

# **Analysis of Briefing Requirements in the United States Courts of Appeals**

Report to the Judicial Conference  
Advisory Committee on Appellate Rules

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This report was undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the author and not necessarily those of the Federal Judicial Center.



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## **I. Introduction**

At its November 2003 meeting, the Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure decided that it needed more information about reported problems with Federal Rule of Appellate Procedure (FRAP) 28 before considering potential amendments to the rule. The committee asked the Federal Judicial Center to assist it by identifying

- every local rule or practice that imposes upon briefs and brief covers requirements that are not found in FRAP 28 and 32;
- the history of the local rules or practices that vary from the national rules; and
- the degree to which those variances are enforced in practice.

### **A. The Current Requirements of FRAP 28 and 32**

The Federal Rules requirements for the content and cover of appellate briefs are in FRAP 28 and 32.<sup>1</sup> FRAP 28 sets out the items that must be included in appellants' and appellees' briefs, as well as the information that may be included in an addendum to the briefs. FRAP 28(a) requires an appellant's brief to contain (1) a corporate disclosure statement, if required by FRAP 26.1; (2) a table of contents; (3) a table of authorities; (4) a jurisdictional statement; (5) a statement of the issues; (6) a statement of the case; (7) a statement of facts; (8) a summary of the argument; (9) the argument; (10) a short conclusion; and (11) the certificate of compliance, if required by FRAP 32(a)(7). In addition, FRAP 28 imposes requirements regarding such matters as references to parties, references to the record, and appending to a brief copies of statutes or rules on which the party relies.

FRAP 32 prescribes the color of each type of brief and the information that must be provided on the front cover of a brief: (1) the number of the case centered at the top; (2) the name of the court; (3) the title of the case; (4) the nature of the proceeding 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 was filed; and (6) the name, office address, and phone number of counsel representing the party for whom the brief is filed.

### **B. Local Variations and Complaints About These Variations**

All the courts of appeals have adopted local rules or practices that require an appellant's brief to contain additional items not required by FRAP 28 or more detailed information for requirements contained in FRAP 28.

Some courts of appeals also have adopted local rules or practices that require more information on a brief cover than FRAP 32 mandates. These additional briefing requirements for the cover and content of appellants' briefs do not contradict the substantive provisions of FRAP 28 or 32.<sup>2</sup> We would expect that the "local variation" provision of

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<sup>1</sup> See Appendix 1 for the text of the relevant provisions of FRAP 28 and FRAP 32.

<sup>2</sup> For purposes of this report, we identified a contradictory rule as a rule that is inconsistent with part of or all of the substantive provisions of another rule. All of the rules or practices identified in the report adopt

FRAP 32(e)<sup>3</sup> protects attorneys who fail to comply with local rules regarding brief covers. That provision directs every court of appeals to accept briefs that comply with FRAP 32, even though the court may choose to accept briefs that do not meet all of the rule's requirements. FRAP 28 has no such "safe harbor" or "local variation" provision.

The Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure has received complaints from the bar that circuit variations in these local rules and practices impose a hardship on attorneys who practice in more than one circuit and must comply with the different requirements. For example, the American Bar Association Council of Appellate Lawyers and the Department of Justice have both proposed changes to FRAP 28 to establish uniform standards in certain aspects of the brief.<sup>4</sup> The bar has also complained that at least some deputy clerks aggravate this situation by ignoring FRAP 32's safe harbor provision and FRAP 25(a)(4)'s dictate that "[t]he clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required . . . by any local rule or practice."

### **C. Structure of This Report**

This report presents information received from the thirteen courts of appeals. Section II provides an overall examination of additional briefing requirements in the appellate courts. The additional requirements are in two large categories—those not mentioned at all in FRAP 28 and those that ask for modified or more detailed information for brief sections already required by FRAP 28. To help the committee identify frequently imposed or favored requirements, the Center further divided the two large categories into subgroups of similar requirements. Section II also describes the few variations regarding brief covers.

Section III analyzes additional briefing requirements in each circuit. It identifies the additional briefing requirements in each court's local rules or other sources, the history behind the adoption of these requirements, and the extent to which courts enforce these additional requirements.

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briefing requirements that *supplement* or *modify* but do not contradict the substantive provisions of FRAP 28 or 32. Many rules incorporate the provisions of FRAP 28 and 32 by reference or explicitly state that the rules' requirements are in **addition** to those briefing requirements listed in FRAP 28 and 32.

<sup>3</sup> See Appendix 1 for the text of FRAP 32(e).

<sup>4</sup> The Department of Justice recommends that FRAP 28 be amended as follows:

- (1) A new provision would require briefs to begin with an "introductory statement." The statement would include the identity of the judge or agency whose decision was being appealed, a citation to the decision being appealed if it was included in a federal reporter, a description of related cases, and, at the option of the party submitting the brief, a statement about whether oral argument is appropriate.
- (2) The statement of the case—now required by Rule 28(a)(6)—would no longer include a description of "the course of proceedings."
- (3) The statement of the facts—now required by Rule 28(a)(7)—would include a description of the "prior proceedings."
- (4) Copies of all unpublished decisions cited in the brief would have to be attached to the brief or included in an addendum that accompanies the brief.

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Section IV discusses the questionnaire responses about any appellate court plans to adopt more briefing requirements, problems courts have experienced under the current rules, and whether FRAP 28 should be amended to prohibit further variations or to include additional or different briefing requirements.

#### **D. How Information Was Collected for Study**

The Center gathered information by reviewing each court's rules and other documents and from responses to questionnaires that we tailored for each court of appeals.

We sent a tailored questionnaire to each circuit executive, with a copy to the chief judge and clerk of court. Responses are current as of September 1, 2004. Section 1 listed any local rules, requirements, or practices we had identified that required an appellant's brief to contain items not specified in FRAP 28. We asked the respondents whether this listing was accurate and complete and to note any rules or practices not on our list. We then asked about the history of these additional requirements—when they were enacted and why. Finally, we asked about the extent to which the court enforced its additional briefing requirements. Section 2 asked the same questions about brief covers.

Section 3 asked about problems the courts were experiencing with FRAP 28 and whether the rule should be amended to include additional requirements or, in the alternative, whether circuits should be prohibited from adding requirements inconsistent with FRAP 28. To expedite responses, we asked respondents to answer for themselves, not to survey their circuit judges or other court personnel.

We asked the circuit executives to have the questionnaire completed by the person or persons who could best respond about past and current briefing requirement practices. We received completed questionnaires from all thirteen courts, ten from clerks of court and from circuit executives in the First, Seventh, and Eleventh Circuits.

## **II. Additional Briefing Requirements in the Courts of Appeals**

### **A. The Number of Additional Requirements Governing the Contents of Briefs**

Table 1 presents the number of appellant brief requirements that each court imposes beyond those imposed by FRAP 28. The additional requirements range from one to ten; six is the average. Over half of the courts have seven or more briefing requirements not contained in FRAP 28.

**Table 1: Number of Additional Requirements Not Listed in FRAP 28**

<b>Circuit</b>	<b>Number of Additional Requirements Governing Brief Contents</b>
DC	10
11th	10
9th	9
10th	8
3rd	7
5th	7
8th	7
Federal	4
1st	3
6th	3
2nd	2
4th	2
7th	1

Local rules impose the majority of these additional requirements, but briefing checklists and practitioners' guides on the courts' websites often provide further interpretation of requirements codified in the local rules or list optional items that the appellant could include or leave out. Some courts explained that the "suggestions" in these secondary sources were not formal requirements but merely preferences of the court to aid it when reviewing the briefs. (When we discuss these additional items, we will identify them clearly as "optional" or as suggestions or preferences as opposed to requirements.) Thus, an attorney should not look solely to a circuit's local rules or simply rely on a briefing checklist to fully understand the circuit's requirements or preferences for briefs. In several courts, a complete picture of the court's briefing requirements requires piecing together information from several sources.

## **B. The Nature of the Additional Requirements Governing the Contents of Briefs**

The additional requirements for brief contents vary widely but fall into one of two categories:

- requirements not mentioned anywhere in FRAP 28<sup>5</sup>; and
- requirements demanding modified or more detailed information in the sections already required by FRAP 28.<sup>6</sup>

We have further subdivided these two general categories into subgroups of requirements that address the same subject matter, even though the rules are not identically worded. For example, a number of requirements not found in FRAP 28 direct the appellant to include in the brief certain items from prior court proceedings, such as the district court opinion and any supporting documentation, any magistrate judge’s report and recommendation, and the notice of appeal, to name a few. Although these rules differ as to the items required for inclusion, we group them together because they all pertain to prior proceedings.

Creating subgroups of similar requirements helped the Center discern whether there were certain requirements or types of requirements favored by a majority or distinct minority of appellate courts. We identified several subgroups of similar rules within each of the two larger categories.

Below we discuss each of the two main categories of departures from FRAP 28 and present a detailed listing of each of the subgroups of similar requirements.

### **1. Rules that impose content requirements not contained in FRAP 28**

Table 2 summarizes the nature of the requirements not mentioned anywhere in FRAP 28.

The largest subgroup of similar requirements (eight courts of appeals<sup>7</sup>) are rules requiring the appellant to include, either in the brief or addendum, certain items from prior court proceedings, such as the order being appealed from and various underlying decisions, rulings, judgments, and supporting documentation. Although the rules vary as to specific content, they all appear to require either the citation to or a copy of the underlying opinion below (district, agency, or bankruptcy court decision or magistrate judge report), including all supporting documentation.

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<sup>5</sup> Local rules in several appellate courts require an appellant’s brief to include a certificate or proof of service and/or a signature. *See, e.g.*, Federal Cir. R. 28(a)(13), Fifth Cir. R. 28.6. Although not mentioned in FRAP 28, these requirements are not included in the listing of additional briefing requirements not imposed by FRAP 28 because they reference items already required by other Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 25(d) (certificate of service requirement) and Fed. R. App. P. 32(d) (signature requirement). Note that even when a certificate of service or signature is not required by local rule, many circuits include these items in “Briefing Checklists” available to practitioners on their websites.

<sup>6</sup> *See supra* note 2.

<sup>7</sup> *See* local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Federal, First, Second, Third, Eighth, Ninth, and Tenth.

**Table 2: Nature of Additional Requirements Not Mentioned in FRAP 28**

Nature of the Additional Requirements Regarding the Content of Briefs	Number of Courts
Rules requiring appellant to include certain items from prior court proceedings	8
Rules requiring appellant to state whether or not oral argument should be heard	5
Rules requiring appellant to include a statement of related cases or proceedings	5
Rules requiring inclusion of any cited unpublished opinion in the addendum	4
Rules that are unique to an individual court	7

The next largest subgroup of rules bearing no resemblance to Rule 28 requirements directs appellants to state in the brief whether or not oral argument should be heard in their case. Five courts<sup>8</sup> require such a statement, and three others<sup>9</sup> make it optional.

Five courts<sup>10</sup> require the appellant to include a statement of related cases or proceedings, and three of these five also require a statement indicating that there are no related cases if there are none.

Four courts<sup>11</sup> require the brief's addendum to contain any unpublished opinion cited in the brief.

The final subgroup of rules bearing no resemblance to FRAP 28 requirements are miscellaneous rules that impose briefing requirements unique to an individual court. For example, the Court of Appeals for the District of Columbia Circuit requires the appellant to include a glossary of any uncommon abbreviations used in the brief. The Court of Appeals for the First Circuit requires the addendum to contain any jury instructions that are a subject on appeal. In the Ninth Circuit, the opening brief in a criminal appeal must report on the bail status and projected release date of defendants in custody.

To help the committee understand the nature of the courts' additional briefing rules, below we present each rule, by major subgroup. The descriptions below paraphrase the rules.<sup>12</sup>

<sup>8</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Fifth, Eighth, Tenth, and Eleventh.

<sup>9</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: First, Fourth, and Sixth.

<sup>10</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Federal, Third, Ninth, and Tenth.

<sup>11</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Fourth, Sixth, and Eighth.

<sup>12</sup> See Appendix 2 for the text of these local rules.

**(1) Rules regarding prior proceedings**

- Brief must include a certificate as to “rulings under review” (defined as a list of all appropriate references to each ruling at issue before the court, including the date, the name of the district judge if any, the place in the appendix where the ruling can be found, and any official citation or a statement that no such citation exists). (*District of Columbia Circuit*)
- Addendum must contain the judgment or order in question and any support for it (*Federal and First Circuits*), including any underlying agency, bankruptcy, or state court decision. (*First Circuit*)
- Statement of the case must include the citation of any published decision of the trial court. (*Federal Circuit*)
- Brief must include a preliminary statement with the name of the judge or agency member who rendered the decision appealed from and the citation to the judge’s decision or supporting opinion if reported. (*Second Circuit*)
- Brief must include the order being appealed, any trial court or agency opinion, the notice of appeal, and relevant docket entries for applications for writ of habeas corpus and in forma pauperis appeals. (*Third Circuit*)
- Brief must include an addendum, not to exceed 15 pages, with (1) the district court or administrative agency opinion, including supporting memoranda; (2) any magistrate judge’s report and recommendation that preceded the district court opinion; (3) “short excerpts from the record” (other than from the transcript of testimony); and (4) other relevant district court rulings. (*Eighth Circuit*)
- Briefs in bankruptcy appeals must contain the name, address, and court of the bankruptcy judge initially ruling on the matter. (*Ninth Circuit*)
- Brief must contain copies of all pertinent written findings, conclusions, and opinions of the district, bankruptcy, or magistrate judge (including any adopted report and recommendation) or copies of their transcript pages if oral. Briefs in social security appeals must include copies of the decisions of the administrative law judge and the appeals council. (*Tenth Circuit*)

**(2) Rules regarding a statement on the need for oral argument**

- Brief must contain a statement referencing any past, scheduled, or concluded oral argument, including dates where applicable. (*District of Columbia Circuit*)
- Preamble to brief must contain a request for oral argument consisting of a “short statement why oral argument would be helpful, or a statement that appellant waives oral argument.” (*Fifth Circuit*)
- First item in the brief must be a statement summarizing the case and listing the reasons why oral argument should or should not be heard and the amount of time needed to present the argument. (*Eighth Circuit*)

- The conclusion must include reasons why oral argument is necessary if requested. (*Tenth Circuit*)
- Brief must include a “short statement of whether or not oral argument is desired, and if so, the reasons why oral argument should be heard.” (*Eleventh Circuit*)
- Brief may contain an *optional* statement in support of or against oral argument. (*First Circuit*)
- Brief may contain an *optional* statement of reasons why oral argument should be heard. (*Fourth and Sixth Circuits*)

**(3) Rules regarding a statement of related cases**

- Brief must include a statement of related cases and proceedings. (*District of Columbia and Federal Circuits*)
- Brief must indicate if there are no related cases or proceedings in addition to the statement of related cases and proceedings. (*Third and Ninth Circuits*)
- Brief must include a list of all prior or related appeals with appropriate citations or a statement that there are no prior or related appeals. (*Tenth Circuit*)

**(4) Rules regarding attachment of a copy of cited unpublished opinions**

- Any unpublished disposition cited in the brief must be included in an addendum to the brief. (*District of Columbia Circuit, Sixth Circuit, and Eighth Circuit*) A distinctly colored separation page is required if the addendum is bound with the brief. (*District of Columbia Circuit*)
- Any unpublished Fourth Circuit opinion cited in the brief must be included in the addendum; unpublished opinions of other courts cited in the brief must be included in a separately bound attachment accompanied by a motion for leave to file the attachment. (*Fourth Circuit*)

**(5) Miscellaneous rules containing content requirements that are unique to an individual court of appeals**

- Brief must include a glossary of uncommon abbreviations. (*District of Columbia Circuit*)
- In a patent appeal, the patent at issue may be included within the addendum (*optional*). (*Federal Circuit*)
- Addendum must include any jury instructions that are the subject of appeal. (*First Circuit*)
- Brief must include an addendum containing the pertinent portions of any document in the record that is the subject or an issue on appeal or short excerpts from the record if necessary to understand specific issues on appeal. (*First Circuit*)
- Brief must include a certification of bar membership. (*Third Circuit*)

- Brief must include an addendum containing a designation of those parts of the record that are in the joint appendix and a designation of any sealed attachments. (*Sixth Circuit*)
- Opening brief in a criminal appeal must contain a statement as to the bail status of the defendant and the defendant’s projected release date if the defendant is in custody. (*Ninth Circuit*)
- Parties may not append or incorporate by reference briefs submitted to the district court or appellate court in a prior appeal or refer the appellate court to such briefs to learn the arguments on the merits of the appeal. (*Ninth Circuit*)
- Pro se litigants may file a form brief supplied by the clerk, and pro se litigants who do so are relieved from the technical requirements of FRAP 28(c) and 32(a). (*Ninth Circuit*)
- Incorporating by reference portions of lower court or agency briefs or pleadings is disapproved and does not satisfy the requirements of FRAP 28(a) and (b). (*Tenth Circuit*)
- A separate addendum must contain copies of all trial exhibits that are referred to in the brief but returned to the parties by the district court. (*Tenth Circuit*)

## **2. Rules that expand or modify the content requirements imposed by FRAP 28**

The second large category of additional briefing requirements that the Center was able to identify comprises rules that direct the appellant to provide details in the brief that go beyond or modify Rule 28’s content requirements. Table 3 summarizes the nature of these requirements.

The largest subgroup of similar rules in this category are those of five courts<sup>13</sup> that modify the ordering of brief contents required under FRAP 28(a).<sup>14</sup> The modified order is a result of the adoption of additional briefing requirements in these circuits.<sup>15</sup>

Four courts<sup>16</sup> require a disclosure statement that is broader than that required by FRAP 28(a)(1)’s corporate disclosure statement. These rules frequently reference the court’s local rule regarding certificates of interest and require disclosure of all persons known to be interested in any side of the case.

Four courts<sup>17</sup> require the appellant to include, in the jurisdictional statement, details in addition to those required by FRAP 28(a)(4). Local rules in four courts<sup>18</sup> describe addi-

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<sup>13</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Fifth, Eighth, Tenth, Eleventh.

<sup>14</sup> See Appendix 1 for the text of FRAP 28(a).

<sup>15</sup> Although the numerical ordering of contents is altered by these rules, these rules do not contradict the substance or ranking of the contents established by FRAP 28(a) because if the additional requirements are removed from these rules, the original substance and ranking of the eleven items as required by FRAP 28(a) remains intact.

<sup>16</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Federal, Fifth, and Eleventh.

<sup>17</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Fifth, Seventh, and Ninth.

tional or modified<sup>19</sup> requirements for referring to the record below than those described in FRAP 28(e). Four courts<sup>20</sup> expand FRAP 28(a)(5)’s requirement of a “statement of the issues presented for review.” These rules require briefs to contain additional information, such as designating where each issue was preserved for appeal. One of these courts<sup>21</sup> also requires a list of four or fewer apposite cases, including constitutional and statutory provisions for each issue. Four courts’ rules<sup>22</sup> contain additional details for reproducing statutes, rules, and regulations in an addendum to the brief as permitted by FRAP 28(f). Two courts<sup>23</sup> require the appellant to identify with an asterisk the principal authorities relied upon in the table of authorities required under FRAP 28(a)(3).

**Table 3: Nature of Requirements Mentioned in FRAP 28 and Expanded by the Courts**

Nature of the Additional Requirements Regarding the Content of Briefs	Number of Courts
Rules requiring that brief contents be in an order modified from that specified by FRAP 28(a)	5
Rules requiring a broader disclosure statement than FRAP 28(a)’s corporate disclosure statement	4
Rules requiring appellant to include additional details in the jurisdictional statement required by FRAP 28(a)	4
Rules stating additional or modified requirements for referring to the record than those required by FRAP 28(e)	4
Rules expanding FRAP 28(a)’s requirements for stating the issues for review	4
Rules requiring additional details for reproducing statutes, rules, and regulations in an addendum than those required by FRAP 28(f)	4

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<sup>18</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: Fifth, Tenth, Eleventh, Ninth.

<sup>19</sup> Ninth Circuit Local Rule 28-2.8 modifies FRAP 28(e)’s requirement that references to the record which are contained in an appendix filed with the brief must be to the pages of the appendix. Rule 28-2.8 requires references to the “excerpts of record where the matter is to be found”. Rule 28-2.8 does not contradict FRAP 28(e) because this modification reflects the fact that the Ninth Circuit uses excerpts as opposed to an appendix.

<sup>20</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: Third, Eighth, Ninth, Tenth.

<sup>21</sup> See local rules presented *infra* Appendix 2 for the following court of appeals: Eighth.

<sup>22</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Second, Fourth, Ninth.

<sup>23</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Tenth.

Rules requiring appellant to use an asterisk to identify the principal authorities relied on as required by FRAP 28(a)	2
Rules imposing requirements unique to a single court	5

Our final subgroup of rules in this category of briefing requirements are those unique to an individual court that expand on a FRAP 28 requirement. For example, the Third Circuit requires citations to any binding authority for each legal proposition supported by citations in the argument section of the brief. In the Fifth Circuit, the brief must contain a separate standard-of-review section, and the summary of the argument must be between two and five pages. The Eighth Circuit requires the certificate of compliance to include the name and version of the word processing software used to prepare the brief. The Eleventh Circuit requires the table of contents to include specific page references to each heading or subheading of each issue argued, and the citations of authority in the brief must comply with Bluebook rules and list the page numbers of cases cited. In addition, the Eleventh Circuit has very specific requirements for the statement of the case.<sup>24</sup>

Below we present the details of the rules that expand on the requirements of FRAP 28. The descriptions below paraphrase the rules.<sup>25</sup>

**(1) Rules requiring that contents of briefs be listed in an order modified from that required by FRAP 28(a)** (*District of Columbia Circuit, Fifth Circuit, Eighth Circuit, Tenth Circuit, and Eleventh Circuit*).

**(2) Rules requiring a disclosure statement broader than that required by FRAP 28(a)(1)'s corporate disclosure statement**

- Brief must include a certificate as to parties and amici. (*District of Columbia Circuit*)
- Brief must include a certificate of interest. (*Federal Circuit*)
- Brief must include a certificate of interested persons. (*Fifth Circuit*)
- Brief must include a certificate of interested persons and corporate disclosure statement. (*Eleventh circuit*)

**(3) Rules requiring the jurisdictional statement include additional details not required under FRAP 28(a)(4)**

- Brief must contain a separate statement indicating that the basis of jurisdiction is in dispute, if so. (*District of Columbia Circuit*)
- Jurisdictional statement must contain citations of authority when needed for clarity. (*Fifth Circuit*)

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<sup>24</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: Third, Fifth, Eighth, Eleventh.

<sup>25</sup> See Appendix 2 for the text of these local rules.

- Jurisdictional statement must contain extensive details listed in a specific order regarding the district court’s jurisdiction and appellate jurisdiction. (*Seventh and Ninth Circuits*)

**(4) Rules that contain additional or modified requirements for referring to the record than those in FRAP 28(e)**

- Every assertion in the briefs regarding matters in the record must be supported by a reference to the page number of the original record where the matter is found. (*Fifth Circuit*)
- References to the record must be supported by a reference to the location, if any, in the excerpts of record where the matter is to be found.<sup>26</sup> (*Ninth Circuit*)
- Statement of facts must include appropriate references to documents in the record, including the document number, if any, from the district or agency docket sheet, document name, filing date, and page number within the document. Transcript references must be to page number, or if the transcript is not sequentially paginated, to date of proceedings and page number. (*Tenth Circuit*)
- In all sections of the brief, including the statement of the case, every reference to the record must be supported by a reference to the volume number (if available), document number, and page number of the original record. (*Eleventh Circuit*)

**(5) Rules expanding FRAP 28(a)(5)’s requirement of a “statement of the issues presented for review”**

- Statement of the issues must designate where in the proceedings each issue was preserved for appeal. (*Third Circuit*)
- Statement of the issues must include for each issue a list of not more than four of the most apposite cases and the most apposite constitutional and statutory provisions. (*Eighth Circuit*)
- Where a party must record an objection to preserve the right to appeal, the brief must state, for each such issue on appeal, where in the record the issue was raised and ruled on or objected to and ruled on. (*Ninth and Tenth Circuits*)

**(6) Rules containing additional details for reproducing statutes, rules, and regulations in an addendum, as permitted under FRAP 28(f)**

- If pertinent statutes and regulations are set forth in an addendum, the brief must contain a statement referencing the addendum, and a table of contents must precede the statutes and regulations. A distinctly colored separation page

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<sup>26</sup> See *supra* note 19.

is required if an addendum is bound with the brief. (*District of Columbia Circuit*)

- A “Special Appendix” must be included as an addendum to the brief or as a separately bound volume if the application or interpretation of any rule of law, including any constitutional provision, treaty, statute, ordinance, etc., is significant to the resolution of any issue on appeal. (*Second Circuit*)
- Relevant constitutional provisions, treatises, statutes, ordinances, rules, or regulations may be included as an addendum to the brief without leave of court. Any other material may be filed only under separate cover and if accompanied by a motion for leave to file an attachment to the brief. (*Fourth Circuit*)
- If determination of issues requires study of statutes, regulations, or rules, relevant parts must be reproduced in an addendum at the end of the brief separated by a colored page. (*Ninth Circuit*)

**(7) Rules containing additional requirements in the description of the table of authorities required by FRAP 28(a)(3)**

- Principal authorities in the table of authorities must be identified with an asterisk. (*District of Columbia Circuit*)
- Table of citations must contain asterisks in the margin identifying the citation upon which the party primarily relies. (*Eleventh Circuit*)

**(8) Miscellaneous rules containing content requirements that are unique to an individual court of appeals**

- For each legal proposition supported by citations in the argument section, citations to any binding opposing authority must be included. (*Third Circuit*)
- In the argument section of the brief required by FRAP 28(a)(9), citation to authorities must conform to a special citation form. (*Third Circuit*)
- Brief must contain a separate standard of review section (stated as a “preference” of the court, not a requirement). (*Fifth Circuit*)
- The summary of the argument must be between two and five pages. (*Fifth Circuit*)
- In all social security, Title VII, and Section 2254 and 2255 appeals, the brief must include a one-page fact sheet immediately following the table of contents. (*Sixth Circuit*)
- First section of each brief must be a statement providing a one-page summary of the case (and a request for, or waiver of, oral argument and the amount of time necessary to present the argument). (*Eighth Circuit*)
- FRAP 28(a)(11)’s certificate of compliance must include the information required by FRAP 32(a)(7)(C) and the name and version of the word processing software used to prepare the brief. (*Eighth Circuit*)

- Table of contents must include specific page references to each heading or subheading of each issue argued. (*Eleventh Circuit*)
- If a party adopts by reference any part of another party's brief pursuant to FRAP 28(i), the adopting party's brief must include a statement describing in detail which briefs and which portions of those briefs it adopts. (*Eleventh Circuit*)
- The statement of the case must include (i) the course of proceedings and dispositions in the court below, including, in criminal appeals, whether the party counsel represents is incarcerated; (ii) a statement of the facts identifying any inferences as such; and (iii) a statement of the standard or scope of review for each contention. (*Eleventh Circuit*)
- The brief's citations of authority must comply with Bluebook rules and reference the specific page number(s) that relate to the propositions for which the case is cited. Citations to Supreme Court decisions must include both the U.S. Reports and Supreme Court Reporter when available. (*Eleventh Circuit*)

### **C. Number and Nature of Additional Requirements Governing the Content of Brief Covers**

Only two courts require the appellant to include items on the brief cover beyond what FRAP 32(a)(2) requires.<sup>27</sup> The Court of Appeals for the District of Columbia Circuit requires the appellant to note the date on which the case is scheduled for oral argument if applicable. The Tenth Circuit requires a statement as to whether oral argument is requested, and the name of the court and judge whose judgment is being appealed. The Federal Circuit "encourages" inclusion of the name of the judge whose judgment is being appealed. The local rules of the Second Circuit Court of Appeals direct that the case number (that FRAP 32(a)(2)(A) requires on the cover) be at least one-inch high. The Second Circuit also permits the brief to be filed in pamphlet form.<sup>28</sup>

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<sup>27</sup> See Appendix 1 for the text of FRAP 32.

<sup>28</sup> See local rules presented *infra* Appendix 2 for the following courts of appeals: District of Columbia, Tenth, Federal, and Second.

### **III. Circuit-by-Circuit Analysis of Additional Briefing Requirements**

Because the history behind the adoption of the additional briefing requirements and their enforcement is unique to each court of appeals, we present an analysis of each circuit below, including for each court the following information:

- the additional briefing requirements adopted by the court;
- when the requirements were adopted;
- why the requirements were adopted; and
- the extent to which the court enforces the additional requirements.

The text of the courts' rules and other provisions regarding briefs are in Appendix 2. Our information on the history and enforcement of the rules is limited to the questionnaire responses we received. In many instances, respondents indicated that they were unable to uncover comprehensive legislative histories behind the adoption of their rules.

#### **A. United States Court of Appeals for the Federal Circuit**

##### **1. Additional Briefing Requirements**

- Certificate of interest (required by Federal Cir. R. 28(a)(1) & 47.4)
- Statement of related cases (required by Federal Cir. R. 28(a)(4) & 47.5)
- Citation of any published decision of the trial tribunal included within the statement of the case (required by Federal Cir. R. 28(a)(7))
- Judgment in question and any opinion, memorandum, or findings and conclusions supporting it should be contained in an addendum (required by Federal Cir. R. 28(a)(12))
- In an appeal involving a patent, the patent in suit may be included within the addendum (stated in Federal Cir. R. 28(a)(12)) (*Optional*)
- Front cover should include the name of the judge from whose judgment appeal is taken (stated in the practice notes following Federal Cir. R. 32) (*Preference*)

##### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court described the court's process for adopting local rules:

All Federal Circuit Rules follow the same process, whether proposed by a Federal Circuit judge to the Court's internal rules committee, proposed by the Court's Advisory Council, or by a practitioner—the rules committee proposes the rule to the judges of the circuit. If a majority agrees to propose the rule, it is publicized for comment. The rules committee then reviews the comments. If the rules committee believes the proposed rule should go forward, it is again voted upon by all the judges, with a majority being sufficient to carry the proposed rule.

The certificate of interest required by local Rules 28(a)(1) and 47.4 has been in the court rules since its creation in 1982. The court regards it as an extension of the corporate disclosure statement required by FRAP 26.1. The statement of related cases required by local Rules 28(a)(4) and 47.5 has also been in the court's rules since 1982, and the clerk reported that this additional requirement allows the court to schedule cases in a more orderly manner and to be aware of pending or recently decided relevant matters.

Local Rule 28(a)(7)'s requirement for citation to any published decision in the statement of the case first appeared in the June 1, 1993, edition of the Federal Circuit Rules.

The clerk stressed that the citation requirement is *only* to the published decision in the instant case and is for the convenience of the court. The addendum requirements imposed by local Rule 28(a)(12) first appeared in the June 1, 1990, edition, and were adopted for the convenience of the court. The clerk said the court's convenience was also the reason for local Rule 28(a)(12)'s optional requirement for inclusion of the patent in the addendum. This optional requirement first appeared in the December 1, 1998, edition of the Federal Circuit Rules. The court's preference for placing the name of the judge from whose judgment appeal is taken on the brief's cover conforms with the changes to the FRAP procedure, effective on December 1, 2002. The practice note first appeared in the May 1, 2003, edition of the Federal Circuit Rules.

### **3. Enforcement of the Additional Briefing Requirements**

The clerk explained that his office files all briefs, but in some cases the court orders the party to correct the non-conformities. Further, no brief would be rejected, nor would a correction be ordered, if the name of the judge below did not appear on the brief's cover.

## **B. United States Court of Appeals for the District of Columbia Circuit**

### **1. Additional Briefing Requirements**

- Specific order for brief contents (required by Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit)
- Certificate as to Parties and Amici (required by D.C. Cir. R. 28(a)(1)(A))
- Certificate as to Rulings Under Review (required by D.C. Cir. R. 28(a)(1)(B))
- Certificate as to Related Cases (required by D.C. Cir. R. 28(a)(1)(C))
- Principal authorities identified with an asterisk in table of authorities (required by D.C. Cir. R. 28(a)(2))
- Glossary of uncommon abbreviations (required by D.C. Cir. R. 28(a)(3))
- Additional statement required if jurisdiction is in dispute (required by Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit (as amended through December 1, 2002))
- Pertinent statutes and regulations included in brief or as an addendum (required by D.C. Cir. R. 28(a)(5))
- References to oral argument (required by D.C. Cir. R. 28(a)(7))
- Copies of any unpublished dispositions included in an addendum (required by D.C. Cir. R. 28(c)(3))
- Date of any scheduled oral argument set forth on the front cover of the brief (required by the Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit (as amended through December 1, 2002))

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court reported that most of the requirements in local Rule 28 appear to have been adopted by 1968. A 1968 version of the local rules contains, with some language variance, nearly all of the current requirements. An annotation in that edition notes that the requirement to use an asterisk to mark authorities principally relied upon (D.C. Cir. R. 28(a)(2)) was adopted in 1960. Some of the requirements appear in versions of the local rules issued in the 1950s, and a version of Rule 28(a)(5), concerning the presentation of statutory or regulatory materials, is in a 1941 edition of the circuit's rules. Two of the current requirements were adopted more recently. The glossary requirement and the instruction to include a summary of argument in all briefs, including the reply brief, were included when the court adopted a major revision of the local rules in 1993. These 1993 changes were discussed at a judges' meeting, were vetted before the D.C. Circuit's lawyers committee on procedures, and were adopted without dissent.

The clerk described the current purpose for these rules (noting that none of the current judges or staff were serving when most of the requirements were adopted). He said the specific order for the content of briefs, as required in the *District of Columbia Circuit Handbook of Practice and Internal Procedures*, guides counsel and ensures that the judges can always find what they are looking for in the same place. Moreover, he said it is a common-sense requirement that is helpful to the bench and bar. He said the certificate as to parties, rulings, and related cases required under local Rule 28(a)(1) serves

three important purposes. First, the listing of parties provides both clerk's office and chambers with an efficient way to check for possible recusals. Second, the listing of rulings identifies for the court exactly what has been appealed. Third, the listing of related cases may allow the court to group cases together for efficient handling and gives the court notice that sister circuits are considering related issues.

The clerk said local Rule 28(a)(2), which requires principal authorities to be identified with an asterisk, is helpful in giving the reader a quick sense of how the party views the case. At least for one judge, the marked authorities indicate which cases to print for a closer review. He said the glossary of uncommon abbreviations, required recently by local Rule 28(a)(3), has proved to be very useful because briefs are replete with acronyms due to the court's heavy federal regulatory and statutory caseload. Readers previously had to search back in the brief for the first reference.

The clerk said the additional statement required if jurisdiction is in dispute, described in the *District of Columbia Circuit Handbook of Practice and Internal Procedures*, focuses the parties and attempts to ensure that the court does not overlook a jurisdictional defect. The requirement to include pertinent statutes and regulations in the brief or as an addendum under local Rule 28(a)(5) has been in place since at least 1941; the clerk said its usefulness is obvious to anyone who must regularly read briefs filed with the court.

The clerk said that local Rule 28(a)(7)'s requirement that litigants put the scheduled oral argument date, if known, at the top of the first page of the brief, and set forth this date on the brief's front cover as described in the court's Practice Handbook, is for administrative convenience and is useful both in chambers and the clerk's office. Local Rule 28(c)(3), which requires copies of unpublished dispositions cited in the brief to be included in an addendum, was essential when unpublished dispositions were not available on line or in volumes such as the Federal Appendix, and it remains a convenience to the reader.

### **3. Enforcement of the Additional Briefing Requirements**

The clerk reported that the court strictly enforces all of its briefing requirements, and judges are not reluctant to call enforcement lapses to the clerk's attention. The court enforces the requirements in accordance with FRAP 25, in that the clerk's office accepts defective briefs and contacts the party, usually by phone, to explain the problem and work through a solution.

## **C. United States Court of Appeals for the First Circuit**

### **1. Additional Briefing Requirements**

- Judgment appealed from and any supporting documentation included in an addendum (required by First Circuit Local Rule 28(a)(1)). Include underlying decision if the appeal arises from a decision reviewing an underlying agency, bankruptcy or state court decision (required by *Requirements for Compliant Briefs and Appendices* and *Ten Pointers for an Appeal*)
- Any jury instructions that are the subject of the appeal included in an addendum (required by First Circuit Local Rule 28(a)(2))
- Portions of any document in the record the subject on appeal and other items from the record necessary for understanding the issues on appeal included in an addendum (required by First Circuit Local Rule 28(a)(3) & (4))
- Optional statement in support of/against oral argument (stated in *Checklist for Briefs*) (*optional*)

### **2. History of Adoption of Additional Briefing Requirements**

The circuit executive said the court adopted local Rule 28, which sets forth the addendum requirements, in 1988 and that, although the rule has been renumbered and reformatted over the years, the substance has remained the same. The requirement to include the underlying decision “[i]f the appeal arises from a decision reviewing an underlying agency, bankruptcy or state court decision” is based on an interpretation of the court’s rule that requires the brief to include an addendum containing the judgment appealed from and any supporting documentation. As indicated, a statement in support of or against oral argument is not a required part of the brief, but is optional. The circuit executive said that although the court adopted local Rule 28’s addendum requirements many years ago and the history behind the rule is not readily available, the rule is valuable in that judges who travel frequently find it convenient to have the most pertinent parts of the record attached to the brief.

### **3. Enforcement of the Additional Briefing Requirements**

The circuit executive said that if a brief is nonconforming, the clerk’s office issues an order noting the date of filing, identifying the deficiency, and setting a date to cure the deficiency. Any deadlines for filing an opposing brief are automatically extended. The circuit executive explained that although the clerk’s office had used language in the deficiency notice indicating that the brief was rejected, in fact the problem has almost always been solved through contact with the litigant. In any event, the circuit executive reported that modifications in the deficiency notice language were in progress but the circuit executive could not predict a date of adoption.

## **D. United States Court of Appeals for the Second Circuit**

### **1. Additional Briefing Requirements**

- Preliminary statement indicating the name of the judge or agency member rendering the decision appealed from, and the citation of the decision if it is reported (required by Second Circuit Local Rule 28)
- Special Appendix included as an addendum to the brief or as a separately bound volume if the application or interpretation of any rule of law, including any constitutional provision, treaty, statute, ordinance, etc., is significant to the resolution of any issue on appeal (required by Second Circuit Local Rule 32(d))
- Case number on cover of brief at least one inch high (required by Second Circuit Local Rule 32(c))
- Brief may be filed in pamphlet form (stated in Second Circuit Local Rule 32(a)) (preference of litigant)

### **2. History of Adoption of Additional Briefing Requirements**

Local Rule 28 took effect in 1998, and local Rule 32(d) became permanent in 2002. Both were adopted to provide judges with important information in an easy, straightforward manner. The clerk of court explained that the court's Rules Committee either initiates proposed rules changes or examines recommendations from judges, court units, or members of the bar. The Rules Committee discusses proposed changes, usually drafts the text of the proposed rule, and then presents the proposal to the full court for discussion and a vote.

### **3. Enforcement of the Additional Briefing Requirements**

When a defective brief is received, the general practice is to ask the party to cure the defect.

## **E. United States Court of Appeals for the Third Circuit**

### **1. Additional Briefing Requirements**

- Designation of where in the proceedings each issue was preserved for appeal, referring to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon included in the statement of the issues (required by Third Circuit LAR 28.1(a)(1))
- Statement of related cases and proceedings (required by Third Circuit LAR 28.1(a)(2))
- Specific citation form required for citation to authorities in the argument (required by Third Circuit LAR 28.3(a))
- Citations to any opposing authority binding on the court for each legal proposition supported by citations in the argument (required by Third Circuit LAR 28.3(b))
- Certification of bar membership included in initial brief filed by each party (required by Third Circuit LAR 28.3(d))
- Order(s) being appealed, opinion(s) of the trial court or agency if any, the notice of appeal, and any order granting a certificate of appealability included in the brief (considered Volume 1 of the Appendix) or in a separate Volume 1 of the Appendix. The court prefers that they be attached to the brief. An additional 25 pages of record material may also be included in Volume 1 (required by *Checklist of Rule Requirements for Preparation of Briefs* and Third Circuit LAR 32.2(c)).
- Relevant docket entries, judgment order or decision being appealed, memorandum or opinion of court or agency subject to review, and notice of appeal or petition for review included when hearing is on the original record under Third Circuit LAR 30.2 (applications for writ of habeas corpus and in forma pauperis appeals) (required by *Checklist of Rule Requirements for Preparation of Briefs*)
- Statement of the standard or scope of review for each issue on appeal placed under a separate heading *before* the discussion of the issue in the argument section (as stated in Third Circuit LAR 28.1(b)) (*preference only*)

### **2. History of Adoption of Additional Briefing Requirements**

Although the most recent rules were adopted in 2002, most of the requirements of local Rule 28 existed as early as 1988. The clerk of court said the court adopted each rule because counsel were not providing the information the court needed in the briefs. She said the court adopted local Rule 32.2(c), which requires the addendum to include the order being appealed, trial court opinions, and the notice of appeal (preferably attached to the brief), and the rule requiring additional items when the hearing is on the original record (*Checklist of Rule Requirements*) so that the judges would have in one document most of what they need to decide a case when they work at home or while traveling. Having the documents attached to the brief or in a separate volume of the appendix makes it easy for judges to identify what they need and to transport it.

### **3. Enforcement of the Additional Briefing Requirements**

The circuit executive said the court enforces its briefing rules. The court files a non-complying brief and calls or sends a noncompliance letter directing counsel to send either a corrected brief or page. Pro se litigants can file an informal brief on a form supplied by

the court. If they are proceeding on the original record and do not attach the required items, the clerk's office sends those items to the court. This is the only briefing requirement the court does not strictly enforce.

## **F. United States Court of Appeals for the Fourth Circuit**

### **1. Additional Briefing Requirements**

- Any unpublished opinion of the Fourth Circuit cited pursuant to Fourth Circuit Local Rule 36(c) included in the addendum; unpublished opinions of other courts included in a separately bound attachment accompanied by a motion for leave to file the attachment (required by Fourth Circuit Loc. R. 28(b) and explained in *Rule Requirements for Preparation of Briefs and Appendices*)
- Verbatim text of any constitutional provision, treaty, statute, ordinance, rule, or regulation cited in the brief and at issue set forth in either body of brief or in addendum. Motion to file required if the attachment is anything other than one of these listed items (required by Fourth Circuit Loc. R. 28(b))
- Optional Request for Oral Argument pursuant to Fourth Circuit Loc. R. 34(a) included if counsel requests argument (stated in *Rule Requirements for Preparation of Briefs and Appendices and Fourth Circuit Checklist for Briefs and Appendices*)

### **2. History of Adoption of Additional Briefing Requirements**

Local Rule 28(b), on attachments to briefs, became effective October 7, 1987. It clarifies what documents can be attached to briefs without leave of court (constitutions, treaties, statutes, ordinances, rules, regulations, and unpublished Fourth Circuit opinions) and what documents require leave of court (everything else).

The provision in local Rule 34(a)—that “in furtherance of the disposition of pending cases under this rule, parties may include in their briefs at the conclusion of the argument a statement setting forth the reasons why, in their opinion, oral argument should be heard”—became effective April 1, 1984. Inclusion of such a statement is optional, but nevertheless aids the court in determining whether the case merits oral argument or can be decided on the briefs. The clerk said the court may elect to hear argument with or without a request.

### **3. Enforcement of the Additional Briefing Requirements**

If the appellant’s brief does not include a required component, the clerk asks the appellant to file a corrected brief. For example, the clerk’s office enforces local Rule 28(b) on attachments to briefs by advising counsel to file either a motion for leave to file an attachment or a corrected brief if a brief is filed with a nonconforming attachment.

## **G. United States Court of Appeals for the Fifth Circuit**

### **1. Additional Briefing Requirements**

- Certificate of interested persons (required by Fifth Cir. R. 28.2.1)
- Statement regarding oral argument included in a preamble to appellant’s brief (required by Fifth Cir. R. 28.2.4)
- Record references throughout the brief supported by page numbers of original record (required by Fifth Cir. R. 28.2.3)
- Citations of authority included in jurisdictional statement (required by Fifth Cir. R. 28.2.5)
- Separate standard of review section (required by Fifth Cir. R. 28.2.6)
- Page limits for summary of the argument (required by Fifth Cir. R. 28.2.2)
- Specific order for brief contents (required by Fifth Cir. R. 28.3)

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court explained that all rule changes are made upon majority vote of the court’s active judges. The court adopted some of them more than 25 years ago, and the available records do not always reflect the vote on each rule change. Also, court records do not disclose why a particular rule was advocated, how many judges may have “sponsored” the rule change, or whether the idea came from a judge or the clerk. Minutes from court meetings dating back to the mid-1960s show that there were “Rules Committees” of active judges who considered and proposed rule changes to the entire court. The court no longer has a “Rules Committee” per se. It now has a “rules proctor”—a single judge responsible for rules. The clerk, the rules proctor, any judge, the Lawyer’s Advisory Committee, or a member of the public can suggest changes to the rules. All suggested rule changes go through the proctor to a court meeting agenda. If a majority of judges agree, the proposed changes are posted for public comment, and after consideration of any comments, the court votes whether to adopt the rule. Some rule changes are necessary to make local rules conform with amendments to the federal rules; others address specific needs of the court based upon experience or anticipated events, such as electronic filing.

The certificate of interested persons, required by local Rule 28.2.1, was added between 1968 and 1971. It became Rule 28.2.1 in 1983 and has been modified over the years. The most recent modifications were in 1999 and 2002. The court has long used this “certificate” as an aid to determine recusals. The most recent changes require parties to update information that changes during the pendency of the case. The clerk said the Rule is broader than the federal rule’s “corporate disclosure statement” because the court’s judges believe the federal standards do not provide them with enough information to make reasoned recusal decisions.

The statement regarding oral argument, required by local Rule 28.2.4, was adopted by unanimous vote as Rule 13(j)(2) on June 7, 1976, and was designated as Rule 28.2.4 in July 1983. The court uses the statement during screening. For example, if neither party requests argument, the court most likely will not order it. The court also has an internal policy that if either party has requested oral argument, but the court decides to handle the case on the non-argument calendar, all judges must agree with the opinion, without dis-

sent or a special concurrence. If the panel cannot reach such a decision, the case must be placed on the oral argument calendar.

Local Rule 28.2.3 regarding record references was Rule 13.6.2 and was adopted in October 1978. It became Rule 28.2.3 in July 1983. The clerk said the court is unique in that it uses the original record on appeal in all merits decisions. It requires district courts to paginate the record consecutively, and the court provides the original record to the parties for their use in writing their briefs. The court requests that the parties refer to the page number in the record when citing to authority for their position. References to any transcripts are to “T, page X,” and references to the record are to “R, page Y.”

The jurisdictional statement, required by local Rule 28.2.5, is former Rule 13.6.5 and was adopted in October 1981. It became Rule 28.2.5 in July 1983. The clerk said the court designed the requirement to ensure that the attorneys and the court agree that there is in fact an articulable jurisdictional basis for the case.

Local Rule 28.2.6’s requirement for a separate standard of review section became effective January 1, 1995. The clerk said the court wrote this expanded version because both attorneys and pro se litigants frequently asked the court “what is a standard of review.” The court designed rule language primarily for informational purposes. The clerk said that since adoption of the additional language, the number of questions has fallen dramatically, and the number of briefs with a standard of review has increased substantially. Having a separate section for the standard of review is a “preference” of the court, not a requirement. The court at one time checked all briefs for a standard of review. Having it in a separate place rather than incorporated in the argument makes it easier for the court to locate it.

Local Rule 28.2.2, which imposes page limits on the summary of the argument, was adopted by unanimous vote on June 7, 1976, as Rule 13(j)(1) and designated as Rule 28.2.2 in 1983. Several judges said that litigants were spending too much time on the summary of their arguments, so this rule suggests that such summaries should be between 2 and 5 pages.

Local Rule 28.3, which lists the order in which the appellant must present the required content of the brief, was originally part of Rule 13.7, which became effective in October 1978. It became Rule 28.3 in July 1983. The clerk said the court wrote this rule essentially as a checklist to help litigants ensure that their briefs met all the briefing requirements in Federal Rules 25, 28, and 32. To help litigants, the court put them in one rule. The court also wanted consistency in brief preparation so that the court’s review would be easier.

Although the clerk pointed out that the court cannot and does not impose a rule or general court policy except by local rule, it does provide a “Checklist for Preparation of Briefs and Record Excerpts” and a *Practitioner’s Guide to the U.S. Court of Appeals for the Fifth Circuit*, both of which are on the court’s website at [www.ca5.uscourts.gov/clerk/docs/pracguide](http://www.ca5.uscourts.gov/clerk/docs/pracguide). The court intends neither the Checklist nor the Practitioner’s Guide to add any new requirements. The clerk said the Checklist provides guidance and information to attorneys and pro se litigants in a succinct form and in one source so that they do not have to look in a variety of places to find applicable rule requirements. The Practitioner’s Guide was first written in 2001 by the clerk’s office. The entire court did not vote on it, but the chief judge and the clerk’s rules proctor approved the contents. The Practi-

tioner's Guide provides the practitioner with detailed suggestions for more effective brief writing, particularly regarding the statement of the issues, the statement of facts, and the argument sections of the brief. Judges and the staff attorney's office had complained that counsel did not know how to write effective briefs, and they hoped that some attorneys would read the guide and improve the quality of their briefs, assist their clients, and help the court understand the points in the brief. For example, the clerk said, the guide provides a suggested practice when writing the argument section required by FRAP 28(a)(9): "If the issue is failure to admit or exclude evidence, refusal to give a particular jury instruction, or any other ruling for which a party must record an objection to preserve the right of appeal, your brief should identify where in the record on appeal counsel made proper objection and where it was ruled upon."

### **3. Enforcement of the Additional Briefing Requirements**

The clerk explained that FRAP 25(a)(4) prohibits his office from refusing to file a brief or other paper "solely because it is not presented in proper form" as required by federal or local rules or practice. Thus, the clerk's office checks for deficiencies, files the brief, and then expends significant effort writing to counsel and monitoring for follow-up. If counsel do not make the corrections or file a motion to file the brief in its present form, the clerk's office must submit the brief to a judge to determine whether to strike the brief and dismiss the case.

The clerk's office always checks that an appellant's brief contains the certificate of interested persons and the statement regarding oral argument. These requirements are strictly enforced. As a result of personnel reductions, clerk's staff are no longer able to check for compliance with local rules requirements for record references, the jurisdictional statement, and order of brief contents. The clerk's office also does not check for compliance with the court's "preference" for a separate standard of review section and the suggested page limits for the summary of the argument. And the clerk's office never checks for compliance with the suggestions contained in the Practitioner's Guide, since they are court "preferences" and not rules.

## **H. United States Court of Appeals for the Sixth Circuit**

### **1. Additional Briefing Requirements**

- One-page fact sheet included after the table of contents for all social security appeals, Title VII appeals, habeas corpus Section 2254 appeals and motion to vacate section 2255 appeals (required by Sixth Cir. R. 28(c))
- Designation of appendix contents pursuant to Sixth Cir. R. 30(b) and designation of sealed attachments pursuant to Sixth Cir. R. 30(f)(4) and (5) included in an addendum (required by Sixth Cir. R. 28(d))
- Copy of any unpublished decision cited in the brief included in an addendum (required by Sixth Cir. R. 28(g))
- Optional statement in support of oral argument pursuant to Sixth Cir. R. 34(a) (stated in Sixth Cir. R. 28(e)) (*optional*)

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court reported that various sections of local Rule 28 were adopted at different times, all as a result of action taken by the court as a body. The court adopted local Rule 28(c)'s requirement for a one-page fact sheet in certain types of appeals many years ago, with the goal of facilitating the court's review of these types of cases. The clerk said that the continuing viability of this requirement is open to question. The purpose of local Rule 28(d)'s addendum requirements is to cause counsel to focus attention on exactly which issues are important to the appeal and which parts of the record warrant inclusion in the joint appendix.

The clerk said local Rule 28(g), which requires including any cited unpublished decision in the addendum, assists the court by making readily available to it any unpublished opinions cited by counsel in the briefs. Local Rule 28(e) and 34(a)'s requirements that parties include a statement in the brief explaining why oral argument should be heard represents part of the court's ongoing effort to manage its oral argument docket. The clerk said this requirement is useful in identifying cases in which counsel does not think that oral argument would be especially necessary or useful or where counsel is otherwise willing to dispense with oral argument.

### **3. Enforcement of the Additional Briefing Requirements**

The clerk said that the court files noncomplying briefs, but the clerk's office then itemizes the deficiencies and directs counsel to correct them. The clerk's office spends a great deal of time monitoring these corrective steps.

## **I. United States Court of Appeals for the Seventh Circuit**

### **1. Additional Briefing Requirements**

- Extensive jurisdictional statement requirements (required by Seventh Circuit Rule 28(a))

### **2. History of Adoption of Additional Briefing Requirements**

The circuit executive said local Rule 28(a) evolved over many years, based on a number of the court of appeals' decisions analyzing trial and appellate court jurisdictional issues and the court's dismissing appeals in which there was no jurisdiction. The judges were concerned about making sure jurisdiction was clearly present.

### **3. Enforcement of the Additional Briefing Requirements**

The circuit executive said that the clerk's office accepts deficient briefs and sends counsel a notice to correct the deficiency. If counsel does not correct the deficiency, the office sends counsel a rule to show cause, advising counsel that the brief will not be filed unless the deficiency is corrected. The circuit executive said the court has sanctioned counsel a number of times for filing a factually incorrect statement of jurisdiction.

## **J. United States Court of Appeals for the Eighth Circuit**

### **1. Additional Briefing Requirements**

- Summary of the case statement in one page or less as the first item of the brief (required by Eighth Cir. R. 28A(f)(1))
- Statement in support of/against oral argument and time needed to present argument included in summary of the case (required by Eighth Cir. R. 28A(f)(1))
- List of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions for each issue included in the statement of the issues (required by Eighth Cir. R. 28A(f)(2))
- Copy of the district court or agency opinion, including supporting memoranda; any magistrate's report and recommendation that preceded the district court opinion; short excerpts from the record; and other relevant district court rulings included in an addendum not to exceed 15 pages (required by Eighth Cir. R. 28A(b))
- Name and version of the word processing software used to prepare the brief included in certificate of compliance pursuant to FRAP 28(a)(11) (required by Eighth Cir. R. 28A(c))
- Copy of any unpublished opinion cited pursuant to Eighth Cir. R. 28A(i) included in an addendum (required by the *Briefing Checklist*)
- Specific order for brief contents (required by the *Briefing Checklist*)

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court said the court's additional requirements have been part of its local rules for more than 30 years. The court adopted them in the early 1970s as part of wide-ranging procedural changes. The full court approved the rules changes. In the late 1990s the court extensively amended its local rules. The purpose of the amendments was to reduce the number of local rules, rely more heavily on the provisions of the Federal Rules of Appellate Procedure, and reduce the burden on practitioners. The amendments were adopted after extensive discussion by the full court and its Federal Practice Advisory Committee. The court retained the brief requirements because the court thought they provided essential materials needed for review of the case.

The clerk said that local Rule 28A(f)(1), requiring appellants to include, as the first item in the brief, a statement providing a summary of the case and a request for or waiver of oral argument, provides the court with additional information that is useful either in screening the case for oral argument or in conducting the merits review of the case. The clerk said local Rule 28A(f)(2)'s requirement for a list of the four most apposite cases helps the court identify the key cases on which counsel rely. Local Rule 28A(b) directs counsel to include in an addendum the key orders and excerpts from critical record items, such as pleadings, transcripts, and jury instructions. The clerk said the court adopted it because judges often read briefs away from chambers and without immediate access to the full record on appeal. The Briefing Checklist, which directs counsel to list brief contents in a specific order and include a copy of any cited unpublished opinion in the addendum, also assists the court with reviewing the briefs.

A practitioner may need to look in several places for a complete understanding of the court's expectations regarding its briefing requirements. Briefing requirements and court

“preferences” or “suggestions” are discussed in four sources besides the rules: Pointers on Preparing Briefs, Briefing Checklist, Internal Operating Procedures, and the Eighth Circuit Handbook; all are available on the court’s website ([www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)). The requirement of local Rule 28A(f)(2), that counsel list the most apposite cases, not to exceed four, for each issue, is also in the Briefing Checklist and the Pointers, but the Pointers contains a requirement not found elsewhere: “If no cases are apposite, include a statement so indicating.” Local Rule 28A(b) requires every appellant’s brief to have an addendum; this requirement is also in the Briefing Checklist and the Pointers, but once again the Pointers contains additional information not found elsewhere: “Please be sure that your addendum contains the order(s) appealed from, including, in a criminal case, the judgment and commitment order. Do not include the Presentence Investigation Report in the addendum in a criminal case.”

Like the Fifth Circuit, the Eighth Circuit has a handbook that provides the practitioner with detailed suggestions for effective brief writing, particularly addressing the statement of the issues, the statement of facts, and the argument sections of the brief. An excerpt from the handbook—expanding on the court’s expectations for a Rule 28A(f) statement of the issues accompanied by a list of not more than four of the most apposite cases—reads as follows:

Effective statement of issues requires careful selection and choice of language. The main issue should be stressed and an effort made to present no more than two or three questions. The issues selected should be stated clearly, simply, and with specificity. The issues should not be too general or too vague. Examples of ineffective statement of the issues follow:

Did the district court err in granting (or failing to grant) a directed verdict? Was summary judgment improperly granted because material facts in dispute exist? Was there sufficient evidence to support the jury’s verdict?

On occasion, although not usually, the questions may be better understood, or stated more simply, if preceded by an introductory factual paragraph. Sample briefs with statement of the issues are available in the clerk’s office.<sup>29</sup>

### **3. Enforcement of the Additional Briefing Requirements**

The clerk said that his office inspects every attorney-filed brief for compliance and sends defect letters whenever a brief does not comply. If the defects are relatively minor, the clerk files the brief and directs counsel to submit corrections sheets, which court staff insert into the brief. Briefs that have too many defects to correct by inserts or corrected pages are filed and then stricken; counsel get a short time to file a corrected brief, and if they fail to do so, the clerk issues an order to show cause why the appeal should not be dismissed. The clerk can waive extremely minor defects (e.g., listing five apposite cases or having a 17-page addendum).

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<sup>29</sup> United States Court of Appeals for the Eighth Circuit, Handbook § XX.A.6, available at [www.ca8.uscourts.gov](http://www.ca8.uscourts.gov).

## **K. United States Court of Appeals for the Ninth Circuit**

### **1. Additional Briefing Requirements**

- Specific jurisdictional statement requirements (required by Ninth Cir. R. 28-2.2)
- Statement of bail status of the defendant in a criminal case (required by Ninth Cir. R. 28-2.4)
- Separate standard of review section identifying applicable standard of review as to each issue (required by Ninth Cir. R. 28-2.5)
- Statement of related cases (required by Ninth Cir. R. 28-2.6)
- Relevant statutes, regulations, or rules needed to determine issues included in an addendum at end of brief (required by Ninth Cir. R. 28-2.7)
- Name, address, and court of bankruptcy judge initially ruling on the case if appeal is from bankruptcy court (required by Ninth Cir. R. 28-2.9)
- Parties prohibited from incorporating by reference briefs or other pleadings filed in the district court, agency, or this court in a prior appeal (imposed by Ninth Cir. R. 28-1(b))
- Pro se litigants have option of filing a form brief relieving them of the technical requirements of FRAP 28(c) and 32(a) (provided for by Ninth Cir. R. 28-1(c))
- References to the record in briefs supported by a reference to the location in the excerpts of record (required by Ninth Cir. R. 28-2.8)

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court said that local Rule 28-2.2's requirement for a statement of jurisdiction and local Rule 28-2.5, which governs the statement of the applicable standard of review, have been in place for at least 20 years. She said that quite a few judges thought the rules were needed to focus counsel's attention on jurisdictional requirements and identification of the correct standard of review for each issue presented in the brief. The court adopted local Rule 28-2.4's statement of bail status requirement approximately ten years ago to alert the bench to any need to expedite its decision making.

The court adopted Rule 28-2.6, requiring a statement of related cases, approximately 15 years ago. The clerk said that after briefing is completed, staff attorneys review the briefs with the goal of placing cases raising related factual or legal issues before the same panel. The statement of related cases assists them. Additionally, if the same issue is pending before more than one panel, the court's general orders direct other panels to defer decision making pending resolution of the issue by the panel initially presented with the question. The statement of related cases alerts the panel to the possibility that another panel may be considering the same issue.

The court adopted local Rule 28-2.9 about five years ago, at the request of the circuit's bankruptcy judges. Its requirement that counsel include the name, address, and court of the bankruptcy judge allows the clerk to provide the bankruptcy courts with copies of dispositions in cases that originated in the bankruptcy court.

The clerk said the court adopted local Rule 28-1(b) about ten years ago. It prohibits incorporation by reference of briefs or other pleadings filed in the district court, agency, or in a prior appeal. It was a response to litigant efforts to evade the applicable length limits by way of incorporating by reference portions of other documents. The court adopted local Rule 28-1(c), allowing pro se litigants to file a form brief, about twelve

years ago as a means to facilitate pro se litigants' access to the courts and ensure that the court had the information necessary to review the appeal. Local Rule 28-2.8, revised in July 1998, modifies FRAP 28(e)'s requirement and reflects the court's use of excerpts as opposed to an appendix.

### **3. Enforcement of the Additional Briefing Requirements**

The clerk said that if counsel submit a brief without a correct statement of bail status or a correct statement of related cases, the brief is filed but the clerk's office sends counsel a notice to correct the omission. No further monitoring of compliance occurs absent a complaint from the bench. The clerk's office also files briefs not complying with the requirement to include the name, address, and court of the bankruptcy judge. The bench identifies violations of the rule prohibiting incorporation by reference of briefs or other pleadings or learns of them through opposing counsel's motion to strike, and the court addresses violations on a case-by-case basis.

## **L. United States Court of Appeals for the Tenth Circuit**

### **1. Additional Briefing Requirements**

- Statement of related cases appended to the table of cases (required by Tenth Cir. R. 28.2(C)(1))
- Statement of the facts with appropriate record references (required by Tenth Cir. R. 28.1 and *Practitioners' Guide to the US Court of Appeals for the Tenth Circuit*)
- Preceding discussion of each issue, cite precise reference in record where issue was raised and ruled upon; if issue requires party to record an objection to preserve right to appeal, identify where in record objection was raised and ruled upon (required by Tenth Cir. R. 28.2(C)(2))
- Copies of the judgment or order under review (or in social security cases, copies of the decisions of the administrative law judge and the appeals council); pertinent written findings, conclusions, etc.; and any relevant statutes, rules, regulations, etc., or magistrate judge's report and recommendation included in an attachment (required by Tenth Cir. R. 28.2(A) and *Practitioners' Guide to the US Court of Appeals for the Tenth Circuit*)
- Copies of all trial exhibits which are referred to in the brief that were returned to the parties by the district court included in a separate addendum (required by *Practitioners' Guide to the US Court of Appeals for the Tenth Circuit*)
- statement as to reason oral argument is necessary (required in Tenth Cir. R. 28.2(C)(4))
- Specific order for brief contents (required by *Practitioners' Guide to the US Court of Appeals for the Tenth Circuit*)
- Incorporating by reference lower court or agency briefs or pleadings disapproved (imposed by Tenth Cir. R. 28.4))
- Statement as to whether oral argument is requested included on front cover of brief (required by Tenth Cir. R. 28.2(C)(4))
- Name of the court and the judge whose judgment is being appealed included on front cover of brief (required by Tenth Cir. R. 28.2(C)(5))

### **2. History of Adoption of Additional Briefing Requirements**

The clerk of court said the court adopted its briefing rules unanimously in 1989 on recommendation of its Rules Committee, to obtain information the court finds essential to decision of the appeal and for the court's convenience. As an example, the clerk said many judges read briefs away from the court while on travel and find it very helpful having a copy of the district court's order in the brief.

The court also has a Practitioner's Guide, which expounds on the briefing requirements listed in the court's local rules and provides detailed suggestions for more effective brief writing, particularly addressing the statement of the issues, the statement of facts, and the argument sections of the brief. Some requirements in the Practitioner's Guide are not in the local rules. For example, only the Practitioner's Guide requires the brief to contain a separate addendum with copies of all trial exhibits referred to in the brief and returned to the parties by the district court. For several of the requirements, it is necessary to look both to the local rule and the Practitioner's Guide for a complete understanding of the court's expectations.

For example, the following excerpt from the Practitioner's Guide provides details not in the local rules about the brief's argument section: "When possible the emphasis should be on reason, not merely on precedent, unless a particular decision is controlling. A few good cases in point, with sufficient discussion to show that they are relevant, are much preferred over a flurry of string citations. Quotations should be used sparingly." Further,

the guide advises that “[w]hen appropriate, brief writers should argue policy, stressing why the court should adopt the client’s view. This is particularly important when there is no controlling precedent—when the court’s opinion will fill a gap or resolve an ambiguity in a statute. Legislative history, the intent of the legislature, and sound public policy are very important to argue.”<sup>30</sup>

### **3. Enforcement of the Additional Briefing Requirements**

The court enforces the briefing rules but does not examine the briefs for content. If only one rule is missed, such as the oral argument statement or statement of related cases, the court permits counsel to correct the brief by submitting labels to be affixed to the brief. Otherwise, the clerk issues a deficiency notice and informs counsel that it will strike the brief if it is not corrected. Because counsel usually make the corrections, the clerk has had to send a deficiency to a judge to strike the brief only once since the amendment to FRAP 25. The clerk’s office does not enforce the rules against pro se parties.

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<sup>30</sup> Practitioners’ Guide to the US Court of Appeals for the Tenth Circuit § VI.C.4 (5th Rev. 1998).

## **M. United States Court of Appeals for the Eleventh Circuit**

### **1. Additional Briefing Requirements**

- Specific order for brief contents (required by Eleventh Cir. R. 28-1)
- Certificate of Interested Persons (required by Eleventh Cir. R. 28-1(b))
- Statement regarding oral argument (required by Eleventh Cir. R. 28-1(c))
- Page references to each section in the brief and each heading or subheading of each issue included in table of contents (required by Eleventh Cir. R. 28-1(d))
- Primary authorities identified with an asterisk in table of citations (required by Eleventh Cir. R. 28-1(e))
- Statement regarding adoption of briefs of other parties if any part of brief of another party is adopted by reference (required by Eleventh Cir. R. 28-1(f))
- Specific reference to original record in statement of the case and all other sections of the brief (required by Eleventh Cir. R. 28-1(i))
- Course of proceedings and dispositions in court below, a statement of the facts, and a statement of the standard of review for each contention included in the statement of the case (required by Eleventh Cir. R. 28-1(i))
- In criminal appeals, counsel’s statement as to whether party is incarcerated included in the statement of the case (required by Eleventh Cir. R. 28-1(i)(i))
- Citations of authority in brief in compliance with Bluebook rules (required by Eleventh Cir. R. 28-1(k))

### **2. History of Adoption of Additional Briefing Requirements**

The circuit executive said that adoption of rules has always required a majority vote of active judges. The court adopted local rules regarding order of contents (28-1), certificate of interested persons (28-1(b)), statement regarding oral argument (28-1(c)), specific page references in table of contents (28-1(d)), and identification of primary authorities in table of citations (28-1(e)) upon the court’s creation on October 1, 1981. Local Rule 28-1(f), regarding adoption of briefs of other parties, took effect April 1, 1991. Local Rule 28-1(i)(i), directing counsel in criminal appeals to state whether the represented party is incarcerated, took effect February 26, 1986.

The circuit executive explained that many of the court’s briefing requirements adopted in 1981 are based on the rules in the old Fifth Circuit. The court has no written history or recollection of the reasons behind the adoption of most of these rules. The court adopted local Rule 28-1(f), which requires a party to include a statement describing which briefs and which portions are adopted by reference, to provide more detailed guidance to counsel wishing to “adopt by reference a part of another’s brief” as permitted by FRAP 28(i).

### **3. Enforcement of Additional Briefing Requirements**

The circuit executive said that the clerk’s office enforces local Rule 28-1(a) to the extent that the docket clerks check to ensure that the brief contains every item required by that rule, i.e., a cover page, a certificate of interested persons, a statement regarding oral

argument, and so forth. Clerks check the certificate of interested persons to ensure that the format complies with FRAP 26.1 and the accompanying circuit rules but do not review the specific content within any of the items. In other words, a docket clerk does not check to see if the Table of Contents contains asterisks in the margin or that citations of authority comply with the Bluebook. Enforcement of a specific content requirement within an item rests with the merits panel.

Pursuant to local Rule 32-3, the clerk files a deficient or nonconforming brief conditionally, subject to compliance with the rule that counsel file a complete set of corrected replacement briefs within 14 days. The clerk's notice specifies the matters requiring correction.

The circuit executive commented that not everyone might agree that a clerk's rejection of a brief not in compliance with FRAP 28 is contrary to FRAP 25(a)(4). FRAP 25(a)(4) pertains to papers "not presented in proper form. . . ." He said some might point out that it is at least arguable that failure to include an item required by FRAP 28 is an error of substance and not of form and that such an argument may find some support in the fact that FRAP 32 is the rule governing the "Form of Briefs, Appendices, and Other Papers."

#### **IV. Current Federal Rules and Future Changes to Rules or Practices**

The final section of the Center's questionnaire asked respondents several questions regarding FRAP 28 and 32 and potential changes to these rules. Respondents were told to answer the questions based upon their own personal experiences and not to survey judges in their court. As such, the following summary of the responses we received should not be viewed as representing the current position of the courts of appeals on these subjects.

##### **A. Planned Changes or Further Additions to Federal Rules by the Appellate Courts**

The questionnaire asked whether the court had any immediate plans to change its local rules, requirements, or practices as to the content of appellant briefs and their covers. Only the clerk of court in the Ninth Circuit responded affirmatively, indicating that the court is considering amending its local rule requiring a statement as to the defendant's bail status in all criminal appeals. The amendment would require a statement regarding an immigrant's detention status in cases seeking review of a Board of Immigration Appeals decision.

Several respondents indicated that although their courts had no immediate plans to adopt new rules as to the content or cover of an appellant's brief, they would soon be implementing new rules requiring electronic filing of briefs.<sup>31</sup>

##### **B. Problems in the Appellate Courts Under Current Federal Rules**

Respondents were asked whether their courts are experiencing any problems that the respondents thought could be alleviated with additional requirements for the content of briefs and their covers. Three answered "yes." The clerk of the Ninth Circuit Court of Appeals reported that several judges there had questioned the utility of FRAP 28's "statement of the case" section and suggested the court consider exempting practitioners in the court from that requirement. She added that an e-mail address on the cover would be helpful.

The Federal Circuit's clerk of court said he thought that all circuits would be aided by having each opening brief contain a statement of related cases and by including the district court decision in the addendum to the brief. He said the court routinely grants motions to delete decisions that are overly long.

The clerk of court in the Eighth Circuit said that he believes that local rules should be amended as seldom as possible to avoid confusion for the bar and to avoid burdening clerk's staff with additional requirements to monitor.

##### **C. Perceived Need in the Appellate Courts for Amending FRAP 28**

Respondents were asked whether they think FRAP 28 needs to be amended to prohibit appellate courts from imposing additional content requirements on appellant briefs

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<sup>31</sup> Respondents for the Second, Third, and Fifth Circuit Court of Appeals reported that their courts will amend their local rules requiring electronic filing of briefs to require the electronic copy to have a "cover" page as required by FRAP 28.

and their covers. Only one respondent answered affirmatively. The clerk of court in the Fifth Circuit said that he believes, as a court manager, that it would be helpful to simplify the federal briefing rules and to have consistency in briefing rules throughout the appellate courts. He suggested eliminating FRAP 28(a) and (e), and either eliminating FRAP 28(f), limiting exactly what may be included by dropping the “etc.,” or adding page limits. He said he believed that many pro se litigants attempt to exceed the brief limits by adding voluminous and irrelevant materials as “addenda.”

The other twelve respondents reported that they did not think FRAP 28 should be amended to prohibit courts from imposing additional briefing requirements. The clerk of court in the District of Columbia Circuit said he believes that the Committee on Federal Rules of Appellate Procedure should allow circuits reasonable leeway to use local rules to address unique needs and to experiment with innovative approaches. He said, for example, that his court was the first to adopt word limits, in lieu of page limits, as a local rule. Due, in part, to the success of this local rule, the Appellate Rules Committee abandoned page limits and substituted word limits nationally. In his view, had a rigid national rule precluded the District of Columbia’s pioneering of the use of word limits, a national rule change might not have occurred. He said that another example of a local variation that has proved useful in his court is the glossary requirement, but that other courts, with very different caseloads, might find such a requirement of minimal value.

The clerk of court in the Third Circuit said that she believes that attorneys practicing nationally would like uniformity, but the judges are very wedded to the additional requirements they have imposed.

The Eighth Circuit’s clerk of court explained why he believes courts should not be precluded from adopting local requirements governing brief contents and format. His court’s requirements for a summary of the case, request for oral argument, and addendum elements provide essential information for screening purposes and merits review. The requirements are well understood by the bar, he said, and are not burdensome. Therefore, he said he believes courts should be permitted to retain practices that make their work more efficient or help the judges reviewing the cases. While circuit uniformity is important to those practitioners with national practices, he said, the vast majority of briefs in his court are filed by attorneys who seldom practice in any other circuit. Furthermore, most of the briefs filed by the Justice Department—the main national practitioner in this court—are filed by attorneys who are assigned to the circuit and understand its requirements. He said that since they work from Eighth Circuit samples or brief banks, the court’s additional requirements present no problems for them. He said that when the court takes action to correct a defective brief, it is usually against a solo practitioner who rarely files an appeal. In his view, the increase in the court’s efficiency and effectiveness as a result of local practices outweighs the minor inconvenience to national practitioners.

#### **D. Additional Briefing Requirements Mentioned in Comments Received from the Appellate Courts**

We asked respondents for their comments regarding what requirements not currently imposed by FRAP 28 and 32 covering the content and covers of appellant briefs should be added if these rules were amended. We received eight comments to this inquiry. The

clerks in the District of Columbia and Tenth Circuits would add all of the additional requirements currently imposed under their local rules, especially if an amended FRAP 28 would preclude any local additional requirements. The clerk in the Third Circuit said she favored adopting all of that court's additional requirements because the additional requirements aid the judges in their review of the case. She said many of the additional rules promote good advocacy, such as identifying where an issue was preserved for appeal or stating the standard of review.

The clerk in the Federal Circuit shared his belief that all circuits would be aided if FRAP 28 required that the addendum contain a copy of the decision and that the opening brief contain a statement of related cases. Furthermore, since a judge can recuse himself or herself for reasons other than stock ownership, he suggested that the corporate disclosure form be renamed as the certificate of interest.

The clerk of court in the Second Circuit suggested that it might be helpful to require parties to include their e-mail address on the cover of a brief.

The Eighth Circuit clerk of court suggested that no more requirements be added to FRAP 28 and 32, as long as local variations are permitted. If local variations are not permitted, he said that he would like to see, at a minimum, amendments that resemble the Eighth Circuit rule on the summary of the case section and that require the addendum to contain the order or orders appealed from.

The Eleventh Circuit's circuit executive said that he believes the court would find it helpful if FRAP 32(a) were amended to require the front cover of a brief to contain the case number of the proceeding before the court, agency, or board below.

Finally, the clerk of court in the Fifth Circuit said that he favored including that court's long-standing requirement that the appellant include the court's certificate of interested parties, which is broader in scope than the corporate disclosure statement required by FRAP 28(a)(1). He also favors inclusion of a request for oral argument identical to that required under Fifth Circuit local Rule 28.2.4. Finally, he thinks that the court's current local Rule 28.7, which prohibits litigants represented by counsel from filing briefs or motions on their own, should be considered for inclusion in the federal rules. He believes this to be a sound rule that helps counsel avoid a long-standing problem the court has faced.

## APPENDIX 1

### Federal Rules of Appellate Procedure 28 and 32

#### **Fed. R. App. P. 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 statement of the case briefly indicating briefly the nature of the case, the course of proceedings, and the disposition below;
- (7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));
- (8) 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;
- (9) the argument, which must contain:
  - (A) appellant's contentions and reasons for them, with citations to authorities and parts of record on which appellant relies; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of each issue or under separate heading place before the discussion of the issues);
- (10) a short conclusion stating the precise relief sought; and
- (11) the certificate of compliance, if required by Rule 32(a)(7).

...

**(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. . . . Only clear abbreviation 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.

**Fed. R. App. P. 32. Form of Briefs, Appendices, and Other Papers**

**(a) Form of a Brief.**

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**(2) Cover . . .** 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(see Rule 12(a));
- (D) the nature of the proceeding. . . and the name of the court, agency, or Board below;
- (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.

.....

**(e) Local Variation.** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

**APPENDIX 2**  
**United States Courts of Appeals' Local Rules and Other Provisions**  
**Regarding the Content and Covers of Briefs**

**FEDERAL CIRCUIT**

**Federal Circuit Rule 28. Briefs**

**(a) Contents of Brief; Organization of Contents; Addendum; Binding.** Briefs . . . must contain the following in the order listed:

- (1) the certificate of interest (see Fed. Cir. Rule 47.4);  
. . . .
- (4) the statement of related cases (see Fed. Cir. Rule 47.5);  
. . . .
- (7) statement of the case, including the citation of any published decision of the trial tribunal in the proceedings;  
. . . .
- (12) the judgment, order, or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an addendum placed last within the initial brief of the appellant or petitioner. This requirement is met when the appendix is bound with the brief. (See Federal Circuit Rule 30(c)(1) and (d) for a duplicative requirement of the appendix.) Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety. (See Federal Circuit Rule 30(a)(3) for a requirement that the patent in suit be included in its entirety in the appendix.)

**Federal Circuit Rule 47.4. Certificate of Interest**

**(a) Purpose; Contents.** To determine whether recusal by a judge is necessary or appropriate, an attorney—except an attorney for the United States—for each party, including a party seeking or permitted to intervene, and for each amicus curiae, must file a certificate of interest. A certificate of interest must be in the form set forth in the appendix to these rules, and must contain the information below in the order listed. Negative responses, if applicable, are required as to each item on the form.

- (1) The full name of every party or amicus represented in the case by the attorney.
- (2) The name of the real party in interest if the party named in the caption is not the real party in interest.
- (3) The corporate disclosure statement prescribed in FRAP 26.1.
- (4) The names of all law firms and the partners and associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

**(b) Filing.** The certificate must be filed with the entry of appearance. The certificate—omitting the caption—must also be filed with each motion, petition, or response thereto, and in each principal brief and brief amicus curiae. . . .

**Federal Circuit Rule 47.5. Statement of Related Cases.** Each principal brief must contain a statement of related cases indicating:

- (a) Whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court, stating:
  - (1) the title and number of that earlier appeal;
  - (2) the date of decision;
  - (3) the composition of the panel; and

- (4) the citation of the opinion in the Federal Reporter, if published; and
- (b) The title and number of any case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal. If there are many related cases, they may be described generally, but the title and case number must be given for any case known to be pending in the Supreme Court, this court, or any other circuit court of appeals.

**Practice Notes following Federal Circuit Rule 32. Preferred Cover.** In addition to the requirements of FRAP 32(a)(2)(D), the court encourages inclusion on the cover of the name of the judge, when applicable, from whose judgment appeal is taken.

## **DISTRICT OF COLUMBIA CIRCUIT**

### **District of Columbia Circuit Rule 28. Briefs**

**(a) Contents of Briefs: Additional Requirements.** Briefs for an appellant/petitioner and an appellee/respondent, and briefs for an intervener and an amicus curiae, must contain the following in addition to the items required by FRAP 28:

**(1) Certificate.** Immediately inside the cover and preceding the table of contents, a certificate titled "Certificate as to Parties, Rulings, and Related Cases," which contains a separate paragraph or paragraphs, with the appropriate heading, corresponding to, and in the same order as, each of the subparagraphs below.

**(A) Parties and Amici.** The appellant or petitioner must furnish a list of all parties, interveners, and amici who have appeared before the district court, and all persons who are parties, interveners, or amici in this court. An appellee or respondent, intervener, or amicus may omit from its certificate those persons who were listed by the appellant or petitioner, but must state: "[Except for the following,] all parties, interveners, and amici appearing [before the district court and] in this court are listed in the Brief for \_\_\_\_\_."

Any party or amicus that is a corporation, association, joint venture, partnership, syndicate, or other similar entity must take the disclosure required by DC Circuit Rule 26.1.

**(B) Rulings Under Review.** Appropriate references must be made to each ruling at issue in this court, including the date, the name of the district court judge (if any), the place in the appendix where the ruling can be found, and any official citation in the case of a district court or Tax Court opinion, the Federal Register citation and/or other citation in the case of an agency decision, or a statement that no such citation exists. Such references need not be included if they are contained in a brief previously filed by another person, but the certificate must state: "[Except for the following,] references to the rulings at issue appear in the Brief for \_\_\_\_\_."

**(C) Related Cases.** A statement indicating whether the case on review was previously before this court or any other court and, if so, the name and number of such prior case. The statement must also contain similar information for any other related cases currently pending in this court or in any other court of which counsel is aware. For purposes of this rule, the phrase "any other court" means any other United States court of appeals or any other court (whether federal or local) in the District of Columbia. The phrase "any other related cases" means any case involving substantially the same parties and the same or similar issues. If there are no related cases the certificate must so state.

**(2) Principal Authorities.** In the left-hand margin of the table of authorities in all briefs, an asterisk must be placed next to those authorities on which the brief principally relies, together with

a notation at the bottom of the first page of the table stating: “Authorities upon which we chiefly rely are marked with asterisks.” If there are no such authorities, the notation must so state.

**(3) Glossary.** All briefs containing abbreviations, including acronyms, must provide a “Glossary” defining each such abbreviation on a page immediately following the table of authorities. Abbreviations that are part of common usage need not be defined.

....

**(5) Statutes and Regulations.** Pertinent statutes and regulations must be set forth either in the body of the brief following the statement of the issues presented for review or in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case a statement must appear in the body of the brief referencing the addendum. If the statutes and regulations are included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the pertinent statutes and regulations are contained in a brief previously submitted by another party, they need not be repeated but, if they are not repeated, a statement must appear under this heading as follows: “[Except for the following,] all applicable states, etc., are contained in the Brief for \_\_\_\_\_.”

....

**(7) References to Oral Argument and Submission Without Oral Argument.** If a case has been scheduled for oral argument, has already been argued, or is being submitted with oral argument, a brief must so state in capital letters at the top of the first page and, where applicable, include the date of the argument.

....

**(c) Citation to Unpublished Dispositions.**

....

**(3) Procedures Governing Citation to Unpublished Dispositions.** Counsel must include in an appropriately labeled addendum to the brief a copy of each unpublished disposition cited in the brief. The addendum may be bound together with the brief, but separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the addendum is bound separately, it must be filed and served concurrently with, and in the same number of copies as, the brief itself.

**Handbook of Practice and Internal Procedures, United States Court of Appeals for the District of Columbia Circuit** (as amended through December 1, 2002).

Section IX.A.5 provides that the front cover of the brief must set forth “the date on which the case has been scheduled for oral argument.”

Section IX.A.7 provides that “[b]riefs must contain the following in the order indicated.”

(a) A “Certificate as to Parties, Rulings, and Related Cases” immediately inside the cover of the brief and preceding the table of contents. Three items must be included in this certificate:

- i. The certificate must identify by name all parties, intervenors, and *amici* who appeared before the district court and all parties, intervenors, or *amici* in this Court. The appellee or the respondent may omit from the certificate those listed by the appellant or the petitioner but must identify the briefs in which the lists are set forth. The certificate also must include the name of any parent company and any publicly-held company that has a 10% or greater ownership interest in the certifying party. Circuit Rule 26.1 specifies precisely what must be included as to corporate entities, and counsel should consult that provision for greater detail.

- ii. The certificate must identify the rulings under review, including the date, the name of the district court judge, the place in the appendix where the ruling is reproduced, and any official citation to the ruling, the Federal Register or other citation when the ruling is an agency decision, or a statement that no such citation exists. In briefs filed after the opening brief, the certificate may incorporate by reference the opening brief's certificate of rulings under review, but must so indicate.
  - iii. The certificate must indicate whether the case was previously before this or any other court, and, if so, identify it by court number and caption. The certificate also must identify "related cases," as defined in Circuit Rule 28(a)(1)(C), or state that there are none.
- (b) A table of contents, with page references.
  - (c) A table of cases, statutes, and other authorities cited, arranged alphabetically and referring to the pages of the brief where they are cited. The table must either include asterisks in the left margin to denote those authorities upon which the brief chiefly relies or state that there are none.
  - (d) A glossary defining abbreviations and acronyms, other than those that are part of common usage. *See* D.C.Cir. Rule 28(a)(3).
  - (e) A statement indicating the basis for this Court's jurisdiction and the basis for the district court's or agency's subject matter jurisdiction, with statutory citations and, if necessary, relevant case citations. *See* Fed. R. App. P. 28(a)(4); D.C. Cir. Rule 28(a)(4). Only appellant's or petitioner's brief must contain this statement; any party, intervenor, or *amicus* may include a counter statement regarding jurisdiction. If the basis of the district court's or agency's subject matter jurisdiction or this Court's jurisdiction is in dispute, the parties should so state and should reference the pages in the brief that address this issue.
  - (f) A section containing pertinent statutes and regulations. *See* D.C. Cir. Rule 28(a)(5). If these are extensive, they may either be included as an addendum bound with the brief or be bound separately. If they are contained in another party's brief, they may be incorporated by reference.
  - (g) A statement of the issues presented for review, which appellee or respondent may omit if satisfied with appellant's or petitioner's statement.
  - (h) A statement of the case consisting of a procedural history indicating the nature of the case, the course of proceedings, and the disposition below. *See* Fed. R. App. P. 28(a)(6). Appellee or respondent may omit or shorten the statement of the case if satisfied with that of the appellant or petitioner.
  - (i) A statement of the facts relevant to the issues presented for review, with appropriate references to the record. *See* Fed. R. App. P. 28(a)(7). Appellee or respondent may omit or shorten the statement of the facts if satisfied with that of the appellant or petitioner.
  - (j) A summary of argument that contains a succinct, clear statement of the arguments made in the body of the brief. The summary must not merely repeat the argument headings.
  - (k) The argument, which contains the contentions of the parties on the issues presented, with citations to authorities, statutes, and portions of the record upon which the parties rely, and the standard of review for each issue. The appellee or respondent may omit this statement if satisfied with that of the appellant or petitioner.
  - (l) A succinct conclusion setting forth the precise relief sought.
  - (m) A certificate of compliance if required by Federal Rule of Appellate Procedure 32(a)(7).

*Analysis of Briefing Requirements in the Courts of Appeals*

Section IX.A.7 (e) provides that “[i]f the basis of the district court’s or agency’s subject matter jurisdiction or the appellate court’s jurisdiction is in dispute, the parties should include a statement to this effect and reference the pages in the brief that address this issue.”

## FIRST CIRCUIT

### First Circuit Local Rule 28. Addendum to Briefs Required

(a) **Contents.** In addition to the requirements of FRAP 28, for the court’s convenience, the brief of the appellant must include an addendum containing the following items:

- (1) The judgment, ruling or order appealed from and any supporting opinion, memorandum, or statement of reason;
- (2) The portions of any instructions to the jury that are the subject of appeal;
- (3) Pertinent portions of any document in the record that is the subject or an issue on appeal; and
- (4) Other items or short excerpts from the record, if any, considered necessary for understanding the specific issues on appeal.

(b) **Form.** The addendum must be limited to 20 pages (exclusive of the judgment, order or opinion appealed from) and shall be bound at the rear of the appellant’s brief.

- (1) The appellee’s brief may include such an addendum to incorporate materials omitted from the appellant’s addendum, subject to the same limitations on length and content.
- (2) Material included in the addendum need not be reproduced in the appendix also.

*Requirements for Compliant Briefs and Appendices and Ten Pointers for an Appeal* (found on the First Circuit’s website, [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov)) provides in addition to First Circuit Local Rule 28 addendum requirements that “[i]f the appeal arises from a decision reviewing an underlying agency, bankruptcy or state court decision, the underlying decision must be included.”

*Checklist for Briefs* (found on the First Circuit’s website, [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov)) provides a listing of requirements for the content of an appellant’s brief, including a “[s]tatement in support of/against oral argument.” However, the listing also clarifies that this is an optional requirement pursuant to First Circuit Local Rule 34(a). Local Rule 34(a) provides that if included, the statement, which is limited to one-half page, must be inserted in the brief immediately after the Table of Contents and Authorities and immediately before the first page of the brief.

## SECOND CIRCUIT

### Second Circuit Local Rule 28. Briefs

1. Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this rule may be disregarded and stricken by the court.
2. Appellant’s brief shall include, as a preliminary statement, the name of the judge or agency member who rendered the decision appealed from and, if the judge’s decision or supporting opinion is reported, the citation thereof.

### Second Circuit Local Rule 32. Briefs and Appendix

(a) **Form of Brief.** Briefs must conform to FRAP Rule 32(a), with the proviso that, if a litigant prefers to file a printed brief in pamphlet format, it must conform to the following specifications. . .

....

(c) **Covers.** The docket number of the case must be printed in type at least one inch high on the cover of each brief and appendix.

**(d) Special Appendix**

**1. Contents of the Special Appendix.** If the application or interpretation of any rule of law, including any constitutional provision, treaty, statute, ordinance, regulation, rule, or sentencing guideline, is significant to the resolution of any issue on appeal, or if the Appendix, exclusive of the orders, opinions, and judgments being appealed, would exceed 300 pages, the parties must provide the court with a Special Appendix, including

- (A) the verbatim text, with appropriate citation, of any such rule of law, and
- (B) such orders, opinions and judgment being appealed.

The inclusion of such materials in a Special Appendix satisfies the obligations established by FRAP Rules 28(f) and 30(a)(1)(C).

**2. Form of the Special Appendix.** The Special Appendix may be presented either as an addendum at the end of a brief, or as a separately bound volume (in which case it must be designated “Special Appendix” on its cover). . . .

## THIRD CIRCUIT

### Third Circuit Local Appellate Rule 28.0. Briefs

#### 28.1 Brief of the Appellant

- (a) The brief of appellant/petitioner shall include, in addition to the sections enumerated in FRAP 28, the following:
  - (1) in the statement of the issues presented for review required by FRAP 28(a)(5), a designation by reference to specific pages of the appendix or place in the proceedings at which each issue on appeal was raised, objected to, and ruled upon;
  - (2) a statement of related cases and proceedings, stating whether this case or proceeding has been before this court previously, and whether the party is aware of any other case or proceeding that is in any way related, completed, pending or about to be presented before this court or any other court or agency, state or federal. If the party is aware of any previous or pending appeals before this court arising out of the same case or proceeding, the statement should identify each such case; and
  - (3) See LAR 32.2(c) for other attachments to the brief.
- (b) The statement of the standard or scope of review for each issue on appeal, *i.e.*, whether the trial court abused its discretion; whether its fact findings are clearly erroneous; whether it erred in formulating or applying a legal precept, in which case review is plenary; whether, on appeal or petition for review of an agency action, there is substantial evidence in the record as a whole to support the order or decision, or whether the agency’s action, findings and conclusions should be held unlawful and set aside for the reasons set forth in 5 U.S.C. Section 706(2), should appear under a separate heading placed before the discussion of the issue in the argument section.

. . . .

#### 28.3 Citation Form; Certification

- (a) In the argument section of the brief required by FRAP 28(a)(9), citations to federal opinions that have been reported shall be the U.S. Reports, the Federal Reporter, the Federal Supplement or the Federal Rules Decisions, and shall identify the judicial circuit or district, and year of decision. Citations to the United States Supreme Court opinions that have not yet appeared in the official reports may be to the Supreme Court Reporter, the Lawyer’s Edition or United States Law Week in that order of preference. Citations to United States Law Week shall include the month, day and year of the decision. Citations to federal decisions that have not been normally reported shall identify the court, docket number and date, and refer to the electronically transmitted decision. Citations to services and topical reports, whether permanent or

loose-leaf, and to electronic citation systems, shall not be used if the text of the case cited has been reported in the United States Reports, the Federal Reporter, and Federal Supplement, or the Federal Rules Decisions. Citations to state court decisions should include the West Reporter system whenever possible, with an identification of the state court.

- (b) For each legal proposition supported by citations in the argument, counsel shall cite to any opposing authority if such authority is binding on this court, e.g., U.S. Supreme Court decisions, published decisions of this court, or, in diversity cases, decisions of the applicable state supreme court.
- (c) All assertions of fact in briefs shall be supported by a specific reference to the record. All references to portions of the record contained in the appendix shall be supported by a citation to the appendix, followed by a parenthetical description of the document referred to, unless otherwise apparent from context.
- (d) Except as otherwise authorized by law, each party shall include a certification in the initial brief filed by that party with the court that at least one of the attorneys whose names appear on the brief is a member of the bar of this court, or has filed an application for admission. . . .

### **Third Circuit Local Appellate Rule 32.2. Form of Briefs and Appendices**

- . . . .
- (c) Volume one of the appendix must consist only of (1) a copy of the notice of appeal, (2) the order or judgment from which the appeal is taken, and any other order or orders of the trial court which pertain to the issues raised on appeal, (3) the relevant opinions of the district court or bankruptcy court, or the opinion or report and recommendation of the magistrate judge, or the decision of the administrative agency, if any and (4) any order granting a certificate of appealability, and (5) no more than 25 additional pages. Volume one of the appendix may be bound in the brief and shall not be counted toward the page or type volume limitations on the brief. All other volumes of the appendix must be separately bound. . . .

*Checklist of Rule Requirements for Preparation of Briefs* (found on Court's website at [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)) lists additional items that must be included in the contents of an appellant's brief:

- order(s) being appealed, and if any, opinion(s) of the trial court or agency, and the notice of appeal, must be included in the brief (considered Volume 1 of the Appendix) or in a separate Volume 1 of the Appendix. The Court prefers they be attached to the brief. An additional 25 pages of record material may also be included (citing to LAR 32.2(c)).
- when hearing is on the original record under Third Circuit LAR 30.2 (applications for writ of habeas corpus and in forma pauperis appeals) the appellant's brief must also include (a) relevant docket entries; (b) judgment order or decision being appealed; (c) memorandum or opinion of court or agency subject to review; and (d) notice of appeal or petition for review.

## **FOURTH CIRCUIT**

### **Fourth Circuit Local Rule 28(b). Attachments to Briefs**

Each party shall include, in the body of the brief or in an addendum thereto, the verbatim text of the relevant portion of any constitutional provision, treaty, statute, ordinance, rule or regulation cited in the brief, if its construction is sought, there is controversy among the parties concerning its proper application to the case, or it is otherwise pertinent to the substantive issues on appeal.

Each party shall also include in the addendum any unpublished opinion cited pursuant to Local Rule 36(c). Should a party wish to supplement the brief with matters other than those enumerated above, the additional material shall be presented to the Court under separate cover, accompanied by a motion for leave to file that specifically identifies the proposed material, indicates whether it is a mat-

ter of record, and sets forth good cause for deviating from the general prohibition of attachments to briefs.

**Fourth Circuit Local Rule 34(a)** states in part, “Because any case may be decided without oral argument, all major arguments should be fully developed in the briefs. In furtherance of the disposition of pending cases under this rule, parties may include in their briefs at the conclusion of the argument a statement setting forth the reasons why, in their opinion, oral argument should be heard.”

**Fourth Circuit Local Rule 36(c)** provides in part that “[i]f counsel believes, nevertheless, that an unpublished disposition of this Court has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if counsel serves a copy thereof on all other parties in the case and on the Court. Such service may be accomplished by including a copy of the disposition in an attachment or addendum to the brief pursuant to the procedures set forth in Local Rule 28(b).”

**Rule Requirements for Preparation of Briefs and Appendices** (found on the court’s website at [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)) provides that “Each party shall also include in the addendum any unpublished opinion of this Court cited pursuant to Local Rule 36(c). Unpublished opinions of other courts may not be included in the addendum; instead, counsel citing an unpublished opinion of another court must include that opinion in a separately bound attachment and file a motion for leave to file attachment pursuant to Local Rule 28(b).”

**Rule Requirements for Preparation of Briefs and Appendices and Fourth Circuit Checklist for Briefs and Appendices** (found on the court’s website at [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)) provides that in addition to the requirements of FRAP 28(a), an appellant’s brief must also contain a Request for Oral Argument, if counsel requests argument, citing Fourth Circuit Local Rule 34(a).

## **FIFTH CIRCUIT**

### **Fifth Circuit Rule 28.2 Briefs—Contents**

**28.2.1 Certificate of Interested Persons.** The certificate of interested persons required by this rule is broader than the corporate disclosure statement contemplated by FRAP 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate corporate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. If a large group of persons or firms can be specified by a generic description, individual listing is not necessary. Each certificate must also list the names of opposing law firms and/or counsel in the case. The certificate must include all information called for by FRAP 26.1(a). Counsel and unrepresented parties must supplement their certificates of interested persons whenever the information that must be disclosed changes.

- (a) Each certificate must list all persons known to counsel to be interested, on all sides of the case, whether or not represented by counsel furnishing the certificate. Counsel has the burden to ascertain and certify the true facts to the court.

- (b) The certificate must be in the following form:
- (1) Number and Style of Case;
  - (2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.  
(Here list names of all such persons and entities and identify their connection and interest.)

\_\_\_\_\_  
Attorney of record for \_\_\_\_\_

**28.2.2 Summary of Argument.** In addition to the requirements of FRAP 28, the summary of argument should seldom exceed 2 and never 5 pages.

**28.2.3 Record References.** Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record where the matter is found.

**28.2.4 Request for Oral Argument.** Counsel for appellant must include in a preamble to appellant's principal brief a short statement why oral argument would be helpful, or a statement that appellant waives oral argument. Appellee's counsel must likewise include in appellee's brief a statement why oral argument is or is not needed. The court will give these statements due, though not controlling, weight in determining whether to hold oral argument. See FRAP 34(a) and Fifth Cir. R. 34.2.

**28.2.5 Statement of Jurisdiction.** The jurisdictional statement required by FRAP 28(a)(4) should contain citations of authority when needed for clarity.

**28.2.6 Standard of Review.** As an aid to understanding FRAP 28(a)(9)(B), the following examples explain the "standard of review." Where the appeal is from an exercise of district court discretion, there should be a statement that the standard of review is whether the district court abused its discretion. The appropriate standard or scope of review for other contentions should be indicated similarly, e.g., that the district court erred in formulating or applying a rule of law; or that there is insufficient evidence to support a verdict; or that fact findings of the trial judge are clearly erroneous under Fed. R. Civ. P. 52(a); or that there is a lack of substantial evidence in the record as a whole to support the factual findings of an administrative agency; or that the agency's action, findings, and conclusions should be held unlawful and set aside for the reasons set forth in 5 U.S.C. Section 706(2) . . . . The court requests that the standard of review be clearly identified in a separate heading before the discussion of the issues.

**28.3 Brief - Order of Contents.** The order of contents of the brief is governed by Fed. R. App. P. 28 and this rule and shall be as follows:

- (a) Certificate of interested persons required by 5th Cir. R. 28.2.1;
- (b) Statement regarding oral argument required by 5th Cir. R. 28.2.4 (See 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 (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.

## SIXTH CIRCUIT

### Sixth Circuit Rule 28. Briefs

- .....
- (c) **Fact Sheets.** A one-page fact sheet, in the form prescribed by this Court, shall be prepared by the counsel for the appellant and for the appellee in all social security appeals, Title VII appeals, habeas corpus § 2254 appeals and motion to vacate § 2255 appeals. Such fact sheet shall be of the same page size as the briefs as required by FRAP 32(a), and be incorporated in the briefs of the parties immediately following the table of contents and preceding the statement of issues presented for review which are required by FRAP 28(a).
- (d) **Designation of Appendix Contents.** Each principal brief shall contain as an addendum the designation of appendix contents required by 6 Cir. R. 30(b) and of sealed attachments governed by 6 Cir. R. 30(f)(4) and (5).
- (e) **Additional Contents.** Each principal brief *shall* also contain the disclosure of corporate affiliations and financial interest required by 6 Cir. R. 26.1 and *may* include a statement of reasons why oral argument should be heard pursuant to 6 Cir. R. 34(a).
- .....
- (g) **Citation of Unpublished Decisions.** Citation of unpublished decisions in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case. If a party believes, nevertheless, that an unpublished disposition has precedential value in relation to a material issue in a case, and that there is no published opinion that would serve as well, such decision may be cited if that party serves a copy thereof on all other parties in the case and on this Court. Such service shall be accomplished by including a copy of the decision in an addendum to the brief.

**Sixth Circuit Rule 30(b). Designation of Contents** provides in relevant part that “[t]he appellant shall file and serve as an addendum to the appellant’s brief a designation of those parts of the record to be included in the joint appendix.”

**Sixth Circuit Rule 34(a). Requesting Oral Argument** provides that “[a] party desiring oral argument must include a statement in the brief, not to exceed one page in length, setting forth the reason(s) why oral argument should be heard. A party’s failure to include such a statement may be deemed by this Court a waiver of oral argument.”

## SEVENTH CIRCUIT

**Seventh Circuit Rule 28. Briefs.** The following requirements supplement those in the corresponding provisions of FRAP 28:

- (a) **Appellant’s Jurisdictional Statement.** The jurisdictional statement in appellant’s brief (see FRAP 28(a)(4)) must contain the following details:
- (1) The statement concerning the district court’s jurisdiction shall identify the provision of the constitution or federal statute involved if jurisdiction is based on the existence of a federal question. If jurisdiction depends on diversity of citizenship, the statement shall identify the jurisdictional amount and the citizenship of each party to the litigation. If any party is a corporation, the statement shall identify both the state of incorporation and the state in which the corporation has its principal place of business. If any party is an unincorporated association or partnership the statement shall identify the citizenship of all members. The statement shall

- supply similar details concerning the invocation of supplemental jurisdiction or other sources of jurisdiction.
- (2) The statement concerning appellate jurisdiction shall identify the statutory provision believed to confer jurisdiction on this court and the following particulars:
    - (i) The date of entry of the judgment or decree sought to be reviewed.
    - (ii) The filing date of any motion for a new trial or alteration of the judgment or any other motion claimed to toll the time within which to appeal.
    - (iii) The disposition of such a motion and the date of its entry.
    - (iv) The filing date of the notice of appeal (together with information about an extension of time if one was granted).
    - (v) If the case is a direct appeal from the decision of a magistrate judge, the dates on which each party consented in writing to the entry of final judgment by the magistrate judge.
  - (3) If the appeal is from an order other than a final judgment that adjudicates all of the claims with respect to all parties, counsel shall provide the information necessary to enable the court to determine whether the order is immediately appealable. Elaboration will be necessary in the following cases although the list is illustrative rather than exhaustive:
    - (i) If any claims or parties remain for disposition in the district court, identify the nature of these claims and the ground on which an appeal may be taken in advance of the final judgment. If there has been a certificate under Fed. R. Civ. P. 54(b) or if this is an appeal by permission under 28 U.S.C. Section 1292(b), give the particulars and describe the relation between the claims or parties subject to the appeal and the claims or parties remaining in the district court.
    - (ii) If the ground of jurisdiction is the “collateral order doctrine,” describe how the order meets each of the criteria of that doctrine: finality, separability from the merits of the underlying action, and practical unreviewability on appeal from a final judgment. Cite pertinent cases establishing the appealability of orders of the character involved.
    - (iii) If the order sought to be reviewed remands a case to a bankruptcy judge or administrative agency, explain what needs to be done on remand and why the order is nonetheless “final.”
    - (iv) Whenever some issues or parties remain before the district court, give enough information to enable the court to determine whether the order is appealable. Appeals from orders granting or staying arbitration or abstaining from decision as well as appeals from the grant or denial of injunctions require careful exposition of jurisdictional factors.

## **EIGHTH CIRCUIT**

### **Eighth Circuit Rule 28A. Briefs**

.....

#### **(b) Addendum.**

- (1) **CONTENTS.** Appellant must prepare an addendum and file it with the opening brief. The addendum must include:
  - (i) a copy of the district court or administrative agency opinion or order including supporting memoranda or findings;
  - (ii) any magistrate’s report and recommendation that preceded the district court opinion and order;
  - (iii) short excerpts from the record, other than from the transcript of testimony, that would be helpful in reading the brief without immediate reference to the appendix; and
  - (iv) other relevant rulings of the district court.

- (2) **LENGTH.** The addendum must not exceed 15 pages excluding the district court or agency opinion and the magistrate’s report and recommendation. The addendum will normally be incorporated into the back of the brief, but may be bound separately if it includes a long district court opinion or report and recommendation. If bound separately, the appellant must file the same number of addenda as briefs.
- (c) **Certification of Word Processing Program.** In addition to the information required by FRAP 32(a)(7)(C), the certificate of compliance must also include the name and version of the word processing software used to prepare the brief.

....

**(f) Contents.**

- (1) **SUMMARY OF THE CASE.** Each appellant must file a statement not to exceed one page providing a summary of the case, the reasons why oral argument should or should not be heard, and the amount of time (15, 20, or 30 minutes, or in an extraordinary case, more than 30 minutes) necessary to present the argument. The summary must be placed as the first item in the brief. If appellee deems appellant’s statement incorrect or incomplete, appellee may include a responsive statement in appellee’s brief.
- (2) **STATEMENT OF ISSUES.** In addition to the requirement of FRAP 28(a)(5), the statement of issues shall include for each issue a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

....

- (i) Citation of Unpublished Opinion.** Unpublished opinions are decisions, which a court designates for unpublished status. They are not precedent and parties generally should not cite them. When relevant to establishing the doctrine of res judicata, collateral estoppel, or the law of the case, however, the parties may cite any unpublished opinion. Parties may also cite an unpublished opinion of this court if the opinion has persuasive value on a material issue and no published opinion of this or another court would serve as well. A party who cites an unpublished opinion in a document must attach a copy of the unpublished opinion to the document. A party who cites an unpublished opinion for the first time at oral argument must attach a copy of the unpublished opinion to the supplemental authority letter required by FRAP 28(j). When citing an unpublished opinion, a party must indicate the opinion’s unpublished status.

**United States Court of Appeals for the Eighth Circuit, *Briefing Checklist*** (available at [www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)) provides that unpublished opinions are to be cited pursuant to 8th Cir. R. 28A(i) and a copy of the opinion should be included in the addendum. The *Checklist* also specifies the order in which items must be included in appellant’s brief:

**REQUIREMENTS AND ORDER OF APPELLANT’S BRIEF. See FRAP 28(a); 8th Cir. R. 28A(f).**

1. Summary of the case and request of oral argument or waiver. See 8th Cir. R. 28A(f)(1).
2. Corporate Disclosure Statement. See FRAP 26.1.
3. Table of Contents. See FRAP 28(a)(2).
4. Table of Authorities. See FRAP 28(a)(3).
5. Jurisdictional Statement. See FRAP 28(a)(4).
6. Statement of the issues: no more than four most apposite cases. See FRAP 28(a)(5); 8th Cir. R. 28A(f)(2).
7. Statement of the case. See FRAP 28(a)(6).
8. Statement of the facts. See FRAP 28(a)(7).
9. Summary of the argument. See FRAP 28(a)(8).
10. Argument and applicable standard of review. See FRAP 28(a)(9).
11. Conclusion. See FRAP 28(a)(10).

12. Certificate of Compliance. See FRAP 32(a)(7).
13. District court opinion/administrative agency decision on review. See 8th Cir. R. 28A(b)(1)
14. Addendum. 15-page limit, exclusive of order appealed from. See 8th Cir. R. 28A(b)(2).

## NINTH CIRCUIT

### Ninth Circuit Rule 28-1. Briefs, Applicable Rules

.....

- (b) Parties must not append or incorporate by reference briefs submitted to the district court or agency or this Court in a prior appeal, or refer this Court to such briefs for the arguments on the merits of the appeal. (New Rule 7/1/2000)
- (c) Appellants proceeding without assistance of counsel may file the form brief provided by the Clerk in lieu of the brief described in the preceding paragraph. If the appellant uses the informal brief form, the optional reply brief need not comply with the technical requirements of FRAP 28(c) or 32(a). (Rev. 1/96)

**Ninth Circuit Rule 28-2. Contents of Briefs.** In addition to the requirements of FRAP 28, briefs shall comply with the following rules:

.....

**Rule 28-2.2. Statement of Jurisdiction.** In a statement preceding the statement of the case in its initial brief, each party shall demonstrate the jurisdiction of the district court or agency and of this Court by stating, in the following order:

- (a) The statutory basis of subject matter jurisdiction of the district court or agency;
- (b) The basis for claiming that the judgment or order appealed from is final or otherwise appealable, and the statutory basis of jurisdiction of this Court;
- (c) The date of entry of the judgment or order appealed from; the date of filing of the notice of appeal or petition for review; and the statute or rule under which it is claimed the appeal is timely.

If the appellee agrees with appellant's statement of one or more of the foregoing matters, it will be sufficient for the appellee to state such agreement under an appropriate heading.

.....

**Rule 28-2.4. Bail Status**

The opening brief in a criminal appeal shall contain a statement as to the bail status of the defendant. If the defendant is in custody, the projected release date should be included.

**Rule 28-2.5. Reviewability and Standard of Review**

As to each issue, appellant shall state where in the record on appeal the issue was raised and ruled on and identify the applicable standard of review.

In addition, if a ruling complained of on appeal is one to which a party must have objected at trial to preserve a right of review, e.g., a failure to admit or exclude evidence or the giving or refusal to give jury instruction, the party shall state where in the record on appeal the objection and ruling are set forth.

**Rule 28-2.6. Statement of Related Cases**

Each party shall identify in a statement on the last page of its initial brief any known related case pending in this court. As to each such case, the statement shall include the name and Court of Appeals docket number of the related case and describe its relationship to the case being briefed. Cases are deemed related if they:

- (a) arise out of the same or consolidated cases in the district court or agency;
- (b) are cases previously heard in this Court that concern the case being briefed;
- (c) raise the same or closely related issues; or
- (d) involve the same transaction or event.

If no other cases in this Court are deemed related, a statement shall be made to that effect. The appellee need not include any case identified as related in the appellant's brief.

**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. The addendum shall be separated from the brief by a distinctively colored page

**Rule 28-2.8 Record References.**

Every assertion in briefs regarding matters in the record shall be supported by a reference to the location, if any, in the excerpts of record where the matter is to be found. (Rev. 7/1/98)

**Rule 28-2.9 Bankruptcy Appeals**

If the appeal arises out of the bankruptcy court, the appellant with the opening brief shall furnish the name, address and court of the bankruptcy judge initially ruling on the matter to the clerk of this court.

## TENTH CIRCUIT

### Tenth Circuit Rule 28.1. References to Appendix or Record

- (A) **Appendix.** References to the appendix should be by page number (e.g., Aplt. App. at 27, or Aplee. Supp. App. at 14).
- (B) **Record.** In cases without an appendix, references to the record should be by document number from the district court's docket sheet and page number within the document (e.g., Doc. 4 at 6). References to the transcript should be by page number.

### Tenth Circuit Rule 28.2. Additional Requirements

- (A) **Appellant's brief.** In addition to all other requirements of FRAP and these rules, the appellant's brief must include the following (even though they are also included in the appendix):
  - (1) copies of all pertinent written findings, conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge (if the district court adopts a magistrate's report and recommendation, that report must also be included);
  - (2) if any judicial pronouncement listed in (1) is oral, a copy of the transcript pages; and
  - (3) in social security cases, copies of the decisions of the administrative law judge and the appeals council.

....

- (C) **All principal briefs.**

- (1) **Statement of related cases.** At the end of the table of cases, the first brief filed by each party must list all prior or related appeals, with appropriate citations, or statement that there are no prior or related appeals.
- (2) **Record references.** For each issue raised on appeal, all briefs must cite the precise reference in the record where the issue was raised and ruled on.
- (3) **Particular record references.** Briefs must cite the precise reference in the record where a required objection was made and ruled on, if the appeal is based on:
  - (a) a failure to admit or exclude evidence;
  - (b) the giving of or refusal to give a particular jury instruction; or
  - (c) any other act or ruling for which a party must record an objection to preserve the right to appeal.
- (4) **Oral argument statement.** The front cover of each party's first brief must state whether oral argument is requested. If argument is requested, a statement of the reasons why argument is necessary must follow the brief's conclusion.
- (5) **Name of court and judge.** The front cover of each brief must contain the name of the court and the judge whose judgment is being appealed.

**Practitioners' Guide to the US Court of Appeals for the Tenth Circuit (5th Rev. 1998),**

VI. Writing a Brief

*A. Formal Requirements as to Content*

1. *Principal Briefs.* Federal Rule of Appellate Procedure 28 and Tenth

Circuit Rule 28 set out the requirements for briefs filed in appeals. The opening and answer briefs must contain the following, under appropriate headings and in the order indicated:

- a. A table of contents with page references, and a table of cases, statutes and other authorities cited, alphabetically arranged and referring to the pages of the brief where they are cited. Appended to the table of cases must be a list, with appropriate citations, of all prior or related appeals, or a statement that there are none.
- b. Appellant's brief, only, must have a preliminary statement of the grounds for the jurisdiction both of the court or agency appealed from and of this court. The statement must cite to supporting statutes and record dates which show that the appellant timely filed the notice of appeal or the petition for review.
- c. A statement of the issues presented for review. (This may be omitted in appellee's brief if appellee is satisfied with appellant's statement; if not satisfied, appellee should simply correct errors or omissions in appellant's statement.)
- d. A statement of the case, which must first briefly indicate the nature of the case, the course of proceedings, and the determinations of the court below.
- e. A statement of the facts relevant to the issues presented for review, with appropriate references to the record. References to documents in the record must include the document number, if any, from the district or agency docket sheet, document name, filing date, and page number within the document (*e.g.*, Doc. No. 48, Motion for Summary Judgment filed 1/15/88 at 3). Transcript references must be to page number, or if not sequentially paginated, by date of proceeding and page number (*e.g.*, Trans. of 8/15/88 Suppression Hearing at 37). If transcripts are not sequentially paginated, references must be to volume or date of proceedings and page number (*e.g.*, Tr. Vol. VII at 37 or Tr. 8/31/88 at 37). Copies of all trial exhibits which are referred to in the brief that were returned to the parties by the district court must be included in a separate addendum. A single addendum is required. At the option of the party, the exhibits may be included in both copies of the appendix. 10th Cir. R. 10.3(D)(5).
- f. A summary of the argument. The argument must be preceded by a summary of it.
- g. The argument, which must contain the contentions of the party with respect to the issues presented and the reasons for them. It also must include citations to relevant authorities, statutes, and portions of the record. Preceding the discussion of each issue, there must be a statement of the standard of review applicable in this court and a precise reference to the place in the record where the issue was raised and decided. *See* 1 S. Childress & M. Davis, *Standards of Review*, § 1.1 at 4 (1986), S. Childress, *A Standards of Review Primer*, 125 F.R.D. 319 (1989). If the issue is failure to admit or exclude evidence, refusal to give a particular jury instruction, or any other ruling for which a party must record an objection to preserve the right of appeal, the brief must identify where in the record counsel made the objection and where it was ruled upon.
- h. A short conclusion, setting forth the precise relief sought.

- i. On the front cover, a statement whether oral argument is desired. A statement of the negative is required when no oral argument is desired. If oral argument is requested, an explanation of the reason oral argument is necessary must follow the conclusion.
- j. In appellant's brief only, an attachment containing a copy of the judgment or order to be reviewed, any pertinent written findings, conclusions, opinions or orders, or, if oral, transcripts of them. If consideration of the appeal requires study of statutes, rules, regulations, contracts (or relevant parts of them), copies of those documents must also be placed in the attachment to the brief. If the district court's ruling was premised on adoption of a magistrate judge's report and recommendation, both must be included.
- k. Every brief that relies on the type-volume limitation must contain a certificate of compliance. Fed. R. App. P. 32(a)(7)(C). *See Length and Form*, below.

NOTE - Even though the pertinent orders or judgment may be included in appellant's appendix, copies must also be attached within each copy of appellant's brief.

**Section VI.A.1(e)** provides that the opening brief must contain a statement of the facts relevant to the issues presented for review, with appropriate references to the record. The Guide goes on to provide details on compliance with this general directive: "References to documents in the record must include the document number, if any, from the district or agency docket sheet, document name, filing date, and page number within the document (e.g., Doc. No. 48, Motion for Summary Judgment filed 1/15/88 at 3). Transcript references must be to page number, or if not sequentially paginated, by date of proceeding and page number (e.g., Trans. of 8/15/88 Suppression Hearing at 37). If transcripts are not sequentially paginated, references must be to volume or date of proceedings and page number (e.g., Tr. Vol. VII at 37 or Tr. 8/31/88 at 37)."

**Section VI.A.1(j)** provides that "[i]n appellant's brief only, an attachment containing a copy of the judgment or order to be reviewed, any pertinent written findings, conclusions, opinions or orders, or, if oral, transcripts of them. If consideration of the appeal requires study of statutes, rules, regulations, contracts (or relevant parts of them), copies of those documents must also be placed in the attachment to the brief. If the district court's ruling was premised on adoption of a magistrate judge's report and recommendation, both must be included."

**Section VI.B.4** provides: "Copies of trial exhibits referred to in a brief must be included in an addendum separate from, but filed with, the brief. The addendum must have a cover page in the same form as the cover page on the briefs and must have a table of contents. The addendum must be paginated, and copies of trial exhibits included in the addendum must be referred to by name and page number. Only one copy of the addendum must be filed. A party may include trial exhibits in all copies of the appendix, instead."

## **ELEVENTH CIRCUIT**

**Eleventh Circuit Rule 28-1. Briefs—Contents.** Each principal brief shall consist, in the order listed, of the following:

- (a) **Cover Page:** elements identical to those in FRAP 32(a)(2).
- (b) **Certificate of Interested Persons and Corporate Disclosure Statement.** A Certificate of Interested Persons and Corporate Disclosure Statement is required of all parties, including governmental parties. The Certificate shall comply with FRAP 26.1 and accompanying circuit rules, and shall be included within each brief (except for the reply brief of an appellant or cross-appellant) immediately following the cover page.
- (c) **Statement Regarding Oral Argument.** Appellant’s brief shall include a short statement of whether or not oral argument is desired, and if so, the reasons why oral argument should be heard. Appellee’s brief shall include a similar statement. The court will accord these statements due, though not controlling, weight in determining whether oral argument will be heard.
- (d) **Table of Contents.** The table of contents shall include page references to each section required by this rule to be included within the brief. The table shall also include specific page references to each heading or subheading of each issue argued.
- (e) **Table of Citations.** The Table of Citations shall show the locations in the brief of citations, and shall contain asterisks in the margin identifying the citation upon which the party primarily relies.
- (f) **Statement Regarding Adoption of Briefs of Other Parties.** A party who adopts by reference any part of the brief of another party pursuant to FRAP 28(i) shall include a statement describing in detail which briefs and which portions of those briefs are adopted.
- (g) **Statement of Jurisdiction.**
- (h) **Statement of the Issues.**
- (i) **Statement of the Case.** In the statement of the case, as in all other sections of the brief, every assertion regarding matter in the record shall be supported by a reference to the volume number (if available), document number, and page number of the original record where the matter relied upon is to be found. The statement of the case shall briefly recite the nature of the case and shall then include:
  - (i) the course of proceedings and dispositions in the court below. **IN CRIMINAL APPEALS, COUNSEL MUST STATE WHETHER THE PARTY THEY REPRESENT IS INCARCERATED;**
  - (ii) a statement of the facts. A proper statement of facts reflects a high standard of professionalism. It must state the facts accurately, those favorable and those unfavorable to the party. Inferences drawn from facts must be identified s such;
  - (iii) a statement of the standard or scope of review for each contention. For example, were the appeal is from an exercise of district court discretion, there shall be a statement that the standard of review is whether the district court abused its discretion. The appropriate standard or scope of review for other contentions should be similarly indicated, e.g., . . . .
- (j) **Summary of the Argument.** The opening briefs of the parties shall also contain a summary of argument, suitably paraphrased, which should be a clear, accurate and succinct condensation of the arguments actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed two and never five pages.
- (k) **Argument and Citations of Authority.** Citations of authority in the brief shall comply with Bluebook rules. Citations shall reference the specific page number(s) that relate to the propositions for which the case is cited. Citations to decisions of the Supreme Court shall include both US Reports and Supreme Court Reporter where such citation exists.
- (l) **Conclusion.**
- (m) **Certificate of Compliance.**
- (n) **Certificate of Service.**