

# United States Court of Appeals For the Fourth Circuit

## Appellate Filing Procedure

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## **ABOUT LANTAGNE LEGAL**

Lantagne Legal Printing (Est. 1992) is a family-run business serving the legal community as a professional service specializing in appellate procedure. We provide the highest levels of quality, service and expertise to our clients, drawing on over a century of combined appellate experience. Our staff is uniquely prepared to meet all of your appellate needs.

In 1997 we welcomed Brief Printing Specialists to the Lantagne Legal Printing family. At that time Kay Craig and May Serafim had worked in the appellate field for over 13 years. During those years they established an impressive reputation for quality and service. The combination of our staffs created the strongest, most experienced appellate services company operating in Richmond today. Kay has since retired but May is still with us serving the legal community in appellate filings.

As a company, we constantly strive to be the very best at what we do. Our commitment to our clients is to provide superior service at a fair price. Comments and suggestions on our work and how we might improve our services are always welcome and can be sent directly to me.

Sincerely,

Donald G. Lantagne  
President

## **ABOUT THIS HANDBOOK**

This handbook provided by Lantagne Legal Printing is intended as a helpful guideline for the appellate process and is not intended as a substitute for the Rules of the Fourth Circuit Court of Appeals. For detailed and definitive answers to appellate procedures and questions, the actual Rules of the Fourth Circuit Court of Appeals should be consulted. We are more than happy to provide copies of the actual rules when requested.

**Be sure to visit us on the web at [lantagne.com](http://lantagne.com)**

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# United States Court of Appeals for the Fourth Circuit

## FILING SCHEDULE

The following Rules of the Court, F.R.A.P. 31(a), Local Rule 31 (a), (b) and (c) have been condensed into the filing schedule below. All time requirements are calculated in calendar days.

|                     | <u>Civil Appeal</u>  | <u>Criminal Appeal</u>                                      |
|---------------------|--|---|
| Brief of Appellant: | 40 days from Briefing Order  | 35 days from Briefing Order                                 |
| Joint Appendix:     | Filed with Brief of Appellant                                      | Filed with Brief of Appellant                               |
| Brief of Appellee:  | 30 days (+3 if serviced by mail)<br>from filing Brief of Appellant | 21 days (+3 mailing days)<br>from filing Brief of Appellant |
| Reply Brief:        | 14 days (+3 if serviced by mail)<br>from filing Brief of Appellee  | 10 days (+3 mailing days)<br>from filing Brief of Appellee  |

# Specifications for the Brief of Appellant

## **F.R.A.P. 32(a)(b), Local Rule 32(a) and your Briefing Order:**

- Paper: 8-½ x 11 inches in size  
Margin lines or borders, line numbering and counsel's letterhead or logo **shall not** appear on the pages of a brief.
- Margins: 1 inch on all four sides
- Line Spacing Text: double-spaced  
Headings & Footnotes: single-spaced  
Quotations over two lines: indented and single-spaced
- Footnotes & Quotations: Must appear in the same **typeface** and **size** as the rest of the brief
- Type: **Monospaced type:** Courier or Courier New – 12 point  
**Proportional type:** Times New Roman – 14 point  
Note: Proportional sans-serif fonts (such as Arial) are not acceptable
- Length: 30 pages; **OR**  
*FRAP 32(a)(7)*  
*Local Rule 32(b)* If over 30 pages, **counsel must certify** the following: No more than 14,000 words (**including footnotes**) based upon word count of word processing program; **OR** 1,300 lines, based on line count of word processing program
- Limits exclude covers, corporate disclosure statement, table of contents, table of citations, proof of service and any addendum of statutes, rules, etc.
- Cover color: Blue

## **Number of copies: Local Rule 31(d)**

- Civil/Retained Criminal – File 8, Serve 1  
Court-Appointed Criminal – File 6, Serve 1

# Content Requirements for the Brief of Appellant

**The brief of appellant shall contain under appropriate headings and in the order here indicated (F.R.A.P. 28(a)):**

1. Corporate Disclosure Statement *(not applicable in a criminal case for non-corp. def. – Local Rule 26.1)*
2. Table of Contents
3. Table of Cases, Statutes and Authorities
4. Statement of Subject Matter and Appellate Jurisdiction
5. Statement of Issue(s) Presented for Review
6. Statement of the Case
7. Statement of the Facts – **Shall include Joint Appendix References showing the source of the facts (Local Rule 28(f))**
8. Summary of Argument
9. Argument
  - Standard of Review
  - Discussion of Issues
10. Conclusion Stating Precise Relief Sought
11. Request for Oral Argument
12. Certificate of Compliance *(FRAP 32(a)(7)(B)(C) – see addendum for sample)*
13. Certificate of Service – *see addendum for sample*

# Content Requirements for the Joint Appendix

The joint appendix shall contain the following according to F.R.A.P. 30(a) and Local Rule 30(b). The parties must file an appendix containing all portions of the record necessary for review of the matters presented. If verbal agreement between parties on the contents of the joint appendix is not reached, the appellant must file a formal designation with the Fourth Circuit (F.R.A.P. 30(b)):

1. Table of Contents
2. Relevant Docket Entries
3. Indictment or Complaint
4. Any other parts of the record which parties wish to bring to the attention of the Court
5. Judgment appealed from or Order appealed from
6. Notice of Appeal

Transcripts of witness's testimony must be clearly identified in the table of contents showing:  
Name; Direct; Cross; Redirect; Recross

Criminal Cases seeking review of sentencing must have the entire sentencing hearing transcript and the presentence report in the appendix as a separate sealed volume.

F.R.A.P. 30(d) – Following the Table of Contents and District Court Docket Entries, the Appendix must be set out in chronological order. Local Rule 30(b) states that “The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, recross) should be clearly indicated at the top of each page of the appendix where the witness’s testimony appears.”

## THE 4<sup>TH</sup> CIRCUIT DOES NOT ALLOW INCLUSION OF CONDENSED TRANSCRIPTS IN THE JOINT APPENDIX

### Number of copies according to Local Rule 30(b):

|                              | <u>File</u> | <u>Serve</u> |
|------------------------------|-------------|--------------|
| Civil/Retained Criminal      | 6           | 1            |
| Court-Appointed Criminal     | 5           | 1            |
| Exhibit Volume (all appeals) | 4           | 1            |
| Sealed Volume                | 4           | 1            |

Page Limit: n/a  
Color: White – F.R.A.P. 32(b)

# Criminal Justice Act Court Appointed Attorneys: What You Need to Know

## CONTENT REQUIREMENTS

### The Brief:

Requirements for the Brief of Appellant in a criminal appeal are identical to requirements for other Fourth Circuit briefs (see page 2 in this handbook). The only difference is in the number of copies filed and served (**Local Rule 31(d)**).

|        |  |
|--------|--|
| File:  | 6 copies of the brief                                      |
| Serve: | 1 copy on counsel for each party<br>separately represented |

### The Joint Appendix:

In addition to the appendix content requirements set forth on page 4 of this handbook, **Local Rule 30(b)** states: “In all criminal appeals seeking review of the application of sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix.” The Presentence Report must be in a separate sealed volume.

Again, the number of copies filed and served differs from a civil appeal:

|        |  |
|--------|--|
| File:  | 5 copies of the joint appendix<br>(4 copies of Exhibit & Sealed Volumes) |
| Serve: | 1 copy on counsel for each party<br>separately represented               |

**Local Rule 32(a)** limits the size of the appendix to 250 sheets copied on both sides (500 pages). A motion to the Court must be made and granted to exceed this limitation.

**Sealed Material:** Local Rule 25(c) requires that if a joint appendix contains sealed material and/or a brief refers to sealed material, counsel must file a certificate of confidentiality (a form for this certificate is located in our addendum). Additionally, the Clerk’s Office requires that the cover of each brief or appendix containing or referring to sealed material be marked SEALED and that the sealed brief or appendix be filed in an envelope marked SEALED.

## **Brief of Appellee: Content Requirements**

1. Corporate Disclosure Statement
2. Table of Contents
3. Table of Authorities
4. Statement of Subject Matter and Appellate Jurisdiction\*
5. Statement of the Issues\*
6. Statement of the Case\*
7. Statement of the Facts\*
8. Summary of Argument
9. Argument
  - Standard of Review\*
  - Discussion of Issues
10. Conclusion
11. Certificate of Compliance
12. Certificate of Service

\*These statements need not be made unless appellee is dissatisfied with those of the appellant

Specifications for the Brief of Appellee are identical to those for the brief of appellant (see page 2), except the cover is **RED**.

## **Reply Brief of Appellant: Content Requirements**

1. Table of Contents
2. Table of Authorities
3. Argument
4. Conclusion
5. Certificate of Compliance (page limitations)
6. Certificate of Service

Specifications for the Reply Brief of Appellant are identical to those for the brief of appellant with the following exceptions:

1. gray cover; yellow if cross-appeal
2. 15 page limit; OR 7,000 words OR 650 lines of Monospaced type

# FILING REQUIREMENTS SUMMARY (HARD COPY)

| <u>NAME</u>                       | <u>COLOR</u> | <u>FILE</u> | <u>SERVE</u> | <u>PG. LIMIT</u>                      |
|-----------------------------------|--------------|-------------|--------------|---------------------------------------|
| Brief of Appellant                | Blue         | 8           | 1            | 30 (or 14,000 words)                  |
| Brief of Appellee                 | Red          | 8           | 1            | 30 (or 14,000 words)                  |
| Reply Brief of Appellant          | Gray         | 8           | 1            | 15 (or 7,000 words)                   |
| Appendix                          | White        | 6           | 1            | N/A                                   |
| Exhibit Volume                    | White        | 4           | 1            | N/A                                   |
| Sealed Volume                     | White        | 4           | 1            | N/A                                   |
| Brief of Amicus Curiae            | Green        | 8           | 1            | No more than brief you are supporting |
| Petition for Permission to Appeal | N/A          | 4           | 1            | 15                                    |

## COURT APPOINTED FILINGS

|                    |       |   |   |  |
|--------------------|-------|---|---|--|
| Brief of Appellant | Blue  | 6 | 1 | 30 (see page 2 for details)                                |
| Appendix           | White | 5 | 1 | 500 pages/250 2-sided including sealed and exhibit volumes |
| Sealed Volume      | White | 4 | 1 |  |
| Exhibit Volume     | White | 4 | 1 |  |

## RULE 32(a)(2): COVER INFORMATION

1. Record Number and Name of Court
2. Style of Case
3. Nature of Proceeding in Court – (Appeal, Petition for Review)
4. Title of Document – (Brief of Appellant...)
5. Name, address and telephone number of counsel representing the party on whose behalf the document is filed.

# **FILING REQUIREMENTS SUMMARY (ELECTRONIC)**

**F.R.A.P. 25(a)(2)(D)** and **Local Rule 25(a)** establish procedures requiring electronic filing of documents, with certain exceptions, and authorizing electronic service of documents using the Court's transmission equipment, as set forth in **Administrative Order 08-01**.

The following documents must be filed **electronically** with the Court on the day of the **hard copy filing**:

- Brief of Appellant
- Brief of Appellee
- Reply Brief
- Brief of Amicus Curiae
- Sealed Certificate (if needed)

The following items are filed **electronically only**:

- Motions
- Petition for Rehearing
- Petition for Rehearing and Petition for Rehearing En Banc
- Notice of Paper Filing (Appendix)

# Common Filing Errors

**The following errors are the most common ones that we find in briefs received from attorneys for filing.**

**Typeface:** The court's rule on typeface (Local Rule 32(a)) has caused some confusion. **Monospaced** type is simply a "Courier" or "Courier New" font. If using this font, you need to select it in 12-point size on your word processor. **Proportional** type is a font such as Times New Roman, Universal or Arial. When using this type of font, you must select 14-point size. Also, the Court **will not accept all types of this font** – for example, Arial is unacceptable. The Court requires the font to be a "serif" font – Times New Roman is your best bet here.

**References to the Joint Appendix:** The Court requires that your Statement of Facts include references to the Joint Appendix showing the source of the facts.

**Summary of Argument:** This is often left out of or misplaced in the brief. It must be included and be placed between the Statement of Facts and the Argument.

**Standard of Review:** This must be included as a subsection, or incorporated in the text, of the argument. It must fall after the heading "Argument," not before.

## **SUMMARY OF SERVICES**

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### **Joint Appendix**

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- Obtain documents from the Appellant counsel for the preparation of the appendix in the United States Court of Appeals for the Fourth Circuit. (If the appeal originates from the Eastern District of Virginia, we can obtain the documents for the original record)
- Make sure all documents required by the court for inclusion are in the appendix
- Complete assembly of the appendix according to the rules of the court
  - ◆ Place all documents in chronological order
  - ◆ Place asterisk symbols for omissions of text in a document
  - ◆ Digitally number each page
- Prepare table of contents
- Prepare cover and copy on the proper color cover stock
- Large exhibits reduced or at original size
- Send an advance copy of the Joint Appendix via overnight mail or hand-delivery for your review, approval and use to finalize referencing your brief

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### **Briefs**

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- Ability to accept briefs via e-mail, disc, fax or hard copy the day it is due for filing. No later than 12:00 p.m. guarantees hand-filing
- Thoroughly examine and check brief for compliance with all Rules of the Court, notifying you of any needed changes
- Electronic filing of brief
- Prepare cover and copy on the proper color cover

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### **Briefs and Appendices**

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- Produce number of copies required for filing and service
- File required copies of briefs and appendices in court by hand whenever possible
- Have the Clerk's office stamp two(2) copies of the brief – one copy for our client and one for opposing counsel
- Serve opposing counsel via U.S. Postal Service, overnight service (if requested) or hand-delivery
- Call you to confirm the filing and serving has been completed

## BENEFITS TO OUR CLIENTS

- The most experienced staff you can find with over a century of combined experience specializing in appellate filing procedures.
- Convenience to court – we are located about 1 city block of the Virginia Supreme Court, Virginia Court of Appeals and the Fourth Circuit Court of Appeals.
- Personal service/personal attention
- Samples of briefs and other pertinent documents provided upon request free of charge.
- **NO RUSH CHARGES – NO HIDDEN COSTS**
- Prompt payment discounts are shown on the invoice when available.

### **A few of the services frequently requested by clients for which we normally do not charge are:**

- A copy of the docket sheets of the record on appeal faxed to your office when requested.
- Filing and service of the designation of contents of the appendix.
- Filing and service of any motions.
- Minor edits and corrections to briefs, if required.
- Guaranteed, same-day filing of your brief with the court if received by 12:00 p.m. Briefs received after 12:00 p.m. may be filed via hand or certified mail, dependant on circumstances.

## Fee Schedule

### United States Court of Appeals for the Fourth Circuit

#### Briefs and Appendices

|  |          |
|--|----------|
| Base Charge (Briefs and Petitions only (Petitions shown below)).....         | \$125.00 |
| Preparation for and filing of Briefs – per original page.....                | \$3.50   |
| Assembly, preparation for and filing Joint Appendix – per original page..... | \$3.00   |
| Paper copies filed/served – per copy .....                                   | \$0.10   |

#### Prices include electronic filing as required by the Court

|   |        |
|---|--------|
| Additional Electronic Copies (CD's) if requested – ea. ....           | \$6.00 |
| (Hyperlinks available upon request – charged on an hourly rate basis) |        |

#### Petitions

|  |        |
|--|--------|
| Paper copies filed/served – per copy ..... | \$0.15 |
|--|--------|

**First class postage is included in our charges. There will be a separate line item charge for any overnight shipping charges.**

#### There are no services billed by the hour other than hyperlinking

**Please note: *Our professional relationship is with you rather than your client, so the invoice represents your obligation to us.***

#### Services included in the above are (but are not limited to):

- Specialist assigned to your case from beginning to completion.
- Electronic filing and service of any Motions in the case.
- Complete assembly of the Appendix according to the Rules of the Court.
- Advance copy of the appendix delivered to your office for approval and use in preparation of your Brief.
- Preparation of covers for both the Appendix and the Brief.
- Review of your Brief to ensure correct format/compliance with the Rules of the Court.
- Edits and corrections to Brief if required.
- Samples of briefs, motions, designations – anything you may need.
- Guaranteed, same day hand filing of your brief with the Court if received by 12:00 p.m. Briefs received after 12:00 p.m. may be filed via hand or certified mail, dependant on circumstances.
- Time-stamped copy of all filings for your records. We also send time-stamped copies to your opposing counsel.
- Confirmation call or email after filing and service of your documents.

**Continued on next page**

## **Fee Schedule – Continued**

### **Additional Services if Needed**

|   |        |
|---|--------|
| Condensed Transcript Enlargement            |        |
| Per Copy Cost .....                         | \$0.50 |
| Retrieval of Designated Documents via PACER |        |
| Per Page Cost .....                         | \$0.45 |
| Color Copies                                |        |
| Per Copy Cost .....                         | \$0.35 |

**First class postage is included in our charges. There will be a separate line item charge for any overnight shipping charges.**

**Please note: *Our professional relationship is with you rather than your client, so the invoice represents your obligation to us.***

The listed fees and charges are the only costs normally associated with Lantagne Legal Printing's handling of your appeal from beginning to end. Your case coordinator will be available to you at all times (weekends included, if necessary) to assure your documents are filed correctly and timely.

Lantagne Legal Printing is family-owned and operated, and is Richmond's oldest continuously owned company specializing in appellate filing and procedure. Our staff, which includes an attorney with extensive appellate court experience, has more combined years of experience in appellate filing procedure than any of our competitors in Richmond. We take pride in providing the best in both service and price. It would be our pleasure to assist you in perfecting your appeal.

**Web site: [lantagne.com](http://lantagne.com)  
E-Mail: [lantagne@lantagne.com](mailto:lantagne@lantagne.com) Phone: 1-800-847-0477**

# ADDENDUM OF SAMPLES

|  |     |
|--|-----|
| Cover .....                                  | A-1 |
| Certificate of Compliance .....              | A-2 |
| Filing & Mailing Certificate .....           | A-3 |
| Certificate Relating to Sealed Material..... | A-4 |

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RECORD NO. 00-0000

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

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JOHN JOSEPH DOE,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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**BRIEF OF APPELLANT**

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**Your Name**  
**YOUR FIRM**  
**Address**  
**City, State, Zip**  
**Phone Number**  
**Email**

*Counsel for Appellant*

---

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RECORD NO. 00-0000

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

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JOHN JOSEPH DOE,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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**JOINT APPENDIX**

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**Your Name**  
**YOUR FIRM**  
**Address**  
**City, State, Zip**  
**Phone Number**  
**Email**

*Counsel for Appellant*

**Opposing Counsel's Name**  
**FIRM**  
**Address**  
**City, State, Zip**  
**Phone Number**  
**Email**

*Counsel for Appellee*

## **CERTIFICATE OF COMPLIANCE**

TO BE INCLUDED IMMEDIATELY BEFORE THE CERTIFICATE OF SERVICE FOR ALL BRIEFS FILED IN THIS COURT.

1. This brief has been prepared using (SELECT AND COMPLETE ONLY ONE):

Fourteen point, proportionally spaced, serif typeface (such as CG Times or Times New Roman, NOT sans serif typeface such as Arial). Specify software name and version, typeface name, and point size below (for example, WordPerfect 8, CG Times, 14 point):

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Twelve point, monospaced typeface (such as Courier or Courier New). Specify software name and version, typeface

2. EXCLUSIVE of the corporate disclosure statement; table of contents; table of citations; statement with respect to oral argument; any addendum containing statutes, rules or regulations; and the certificate of service, the brief containing (SELECT AND COMPLETE ONLY ONE):

\_\_\_\_ Pages (give specific number of pages; may not exceed 30 pages for opening or answering brief or 15 pages for reply brief); OR

\_\_\_\_ Words (give specific number of words; may not exceed 14,000 words for opening or answering brief or 7,000 for reply brief); OR

\_\_\_\_ Lines of Monospaced Type (give specific number of lines; may not exceed 1,300 lines for opening or answering brief or 650 for reply brief; may be used ONLY for briefs prepared in monospaced type such as Courier or Courier New).

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the Court so directs, I will provide an electronic version of the brief and/or copy of the word or line print-out.

---

Date

---

Signature of Filing Party

1. **Prepared by Attorney's Office:**

Filing and Mailing Certificate

I hereby certify that on this \_\_\_ day of 20\_\_\_, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit the required copies of this Brief of Appellant and further certify that I mailed this same date the required copies to opposing counsel.

\_\_\_\_\_  
Attorney's Name

Opposing Counsel served:  
Name, address, phone number

---

---

2. **Prepared by Lantagne Legal Printing:**

Filing and Mailing Certificate

I hereby certify that on this \_\_ day of \_\_\_\_\_, 20\_\_, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit the required copies of this Brief of Appellant and Joint Appendix and further certify that I mailed this same date from Richmond, Virginia the required copies to opposing counsel.

The necessary filing and mailing was performed in accordance with the instructions given me by counsel in this case.

\_\_\_\_\_  
Lantagne Legal Printing  
801 East Main Street, Suite 100  
Post Office Box 2472  
Richmond, Virginia 23219-2472

Opposing Counsel served:  
Name, address phone number

RECORD NO. \_\_\_\_\_

CERTIFICATE OF CONFIDENTIALITY

Pursuant to Local Rule 10(d), \_\_\_\_\_, who is the appellant, states that the record on appeal contains confidential materials sealed by the lower court/agency and hereby certifies the following information:

1. Identity of the material sealed below:
  
2. Dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed:
  
3. Identity of the appellate documents submitted for filing that disclose information in materials sealed by the lower court/agency:

Four copies of the appellate documents that are the subject of this certificate are submitted for filing. They are each conspicuously marked SEALED on their cover pages and are enclosed in an envelope marked SEALED. A copy of this certificate must be served on opposing counsel.

\_\_\_\_\_, 200\_\_  
(date)

\_\_\_\_\_  
(signature)