

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

CHECKLIST FOR PREPARATION OF BRIEFS AND RECORD EXCERPTS

NOTE: Check all copies before mailing.

- 1) **CONTENTS OF BRIEFS (5TH CIR. R. 28.3 reproduced below gives the required contents of a brief.**
 - a) **Certificate of interested persons required by 5TH CIR. R. 28.2.1;**
 - b) **Statement regarding oral argument required by 5TH CIR. R. 28.2.3 (see also FED. R. APP. P. 34(a)(1));**
 - c) **A table of contents, with page references (see FED. R. APP. P. 28 (a)(2));**
 - d) **A table of authorities (see FED. R. APP. P. 28(a)(3));**
 - e) **A jurisdictional statement as required by FED. R. APP. P. 28(a)(4)(A) through (D);**
 - f) **A statement of issues presented for review (see FED. R. APP. P. 28(a)(5));**
 - g) **A statement of the case (see FED. R. APP. P. 28(a)(6));**
 - h) **A statement of facts relevant to the issues submitted for review (see FED. R. APP. P. 28(a)(7));**
 - i) **A summary of the argument (see FED. R. APP. P. 28(a)(8));**
 - j) **The argument, including the applicable standards of review (see FED. R. APP. P. 28(a)(9));**
 - k) **A short conclusion stating the precise relief sought (see FED. R. APP. P. 28(a)(10));**
 - l) **A signature of counsel or a party as required by FED. R. APP. P. 32(d);**
 - m) **A certificate of service in the form required by FED. R. APP. P. 25;**
 - n) **A certificate of compliance if required by FED. R. APP. P. 32(a)(7) and 5TH CIR. R. 32.3.**

2) **FORM (See FED. R. APP. P. and 5TH CIR. R. 32)**

a) **Paper Size. 8½ x 11 inch paper is required for briefs.**

| | Page Limit Option | Type-Volume with monospaced (non-proportional) type, Text Line Option | Type-Volume with proportional or monospaced type, Word Count Option |
|-------------------------|--|--|--|
| Print Size | 14 point or larger for text; 12 point or larger for footnotes in proportional typeface; no more than 10½ cpi for text, no more than 12½ cpi for footnotes in monospaced type. | At least 10½ cpi for text; 12½ cpi for footnotes | At least 14 point for text; at least 12 point for footnotes in proportional typeface; 10½ (12½ cpi for monospaced typeface) |
| Principal Briefs | 30 Pages | 1,300 lines of text | 14,000 words |
| Reply Briefs | 15 Pages | 650 lines of text | 7,000 words |

- b) **Text. Must be double spaced; quotations over 2 lines and footnotes may be single spaced.**
- c) **Margins. Must be 1 inch on all sides.**
- d) **Typeface style. Either proportionally spaced or monospaced typeface may be used. A plain roman style is required although italics or boldface may be used for emphasis. Case names must be italicized or underlined. San serif typeface is not permitted in proportional typeface, except for headings and captions.**
- e) **Legibility. A clear black image on light paper with clarity equalling or exceeding that of a laser printer. (FED. R. APP. P. 32(a)(1)(A) and (B))**
- f) **Reproduction. Only one side of the paper may be used. (FED. R. APP. P. 32(a)(1)(A))**
- g) **LENGTH OF BRIEFS (See FED. R. APP. P. 32(a)(7)(B)(iii) for calculations of word and text line limits. In general, any certificate of interested parties; tables of contents and citations; statement with respect to oral argument; any addendum containing statutes, rules, or regulations; and, any certificates of counsel do not count toward the word or text line limitations.)**

3) COVER AND BINDING OF BRIEF (FED. R. APP. P. 32(a)(2) and (3))

a) **Durable cover on both front and back. The front cover must contain: (1) the number of the case centered at the top; (2) the name of the court; (3) the title of the case (FED. R. APP. P. 12(a)); (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below; (5) the title of the brief identifying the party or parties for whom the brief is filed; and (6) the name, office address and telephone number of counsel representing the party for whom the brief is filed.**

b) **Briefs must be bound in a secure manner, not obscuring the text, and permitting the brief to lie reasonably flat when open, i.e. spiral binding. Cost of this type binding may be recovered. (5TH CIR. R. 39)**

c) **Color:**

**Brief of Appellant - Blue
Brief of Appellee - Red
Reply Brief of Appellant - Gray
Intervenor or Amicus Curiae - Green
Supplemental Brief - Tan**

Cross-Appeals:

**Principal Brief of Appellant - Cross Appellee - Blue
Principal Brief of Appellee - Cross Appellant - Red
Reply Brief of Appellant - Cross Appellee - Yellow
Reply Brief of Appellee - Cross Appellant - Gray**

4) NUMBER OF COPIES 7 paper copies - will be requested after your e-filed brief is reviewed and noted to be sufficient. For those exempt from e-filing, 7 paper copies should be mailed or forwarded as well as - electronic copies as required by 5TH CIR. R. 31.1, See 6) below.

5) TIME REQUIREMENTS (FED.R.APP.P. and 5TH CIR. R. 31)

a) **Appellant's Brief is due within 40 days of the briefing notice.**

b) **Appellee's Brief is due within 33 days from the date of the certificate of service of the Appellant's Brief.**

c) **Appellant's Reply Brief is due within 17 days of the certificate of service of the Appellee's Brief.**

d) **The due date is the date on which the brief is expected to be mailed to this court and served on the opposing party. If the due date falls on a weekend or federal holiday, it is extended to the following day.**

6) FILING AND SERVICE (Fed.R.App.P. 25 and 31) All counsel are now required in accordance with 5th CIR. R. 25.2.1 to file all pleadings, other than case originating documents, electronically via the court's CM/ECF filing system. Briefs are deemed filed at the time of the original e-filing or for those exempt from e-filing, on the day of mailing or delivery to a third party commercial carrier for delivery within 3 calendar days. 5TH CIR. R. 39.2 restricts the recovery of certain mailing and commercial delivery costs. Requirement for filing and providing electronic copies of briefs - See 5TH CIR. R. 31.1 on back of this page.

7) RECORD EXCERPTS are also filed electronically, those exempt from e-filing must continue to forward an electronic copy as well as 4 paper copies. After record excerpts electronically filed are reviewed and noted to be sufficient, paper copies will be requested.

8) PRINTING COSTS (5TH CIR. R. 39.1 limits the recoverable reproduction costs to a maximum of \$.25 per page.)

FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

Extracts from FED. R. APP. P. 32

- (a) *Form of a Brief.*
- (1) *Reproduction.*
(A) A brief may be reproduced by any process that yields a clear black image on light paper. 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.
- (2) *Cover.* Except for filings by unrepresented parties, the appellant's brief cover must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover must contain:
(A) the case number centered at the top; (B) the court name; (C) the case title (see Rule 12(a)); (D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court name, agency, or board below; (E) the brief's title, identifying for whom the brief is filed; and (F) counsel's the name, office address, and telephone number.
- (3) *Binding.* Must be secure, not obscure the text, and permits the brief to lie reasonably flat when open.
- (4) *Paper Size, Line Spacing, and Margins.* 8½ by 11 inch paper, double-spaced text, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced, margins at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- (5) *Typeface.* Proportionally spaced or a monospaced face may be used.
(A) Proportionally spaced face must include serifs; sans-serif type may be used in headings and captions. Proportionally spaced face must be 14-point or larger. (B) Monospaced face may not contain more than 10½ characters per inch.
- (6) *Type Styles.* Use 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.* Principal brief may not exceed 30 pages; 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 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.
- (c) *Form of Other Papers.*
- (1) *Motion.* Motions are governed by Rule 27, and are limited to 20 pages. Follow FED. R. APP. P. 32(a)(5) & (6) for typeface and typestyle.
- (2) *Other Papers.* Any other paper, including a petition for rehearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

- (A) No cover is necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2); and
- (B) Rule 32(a)(7) does not apply.

For rules covering briefs in cross-appeals, See FED. R. APP. P. 28.1.

Extracts from 5TH CIR. R. 31 and 32

5TH CIR. R. 31.1: Briefs -Briefs - Number of Copies; Computer Generated Briefs. *Only 7 paper copies of briefs need be filed. Where a party is represented by counsel who is exempt from electronic filing under 5TH CIR. R. 25.2, and counsel generates his or her brief by computer, the party also must submit an electronic version of the brief to the court. The filing party must serve unrepresented parties and counsel for separately represented parties in accordance with FED. R. APP. P. 31(b), and also must serve an electronic version of the brief on each party separately represented. However, the parties may agree in writing to waive service of paper copies of the brief and to be served with an electronic copy only. Electronic service may be in a form agreed to in writing by the parties, or by the same means as submitted to the court. The electronic copy of the brief must be filed on a CD, computer diskette, or such other electronic medium as the clerk may authorize.*

The electronic version must:

be prepared in a single Portable Document Format (PDF) file. (Briefs scanned into PDF are not acceptable);

contain nothing other than the brief;

have as the first page of the electronic file a brief cover page as required by FED. R. APP. P. 32(a)(2).

If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label containing the case name and docket number, and identifying the brief as the appellant's, appellee's, etc.

5TH CIR. R. 32.1: Allows the typeface in footnotes to be smaller than the text.

Extracts from 5TH CIR. R. 30

5TH CIR. R. 30.1.2 Filing. *Four paper copies of excerpts of the district court record must accompany the appellant's brief, see 5TH CIR. R. 30.1.4 and 30.1.5. If exempt from electronic filing under 5TH CIR. R. 25.2, all appellants represented by counsel must file an electronic copy of the record excerpts on a CD, computer diskette, or such other electronic medium as the clerk may authorize. The electronic copy must be in a single Portable Document Format (PDF) file; contain nothing other than the record excerpts; and have as the first page of the electronic copy an index to the contents. If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label containing the case name and docket number and state "Record Excerpts." The appellant must serve a paper and electronic copy of the excerpts on counsel for each of the parties separately represented; a paper copy on any party proceeding pro se, and an electronic copy, if the pro se party is not an inmate confined in an institution. The appellee may similarly submit and serve additional record excerpts with the appellee's principal brief, with the required copies furnished to the clerk accompanying the appellee's brief.*