

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

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

(d) **Length.** Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) **Time for Filing.** An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) **Reply Brief.** Except by the court's permission, an amicus curiae may not file a reply brief.

(g) **Oral Argument.** An amicus curiae may participate in oral argument only with the court's permission.

#### **6 Cir. R. 29 Motion to Participate in Oral Argument.**

Any request of amicus curiae to participate in oral argument shall be by written motion stating the reason oral argument will aid the court.

COMMITTEE NOTE:

#### **6 Cir. I.O.P. 29 [Reserved]**

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

#### **FRAP 30 Appendix to the Briefs**

##### **(a) Appellant's Responsibility.**

(1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:

- (A) the relevant docket entries in the proceeding below;
- (B) the relevant portions of the pleadings, charge, findings, or opinion;
- (C) the judgment, order, or decision in question; and
- (D) other parts of the record to which the parties wish to direct the court's attention.

(2) **Excluded Material.** Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) **All Parties' Responsibilities.**

(1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 10 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intend to present for review. The appellee may, within 10 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designation parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) **Costs of Appendix.** Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers part of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) **Deferred Appendix.**

(1) **Deferral Until After Briefs Are Filed.** The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) **References to the Record.**

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) **Format of the Appendix.** The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) **Reproduction of Exhibits.** Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

- (f) **Appeal on the Original Record Without an Appendix.** The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

### **6 Cir. R. 30 Appendix to the Briefs**

- (a) **Purpose of Appendix.** The purpose of the appendix is to assist the judges in reviewing the briefs and in preparing for oral argument by providing to them those parts of the record necessary for effective understanding of the issues raised in the briefs. The appendix is not intended to be a substitute for the record; this Court has it available and will consult the entire record whenever it becomes necessary.
- (b) **Designation of Contents.** The appellant shall file and serve as an addendum to the appellant's brief a designation of those parts of the record to be included in the joint appendix. The appellee shall file and serve as an addendum to the appellee's brief a cross-designation setting forth any parts of the record the appellee wants to have included in the joint appendix that do not appear in the appellant's designation.

A designation of appendix contents included in the addendum to a principal brief shall not be counted against the page limitations applicable to that brief.

Counsel should consult the contents requirements set forth in subdivision (f) of this local rule. Parts of the record not included in the joint appendix may, nevertheless, be relied upon by parties in presenting arguments and by this Court in disposing of the case.

In designating the contents of the joint appendix, counsel should be mindful that inclusion therein of parts of the record unnecessary to the disposition of the case, or omission therefrom of parts of the record necessary to the disposition of the case, imposes a burden on both the parties and the Court and may result in sanctions pursuant to subdivision (m) of this local rule.

- (c) **Cost of Production.** Matters concerning the cost of producing the joint appendix or disputes over inclusion therein of parts of the record deemed by either party unnecessary to disposition of the case shall be governed by the second paragraph of FRAP 30(b) or subdivision (m) of this local rule.
- (d) **Time for Filing.** The appellant has the responsibility to prepare the joint appendix and shall serve and file it not later than 21 days after the filing of the appellee's "proof" brief.

(e) **Number of Copies.** Five copies of the joint appendix shall be filed with this Court, and one copy of the joint appendix shall be served upon counsel for each party to the appeal.

(f) **Contents.**

(1) **Appendix in Appeals from the District Court or Tax Court.** The joint appendix in an appeal from the district court or the tax court shall include the following parts of the record:

- (A) the current docket sheet of the district court or the tax court;
- (B) the complaint or the indictment and any other pleadings or motions relevant to the arguments presented on appeal;
- (C) the judgment from the which the appeal is taken and any memorandum opinion or opinion from the bench, or findings of fact and conclusions of law incident thereto, including any report and recommendation of a magistrate judge and objections filed;
- (D) the notice of appeal;
- (E) any other parts of the record, including all or part of any exhibit or transcript pages which are necessary for effective understanding of the issues raised in the briefs in chronological order. Except where they have independent relevance, memoranda of law filed in the proceedings below shall not be included in the joint appendix;
- (F) counsel's certification that all documents included in the joint appendix are copies of documents properly made a part of the record.

(2) **Appendix in Agency Proceedings.** The joint appendix in agency proceedings shall include the following parts of the record:

- (A) the order sought to be reviewed or enforced;
- (B) any supporting opinion, findings of fact or conclusions of law filed by the agency, board, commission or officer; and
- (C) the petition for review or application for enforcement.

(3) **Appendix in Habeas Corpus Cases Where There Is No Written State Court Record.** The joint appendix in an appeal from the grant or denial of a writ of habeas corpus in a case in which the record of the proceedings in state court is in

other than written form shall include a written transcript of all portions of the state court record which any party deems relevant to this Court's resolution of the issues raised on appeal. Notwithstanding the provision of subsection (b) of this rule, a party may not rely on any part of the state court record not reduced to written form.

Appellant shall provide to this Court and appellee a transcript of the necessary portions from the official state court record within 30 days of filing of the notice of appeal. An additional 30 days may be granted by the clerk of this Court. Where, by reason of the length of the necessary portions of the state court record, more than 60 days are required, appellant shall within said 60 day period request additional time by written motion.

An appellee who believes that a transcript of other portions of the state court record are necessary shall provide that transcript to this Court and appellant within 30 days, with extensions of time as provided above.

The transcript may be prepared by any method which provides an adequate typewritten record.

Upon filing of a transcript in this Court, any party will have 15 days to notify this Court of objections to the accuracy of the transcript. If any difference arises as to whether the transcript accurately reports the proceedings in the trial court the difference shall be resolved by the procedures set forth in FRAP 10(e).

(4) **Presentence Investigation Report.** In any criminal appeal in which a defendant's sentence is being challenged, counsel shall submit, as a separate volume of the appendix labeled "Confidential" a copy of the presentence investigation report. See 6 Cir. I.O.P. 11(a)(2).

(5) **Inclusion of Sealed Record Items.** If in counsel's opinion it becomes necessary to include sealed items, a copy of the sealed item(s) shall be placed in a separate sealed envelope to be included as an attachment to each copy of the joint appendix. An appropriate notation on the cover of the envelope should specify the nature of the sealed enclosure. The balance of the joint appendix will be treated as part of the public record; the sealed attachment will not.

Counsel is cautioned against attempting to use this procedure to have held out of public view items not previously sealed by order of either the district court or this Court. Such relief can be had only by way of a timely motion specifically requesting such relief.

(6) **Appendix in Cross Appeals.** See 6 Cir. R. 102(b).

(g) **Certificate of Service.** The certificate of service required by FRAP 25(d) must be included with the appendix or it shall not be deemed filed.

(h) **Index.** The joint appendix shall be paginated and shall have an index that describes each document contained therein; sets forth for each such document the corresponding record entry number from the docket sheet of the court below, where available; and shows the page within the appendix where such document first appears. The index shall also contain an alphabetical list of those witnesses whose testimony is included in the appendix, with a reference to the date and proceeding, if other than trial, where such testimony begins and shall also indicate the corresponding page(s) in the appendix.

Where the joint appendix is divided into more than one volume, each volume shall be consecutively paginated and shall contain an index or indices conforming with the requirements of this subsection. The index or indices contained in each volume shall include the contents of all volumes of the joint appendix.

(i) **Format.** Following the index, the joint appendix shall contain, if applicable, the docket sheet of the court below and, thereafter, the contents designated by the parties in the order set forth in subdivision (f) of this rule. At the election of the appellant, portions of the transcript or exhibits which have been properly made a part of the record may appear at the end of the appendix or in a separate volume or volumes thereof. The original pagination of each part of the transcript shall be indicated in the appendix by placing in brackets the page number of the original transcript in the margin of the appendix where the page begins. The name of each witness shall appear on each page of the appendix where the testimony of that witness begins.

This Court does not look favorably upon commercial printing or other expensive methods of producing joint appendices. Accordingly, the joint appendix may contain photocopies of the pages of the record on appeal, provided such photocopies are legible. Counsel should retype any documents which, when reproduced, have become illegible. Every copy of the joint appendix filed or served shall be legible and securely bound along the left edge of the document, by a means other than metal fasteners, so as not to come apart when used.

(j) **Cases in Which Appendix Not Required.**

(1) **Record 100 Pages or Less.** In cases in which the entire record as transmitted to this Court, including portions of the trial transcript and all exhibits, is 100 pages or less, the appellant, in lieu of the appendix, may file with the appellant's brief four legible photocopies of the record. In addition, one copy of the record so prepared shall be served upon counsel for each party to the appeal with appellant's brief.

All copies of the record filed and served pursuant to this subsection shall be paginated and contain an index conforming with the requirements of the first paragraph of subdivision (h) of this local rule, and shall contain the certification required by subdivision (f)(1)(F) of this local rule.

- (2) **Social Security Cases.** In appeals from a district court involving a review of a decision of the Commissioner of Social Security, the attorney representing the Commissioner shall file with the brief four paginated copies of the administrative record.

Additionally, the appellant shall attach to the appellant's brief copies of the opinion and order of the district court from which the appeal is taken, the report and recommendation of the magistrate judge, if any, together with any objections thereto and the certification required by subdivision (f)(1)(F) of this local rule. If the appellant fails to attach a copy of the opinion and order and report and recommendation of the magistrate judge to the appellant's brief, the attorney representing the Commissioner shall attach a copy to the appellee's brief.

- (k) **Duty to File Appendix in Prisoner Cases.** In prisoner cases filed pro se and in forma pauperis, it will be the responsibility of the state attorney general or the United States attorney, as the case may be, to file an adequate appendix which shall include copies of the opinion and order from which the appeal is taken and any magistrate judge's report and objection. In habeas corpus cases it will be the obligation of the state attorney general to file, with the government's brief, copies of all unpublished decisions of state courts involving previous hearings relating to the petition and a copy of the transcript of the trial and any post-conviction hearing of petitioner in the state trial court, if previously transcribed and available.
- (l) **Duty to File Appendix in Black Lung Cases.** Where a pro se in forma pauperis litigant is seeking review of an administrative decision regarding a claim for black lung benefits, it will be the responsibility of counsel for the Director to file, with the brief on behalf of the Director, an adequate appendix which will include the decision to be reviewed and any other items of record necessary for this Court's informed review.
- (m) **Sanctions.** Failure to file a joint appendix, or the filing of a joint appendix substantially out of compliance with the requirements of this local rule, may result in dismissal of the appeal. This Court, on the motion of a party or on its own motion, may deny costs to a party who has been responsible for the insertion of unnecessary material into, or for the omission of necessary material from, the joint appendix. Moreover, any counsel who so complicates the proceedings in any case by unreasonably and vexatiously failing to comply with the requirements of this local rule may be required by this Court to satisfy personally any excess costs, pursuant to 28 U.S.C. § 1927, and may be subject to disciplinary sanctions.

COMMITTEE NOTE: All except subsections (f)(4), (5), (6) and (g) - former 6th Cir. R. 11; (f)(4) - former 6th Cir. R. 12 (d); (f)(5) - former I.O.P. 16.13; (f)(6) - former 6th Cir. R. 30(b); (g) - former I.O.P. 16.11.

**6 Cir. I.O.P. 30 [Reserved]**

COMMITTEE NOTE: No corresponding 6 Cir. I.O.P.

**FRAP 31 Serving and Filing Briefs**

**(a) Time to Serve and File a Brief.**

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

**(b) Number of Copies.** Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

**(c) Consequence of Failure to File.** If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

**6 Cir. R. 31 Filing and Service of a Brief**

**(a) Number of Copies.** Within the time provisions of the briefing schedule established by this Court, each party shall file one original, signed "proof" brief with the clerk and shall serve one copy of the "proof" brief on all other parties. Within 21 days of the filing of a proper joint appendix as provided in 6 Cir. R. 30, each party shall file one original,