

FORMAL BRIEFING

Use of Formal Briefing Schedule

The court uses a formal briefing schedule in appeals in which both sides are represented by counsel, with the following exceptions:

- In an appeal from the denial of relief under 28 U.S.C. § 2254 or 2255 in a non-capital counseled case, a formal briefing schedule is not set until a certificate of appealability has been granted in whole or in part.
- A formal briefing schedule is not set for a petition for permission to appeal unless otherwise ordered by the court.
- A formal briefing schedule is not set for a mandamus petition unless the court determines that formal briefing and oral argument would aid in resolution of the petition.
- A formal briefing schedule is not used in counseled bail appeals and recalcitrant witness appeals; the court instead uses an expedited memorandum briefing schedule.

Briefing Schedule

The court sets the briefing schedule when the record is complete and sends notice to the parties of the dates the briefs are to be filed. See Loc. R. 10(a) & 31(b).

Standard Briefing Order	Criminal	Civil/Agency
Opening Brief & Appendix	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of the administrative record)
Response Brief	21 days from service of opening brief	30 days from service of opening brief
Reply Brief	10 days from service of response brief	21 days from service of response brief
Cross Appeal Briefing Order	Criminal	Civil/Agency
Opening Brief & Appendix	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of administrative record)
Opening/Response Brief	21 days from service of opening brief	30 days from service of opening brief
Response/Reply Brief	21 days from service of opening/response brief	30 days from service of opening/response brief
Reply Brief	10 days from service of response/reply brief	21 days from service of response/reply brief

FRAP 30(c) Briefing Order	Criminal	Civil/Agency
Page-Proof Opening Brief	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of administrative record)
Page-Proof Response Brief	21 days from service of opening brief	30 days from service of opening brief
Appendix	14 days from service of response brief	14 days from service of response brief
All Briefs in Final Form	10 days from service of appendix	10 days from service of appendix
FRAP 30(c) Cross Appeal Briefing Order	Criminal	Civil/Agency
Page-Proof Opening Brief	35 days from date of order	40 days from date of order (add 40 days in immigration and social security cases for filing of the administrative record)
Page-Proof Opening/Response Brief	21 days from service of opening brief	30 days from service of opening brief
Page-Proof Response/Reply Brief	21 days from service of opening/response brief	30 days from service of opening/response brief
Appendix	14 days from service of response/reply brief	14 days from service of response/reply brief
All Briefs in Final Form	10 days from service of appendix	10 days from service of appendix
Amicus Brief	Criminal	Civil/Agency
State or Federal Government (consent or leave of court not required)	7 days after filing of principal brief by party being supported	7 days after filing of principal brief by party being supported
Other Parties (requires consent of parties or leave of court)	7 days after filing of principal brief by party being supported	7 days after filing of principal brief by party being supported

Extensions

Extensions of time to file briefs will be granted only when extraordinary circumstances exist. A motion for extension of time to file a brief must be filed well in advance of the date the brief is due and must set forth the additional time requested and the reasons for the request. The court discourages these motions and may deny the motion entirely or grant a lesser period of time than requested. Loc. R. 31(c).

Failure to File Brief

If appellant fails to timely file its brief, the clerk's office will issue notice under Local Rule 45 that the appeal will be dismissed unless counsel remedies the default within 15 days. If appellant is represented by court-appointed counsel, the clerk will issue notice of intent to initiate disciplinary action under Local Rule 46(g) instead of threatening dismissal under Local Rule 45. If appellee fails to file a brief, the appellee will not be heard at any oral argument scheduled in the matter except by leave of court. Fed. R. App. P. 31(c).

Leave to File Amicus Briefs

The court will prohibit the filing of or strike an amicus brief that would result in the recusal of a member of the panel that has been assigned to the case or in the recusal of a member of the en banc court from a vote on whether to hear or rehear a case en banc. Loc. R. 29(a).

Corrections

If briefs or appendices are illegible or are not in the form required by the rules, counsel will be required to file corrected copies of the document. If the corrected copies are not submitted within the time allowed by the clerk, they must be accompanied by a motion to extend filing time. Loc. R. 32(c).

Related Links

- [Rule 28, Briefs \(with Local Rules\)](#)
- [Rule 28.1, Cross Appeals](#)
- [Rule 29, Brief of an Amicus Curiae](#)
- [Rule 30, Appendix to the Briefs \(with Local Rules\)](#)
- [Rule 31, Serving and Filing Briefs \(with Local Rules\)](#)
- [Rule 32, Form of Briefs, Appendices, and other Papers \(with Local Rules\)](#)
- [Rule 32.1, Citing Judicial Dispositions \(with Local Rule\)](#)
- [Court Forms & Fees – Formal Briefs & Appendices](#)