

Rule 28. Briefs

- (a) Appellant's Brief.** The appellant's brief must contain, under appropriate headings and in the order indicated:
- (1) a corporate disclosure statement if required by Rule 26.1;
 - (2) a table of contents, with page references;
 - (3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;
 - (4) a jurisdictional statement, including:
 - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (C) the filing dates establishing the timeliness of the appeal or petition for review; and
 - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;
 - (5) a statement of the issues presented for review;
 - (6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));
 - (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
 - (8) the argument, which must contain:
 - (A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
 - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
 - (9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(a)(7).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

- (1) the jurisdictional statement;
- (2) the statement of the issues;
- (3) the statement of the case; and
- (4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved]

(h) [Reserved]

- (i) **Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
- (j) **Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all 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.

Local Rule 28(a). Consolidated Cases and Briefs.

Related appeals or petitions for review will be consolidated in the Office of the Clerk, with notice to all parties, at the time a briefing schedule is established. One brief shall be permitted per side, including parties permitted to intervene, in all cases consolidated by Court order, unless leave to the contrary is granted upon good cause shown. In consolidated cases lead counsel shall be selected by the attorneys on each side and that person's identity made known in writing to the clerk within 14 days of the date of the order of consolidation. In the absence of an agreement by counsel, the clerk shall designate lead counsel. The individual so designated shall be responsible for the coordination, preparation and filing of the briefs and appendix.

Local Rule 28(b). Addenda and Attachments to Briefs.

A party may comply with the requirements of FRAP 28(f) and FRAP 32.1(b) by including material or items designated therein in an addendum at the end of the brief or by supplying them to the Court under separate cover. Should a party wish to supplement the brief with matters other than those designated in FRAP 28(f) or FRAP 32.1(b), the additional material must be presented to the Court under separate cover, accompanied by a motion for leave to file such supplemental material as an attachment to the brief.

Local Rule 28(c). Responsibilities of Counsel Listed on a Brief.

The Court will interpret the listing of an attorney on a brief as a representation that he or she is capable of arguing the appeal if lead counsel is unavailable.

Local Rule 28(d). Joint Appeals and Consolidations.

Where multiple parties are directed to file a consolidated brief, counsel on the same side of the case should confer and agree upon a means for assuring that the positions of all parties are addressed within the length limits allowed and that each counsel will have an opportunity to review and approve the consolidated brief before it is filed.

Motions to file separate briefs are not favored by the Court and are granted only upon a particularized showing of good cause, such as, but not limited to, cases in which the interests of the parties are adverse. Generally unacceptable grounds for requests to file separate briefs include representations that the issues presented require a brief in excess of the length limitations established by FRAP 32(a)(7) (appropriately addressed by a motion to exceed length limit), that counsel cannot coordinate their efforts due to different geographical locations, or that the participation of separate counsel in the proceedings below entitles each party to separate briefs on appeal.

If a motion to file separate briefs is granted, the length of such briefs may be limited by the Court. The parties shall continue to share the time allowed for oral argument.

Local Rule 28(e). Citation of Additional Authorities.

Counsel may, without leave of Court, present a letter drawing the Court's attention to supplemental authorities under Rule 28(j) and serve a copy on all counsel of record. The Court may grant leave for or direct the filing of additional memoranda, which may include additional argument before, during or after oral argument.

Local Rule 28(f). Statement of Case.

The statement of the case required by FRAP 28(a)(6) must include a narrative statement of all of the facts necessary for the Court to reach the conclusion which the brief desires with references to the specific pages in the appendix that support each of the facts stated.

Local Rule 28(a) amended December 1, 2009.

Local Rule 28(b) amended December 1, 1998, December 1, 2006, and August 20, 2007

Former Local Rule 28(c) rescinded September 28, 1994.

Former Local Rule 28(d) redesignated Local Rule 28(c) September 28, 1994.

Former I.O.P.-28.1 amended January 1, 1994; redesignated Local Rule 28(d) December 1, 1995; amended and redesignated Local Rule 32(b) December 1, 1998.

Former I.O.P.-28.2 amended and redesignated Local Rule 28(e) December 1, 1995; amended and redesignated Local Rule 28(d) December 1, 1998.

Former I.O.P.-28.3 redesignated Local Rule 28(f) December 1, 1995; redesignated Local Rule 28(e) December 1, 1998; amended December 1, 2002, and April 1, 2008.

Former Local Rule 28(g) adopted June 5, 1996; amended December 4, 1996; amended and redesignated Local Rule 28(f) December 1, 1998; amended December 2, 2013.