

Third Circuit Civil Appeals: Appellant's Brief and Appendix

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WITH PRACTICAL LAW LITIGATION

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A Practice Note explaining how to prepare and submit the appellant's brief and appendix in civil appeals to the United States Court of Appeals for the Third Circuit from a federal district court's order or judgment. This Note explains briefing schedules and the content, formatting, service, and filing requirements for the appellant's brief and appendix.

The briefs are the parties' first opportunity to present their arguments to the Third Circuit. Briefing begins with the appellant's opening brief and an appendix containing key parts of the record on appeal. This Note explains the schedules for filing and serving the briefs and the content, format, filing, and service requirements for the appellant's brief and appendix.

BRIEFING SCHEDULES

The parties must serve and file their briefs according to the Federal Rules of Appellate Procedure (FRAP) and the local rules for the Third Circuit (3d Cir. L.A.R.) or, if ordered otherwise, according to a briefing schedule set by the Third Circuit. The parties may request extensions if they have good reasons for being unable to meet the court's deadlines. Attorneys should be aware of the:

- Time to serve and file briefs (see Timing).
- Ways to extend the briefing schedule (see Extensions of the Briefing Schedule).
- Consequences of failing to comply with the briefing schedule (see Failure to Comply with Briefing Schedule).

TIMING

The Third Circuit clerk typically issues a briefing and scheduling order shortly after an appeal is docketed. Unless the court orders otherwise:

- The appellant must serve and file its opening brief within 40 days after the date on which the record is filed.

- The appellee must serve and file its brief within 30 days after the appellant serves its brief.
- The appellant may serve and file a reply brief within 14 days after the appellee serves its brief, but at least seven days before argument, unless the court orders otherwise.

(FRAP 31(a)(1) and (2).)

A party receiving service by US mail or commercial carrier may add three days to the time otherwise available to respond. However, parties receiving a brief by electronic service may not add three days to a response time (FRAP 26(c)).

If the case is referred to mediation, the court defers establishing a briefing schedule, unless the Chief Circuit Mediator or the court determines otherwise (3d Cir. L.A.R. 33.3).

EXTENSIONS OF THE BRIEFING SCHEDULE

A party that cannot meet a deadline to file its brief may ask the court for an extension. The parties may not agree or stipulate to change the briefing schedule on their own. The court does not automatically grant a request for an extension, even where the request is unopposed.

A party may make its first request for an extension of 14 days or less by telephone or in writing. The clerk may grant extensions on a showing of good cause. The requesting party should notify opposing counsel before requesting an extension. A party must request an extension at least three days before the brief's due date. If less than three days remain before the due date, the requesting party must make the request by written motion and demonstrate that good cause for the extension either:

- Did not exist earlier.
- Could not with due diligence have been known or communicated to the court earlier.

(3d Cir. L.A.R. 31.4.)

The Third Circuit greatly disfavors second requests for an extension of time to file a brief. The court grants second extension requests only on a showing of good cause that was not foreseeable when the first request was made. A party must make a second extension request by written motion. (3d Cir. L.A.R. 31.4.)

FAILURE TO COMPLY WITH BRIEFING SCHEDULE

If an appellant fails to file its brief or appendix by the due date, the appellee may move to dismiss the appeal. If an appellee fails to timely file its brief, it is not permitted to participate at oral argument unless the court grants permission. (FRAP 31(c).)

THE APPELLANT'S BRIEF

The appellant's brief is the primary vehicle for the appellant to explain to the Third Circuit why it should grant relief from the district court's order or judgment.

CONTENTS OF THE APPELLANT'S BRIEF

The appellant's brief must contain, in order:

- A cover (see Cover).
- A corporate disclosure statement and statement of financial interest (see Disclosure Statement).
- A table of contents (see Table of Contents).
- A table of authorities (see Table of Authorities).
- A statement of subject-matter and appellate jurisdiction (see Jurisdictional Statement).
- A statement of the issues (see Statement of the Issues).
- A statement of related cases and proceedings (see Statement of Related Cases and Proceedings).
- A statement of the relevant facts (see Statement of the Case).
- A summary of the argument (see Summary of the Argument).
- An argument (see Argument).
- A conclusion (see Conclusion).
- A signature (see Signature).
- A certificate of compliance (see Certificate of Compliance).
- An electronic document certificate (see Electronic Document Certificate).
- A certificate of bar admission (see Certificate of Bar Admission).
- Proof of service (see Certificate of Service).

(FRAP 25(d), 26.1, 28(a), 32(a)(2), (d), and (g); 3d Cir. L.A.R. 28.1; 3d Cir. R. 28.3(d); 3d Cir. R. 28.4.)

Unlike in some other federal courts of appeals, in the Third Circuit, the appellant does not request oral argument in its opening brief. Instead, the appellant must file a separate oral argument statement within seven days after the appellee files its brief, explaining why the court should hear oral argument and setting out the amount of argument time sought. (3d Cir. L.A.R. 34.1(b).)

Cover

The cover page must list:

- The court of appeals docket number centered at the top of the page.
- The name of the court (United States Court of Appeals for the Third Circuit).
- The title or caption of the case, including the parties to the appeal and their appellate designations (for example, Plaintiff-Appellant).

- The nature of the proceeding and the name of the court below (for example, On Appeal from the United States District Court for the District of New Jersey).
- The title of the brief, which must indicate the name of the party for whom the brief is filed (for example, Appellant's Brief).
- The name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(FRAP 32(a)(2)).

Except for filings by unrepresented parties, paper copies of the appellant's brief must have a blue cover (FRAP 32(a)(2)). If the appellant uses a transparent cover, the underlying cover sheet must be blue (3d Cir. L.A.R. 32.2(b)).

Disclosure Statement

The appellant's brief must include a disclosure statement immediately after the cover (FRAP 26.1(b) and 28(a)(1)). The statement must:

- Appear before the table of contents.
- For corporate parties, identify any parent corporation and any publicly held corporation that owns 10% or more of the party's stock.
- For all parties, identify any publicly owned corporation that possesses a financial interest in the outcome of the litigation and the nature of the interest.

(FRAP 26.1(a); 3d Cir. L.A.R. 26.1.1; see Practice Note, Third Circuit Civil Appeals: Post-Initiation Filings and Mediation: Corporate Disclosure Statement and Statement of Financial Interest ([W-010-8497](#))).

Counsel must use the Corporate Disclosure and Statement of Financial Interest form on the court's website.

The appellant's brief must include the disclosure statement even if the appellant previously submitted one to the court. Counsel must immediately supplement the statement if any of the relevant information changes. (FRAP 26.1(b).)

For more information about drafting, formatting, and updating the corporate disclosure statement, see Practice Note, Third Circuit Civil Appeals: Post-Initiation Filings and Mediation: Corporate Disclosure Statement and Statement of Financial Interest ([W-010-8497](#)).

Table of Contents

The appellant's brief must include a table of contents indicating the page on which each section of the brief begins. The table also must include specific page references to each heading or subheading of each issue to be argued. (FRAP 28(a)(2).)

Table of Authorities

The appellant's brief must include a table of authorities listing the cases, statutes, and other authorities cited in the brief, along with page references to where the appellant cited each authority. Cases must appear in the table in alphabetical order. (FRAP 28(a)(3).) Some attorneys use *passim* when an authority appears on several pages of the brief (usually more than five) rather than providing a lengthy list of pages.

Jurisdictional Statement

The appellant's brief must include a statement of subject matter and appellate jurisdiction immediately before the statement of the issues. The jurisdictional statement must include:

- The basis for the district court's subject matter jurisdiction (for example, federal question jurisdiction or diversity jurisdiction), with any relevant facts establishing jurisdiction and citations to the appropriate statutes.
- The basis for appellate jurisdiction (for example, an appeal from a final judgment), with any relevant facts establishing jurisdiction and citations to the appropriate statutes.
- The filing dates necessary to establish the timeliness of the appeal. These typically include:
 - the date the district court issued the order or judgment appealed from; and
 - the date the appellant filed the notice of appeal or petition for permission to appeal.
- A statement that the appeal is either:
 - from a final order or judgment disposing of all claims; or
 - premised on some other proper basis for appellate jurisdiction.

(FRAP 28(a)(4).)

To the extent that the second and fourth items are duplicative, the jurisdictional statement may recite the relevant information once. For example, counsel need not state twice that the appeal is taken from a final order or judgment. The jurisdictional statement is often a single paragraph.

Statement of the Issues

The appellant's brief must include a statement of the issues presented for appellate review after the jurisdictional statement (FRAP 28(a)(5)). For each issue, counsel must reference the specific pages of the appendix or location in the record where each issue was raised, objected to, and ruled on (3d Cir. L.A.R. 28.1(a)(1)).

The appellant's opening brief must raise and address every issue the appellant wants the Third Circuit to consider. The failure to do so waives the ability to raise the issue, even if the appellant later raises it in its reply brief (see *United States v. Pelullo*, 399 F.3d 197, 222 (3d Cir. 2005)).

The rules do not specify any particular format for the issues presented. Most attorneys phrase their issues as either:

- A question (for example, "Does a plaintiff need to plead with particularity a claim of negligent misrepresentation?").
- A declaratory statement beginning with "whether" (for example, "Whether a plaintiff must plead with particularity a claim of negligent misrepresentation.").)

If an issue involves some facts, attorneys often include a generic description of them. There is no need to present the specific facts of the appeal in the statement of issues presented for review. For example, an issue in a negligence case may be, "Whether a driver violates his duty of due care to others when he accelerates through a yellow light."

Each issue presented can be multiple sentences. For example, the negligence issue above may alternatively be phrased as: "A driver accelerated while driving through a yellow light. Did he violate his duty of care to others?"

The rules do not specify how many issues a brief may present or what makes something significant enough to constitute an issue presented for review. Some attorneys present as many issues as there are main sections of the argument (see Argument). For example, if the argument section of a brief contains three main points, some attorneys identify three issues presented, even if some of the points have sub-points.

Attorneys commonly place each issue presented in a separate, numbered paragraph.

Selecting the issues to raise is one of the most important decisions made on appeal. The more issues an appellant presents, the less space counsel has to devote to each issue and the less attention the court may pay to these issues. An appellant is far better served by presenting a small number of strong issues, rather than by raising every possible ground for error. However, to avoid any waiver issues, an attorney always must raise each issue the appellant wants addressed on appeal (see *Pelullo*, 399 F.3d at 222).

Statement of Related Cases and Proceedings

Following the statement of the issues, the appellant's brief must contain a statement of related cases and proceedings, stating whether:

- The case was previously before the Third Circuit.
- Any other related case or proceeding is completed, pending, or about to be presented to any state or federal court or agency.
- Any previous or pending appeal before the Third Circuit arose out of the same case or proceeding.

(3d Cir. L.A.R. 28.1(a)(2).)

Statement of the Case

The appellant's brief must include a statement of the case after the statement of related cases and proceedings (FRAP 28(a)(6)). At the beginning of the statement, the appellant must:

- Include a statement of the facts relevant to the issues on appeal.
- Describe the relevant procedural history.
- Identify the rulings presented for review.

(FRAP 28(a)(6).)

Counsel must support all statements of fact and procedural history with citations to the record on appeal (FRAP 28(a)(6) and 28(e); 3d Cir. L.A.R. 28.3(c)). Counsel must support all references to portions of the record contained in the appendix by a citation to the appendix followed by a parenthetical description of the document, unless it is otherwise apparent from the context of the sentence (FRAP 30(c)(2); 3d Cir. L.A.R. 28.3(c)). Counsel may include hyperlinks to the electronic appendix in addition to the citation to the page in the paper appendix (3d Cir. L.A.R. 28.3(c)). Counsel must seek and obtain permission before including hyperlinks to audio and video files (3d Cir. L.A.R. 28.3(c)). Counsel may not include hyperlinks to sealed or otherwise restricted documents (3d Cir. L.A.R. 28.3(c)).

The statement of the case should be written as a persuasive (but not argumentative) narrative and not as a bullet point string of relevant facts. In describing the facts and procedural history, counsel should set out only the material events and dates. Superfluous information may distract or confuse readers.

When providing all of the relevant facts, counsel should disclose all material facts, even those which do not favor the appellant's argument. Counsel may seek to minimize those "bad facts" but should not conceal them. These facts may look substantially worse when revealed for the first time in the appellee's brief and the appellant's counsel may lose credibility with the court.

Although not required, counsel often divide the statement of the case into separate sections with headings. For example, a heading in a breach of contract action may be, "The Parties Enter into a Contract." Counsel need not number these headings.

Counsel should refer to the parties by their names or by descriptive terms that identify them clearly, as opposed to "appellant" and "appellee" (FRAP 28(d)). For example, a brief may describe the parties as the employer and the employee, the buyer and the seller, or the plaintiff and defendant.

Summary of the Argument

The appellant's brief must include a summary of its argument after the statement of the case. The summary should provide a brief narrative overview of the argument. It should not merely restate the headings in the argument section. (FRAP 28(a)(7).) For example, counsel may provide a single paragraph synopsis of each point in the argument section.

Argument

After presenting a summary of its argument on appeal, the appellant's brief must set out in full its argument for why the Third Circuit should grant relief from the district court's order or judgment. The argument section must include:

- A concise statement of the applicable standard of review before the discussion of each issue.
- The appellant's contentions and the legal reasons supporting them.
- Citations to legal authorities and materials in the record relied on by the appellant.

(FRAP 28(a)(8).)

The statement of the applicable standard should appear under a separate heading placed before the discussion of each issue (3d Cir. L.A.R. 28.1(b)).

The appellant's brief should present the legal argument in a narrative form with proper headings. The argument should be organized in a concise and logical way free of irrelevant information. Counsel should not make any personal attacks against opposing counsel or parties (3d Cir. L.A.R. 28.1(d)).

Counsel often divide the argument section into points, with each point addressing one of the appellant's main arguments. Each point may contain sub-points. For example, Point I may argue that the district court possessed diversity jurisdiction over the action, while Point II may argue that the complaint stated a claim for negligence. Point II may contain sub-points II.A, II.B, II.C, and II.D, arguing,

for example, that the plaintiff adequately alleged duty, breach, causation, and damages, respectively.

Just as in the statement of the case, counsel must support every statement in the argument section which concerns matters in the record, including factual assertions, with a citation to the record (FRAP 28(a)(6) and 28(e); see Statement of the Case).

Counsel must identify the proper reporter or source when citing legal authorities:

- **Published federal decisions.** For citations to federal opinions reported in the United States Reports, Federal Reporter, Federal Supplement, or Federal Rules Decisions, counsel must cite to those reporters. Counsel may cite to the Supreme Court Reporter, Lawyer's Edition, or United States Law Week, in that order, for United States Supreme Court decisions that have not yet been published in the United States Reports.
- **Unpublished federal decisions.** For citations to federal opinions not formally reported in one of the above-listed reporters, counsel must identify the court, docket number, the full date of decision, and a citation to a publicly available electronic database, such as Westlaw.
- **State court decisions.** For citations to state court decisions, counsel should include the West Reporter citation whenever possible, and identify the state court.

(3d Cir. L.A.R. 28.3(a).)

Counsel may include hyperlinks to all cited decisions if counsel also includes the standard citation to the reporter (3d Cir. L.A.R. 28.3(a)). If the appellant cites a federal judicial opinion, order, judgment, or other written disposition not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief (FRAP 32.1(b)).

If disposition of the appeal "requires the study" of statutes, rules, regulations, or other legal authorities (for example, because the appeals turn on a question of statutory interpretation), an appellant must set out the relevant parts of these authorities in one of the following:

- The appellant's brief itself.
- An addendum at the end of the brief.
- A separate volume provided to the court.

(FRAP 28(f).)

Counsel typically quote the relevant portions of a statute, regulation, rule, or other authority in the appellant's brief itself. If the relevant portion is lengthy or if an authority is not easily accessible (for example, a local law not published online), counsel may include a copy of it in an addendum at the end of a brief.

Conclusion

The appellant's brief must contain a short conclusion stating the precise relief sought in the appeal (FRAP 28(a)(9)). For example, the conclusion may read, "For all of the foregoing reasons, this Court should reverse the decision below and enter judgment for plaintiff."

Signature

The appellant's brief must include a signature from one of the attorneys representing the appellant (FRAP 32(d); 3d Cir. L.A.R. 28.4; 3d Cir.

L.A.R. 46.4). For electronically filed documents, the filing attorney's case management/electronic case filing (CM/ECF) system log-in and password constitute the required signature for all purposes. A manual signature is unnecessary (3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 46.4; 3d Cir. L.A.R. 113.9(a)). The filing attorney must type "s/[ATTORNEY'S NAME]" on the signature line to signify that the document is signed. The Third Circuit also allows counsel to apply an electronic signature, but the use of an "s/" is the more common method of signing documents. (3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 113.9(b).)

Counsel also must include a signature block directly below the signature line, including the filing attorney's:

- Name.
- State bar number.
- Business address.
- Telephone number.

(3d Cir. L.A.R. 28.4.)

If a brief is submitted jointly on behalf of two or more separately represented parties, the filing attorney must include a separate signature line and block for each attorney. If so, counsel must file the document:

- Containing a scanned image with all necessary signatures.
- Containing a statement representing the consent of the non-filing signatories.
- Identifying the parties whose signatures are required and submitting a notice of endorsement by the other parties within three business days of filing.
- In any other manner approved by the court.

(3d Cir. L.A.R. 113.9(c).)

Certificate of Compliance

An appellant's brief must contain a certificate by the appellant's attorney stating that the brief complies with the type-volume limitations (FRAP 28(a)(10) and 32(g)(1); 3d Cir. L.A.R. 31.1(c); and see Length or Type-Volume). When preparing the certificate, counsel may rely on the word or line count provided by the word processing software used when drafting the brief (FRAP 32(g)(1)). The certificate must state either the number of:

- Words in the brief.
- Lines of monospaced type in the brief.

(FRAP 32(g)(1); and see Font.)

Counsel may use Form 6 in the Appendix of Forms to the FRAP (FRAP 32(g)(2)).

Electronic Document Certificate

Counsel must certify that:

- The text of the electronic brief is identical to the text in the paper copies.
- A virus detection program was run on the electronic brief and no virus was detected. Counsel must identify the version of the virus detection program.

(3d Cir. L.A.R. 31.1(c).)

The court may impose sanctions if a filing contains a computer virus or worm (3d Cir. L.A.R. 31.1(c)).

Certificate of Bar Admission

The appellant's brief must include a certification that at least one of the attorneys whose names appear on the brief is a member of the Third Circuit bar or has filed an application for admission to the Third Circuit (3d Cir. L.A.R. 28.3(d)).

Certificate of Service

Counsel must include a certificate of service in the appellant's brief, even if all parties receive service via CM/ECF (FRAP 25(d); 3d Cir. L.A.R. 113.4(c)). The Notice of Docket Activity (NDA) generated by CM/ECF constitutes service of the brief on all counsel registered to use Third Circuit CM/ECF (3d Cir. L.A.R. 113.3(a)).

The certificate must state that:

- Counsel for the other parties are registered to use Third Circuit CM/ECF and receive service by the NDA.
- If one or more parties are exempt from using CM/EF, that the appellant effects service by:
 - personal delivery;
 - first-class mail; or
 - third-party commercial carrier for delivery within three days.

(FRAP 25(c)(1) and (d); 3d Cir. L.A.R. 113.4(b); 3d Cir. L.A.R. 113.4(c).)

FORMATTING THE APPELLANT'S BRIEF

The appellant's brief must comply with formatting requirements regarding:

- Page size, line spacing, and margins (see Page Size, Line Spacing, and Margins).
- Font (see Font).
- Length or type-volume (see Length or Type-Volume).
- File format for electronic briefs (see File Format).
- Paper copies of briefs (see Paper Briefs).

Page Size, Line Spacing, and Margins

Counsel must prepare the appellant's brief using 8.5 by 11 inch pages (FRAP 32(a)(4)).

Brief pages must have margins of at least:

- One inch on the left and right sides of the page.
- Three-quarters of an inch on the top and bottom of each page.

(FRAP 32(a)(4); 3d Cir. L.A.R. 32.1(b).)

Except for page numbers, the appellant's brief may not include any text in the margins (FRAP 32(a)(4)).

The text of the appellant's brief must be double-spaced. However, a brief may use single-spacing for:

- Headings.
- Footnotes.
- Quotations more than two lines long (which should be indented on both sides).

(FRAP 32(a)(4).)

Font

Briefs must use black type (FRAP 32(a)(1)(A)). The appellant's brief must use a plain, roman style font. However, appellants may occasionally use italics or boldface for emphasis. Case names must be italicized or underlined. (FRAP 32(a)(6).)

The appellant's brief may be written in either a proportionally spaced font (for example, Times New Roman) or a monospaced font (for example, Courier) (FRAP 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs).

The required font size depends on which type of font the appellant uses:

- **Proportionally spaced font.** An appellant's brief written in a proportionally spaced font must use at least a 14-point font size. This font must include serifs (for example, Times New Roman). However, headings and captions may appear in sans-serif type (that is, a font without serifs, like Arial or Helvetica).
- **Monospaced font.** An appellant's brief printed in a monospaced font may not contain more than 10.5 characters per inch. This roughly translates to 12-point Courier font.

(FRAP 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs.)

Length or Type-Volume

The appellant's brief may not exceed 30 pages without prior approval from the court, unless it either:

- Contains no more than 13,000 words.
- Uses a monospaced font and contains no more than 1,300 lines of text.

(FRAP 32(a)(7).)

Counsel may rely on the word or line count provided by the word processing software used to draft the brief (FRAP 32(g)(1)). An appellant's brief must contain a certificate by the appellant's attorney stating that the brief complies with these "type-volume" limitations (FRAP 28(a)(10) and 32(g)(1); 3d Cir. L.A.R. 31.1(c); and see Certificate of Compliance).

In determining the word or line count of a brief, counsel must include the headings, text, footnotes, and quotations. Counsel may exclude:

- The cover page.
- The corporate disclosure statement and statement of financial interest.
- The table of contents.
- The table of authorities.
- The signature block.
- Any addendum containing statutes, rules, or regulations.
- The certificates of counsel.
- The certificate of service.

(FRAP 32(f).)

File Format

When serving and filing a brief using CM/ECF, the appellant must prepare its brief in PDF format. Counsel should create the PDF document by converting a word processing document, not by

scanning. (3d Cir. L.A.R. 31.1(b) and committee comments.) Converting the brief from the word processing software file directly to PDF produces the smallest document and the best image.

Paper Briefs

Paper copies of the appellant's brief must include a blue cover of durable quality (FRAP 32(a)(2); see Cover). Briefs must be printed single-sided (FRAP 32(a)(1)(A)). The print quality must be at least as good as that of a laser printer (FRAP 32(a)(1)(B)).

Counsel must bind paper copies of the appellant's brief along the left margin, in a way that:

- Is secure.
- Does not obscure the text.
- Permits the brief to lie reasonably flat when open.

(FRAP 32(a)(3).) Counsel may use velo or spiral binding, but may not use backbones or spines. Any metal fasteners or staples must have smooth edges and be covered. (3d Cir. L.A.R. 32.1(a).)

FILING AND SERVING THE APPELLANT'S BRIEF

Counsel must use CM/ECF to serve and file the appellant's brief (3d Cir. L.A.R. 31.1(b)(1)). Counsel also must serve one paper copy of the appellant's brief on any party exempt from CM/ECF and any *pro se* party, unless opposing counsel has consented to electronic service (FRAP 25(b); 3d Cir. L.A.R. 31.1(a); 3d Cir. L.A.R. 31.1(d)). Acceptable methods of paper service include:

- Personal delivery.
- First-class mail.
- Third-party commercial carrier for delivery within three (3) days.

(FRAP 25(c)(1).)

On the same day the appellant electronically files its brief, the appellant must send one originally signed brief and six paper copies to the clerk of the court by either:

- First-class mail.
- Third-party commercial carrier for delivery within three days.

(FRAP 25(a)(2)(B); 3d Cir. L.A.R. 25.1(a); 3d Cir. L.A.R. 31.1(a); 3d Cir. L.A.R. 31.1(b)(3); see Standing Order: Reduced Number of Copies of Briefs Required (Apr. 29, 2013).)

In appeals from the District Court for the District of the Virgin Islands, counsel must file one additional paper copy of the brief with the clerk of the district court in the location from which the appeal is taken (St. Thomas or St. Croix) (3d Cir. L.A.R. 31.1(a)). The court may order additional paper copies to be filed if the court orders hearing or rehearing *en banc* (3d Cir. L.A.R. 31.1(a)).

The paper copies must be identical to the electronic copies except that they must have a blue cover (FRAP 32(a)(2); 3d Cir. L.A.R. 31.1(c)). The brief is considered filed on the date counsel files the electronic version via CM/ECF if the paper copies are mailed to the clerk on the same day (3d Cir. L.A.R. 31.1(b)(3)).

THE APPENDIX

The appendix includes those portions of the record necessary for the court's disposition of the appeal.

THE PARTIES' RESPONSIBILITIES

The appellant must compile and submit the appendix at the same time that it files the brief (FRAP 30(a)(3)). Although the FRAP allow the court to order a "deferred appendix" (which an appellant must file 21 days after the appellee serves its brief), the Third Circuit disfavors the use of a deferred appendix (FRAP 30(c); 3d Cir. L.A.R. 30.4).

The parties should work together to develop the appendix. If the parties cannot agree on its contents, the appellant must serve on the appellee, within 14 days after the record is filed, a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues for review. The appellee may then, within 14 days, serve on the appellant a designation of additional parts of the record to be included in the appendix. The appellant must include those designated parts in the appendix. (FRAP 30(b)(1).)

The appellant ordinarily bears the cost of preparing the appendix, but the appellee must advance the cost of including additional designations (FRAP 30(b)(2)). The court may impose sanctions on an attorney who unreasonably increases litigation costs by including unnecessary material in the appendix (FRAP 30(b)(2); 3d Cir. L.A.R. 30.5).

Contents of the Appendix

The appendix must include:

- A cover (see Cover).
- A table of contents (see Table of Contents).
- The district court docket sheet (see Docket Entries).
- The relevant record material from the district court (see Record Material From the District Court).
- Proof of service (see Certificate of Service).

(FRAP 30(a)(1); 3d Cir. L.A.R. 30.3.)

Cover

The appendix cover must be white and must contain:

- The court of appeals docket number centered at the top of the page.
- The name of the court (United States Court of Appeals for the Third Circuit).
- The title of the case, including the parties to the appeal and their appellate designations (for example, Plaintiff-Appellant).
- The nature of the proceeding and the name of the court below (for example, On Appeal from the United States District Court for the District of New Jersey).
- The title of the document (Appendix).
- The name, office address, and telephone number of counsel representing the party filing the appendix.

(FRAP 32(a) and 32(b)(1).)

The cover of each appendix volume must specify the volume and pages contained within (for example, "Vol. 2, pp. 358-722") (3d Cir. L.A.R. 32.2(d)).

Table of Contents

The appendix must begin with an index or table of contents that:

- Provides a description of each item sufficient to explain the nature of the item.
- Specifies the page at which each item or document begins. (FRAP 30(d); 3d Cir. L.A.R. 30.3(a).)

Counsel often include the date of each item in its description, which may assist in ensuring that parts of the record are placed in chronological order, as required by FRAP 30(d). If the appellant files multiple appendix volumes, the index must indicate the volume in which each document is located.

Docket Entries

Immediately following the table of contents, the appendix must contain the entire federal district court docket sheet (FRAP 30(a)(1)(A) and 30(d)).

Record Material From the District Court

The bulk of the appendix consists of the evidence and other record material from the district court on which the parties rely in making their appellate arguments.

Volume one of the appendix must include only the following record material from the district court:

- A copy of the notice of appeal (3d Cir. L.A.R. 30.3(a); 3d Cir. L.A.R. 32.2(c)(1)).
- The judgment or order from which the appeal is taken and any other orders that relate to the issues in the appeal (FRAP 30(a)(1)(C); 3d Cir. L.A.R. 32.2(c)(2)).
- The relevant opinions or decisions at issue in the appeal (FRAP 30(a)(1)(C); 3d Cir. L.A.R. 30.3(a); 3d Cir. L.A.R. 32.2(c)(3)).
- Any order granting a certificate of appealability (3d Cir. L.A.R. 30.3(a); 3d Cir. L.A.R. 32.2(c)(4)).

The remaining volumes of the appendix must include:

- The relevant portions of the pleadings, jury charge, findings of fact, and conclusions of law or opinion (FRAP 30(a)(1)(B)).
- Any other parts of the record to which the parties wish to direct the court's attention (FRAP 30(a)(1)(D)).

Counsel must arrange these items in chronological order (FRAP 30(d)). Counsel should not include memoranda of law filed in the district court, unless it is necessary to show that counsel raised an argument or preserved an issue before the district court (FRAP 30(a)(2); 3d Cir. L.A.R. 30.3(a)). Counsel generally should not include portions of the transcript in the appendix (3d Cir. L.A.R. 30.3(a)). However, if an appeal challenges the sufficiency of the evidence to support a verdict or other determination, counsel must include in the appendix all record evidence that supports the challenged determination (3d Cir. L.A.R. 30.3(a)).

For items sealed before the district court and not unsealed by court order, counsel must file the item electronically as a separate docket entry in a sealed volume. Counsel should not include the sealed item in the paper copy of the appendix, but should file it in a separate sealed envelope (3d Cir. L.A.R. 30.3(b)).

Unlike a brief, the appendix does not include counsel's signature or a signature block.

Certificate of Service

The appellant must include a certificate of service in the appendix indicating that the appendix was served on all parties, either by CM/ECF or by one of the approved methods for serving parties exempt from CM/ECF (FRAP 25(c) and (d)).

FORMATTING THE APPENDIX

Counsel must reproduce the paper appendix on white paper with a clear black image. The appendix must include a white cover of durable quality on both the front and back sides (FRAP 32(a)(1) and 32(b)). Counsel must bind paper copies of the appendix in a way that:

- Is secure.
- Does not obscure the text.

(FRAP 32(a)(3).)

The binding must be made at the left margin. Counsel may use velo or spiral binding, but may not use backbones or spines. Any metal fasteners or staples must have smooth edges and be covered. (3d Cir. L.A.R. 32.1(a).)

The appendix must have margins of at least:

- One inch on the left and right sides of the page.
- Three-quarters of an inch on the top and bottom of each page.

(FRAP 32(a)(4); 3d Cir. L.A.R. 32.1(b).)

Appendices must be printed on only one side of the page (FRAP 32(a)(1) and 32(b)).

The court prefers that counsel include the first volume of the appendix as an attachment to the paper copy of the appellant's brief (3d Cir. L.A.R. 28.1(c); 3d Cir. L.A.R. 30.3(e)). Volume one of the appendix may be a separate document when filed electronically (3d Cir. L.A.R. 28.1(c)).

Each appendix volume may not exceed 50 megabytes (MB) in size. Counsel must split volumes larger than 50 MB into separate smaller volumes that do not exceed 50 MB. Multiple volumes may be filed and associated with a single filing event (see Third Circuit Summary of Electronic Filing Requirements and Third Circuit CM/ECF Frequently Asked Questions).

FILING AND SERVING THE APPENDIX

The appellant must serve and file the appendix using CM/ECF at the time that the appellant files its brief (FRAP 30(a)(3); 3d Cir. L.A.R. 30.1(a)).

Counsel also must:

- File four paper copies of the appendix with the Third Circuit clerk.
- Serve any parties exempt from using CM/ECF with one paper copy of the appendix and file proof of service with the appendix.
- If the appeal is from a decision or order of the United States District Court for the District of the Virgin Islands, file one paper copy of the appendix with the clerk of the district court in St. Thomas or St. Croix.

(FRAP 25(a)(2)(B), (b)-(d), and 30(a)(3); 3d Cir. L.A.R. 30.1(b); 3d Cir. L.A.R. 30.1(d).)

The court may order counsel to file additional paper copies if hearing or rehearing *en banc* is ordered (3d Cir. L.A.R. 30.1(e)). Counsel may file the required paper copies with the Third Circuit clerk by:

- First-class mail.
- Third-party commercial carrier for delivery within three days.

(FRAP 25(a)(2)(B).)

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