of Appellant.” The cover shall include the volume number. The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of the documents in the clerk’s record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter’s transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. The excerpts shall be filed in multiple volumes, with each volume containing three hundred (300) pages or fewer.

(b) Excerpts of Record that do not exceed 75 pages

The documents in the excerpts normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter’s transcripts or portions thereof shall be placed according to the date of the hearing. The document with the latest file date should appear under the first tab or should be paginated beginning with page 1. The trial court docket shall always be the last document in the excerpts. The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of the documents in the clerk’s record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter’s transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts.

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 (Include statement of the standard of review)
- (10) Conclusion (Signature of counsel required)
- (11) Statement of related cases
- (12) Certificate of compliance (Mandatory regardless of page count, Circuit Rule 32-1)
- (13) Certificate of service

Appellee's Brief

The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(13), except that a jurisdictional statement, statement of the issues, of the case, of the 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, a table of contents, a table of authorities, and certificate of service.

FRAP 26.1 Corporate Disclosure Statement

Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.

Circuit Rule 28-2.7 Addendum to Briefs

If determination of the issues presented requires the study of statutes, regulations or rules, relevant parts thereof shall be reproduced in an addendum at the end of a party's brief. All opening briefs filed in counseled petitions for review of immigration cases must include an addendum comprised of the orders being challenged, including any orders of the immigration court and Board of Immigration Appeals. The addendum shall be separated from the brief by a distinctively colored page.

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.

(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.

Circuit Rule 32-1 Certificate of Compliance

Certificate of compliance is mandatory regardless of page count. Petitions for Rehearing must be accompanied by a certificate of compliance.

FRAP 35/40 Petition for Rehearing or Rehearing En Banc

A party may petition for a rehearing or rehearing en banc.

Unless the time is shortened or extended by order or local rule, a petition may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time. A petition must be received by the clerk of court on the due date.

The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

Each petition shall include a copy of the opinion or summary order to which the petition relates.

Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, unless it complies with the alternative length limitations of 4,200 words or 320 lines of 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
FRAP 31
SERVING AND FILING BRIEFS

(a) Time to Serve and File a Brief

- (1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing

CIRCUIT RULE 31-2
TIME FOR SERVICE AND FILING

31-2.1 Requirement of Timely Filing

- (a) Parties shall observe the briefing schedule set forth in FRAP 31(a) unless a briefing schedule is established by an order of the Court of Appeals or district court. Specific due dates set by Court order are not subject to the additional 3-day allowance for service of previous papers by mail set forth in FRAP 26(c). The filing of the appellant's brief before the due date shall not advance the due date for the appellee's brief.
- (b) In cases controlled by FRAP 31(a), the appellant is responsible for determining the date on which the certificate of record is filed with the Court of Appeals and for computing the due date for the opening brief.

SERVING AND FILING

FRAP 25

Serving and filing of briefs and record excerpts may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days. Serving and filing by mail or by commercial carrier is complete on mailing or delivery to the carrier. When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

Mailing Address (U.S. Postal Service)

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for the Ninth Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

Overnight Courier Services (Federal Express, Airborne, DHL, etc.)

Clerk
U.S. Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

SPECIFICATION CHART

Document	Color	Limitation	Serve	File
Excerpts of Record	white	no limit	1	5
Appellant’s Brief	blue	14,000 words	2	16
Appellee’s Brief	red	14,000 words	2	16
Reply Brief	gray	7,000 words	2	16
Amicus Brief	green	7,000 words	2	16
Supplemental Brief	tan	—	2	16
Petition for Rehearing	white	15 pages	2	5
Petition for Rehearing En Banc	white	15 pages	2	51
Motion	—	20 pages	1	5
Appellant’s Principal Brief[†]	blue	14,000 words	2	16
Appellee’s Principal & Response Brief[†]	red	16,500 words	2	16
Appellant’s Response & Reply Brief[†]	yellow	14,000 words	2	16
Appellee’s Reply Brief[†]	gray	7,000 words	2	16

[†] Cross-Appeals.

SAMPLE COVER

00-0000

IN THE
United States Court of Appeals
FOR THE NINTH 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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Since your documents are stored electronically, we are able to quickly finalize and print the necessary copies of your record/appendix and brief.

Serving 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.