

Third Circuit Civil Appeals: Motions

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WITH PRACTICAL LAW LITIGATION

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A Practice Note explaining motion practice in civil appeals to the US Court of Appeals for the Third Circuit from a federal district court's order or judgment. This Note explains how to draft, serve, and file motions, motion responses, and motion replies, and discusses certain common types of motions, including motions to expedite, motions for summary action, and motions for reconsideration. This Note also explains how to voluntarily discontinue an appeal.

Appellate motion practice is usually much more limited than district court motion practice. Many appeals conclude without the parties making a motion. However, parties do sometimes move the court for either dispositive relief (for example, dismissal of the appeal for lack of jurisdiction) or non-dispositive relief (for example, an extension of time to file a document). In some circumstances, an appellant may move or stipulate to discontinue its own appeal rather than litigate it to its conclusion.

This Note explains motion practice in the US Court of Appeals for the Third Circuit and voluntary discontinuance of an appeal.

MAKING A MOTION

During an appeal, any party that needs relief from the court typically must make a formal motion.

TIMING OF A MOTION

The Third Circuit does not have a set time for making all motions. If there is no deadline for a particular type of motion, counsel should move as soon as reasonably possible after determining that the client needs relief. The court may take into account any undue delay when deciding a motion.

A party seeking expedited consideration of a motion must, to the fullest extent possible, provide the clerk with advance notice that the motion will be filed (3d Cir. L.A.R. 27.7).

A party must make certain types of motions within a specified time of a given event. For example:

- A motion for an extension of time to file the brief or appendix must be made at least three days before the expiration of the time for filing the brief or appendix (3d Cir. L.A.R. 31.4; see Practice Note, Third Circuit Civil Appeals: Appellant's Brief and Appendix: Extensions of the Briefing Schedule ([W-011-2754](#))).
- A motion for summary action should be filed before the appellant's brief is due (3d Cir. L.A.R. 27.4(b); see Motions for Summary Action).

CONTENTS OF A MOTION

A motion filed in the Third Circuit typically contains:

- A cover or first page (see Cover or First Page).
- A disclosure statement (see Disclosure Statement).
- A statement of the facts and the party's legal argument (see Statement of Facts and Legal Argument).
- A signature (see Signature).
- Certificates of counsel (see Certificate of Compliance, Certificate of Uncontested Motion, Electronic Document Certificate, and Certificate of Bar Admission).
- Any exhibits or other documents supporting the motion (see Exhibits and Supporting Documents).
- Proof of service (see Certificate of Service).

(FRAP 25(d), 26.1, 27, and 32(d), (g); 3d Cir. L.A.R. 26.1.1; 3d Cir. L.A.R. 27.2(b); 3d Cir. L.A.R. 27.3; 3d Cir. L.A.R. 28.3(d); 3d Cir. L.A.R. 31.1(c); 3d Cir. L.A.R. 46.4; 3d Cir. L.A.R. 113.4(b); 3d Cir. L.A.R. 113.6(a); 3d Cir. L.A.R. 113.9(a).)

Some counsel also choose to include a table of contents and table of authorities.

Counsel may not submit a separate memorandum of law, notice of motion, or proposed order (FRAP 27(a)(2)(C)).

Cover or First Page

A motion does not need a separate cover page. If a motion includes a cover page, the cover must be white (FRAP 27(d)(1)(B)). A motion's cover or first page must state:

- The court of appeals docket number.
- 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 title of the motion, which must briefly indicate the purpose of the motion and the name of the party for whom the motion is filed (for example, "Appellant's Motion to File an Oversize Brief").

(FRAP 27(d)(1)(B).) The cover or first page also should include the name, office address, and telephone number of counsel representing the party for whom the motion is filed.

If a motion is unopposed, counsel typically indicate so in the motion's title (for example, "Appellant's Unopposed Motion to File an Oversize Brief").

Disclosure Statement

A motion must include a disclosure statement unless the movant already filed one in the appeal (for example, with its appellate brief) (FRAP 26.1(b)). The statement must:

- For corporate parties, identify any parent corporation and any publicly held corporation that owns ten percent 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.

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 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](#)).

Statement of Facts and Legal Argument

All motions must state with particularity:

- The relief sought.
- The grounds for the relief sought.
- Any legal argument in support of the motion.

(FRAP 27(a)(2)(A).)

This usually takes the form of:

- A statement of facts explaining the factual grounds for the relief sought.
- A legal argument applying the law to the facts.

The legal argument must be made within the actual motion. The moving party may not file a separate brief or memorandum of law supporting the motion (FRAP 27(a)(2)(C)(i)).

Signature

A motion must include a signature from one of the attorneys representing the moving party (FRAP 32(d); 3d Cir. L.A.R. 46.4). For electronically filed motions, the filing attorney's case management/electronic case filing (CM/ECF) system log-in and password constitute the required signature for all purposes (3d Cir. L.A.R. 113.9(a)). A manual signature is unnecessary (3d Cir. L.A.R. 46.4). The filing attorney should 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. 113.9(b).)

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

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

If a motion 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. 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

A motion must contain a certificate by the moving party's attorney stating that the motion complies with the type-volume limitations (FRAP 32(g)(1); 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 motion. The certificate must state the number of words in the motion. (FRAP 32(g)(1).)

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

Certificate of Uncontested Motion

If a motion is unopposed, counsel must certify the motion as uncontested (3d Cir. L.A.R. 27.3).

Electronic Document Certificate

Although only required for briefs, counsel should consider including an electronic document certificate certifying that:

- The text of the electronic motion is identical to the text in any paper copies.
- A virus detection program was run on the electronic motion 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

Although only required for briefs, counsel should consider including a certificate of admission to the Third Circuit. The certificate of admission should certify that at least one of the attorneys whose names appear on the motion either:

- Is a member of the Third Circuit bar.
- Has filed an application for admission to the Third Circuit.

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

Exhibits and Supporting Documents

If a motion requires factual support, counsel should include a supporting affidavit or declaration that contains only facts and not legal argument (FRAP 27(a)(2)(B)). An affidavit or declaration may include relevant documentary exhibits. The moving party must include only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court (3d Cir. L.A.R. 113.6(a)).

If the motion seeks substantive relief from a district court order or judgment, the affidavit or declaration must include that order or judgment as an exhibit together with any accompanying opinion (FRAP 27(a)(2)(B)(iii)).

A motion seeking summary action must include a copy of the trial court's opinion or the underlying agency decision as a separate exhibit (FRAP 27(a)(2)(B)(iii); see *Motions for Summary Action*).

Counsel should not submit a proposed order (FRAP 27(a)(2)(C)(iii)).

Certificate of Service

Counsel must include a certificate of service in the motion, even if all parties receive service via CM/ECF (FRAP 25(d); 3d Cir. L.A.R. 113.4(c)). The CM/ECF-generated Notice of Docket Activity (NDA) constitutes service of the motion 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 moving party effects service by:

- personal delivery;
- first-class mail; or
- third-party commercial carrier for delivery within three days.

(FRAP 25(c)(1), (d); 3d Cir. L.A.R. 113.4(b), (c); see *Serving and Filing a Motion*.)

FORMATTING A MOTION

Motions in the Third Circuit must conform to formatting requirements that are similar to those for briefs except for length.

Page Size, Margins, and Line Spacing

Counsel must prepare a motion using 8.5 by 11 inch pages (FRAP 27(d)(1)(D)).

Motions 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 27(d)(1)(D); 3d Cir. L.A.R. 32.1(b).)

Except for page numbers, a motion must not include any text in the margins (FRAP 27(d)(1)(D)).

The text of a motion must be double-spaced. However, a motion may use single-spacing for:

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

(FRAP 27(d)(1)(D).)

Font

Motions must use black type (FRAP 27(d)(1)(A)). Counsel may occasionally use italics or boldface for emphasis. Case names must be italicized or underlined. (FRAP 27(d)(1)(E) and 32(a)(6).)

The motion may be written in either a proportionally spaced font (for example, Times New Roman) or a monospaced font (for example, Courier) (FRAP 27(d)(1)(E) and 32(a)(5); *Third Circuit Font and Page Length Requirements for Filing Briefs*).

The required font size depends on which type of font counsel uses:

- **Proportionally spaced font.** A motion 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.** A motion printed in a monospaced font may not contain more than 10.5 characters per inch. This roughly translates to 12-point Courier font.

(FRAP 27(d)(1)(E) and 32(a)(5); *Third Circuit Font and Page Length Requirements for Filing Briefs*.)

Length or Type-Volume

Unless the court orders otherwise, a motion may not exceed:

- 5,200 words if prepared using a computer.
- 20 pages if prepared using a typewriter or by hand.

(FRAP 27(d)(2).) The motion must contain a certificate by the moving party's attorney stating that the papers comply with these type-volume limitations (FRAP 32(g)(1); and see Certificate of Compliance).

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

- Any cover page.
- The corporate disclosure statement and statement of financial interest.
- Any table of contents.
- Any table of authorities.
- The signature block.
- The certificates of counsel.
- Any accompanying affidavits, declarations, or exhibits.
- Proof of service.

(FRAP 32(f).)

File Format

Counsel must prepare the motion in PDF format for serving and filing in CM/ECF. Counsel should create the PDF document by converting a word processing document and not by scanning. Converting the motion from the word processing software file directly to PDF produces the smallest document and the best image.

Each PDF file may not exceed 50 megabytes. Where possible, counsel should file the entire motion (including any supporting affidavits, declarations, and exhibits) as a single file if it does not exceed 50 megabytes. If any file is larger than 50 megabytes, counsel must file it in multiple parts.

Paper Motions

If paper copies of a motion are necessary, counsel must bind paper copies along the left margin in a way that:

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

(FRAP 27(d)(1)(C); see *Serving and Filing a Motion*.) 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).)

A cover is not necessary. If counsel uses one, it must be white (FRAP 27(d)(1)(B); see *Cover or First Page*).

SERVING AND FILING A MOTION

Counsel must use CM/ECF to serve and file the motion (3d Cir. L.A.R. 27.2(a); 3d Cir. L.A.R. 113.4). Unless the clerk orders otherwise, counsel does not need to file paper copies with the court (3d Cir. L.A.R. 27.2(a)). Any party registered to use CM/ECF consents to receive electronic service via CM/CMF (3d Cir. L.A.R. 113.2(c)).

If a pro se party has not registered to use CM/ECF or the opposing party has not yet filed a notice of appearance, counsel must use an alternate method of service (3d Cir. L.A.R. 27.2(b)). Acceptable methods of paper service include:

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

(FRAP 25(c)(1).)

If a party is filing an emergency motion and does not have time to complete service on other parties or the moving party has reason to believe that another party may not receive the motion in sufficient time to respond before the court acts, the moving party should notify the other parties by telephone, email, or facsimile that the motion has been filed (3d Cir. L.A.R. 27.2(b)).

RESPONDING TO A MOTION

Any party may respond to a motion (FRAP 27(a)(3)(A)). A response does not necessarily have to oppose the motion. For example, counsel can take no position on a motion but bring to the court's attention facts that the court may deem significant.

TIMING OF A MOTION RESPONSE

Any party may respond to a motion within ten days after service of the motion (FRAP 27(a)(3)(A)). A party receiving a motion by mail or overnight delivery may add three days to the time otherwise available to respond. Parties receiving a document by electronic service may not add three days to a response time calculated from the date of service. (FRAP 26(c).)

If the Third Circuit Clerk determines that a motion requires expedited consideration, the clerk may direct that any opposition be filed within seven days after service of the motion (3d Cir. L.A.R. 27.7).

The court (or the Third Circuit clerk) may decide procedural motions without waiting ten days. The court must inform the parties if it intends to act sooner than the rules require. (FRAP 27(a)(3)(A), (b).) If a party wants to oppose another party's motion, it should do so promptly or risk the court granting the motion without an opportunity to respond.

CONTENTS OF A MOTION RESPONSE

A motion response filed in the Third Circuit typically contains:

- A cover or first page (see *Cover or First Page*).
- A disclosure statement (see *Disclosure Statement*).
- A statement of the facts and the party's legal argument (see *Statement of Facts and Legal Argument*).
- A signature (see *Signature*).
- Certificates of counsel (see *Certificate of Compliance*, *Electronic Document Certificate*, and *Certificate of Bar Admission*).
- Any exhibits or other documents supporting the motion (see *Exhibits and Supporting Documents*).
- Proof of service (see *Certificate of Service*).

(FRAP 25(d), 26.1, 27, and 32(d), (g); 3d Cir. L.A.R. 26.1.1; 3d Cir. L.A.R. 27.2(b); 3d Cir. L.A.R. 28.3(d); 3d Cir. L.A.R. 31.1(c); 3d Cir. L.A.R. 46.4; 3d Cir. L.A.R. 113.4(b); 3d Cir. L.A.R. 113.6(a); 3d Cir. L.A.R. 113.9(a).)

Some counsel also choose to include a table of contents and table of authorities.

Counsel may not submit a proposed order (FRAP 27(a)(2)(C)).

Cover or First Page

A motion response does not need a separate cover page. If a motion response includes a cover page, the cover must be white (FRAP 27(d)(1)(B)). A motion response's cover or first page must state:

- The court of appeals docket number.
- 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, "Defendant-Appellee").
- The title of the motion response, which must briefly indicate the purpose of the response and the name of the party for whom the response is filed (for example, "Appellee's Opposition to Appellant's Motion to File an Oversize Brief").

(FRAP 27(d)(1)(B).) The cover or first page also should include the name, office address, and telephone number of counsel representing the party for whom the response is filed.

Disclosure Statement

A motion response must include a disclosure statement unless the responding party already filed one in the appeal (for example, with its appellate brief) (FRAP 26.1(b)). The statement must:

- For corporate parties, identify any parent corporation and any publicly held corporation that owns ten percent 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.

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 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](#)).

Statement of Facts and Legal Argument

The motion response should set out in full whatever the responding party wants to say in response to the motion. As appropriate, the response should state the facts of the case framed in the light most positive to the responding party.

If the responding party opposes the motion, it should explain why the court should deny the motion in whole or in part, including any legal argument. If the responding party does not oppose the motion, it

should state that and set out any relevant information that it wants to provide the court. Counsel may not submit a separate memorandum or brief. They must include all necessary arguments and authority in the response. (FRAP 27(a)(2), (3).)

Signature

A motion response must include a signature from one of the attorneys representing the responding party (FRAP 32(d); 3d Cir. L.A.R. 46.4). For electronically filed responses, the filing attorney's CM/ECF system log-in and password constitute the required signature for all purposes (3d Cir. L.A.R. 113.9(a)). A manual signature is unnecessary (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. 113.9(b).)

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

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

If a motion response 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. 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

A motion response must contain a certificate by the responding party's attorney stating that the response complies with the type-volume limitations (FRAP 32(g)(1); 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 response. The certificate must state the number of words in the response. (FRAP 32(g)(1).)

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

Electronic Document Certificate

Although only required for briefs, counsel should consider including an electronic document certificate certifying that:

- The text of the electronic motion response is identical to the text in any paper copies.

- A virus detection program was run on the electronic response 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

Although only required for briefs, counsel should consider including a certificate of admission to the Third Circuit. The certificate of admission should certify that at least one of the attorneys whose names appear on the motion response either:

- Is a member of the Third Circuit bar.
- Has filed an application for admission to the Third Circuit.

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

Exhibits and Supporting Documents

All motion responses should include any affidavit or other paper necessary to support the response (FRAP 27(a)(2)(B)(i)). Any affidavit or declaration filed and served with the motion response:

- Should include only factual information, not legal argument (FRAP 27(a)(2)(B)(ii)).
- May include relevant documentary exhibits.

The responding party must include only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court (3d Cir. L.A.R. 113.6(a)).

Certificate of Service

Counsel must include a certificate of service in the motion response, even if all parties receive service via CM/ECF (FRAP 25(d); 3d Cir. L.A.R. 113.4(c)). The NDA generated by CM/ECF constitutes service of the response 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/ECF, that the responding party effects service by:
 - personal delivery;
 - first-class mail; or
 - third-party commercial carrier for delivery within three days.

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

FORMATTING A MOTION RESPONSE

Motion responses in the Third Circuit must conform to the same formatting requirements as motions.

Page Size, Margins, and Line Spacing

Counsel must prepare a motion response using 8.5 by 11 inch pages (FRAP 27(d)(1)(D)).

Responses 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 27(d)(1)(D); 3d Cir. L.A.R. 32.1(b).)

Except for page numbers, a motion response must not include any text in the margins (FRAP 27(d)(1)(D)).

The text of a motion response must be double-spaced. However, a response may use single-spacing for:

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

(FRAP 27(d)(1)(D).)

Font

Motion responses must use black type (FRAP 27(d)(1)(A)). Counsel may occasionally use italics or boldface for emphasis. Case names must be italicized or underlined. (FRAP 27(d)(1)(E) and 32(a)(6).)

The motion response may be written in either a proportionally spaced font (for example, Times New Roman) or a monospaced font (for example, Courier) (FRAP 27(d)(1)(E) and 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs).

The required font size depends on which type of font counsel uses:

- **Proportionally spaced font.** A motion response 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.** A motion response printed in a monospaced font may not contain more than 10.5 characters per inch. This roughly translates to 12-point Courier font.

(FRAP 27(d)(1)(E) and 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs.)

Length or Type-Volume

Unless the court orders otherwise, a motion response may not exceed:

- 5,200 words if prepared using a computer.
- 20 pages if prepared using a typewriter or by hand.

(FRAP 27(d)(2).) The motion response must contain a certificate by the responding party's attorney stating that the papers comply with these type-volume limitations (FRAP 32(g)(1); see Certificate of Compliance).

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

- Any cover page.
- The corporate disclosure statement and statement of financial interest.

- Any table of contents.
- Any table of authorities.
- The signature block.
- The certificates of counsel.
- Any accompanying affidavits, declarations, or exhibits.
- Proof of service.

(FRAP 27(a)(2)(B), (d)(2) and 32(f).)

File Format

Counsel must prepare the response in PDF format for serving and filing in CM/ECF. Counsel should create the PDF document by converting a word processing document and not by scanning. Converting the response from the word processing software file directly to PDF produces the smallest document and the best image.

Each PDF file may not exceed 50 megabytes. Where possible, counsel should file the entire motion response (including any supporting affidavits, declarations, and exhibits) as a single file if it does not exceed 50 megabytes. If any file is larger than 50 megabytes, counsel must file it in multiple parts.

Paper Motion Responses

If paper copies of a motion response are necessary, counsel must bind paper copies along the left margin in a way that:

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

(FRAP 27(d)(1)(C); see *Serving and Filing a Motion Response*.) 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).)

A cover is not necessary. If counsel uses one, it must be white (FRAP 27(d)(1)(B); see *Cover or First Page*).

SERVING AND FILING A MOTION RESPONSE

Counsel must use CM/ECF to serve and file the motion response (3d Cir. L.A.R. 27.2(a); 3d Cir. L.A.R. 113.4). Unless the clerk orders otherwise, counsel does not need to file paper copies with the court (3d Cir. L.A.R. 27.2(a)). Any party registered to use CM/ECF consents to receive electronic service via CM/CMF (3d Cir. L.A.R. 113.2(c)).

If any party is exempt from CM/ECF, counsel must serve the response by paper means and file proof of service with the response (FRAP 25(b), (c), and (d); 3d Cir. L.A.R. 27.2(b)). Acceptable methods of paper service include:

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

(FRAP 25(c)(1).)

REPLYING TO A MOTION RESPONSE

A moving party has the option of submitting a reply in further support of its motion (FRAP 27(a)(4)).

TIMING OF A REPLY

The moving party must serve and file any reply within seven days after service of the response (FRAP 27(a)(4)). A party receiving a motion response by mail or overnight delivery may add three days to the time otherwise available to reply. Parties receiving a document by electronic service may not add three days to a response time calculated from the date of service. (FRAP 26(c).)

If the court or the clerk determines that a motion requires expedited consideration, the court may direct the moving party to file a reply within three days after the responding party serves its response (3d Cir. L.A.R. 27.7).

The court (or the Third Circuit clerk) may decide procedural motions without waiting ten days. The court must inform the parties if it intends to act sooner than the rules require. (FRAP 27(a)(3)(A), (b).) Therefore, if a party wants to oppose another party's motion, it should do so promptly or risk the court granting the motion without an opportunity to respond.

CONTENTS OF A REPLY

A motion reply filed in the Third Circuit typically contains:

- A cover or first page (see *Cover or First Page*).
- An argument (see *Argument*).
- A signature (see *Signature*).
- Certificates of counsel (see *Certificate of Compliance, Electronic Document Certificate, and Certificate of Bar Admission*).
- Any exhibits or other documents supporting the motion (see *Exhibits and Supporting Documents*).
- Proof of service (see *Certificate of Service*).

(FRAP 25(d), 27, and 32(d).)

Some counsel also choose to include a table of contents and table of authorities.

Counsel may not submit a proposed order (FRAP 27(a)(2)(C)).

Cover or First Page

A motion reply does not need a separate cover page. If a motion reply includes a cover page, the cover must be white (FRAP 27(d)(1)(B)).

A reply's cover or first page must state:

- The court of appeals docket number.
- 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 title of the reply, which must briefly indicate the purpose of the reply and the name of the party for whom the reply is filed

(for example, “Reply in Further Support of Appellant’s Motion to File an Oversize Brief”).

(FRAP 27(d)(1)(B).) The cover or first page also should include the name, office address, and telephone number of counsel representing the party for whom the reply is filed.

Argument

The reply should set out the moving party’s argument rebutting the responding party’s response.

A reply may not contain any material unrelated to the opposing party’s motion response (FRAP 27(a)(4)). A reply generally should not simply repeat arguments that the moving party presented in its motion.

Signature

A reply must include a signature from one of the attorneys representing the moving party (FRAP 32(d); 3d Cir. L.A.R. 46.4). For electronically filed replies, the filing attorney’s CM/ECF system log-in and password constitute the required signature for all purposes (3d Cir. L.A.R. 113.9(a)). A manual signature is unnecessary (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. 113.9(b).)

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

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

If a motion reply 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. Counsel must also 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

A motion reply must contain a certificate by the moving party’s attorney stating that the reply complies with the type-volume limitations (FRAP 32(g)(1); 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 reply. The certificate must state the number of words in the reply. (FRAP 32(g)(1).)

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

Electronic Document Certificate

Although only required for briefs, counsel should consider including an electronic document certificate certifying that:

- The text of the electronic reply is identical to the text in any paper copies.
- A virus detection program was run on the electronic reply 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

Although only required for briefs, counsel should consider including a certificate of admission to the Third Circuit. The certificate of admission should certify that at least one of the attorneys whose names appear on the motion reply either:

- Is a member of the Third Circuit bar.
- Has filed an application for admission to the Third Circuit.

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

Exhibits and Supporting Documents

If the motion requires further factual support, counsel should support any reply with an affidavit or declaration. Any affidavit or declaration filed and served with the motion reply:

- Should include only factual information, not legal argument (FRAP 27(a)(2)(B)(ii)).
- May include relevant documentary exhibits.

The moving party must include only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court (3d Cir. L.A.R. 113.6(a)).

Certificate of Service

Counsel must include a certificate of service in the motion reply, even if all parties receive service via CM/ECF (FRAP 25(d); 3d Cir. L.A.R. 113.4(c)). The CM/ECF-generated NDA constitutes service of the reply 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/ECF, that the moving party effects service by:
 - personal delivery;
 - first-class mail; or
 - third-party commercial carrier for delivery within three days.

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

FORMATTING A REPLY

Motion replies in the Third Circuit must conform to the same formatting requirements as motions, except for length.

Page Size, Margins, and Line Spacing

Counsel must prepare a reply using 8.5 by 11 inch pages (FRAP 27(d)(1)(D)).

Motion replies 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 27(d)(1)(D); 3d Cir. L.A.R. 32.1(b).)

Except for page numbers, a reply must not include any text in the margins (FRAP 27(d)(1)(D)).

The text of a reply must be double-spaced. However, a reply may use single-spacing for:

- Headings.
- Footnotes.
- Quotations more than two lines long (which should be indented on both sides). (FRAP 27(d)(1)(D).)

Font

Replies must use black type (FRAP 27(d)(1)(A)). Counsel may occasionally use italics or boldface for emphasis. Case names must be italicized or underlined. (FRAP 27(d)(1)(E) and 32(a)(6).)

The reply may be written in either a proportionally spaced font (for example, Times New Roman) or a monospaced font (for example, Courier) (FRAP 27(d)(1)(E) and 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs).

The required font size depends on which type of font counsel uses:

- **Proportionally spaced font.** A reply 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.** A reply printed in a monospaced font may not contain more than 10.5 characters per inch. This roughly translates to 12-point Courier font.

(FRAP 27(d)(1)(E) and 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs.)

Length or Type-Volume

Unless the court orders otherwise, a reply may not exceed:

- 2,600 words if prepared using a computer.
- 10 pages if prepared using a typewriter or by hand.

(FRAP 27(d)(2).) The reply must contain a certificate by the moving party's attorney stating that the papers comply with these type-volume limitations (FRAP 32(g)(1); see Certificate of Compliance).

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

- Any cover page.
- Any table of contents.
- Any table of authorities.
- The signature block.
- The certificates of counsel.
- Any accompanying affidavits, declarations, or exhibits.
- Proof of service.

(FRAP 27(a)(2)(B), (d)(2) and 32(f).)

File Format

Counsel must prepare the motion in PDF format for serving and filing in CM/ECF. Counsel should create the PDF document by converting a word processing document and not by scanning. Converting the reply from the word processing software file directly to PDF produces the smallest document and the best image.

Each PDF file may not exceed 50 megabytes. Where possible, counsel should file the entire reply (including any supporting affidavits, declarations, and exhibits) as a single file if it does not exceed 50 megabytes. If any file is larger than 50 megabytes, counsel must file it in multiple parts.

Paper Replies

If paper copies of a reply are necessary, counsel must bind paper copies along the left margin in a way that:

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

(FRAP 27(d)(1)(C); see *Serving and Filing a Reply*.) 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).)

A cover is not necessary. If counsel uses one, it must be white (FRAP 27(d)(1)(B); see *Cover or First Page*).

SERVING AND FILING A REPLY

Counsel must use CM/ECF to serve and file the reply (3d Cir. L.A.R. 27.2(a); 3d Cir. L.A.R. 113.4). Unless the clerk orders otherwise, counsel does not need to file paper copies with the court (3d Cir. L.A.R. 27.2(a)). Any party registered to use CM/ECF consents to receive electronic service via CM/CMF (3d Cir. L.A.R. 113.2(c)).

If any party is exempt from CM/ECF, counsel must serve the reply by paper means and file proof of service with the response (FRAP 25(b), (c), and (d); 3d Cir. L.A.R. 27.2(b)). Acceptable methods of paper service include:

- Personal delivery.
- First-class mail.
- Third-party commercial carrier for delivery within three days. (FRAP 25(c)(1).)

CROSS-MOTIONS

A party responding to a motion may request affirmative relief on its own behalf (FRAP 27(a)(3)(B)). This is commonly called a cross-motion. For example, an appellee opposing a motion for a stay pending appeal may cross-move to dismiss the appeal.

A party must serve and file a cross-motion within ten days after service of a motion (FRAP 27(a)(3)(A), (B)). The cross-motion must comply with all of the content, formatting, notice, service, and filing requirements for a motion (see Making a Motion). The title of the cross-motion also must alert the court that it is a cross-motion and not simply a motion response (for example, “Defendant-Appellee’s Cross-Motion to Dismiss the Appeal”) (FRAP 27(a)(3)(B)).

The original movant must file and serve its response to a cross-motion within ten days after service of the cross-motion (FRAP 27(a)(3)). The cross-motion response should comply with all of the content, formatting, service, and filing requirements for a motion response (see Responding to a Motion).

A reply in support of a cross-motion must be served within seven days after service of the response (FRAP 27(a)(4)). The cross-motion reply should comply with all of the content, formatting, service, and filing requirements for a motion reply (see Replying to a Motion Response).

DISPOSITION OF A MOTION

The Third Circuit typically decides motions without hearing oral argument. Counsel may assume that there will not be oral argument unless the clerk advises otherwise. (FRAP 27(e); 3d Cir. L.A.R. 27.1; 3d Cir. L.A.R. 34.3.)

If the court decides a procedural motion before receiving a response or reply, a later filed response or reply has no effect, even if timely under the rules. If the party whose response or reply was not considered wishes to contest the ruling, it must file a motion for reconsideration, modification, or vacatur of the Court’s order (FRAP 27(b)).

A single judge may decide non-dispositive motions, subject to review by the court (FRAP 27(c)). The Third Circuit typically refers to a single judge motions:

- To stay pending appeal or mandamus (in an emergency situation).
- For appointment of counsel to indigent parties.
- To approve cost of transcripts at government expense.
- To withdraw.
- To expedite.
- To intervene.
- To compel the ordering of transcripts.
- To seal or unseal.

(3d Cir. Internal Operating Procedure (“IOP”) 10.5.2.) A single judge ordinarily does not hear motions:

- For leave to intervene.
- To postpone oral argument in a case that has been set for oral argument by the clerk.
- That the court has ordered to be acted on by the court or a panel of judges.

(3d Cir. L.A.R. 27.5.)

The Third Circuit clerk may decide certain routine, procedural motions subject to review by the court (FRAP 27(b)). The subject of the motion must:

- Be ministerial.
- Relate to the preparation or printing of the appendix or briefs.
- Relate to the court’s calendar.

(3d Cir. L.A.R. 27.6.)

If a party is dissatisfied with a ruling by the Third Circuit clerk or single judge on a procedural motion, it can seek relief by filing a motion for reconsideration (see Motions for Reconsideration). If the dissatisfied party promptly moves for reconsideration, then the action of:

- A single judge may be reviewed by a panel of the court.
- The clerk may be reviewed by either a single judge or a panel.

(3d Cir. L.A.R. 27.5; 3d Cir. L.A.R. 27.6.)

COMMON TYPES OF MOTIONS

The requirements described above apply to all types of motions. Certain common types of motions have additional requirements, such as motions:

- To expedite (see Motions to Expedite).
- For summary action (see Motions for Summary Action).
- For reconsideration (see Motions for Reconsideration).

For information on motions:

- For a stay of an order or judgment pending appeal, see Practice Note, Third Circuit Civil Appeals: Initiating an Appeal: Seeking a Stay Pending Appeal ([W-010-7599](#)).
- To extend the briefing schedule, see Practice Note, Third Circuit Civil Appeals: Appellant’s Brief and Appendix: Extensions of the Briefing Schedule ([W-011-2754](#)).
- To appear as amicus curiae, see Practice Note, Third Circuit Civil Appeals: Amicus Curiae Briefs ([W-012-9759](#)).

For information on petitions for panel rehearing or rehearing *en banc*, see Practice Note, Third Circuit Civil Appeals: Oral Argument, Disposition, and Rehearing: Panel Rehearing ([W-013-2128](#)) and Rehearing En Banc ([W-013-2128](#)).

MOTIONS TO EXPEDITE

A party who seeks to expedite the appeal must file a motion to expedite within 14 days after the notice of appeal is filed. If the reason requiring expedited review does not occur until after the notice of appeal has been filed, the party must file the motion within 14 days after the event giving rise to the need for expedited review. A party opposing expedited review must file its opposition within seven days after service of the motion. The moving party may reply within three days after service of the opposition. (3d Cir. L.A.R. 4.1.)

A motion to expedite must:

- Set out the exceptional reason that warrants expedition.
- Include a proposed briefing schedule that, if possible, has been agreed upon by the parties.

A non-moving party may agree to a proposed briefing schedule without conceding that expedition is necessary. (3d Cir. L.A.R. 4.1.)

MOTIONS FOR SUMMARY ACTION

If an appeal does not present a substantial question or if subsequent precedent or a change in circumstances warrants such summary action, a party may move for summary action:

- Affirming or reversing a judgment or order.
- Otherwise enforcing, vacating, remanding, modifying, or setting aside a judgment, decree, or order.

(3d Cir. L.A.R. 27.4(a).) A party must move for summary judgment before the appellant's brief is due unless the motion is based on subsequent precedent or a change in circumstances (3d Cir. L.A.R. 27.4(b)). The court may grant summary action only if the motions panel unanimously votes to do so (3d Cir. I.O.P. 10.6).

MOTIONS FOR RECONSIDERATION

If a party seeks reconsideration of the court's judgment, it should move for rehearing under FRAP 40(a). A party may move for reconsideration of any other ruling of a panel, a single judge, or a clerk. A panel or a single judge may review the action of the clerk. A panel may review the action of a single judge. (3d Cir. L.A.R. 27.5; 3d Cir. L.A.R. 27.6; 3d Cir. I.O.P. 10.3.3; see Disposition of a Motion.)

VOLUNTARILY DISCONTINUING AN APPEAL

If an appellant does not wish to litigate an appeal to conclusion, it may voluntarily discontinue the appeal by stipulation or motion (FRAP 42(a)). The process to discontinue the appeal depends on whether the Third Circuit has docketed the appeal (FRAP 42(b)).

After the appellant files the notice of appeal with the district court but before the Third Circuit docketed the appeal, the appellant may file with the district court either:

- A stipulation signed by all parties discontinuing the appeal.
- A motion to discontinue the appeal.

(FRAP 42(a).)

Once the Third Circuit docketed the appeal, the appellant must file any stipulation or motion with the Third Circuit (FRAP 42(b)).

A stipulation of voluntary discontinuance filed in the Third Circuit is not effective unless and until it is so ordered by the court. A stipulation of voluntary discontinuance must state how the parties are allocating costs and fees (FRAP 42(b)). For example, the stipulation may state that each party agrees to bear its own costs and attorney's fees.

Absent a compliant stipulation, the court may dismiss the appeal on the appellant's motion on terms agreed to by the parties or fixed by the court (FRAP 42(b)).

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