

RULE REQUIREMENTS FOR PREPARATION OF BRIEFS AND APPENDICES

BRIEFS

1. Organization, Contents.

A. Appellant's Opening Brief--FRAP 28(a) (Electronic Entry **BRIEF)**

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Corporate Disclosure Form**--filed with brief if required by Local Rule 26.1
- ▶ **Table of Contents** with page references
- ▶ **Table of Authorities**--cases, statutes, etc., with page references to brief
- ▶ **Jurisdictional Statement**
 - (i) basis for district court's or agency's subject matter jurisdiction, with facts and legal citations
 - (ii) basis for court of appeals' jurisdiction, with facts and legal citations
 - (iii) filing dates establishing the timeliness of the appeal or petition for review
 - (iv) assertion that appeal is from final order assertion or other information establishing jurisdiction
- ▶ **Statement of the Issues** presented for review
- ▶ **Statement of the Case**--brief summary of nature of case, course of proceedings, and disposition
- ▶ **Statement of Facts**--narrative statement of all facts necessary for the court to reach the conclusion which the brief desires, with appendix references showing the source of the facts stated
- ▶ **Summary of Argument**--succinct statement of arguments, more than a mere repetition of headings
- ▶ **Argument**--contains Standard of Review and Discussion of Issues
 - **Standard of Review**--concise statement of the applicable standard of review for each issue, which may appear in the discussion of each issue or under a separate heading placed before the Discussion of the Issues--separate statement of the Standard of Review at the beginning of the Argument section is preferred
 - **Discussion of Issues**--appellant's contentions and the reasons for them, with citations to the authorities and appendix references on which appellant relies
- ▶ **Conclusion**--briefly stating the precise relief sought
- ▶ **Request for Oral Argument** if counsel requests argument under Local Rule 34(a)
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)
- ▶ **Certificate of Service**

B. Appellee's Response Brief--FRAP 28(b) (Electronic Entry **BRIEF)**

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Corporate Disclosure Form**--filed with brief if required by Local Rule 26.1
- ▶ **Table of Contents** with page references
- ▶ **Summary of Argument**
- ▶ **Argument**
- ▶ **Request for Oral Argument** if counsel requests argument
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)

▶ **Certificate of Service**

None of the following need appear in appellee's brief unless appellee is dissatisfied with appellant's statement: Jurisdictional Statement, Statement of the Issues, Statement of the Case, Statement of Facts, and Statement of Standard of Review.

C. Reply Brief--FRAP 28(c) (Electronic Entry **BRIEF**)

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Table of Contents** with page references
- ▶ **Table of Authorities** with page references
- ▶ **Argument**
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)
- ▶ **Certificate of Service**

D. Cross-Appeal Briefs--FRAP 28.1(c). In cross-appeals, the party filing the first notice of appeal is designated the appellant and files appellant's opening brief as described above. Appellee files appellee's opening/response brief, opening on the cross-appeal issues and responding to appellant's issues. Appellant files appellant's response/reply brief responding on the cross-appeal issues and replying on appellant's own issues. Appellee files a reply brief as described above. The required contents for appellee's opening/response brief and appellant's response/reply brief are:

i. Appellee's Opening/Response Brief (Electronic Entry **BRIEF**)

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Corporate Disclosure Form**--filed with brief if required by Local Rule 26.1
- ▶ **Table of Contents** with page references
- ▶ **Table of Authorities** with page references
- ▶ **Jurisdictional Statement**
- ▶ **Statement of the Issues** presented for review
- ▶ **Summary of Argument**
- ▶ **Argument**
 - **Standard of Review**
 - **Discussion of Issues**
- ▶ **Conclusion**--briefly stating the precise relief sought
- ▶ **Request for Oral Argument** if counsel requests argument
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)
- ▶ **Certificate of Service**

None of the following need appear in appellee's opening/response brief unless appellee is dissatisfied with appellant's statement: Statement of the Case or Statement of Facts.

ii. Appellant's Response/Reply Brief (Electronic Entry **BRIEF**)

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Table of Contents** with page references
- ▶ **Table of Authorities** with page references

- ▶ **Summary of Argument**

- ▶ **Argument**
- ▶ **Request for Oral Argument** if counsel requests argument
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)
- ▶ **Certificate of Service**

None of the following need appear in appellant's response/reply brief unless appellant is dissatisfied with appellee's statement: Jurisdictional Statement, Statement of the Issues, Statement of the Case, Statement of Facts, and Statement of Standard of Review.

E. Amicus Brief--FRAP 29 (Electronic Entry Amicus curiae/intervenor brief)

- ▶ **Cover** for both electronic text and paper versions of brief
- ▶ **Corporate Disclosure Form**--filed with brief of corporate amicus
- ▶ **Table of Contents** with page references
- ▶ **Table of Authorities** with page references
- ▶ **Statement of Identity, Interest in Case, and Source of Authority to File**
- ▶ **Argument**, which may be preceded by Summary of Argument but need not include Standard of Review
- ▶ **Signature of Counsel** (FRAP 32(d))
- ▶ **Certificate of Compliance** with typeface and length limits pursuant to FRAP 32(a)(7)(C)
- ▶ **Certificate of Service**

2. Text PDF Rather Than Scanned PDF—Administrative Order 08-01, Rule 1(f). Briefs must be converted from their word processing format (Word, WordPerfect, etc.) to PDF format using electronic conversion software to create a **text** PDF, rather than by scanning the brief into a scanned image PDF. Text PDF documents are text searchable, whereas scanned PDF documents are not.

3. Certificate of Compliance--FRAP 32(a)(7)(C). All briefs filed in this court must include a certificate of compliance form (attached) certifying that the brief complies with the typeface and length limitations of FRAP 28.1(e) & 32(a). The certificate should be filed as part of the electronic brief in the **BRIEF** entry.

4. Typeface--FRAP 32(a)(5). Counsel must certify that the brief has been produced using either 14 point proportional, serif typeface or 12 point monospaced typeface. Proportional typeface, such as CG Times or Times New Roman, gives a different amount of horizontal space to characters depending on the width of the character. If proportional typeface is used, the typeface must have serifs (small horizontal or vertical strokes at the ends of the letters). Sans-serif type, such as Arial, may not be used except in captions and headings. Monospaced typeface, such as Courier or Courier New, is one in which all characters are given the same horizontal space on the line. **All typeface requirements apply to footnotes as well as text.**

5. Length--FRAP 28.1(e) & 32(a)(7). The court encourages short, concise briefs. Motions to exceed the length limitations set by FRAP 28.1(e) & 32(a) are disfavored and will be granted only for exceptional reasons. Any motion to exceed the length limitations must be filed at least 10 days in advance of the due date and must be supported by a statement of reasons. Local Rule 32(b).

A. Appellant's Opening Brief, Appellee's Response Brief, Appellant's Response/Reply Brief. Appellant's opening brief, appellee's response brief, and appellant's response/reply brief must not exceed:

- ▶ 30 pages (unless brief is within word or line limits listed below); **or**
- ▶ 14,000 words, based upon word count of word processing system; **or**
- ▶ 1,300 lines, based upon line count of word processing system (line count may be used ONLY for briefs prepared in monospaced type).

B. Appellee's Opening/Response Brief. Appellee's opening/response brief under a cross-appeal schedule must not exceed:

- ▶ 35 pages (unless brief is within word or line limits listed below); **or**
- ▶ 16,500 words, based upon word count of word processing system; **or**
- ▶ 1,500 lines, based upon line count of word processing system (line count may be used ONLY for briefs prepared in monospaced type).

C. Appellant's Reply Brief, Appellee's Reply Brief, Amicus Brief. Any reply brief or amicus brief must not exceed:

- ▶ 15 pages (unless brief is within word or line limits listed below); **or**
- ▶ 7,000 words, based upon word count of word processing system; **or**
- ▶ 650 lines, based upon line count of word processing system (line count may be used ONLY for briefs prepared in monospaced type).

Headings, footnotes, and quotations count towards the word and line limitations. The Corporate Disclosure Statement, Table of Contents, Table of Authorities, Request for Oral Argument, Addendum, Certificate of Compliance, and Certificate of Service do not count towards the length limitations.

5. Line Spacing, Margins--FRAP 32(a)(4). Briefs must be on 8 ½ by 11" paper. 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 margins, but no text may appear there.

6. Hyperlinks. Electronic briefs may contain hyperlinks to other portions of the same document, other documents filed on appeal, documents filed in the lower court that are part of the record on appeal, or to statutes, rules, regulations, or opinions. Hyperlinks do not, however, replace citations to the appendix, record, or legal authority, and briefs must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink.

APPENDICES

1. Method of Filing. 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. A sample Notice of Paper Filing form is attached.

2. Responsibilities of the Parties--FRAP 30(b), Loc. R. 30(a) & (b). The parties are encouraged to agree on the contents of the appendix. In the absence of agreement, the appellant must, within 14 days of entry of the briefing order, serve on appellee a designation of the parts of the record appellant intends to include and a statement of the issues appellant intends to present. The appellee may, within 14 days after receipt of the designation, serve on appellant a designation of *additional* parts of the record to which appellee wishes to direct the Court's attention. Copies of the parties' designations should *not* be filed with the court. The appellant must include all designated parts in the appendix, but should avoid any unnecessary duplication of materials when assembling the appendix. Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers parts of the record designated by appellee unnecessary for determination of the issues presented, appellant may so advise the appellee, and appellee must advance the cost of including such parts. The costs of producing the appendix are generally taxable in civil cases under FRAP 39 at the close of the case, but if either party causes matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on that party.

3. Contents--FRAP 30(a), Loc. R. 30(b). In accordance with Local Rule 10(a), the record is retained in the district court; therefore, the parties should include in the joint appendix all portions of the record necessary to review of the matters presented. Citation in the parties' briefs to portions of the record not included in the appendix is disfavored. The following *must* be included in the appendix:

- ▶ **Table of Contents, with page numbers**
- ▶ **District Court Docket Sheet**
- ▶ **Complaint as finally amended (civil appeals) or Indictment (criminal appeals)**
- ▶ **Relevant portions of the pleadings, transcript, charge, findings, opinions**
- ▶ **Final Order or Order appealed from**
- ▶ **Notice of Appeal**

After the table of contents and the district court docket sheet, the parts of the record must be set out in chronological order. Each page of the appendix must be consecutively numbered.

4. Table of Contents--Loc. R. 30(b). The table of contents to the appendix must 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. Each witness's testimony and the page on which it begins must be clearly identified in the table of contents, beneath the proceeding in which it occurred. Each exhibit should be identified in the table of contents by exhibit number or letter and by name or brief description and the page number on which it begins.

5. Transcript Page Headings--Loc. R. 30(b). The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) must be clearly indicated at the top of each page of the appendix where the witness's testimony appears. This requirement applies to in-court testimony and deposition testimony.

6. Presentence Report & Statement of Reasons--Loc. R. 30(b). In all criminal appeals seeking review of the application of the sentencing guidelines, appellant must include the sentencing hearing transcript and presentence report in the appendix. The presentence report, objections to the report, and statement of reasons supporting the sentence must be placed in a sealed volume of the appendix. In consolidated criminal appeals, these materials must be separately sealed as to each

defendant by marking the volume and envelope as SEALED – [DEFENDANT’S NAME]. The sealed volumes containing each defendant’s presentence report are served on counsel for the government, but not on counsel for codefendants. A certificate of confidentiality must be filed in electronic and paper form for sealed volumes.

7. Anders Appeals. An appendix is permitted but not required in criminal appeals in which a brief is filed under Anders v. California, 386 U.S. 738 (1967), because the court will obtain and review the entire record in Anders cases. Anders requires that counsel have all transcript prepared for inclusion in the record, including trial, guilty plea, sentencing, and suppression hearings.

8. Length of Appendices--Loc. R. 32(a). In court-appointed cases where reimbursement is sought from the court, no joint appendix may exceed 250 sheets of double-sided copying (500 pages) without advance permission from the court. Absent such permission, reimbursement of copying costs will be limited to 250 sheets.

9. Condensed Transcript--FRAP 32(b)(2) (legibility). The court will not accept appendices containing “condensed” transcript wherein several pages of transcript appear on a single sheet.

10. Administrative Record as Appendix. Appendix format requirements must be satisfied in agency review cases in which appellant is granted leave to file the administrative record as the appendix.

GENERAL PROVISIONS

1. Sealed Briefs--Loc. R. 25(c). When sealed material is included in a brief, two versions of the document must be filed: (i) a complete version under seal in which the sealed material has been distinctively marked and (ii) a redacted version of the same document for the public file. The front of the sealed brief must be conspicuously marked SEALED, and the document must be accompanied by a certificate of confidentiality or motion to seal. Counsel **must** use the electronic entry **SEALED BRIEF** since this entry automatically protects the brief from access by anyone except the Court. The sealed brief must be served in paper form. Counsel also uses the electronic entry **certificate of confidentiality** or **MOTION / seal** to identify the basis for sealing the brief; because these entries are not sealed, the motion or certificate should not include any sealed information. The public, redacted version of the brief is filed using the electronic entry **BRIEF**. See the FAQs on the court’s CM/ECF Docket page at www.ca4.uscourts.gov for information on redacting electronic documents.

2. Sealed Appendices--Loc. R. 25(c). When sealed material is included in the appendix, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix. The front of the sealed volume must be conspicuously marked SEALED, and the volume must be accompanied by a certificate of confidentiality. In consolidated criminal appeals, the presentence report, objections, and statement of reasons supporting the sentence must be placed in separately sealed volumes identified for each defendant and served only on the government and the defendant to whom the material relates (SEALED – DEFENDANT’S NAME). Both sealed and unsealed volumes of appendix are filed in paper form only. The electronic entry **Notice of paper filing** is used to notify the court of the date the sealed and unsealed volumes of appendix were delivered for filing. Counsel also makes the electronic entry **certificate of confidentiality** to identify the basis for sealing appendix volumes.

3. **Cover--FRAP 32(a)(2) & (b)**. Briefs and appendices must have covers, which are color coded as shown below. The electronic version of the brief must include a white cover page in text PDF format. Sample electronic cover page forms are attached.

Standard Schedule

Appendix: White

Appellant's Opening Brief: Blue

Appellee's Response Brief: Red

Appellant's Reply Brief: Gray

Intervenor or Amicus Curiae Brief: Green

Supplemental Brief (Any Party): Tan

Cross-Appeal Schedule

Appendix: White

Appellant's Opening Brief: Blue

Appellee's Opening/Response Brief: Red

Appellant's Response/Reply Brief: Yellow

Appellee's Reply Brief: Gray

4. **Cover Information--FRAP 32(a)(2) & (b)**. Covers of briefs and appendices must be labeled with the following information. An electronic text version of the cover **must** be included with the electronic version of the brief.

- ▶ **Fourth Circuit docket number, centered at the top (do not include lower court or agency docket number)**
- ▶ **United States Court of Appeals for the Fourth Circuit**
- ▶ **Title of the case (parties' names)**
- ▶ **Nature of proceeding (e.g., Appeal, Petition for Review) and name of court, agency, or board below**
- ▶ **Title of the brief, identifying the party or parties for whom the brief is filed**
- ▶ **Names, addresses, and telephone numbers of lead counsel and all counsel participating in preparation of the brief (include names, addresses, and telephone numbers of opposing counsel on appendix only, not on the briefs)**

5. **Bindings FRAP 32(a)(3) & (b)**. Briefs and appendices must be bound along the full length of the left side in a manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open. Each bound volume should not exceed 1 ½" in thickness. Preferred binding methods are: Spiral, plastic-ring binding; "Cheshire" hot-glued tape binding; and "Perfect" binding. Prohibited binding methods are: Binding the top rather than the left side of the document or using staples, clips, or notebooks.

6. **Copies--FRAP 32(a)(1) & Loc. R. 32(a)**. Double-sided copying of the appendix is required in court-appointed cases when the appendix is prepared by a commercial printer, and is preferred for appendices in all cases. Double-sided copying is *not* permitted for briefs.

7. **Citation of Supplemental Authorities under FRAP 28(j)**. If pertinent and significant authorities come to a party's attention after the party's brief is filed - or after oral argument but before decision - a party may promptly advise the circuit clerk by letter, with service on the other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited and served on the other parties.

8. Electronic and Paper Filing Requirements. Electronic filing is mandatory for counsel in all cases effective June 1, 2008. Electronic filing entries, paper filing requirements, and service requirements are set forth below:

Document	Electronic Form	Paper Form
Public Version of Brief	File and serve in electronic text form using BRIEF entry (with cover, disclosure form, certificates of compliance & service)	File 8 copies (6 if counsel appointed, 4 if proceeding IFP without appointed counsel). Paper service not required on counsel who have consented to electronic service.
Sealed Version of Brief	File in electronic form using SEALED BRIEF entry, which restricts access to court users only. Make separate entry for: Certificate of confidentiality or MOTION / seal .	File 4 copies of sealed version of brief (marked SEALED), together with 4 copies of certificate of confidentiality or motion to seal, in an envelope marked SEALED. Serve one copy in paper form on counsel for each party separately represented, since electronic form is restricted to court users.
Unsealed Appendix Volumes	Make entry for Notice of paper filing and file notice that appendix has been filed in paper form (form Notice attached).	File 6 copies of unsealed volumes of appendix; 5 if counsel appointed; 4 if proceeding IFP without appointed counsel; 4 in immigration cases; 4 for exhibit volumes. Serve one copy in paper form on counsel for each party separately represented.
Sealed Appendix Volumes	Make entry for Notice of paper filing and file notice that appendix has been filed in paper form (one notice can be used for sealed and unsealed volumes of appendix). Make separate entry for: Certificate of confidentiality .	File 4 copies of sealed volumes of the appendix (marked SEALED), together with 4 copies of the certificate of confidentiality, in an envelope marked SEALED. Serve one copy in paper form on counsel for each party separately represented. In consolidated criminal appeals, place each defendant's confidential sentencing materials in separate sealed volumes identified by defendant and served only on the government and the defendant to whom the material pertains.
Supplemental Authorities	File and serve in electronic form using the Supplemental authorities entry. File and serve response in electronic form using the Supplemental authorities response entry.	If filed electronically, paper copies are not required.

NO. _____

In The
United States Court of Appeals
For The Fourth Circuit

v.

FOR THE ON APPEAL FROM THE UNITED STATES DISTRICT COURT
AT

Counsel for

NO. _____

In The
United States Court of Appeals
For The Fourth Circuit

v.

ON PETITION FOR REVIEW OF AN ORDER OF

Counsel for

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. _____ **Caption:** _____

CERTIFICATE OF COMPLIANCE WITH RULE 28.1(e) or 32(a)
Certificate of Compliance With Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because:

[Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 14,000 words or 1,300 lines; Appellee's Opening/Response Brief may not exceed 16,500 words or 1,500 lines; any Reply or Amicus Brief may not exceed 7,000 words or 650 lines; line count may be used only with monospaced type]

this brief contains _____ *[state the number of]* words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

this brief uses a monospaced typeface and contains _____ *[state the number of]* lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

[14-point font must be used with proportional typeface, such as Times New Roman or CG Times; 12-point font must be used with monospaced typeface, such as Courier or Courier New]

this brief has been prepared in a proportionally spaced typeface using _____ *[state name and version of word processing program]* in _____ *[state font size and name of the type style]*; or

this brief has been prepared in a monospaced typeface using _____ *[state name and version of word processing program]* with _____ *[state number of characters per inch and name of type style]*.

(s) _____

Attorney for _____

Dated: _____

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
CERTIFICATE OF CONFIDENTIALITY, LOCAL RULE 25(c)

No. _____ Caption: _____

(appellant, appellee, petitioner, respondent, other)

certifies the following information regarding sealing of the document(s) described below:

1. Identify document(s) filed (e.g., appendix volume, opening brief, motion):

2. Is sealing of document(s) necessary?

No

Yes, to protect material sealed by district court/agency

Yes, to protect personal data identifiers

3. Have redacted copies of document been filed: *[For sealed briefs and motion papers, counsel must file (i) a sealed version of the document (marked SEALED, with sealed material highlighted, and accompanied by a certificate of confidentiality or motion to seal) and (ii) a public version (with sealed material redacted). Use SEALED BRIEF FILED or SEALED DOCUMENT OR MOTION FILED and certificate of confidentiality filed entries for electronic filing. Also file four paper copies of sealed version of briefs, together with usual number of public version of briefs.]*

Yes

No

4. Has sealed record material been separated from unsealed record material and placed in a separate, sealed volume of the appendix: *[For sealed appendices, counsel must place sealed material in a separate volume of the appendix, marked SEALED, and file four paper copies with certificates of confidentiality in envelopes marked SEALED. Use Notice of paper filing and certificate of confidentiality filed for electronic entries.]*

Yes

No

5. Date(s) of order(s) sealing the material or, if there is no order, the authority relied upon to treat the material as sealed:

6. Terms of order sealing the material, including whether documents were filed ex parte or in camera (if filed ex parte, envelope and front of document must be marked SEALED and EX PARTE):

(date)

(signature)

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

NOTICE OF PAPER FILING

No. _____ Caption: _____

Document: _____

Under Seal: Yes No In Part: Vols. _____

_____ as the _____
(party name) (appellant, appellee, petitioner, respondent)

certify that the above-referenced document has been filed and served as follows:

Filed by _____ on _____

Served by _____ on _____

to:

(date)

(signature)