

designated as lead judge in accordance with a rotation schedule to be devised by the clerk. Each member of the panel receives a complete set of papers for those motions requiring panel action.

- (b) **Emergency Motions.** It is recognized that in some cases counsel will have advance indications that a situation may arise which will cause the filing of an emergency motion. It is expected that the moving party will make every reasonable effort to notify the clerk at the earliest possible time that such an emergency motion may be filed, the nature of the motion and the relief to be sought.

Hearings on emergency motions, as with other motions, are extremely unusual. Movants ought not expect that a hearing will be granted and need not move for such a hearing. Should this Court feel it necessary to hold a hearing, the clerk will inform counsel of the date and time.

- (c) **Motions After Assignment to Calendar.** Motions in cases assigned to the oral argument calendar are circulated to the hearing panel rather than to the motions panel. The senior active judge on the panel will initiate the action taken by the panel.

COMMITTEE NOTE: (a) - former I.O.P. 17.4.; (b) - former I.O.P. 17.5; (c) - former I.O.P. 17.9.

FRAP 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 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 the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
 - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (10) a short conclusion stating the precise relief sought; and
- (11) the certificate of compliance, if required by Rule 32(a)(7).
- (b) **Appellee's Brief.** The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statements:
- (1) the jurisdictional statement;
 - (2) the statement of the issues;
 - (3) the statement of the case;
 - (4) the statement of the facts; and
 - (5) the statement of the standard of review.

- (c) **Reply Brief.** The appellant may file a brief in reply to the appellee’s brief. An appellee who has cross-appealed may file a brief in reply to the appellant’s response to the issues presented by the cross-appeal. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with reference to the pages of the reply brief where they are cited.
- (d) **References to Parties.** In briefs and at oral argument, counsel should minimize use of the terms “appellant” and “appellee.” To make briefs clear, counsel should use the parties’ actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as “the employee,” “the injured person,” “the taxpayer,” “the ship,” “the stevedore.”
- (e) **References to the Record.** References to the parts of the record contained in the appendix filed with the appellant’s brief must be to the page of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:
- Answer p. 7;
 - Motion for Judgment p. 2;
 - Transcript p. 231.
- Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.
- (f) **Reproduction of Statutes, Rules, Regulations, etc.** If the court’s determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.
- (g) **[Reserved]**
- (h) **Briefs in a Case Involving a Cross-Appeal.** If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30, 31, and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order. With respect to appellee’s cross-appeal and response to appellant’s brief, appellee’s brief must conform to the requirements of Rule 28(a)(1)-(11). But an

appellee who is satisfied with appellant's statement need not include a statement of the case or of the facts.

- (i) **Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
- (j) **Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before a decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

6 Cir. R. 28 Briefs

- (a) **References in Brief to the Record.** As provided in FRAP 30(c), in order that a party may refer in a brief directly to pages of the appendix, each party shall serve and file a "proof" brief within the time provided by the briefing schedule established by this Court with references to the particular document in the record or to the pages of the record. Within 21 days after a proper appendix or, in cases governed by 6 Cir. R. 30(j), a paginated record is filed, each party shall serve and file copies of the "final" brief in the form prescribed in FRAP 32(a), containing references to the pages of the appendix or paginated record in addition to the initial references to the pages or the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.
- (b) **Length of Briefs.** The documents required or permitted to be filed with the briefs pursuant to subdivisions (c), (d), (e) and (g) of this rule, and subdivision (b) of 6 Cir. R. 30, shall not be counted for purposes of the page limitations for briefs established by FRAP 32(a)(7)(A). When the appeal is from a sentence of death, the page limitations of 6 Cir. R. 22(c)(8) apply.
- (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 (see forms 6CA-55, 6CA-56, 6CA-57, 6CA-58). 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 (see form 6CA-1) and may include a statement of reasons why oral argument should be heard pursuant to 6 Cir. R. 34(a).
- (f) **Briefs in Cases Involving Cross Appeals.** See 6 Cir. R. 102(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.
- (h) **Briefs as Public Record.** Briefs filed with this Court are a matter of public record. If counsel finds it necessary to refer in a brief to information that has been placed under seal, counsel should not assume that the brief itself also will be placed under seal. In order to have all or part of a brief sealed, counsel must file a specific and timely motion seeking such relief.

COMMITTEE NOTE: Except as otherwise noted - former 6th Cir. R. 10 (b), (c), (d), (e), (f), (g), and (m), 24(c), and 30(a); (b), last sentence - new; (h) - former I.O.P. 15.16.

6 Cir. I.O.P. 28 Briefs

- (a) **Length.** Briefs in excess of the lengths provided by the rules are seldom permitted.
- (b) **Sample Briefs.** The clerk's office will not distribute sample briefs. However, copies are available for inspection in the clerk's office.
- (c) **Expedited Cases.** In the following cases, this Court directs the parties to file briefs on an expedited basis and then schedules an oral hearing or submission on briefs as soon as possible: recalcitrant witnesses under 28 U.S.C. § 1826 and grand jury contempt appeals. Issuance of a routine briefing schedule and expedited argument or submission on briefs is directed in the following cases: appeals from orders denying or granting preliminary or temporary injunctions; interlocutory appeals under 28 U.S.C.

§ 1292(b); direct criminal appeals; and appeals in cases filed pursuant to 28 U.S.C. §§ 2241, 2254 and 2255. See also FRAP 45(b).

Any other case may be expedited upon this Court's granting of a motion pursuant to 6 Cir. R. 27(f). If an appeal is ordered expedited, the clerk will fix a briefing schedule which will permit the appeal to be set for oral argument at an early date, unless an earlier hearing date is directed by a judge. The clerk will usually have some idea of the approximate date of the hearing and will so advise counsel when the order is issued.

COMMITTEE NOTE: (a) - former I.O.P. 15.2; (b) - former I.O.P. 15.2; (d) - former I.O.P. 15.16, 17.7.

FRAP 29 Brief of an Amicus Curiae

- (a) **When Permitted.** The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.
- (b) **Motion for Leave to File.** The motion must be accompanied by the proposed brief and state:
- (1) the movant's interest; and
 - (2) the reason why an amicus curiae brief is desirable and why the matters asserted are relevant to the disposition of the case.
- (c) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required of parties by Rule 26.1. An amicus brief need not comply with Rule 28, but must include the following:
- (1) a table of contents, with page references;
 - (2) a table of authorities — cases (alphabetically arranged), statutes and other authorities — with references to the pages of the brief where they are cited;
 - (3) a concise statement of the identify of the amicus curiae, its interest in the case, and the source of its authority to file;