

12/05

**GUIDE TO WRITING A BRIEF UNDER FED. R. APP. R. 32;  
ELECTRONIC FILING AND SERVICE OF BRIEFS  
UNDER 5TH CIR. R. 31.1;  
AMICUS CURIAE BRIEFS UNDER FED. R. APP. P. 29; AND  
PETITIONS FOR REHEARING UNDER FED. R. APP. P. 35 AND 40**

**A. PRINCIPAL BRIEFS UNDER FED. R. APP. P. AND 5TH CIR. R. 32.**

**WHAT DO FED. R. APP. P. AND 5TH CIR. R. 32 PROVIDE?**

Below are the highlights of how a brief should look under the rules:

**1. THE BRIEF COVER MUST:**

- A. be opaque and of durable quality (The color of the brief covers is set forth in FED. R. APP. P. 32(a)(2). If a plastic document protector is used, the front and back covers either must be the correct color, or if the front and/or back of the cover is clear, the title and back page under the clear cover(s) must be on correctly colored paper);
- B. have the number of the case centered at the top;
- C. give the name of the court;
- D. provide the title of the case (See FED. R. APP. P. 12(a)). NOTE, WE ATTACH THE APPROPRIATE CASE TITLE TO THE BRIEFING NOTICE YOU RECEIVE. PLEASE USE IT;
- E. contain the nature of the proceeding and the name of the court, agency or board below;

F. contain the title of the brief identifying the party or parties for whom the brief is filed, e.g., "Brief for Appellant, XYZ Corp.";

G. show the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

**2. THE BINDING MUST:**

be secure, not cover any part of the text, and permit the document to lie **reasonably flat when open**. (Spiral binding is greatly preferred.)

**3. PAPER SIZE, LINE SPACING, AND MARGINS:**

A. use 8½ by 11 inch paper;

B. double space the text; single space may be used for footnotes, quotations more than two lines long, and headings;

C. use 1 inch margins on top, bottom, and both sides.

**4. TYPEFACE:**

**A. General.** Two typeface choices are allowed: proportional or monospaced. Proportional typeface gives each character a different spacing. Thus, an "i" takes less space than an "m." Monospaced typeface assigns the same space for each character. Proportionally spaced typeface must include serifs in the text and footnotes. A simple example of a serif is that letters such as "i" and "l" have a horizontal line at the bottom of the letters. **Sans serif typeface does not**

have these markings and is not acceptable in a brief, except in headings and captions.

**B. Typeface Size.**

1. Proportionally spaced typeface must be in 14 point or larger, for text. Unlike the Federal Rule, the Fifth Circuit Rule allows proportionally or monospaced typeface footnotes to be in a smaller size than the text of the brief. Footnotes in proportionally spaced typeface must be in at least 12 point or larger.

2. Monospaced typeface, e.g. Courier, may not contain more than 10½ characters per inch for text. Footnotes in monospaced typeface must have no more than 12½ characters per inch.

**C. Type Styles.**

Briefs must be set in a plain roman style, although *italics* or **boldface** may be used for emphasis. Case names must be *italicized* or underlined, not **boldface**.

**D. Length Limitations.**

1. **General.** The rule has three length limits: a 30 page limit that applies to both proportional and monospaced typeface; a word-count limit for proportionally spaced or monospaced typeface; or, a text line limit for monospaced typeface.

2. **Page Limit.** If you choose the page limit option, your brief will be shorter than under the other options. Appellant's and appellee's principal briefs are limited to 30 or fewer pages, and 15 or fewer pages for reply briefs. The certificate of interested persons, statement regarding

oral argument, tables of citations and contents, proof of service, and addenda suggested by FED. R. APP. P. 28(g) are not included in the page count. If you choose to use the page limit, you do not need to prepare the certificate of compliance, described below. You may write the brief in either 14 point or larger proportional typeface, or not more than 10½ characters per inch monospaced typeface for text. Footnotes may be smaller, as stated in the rule. The text must be double spaced, except for headings, footnotes, and quotations over two lines, and the margins must be one inch on all sides.

**3. Word Count Limit.** Under this option, the brief must be in 14 point or larger **proportionally spaced typeface** for text, with footnotes in 12 point or larger typeface, or in **monospaced typeface** with text no smaller than 10½ characters per inch and footnotes no smaller than 12½ characters per inch. The brief must be double spaced except for headings, footnotes, and quotations over two lines, and must have one inch margins on all sides. Appellant's and appellee's principal briefs are limited to 14,000 words. A reply brief is limited to 7,000 words. Headings, footnotes, and quotations count toward the limit. Certificates of interested persons/corporate disclosure statements, tables of contents and citations, statements regarding oral argument, addenda suggested by FED. R. APP.

P. 28(g), and any certificates of counsel do not count toward the limit.

**4. Text Line Limit.** Finally, you may elect to prepare the brief in **monospaced typeface** with no more than 10½ characters per inch for text, and no more than 12½ characters per inch for footnotes. There is a 1,300 text line limit for principal briefs. A reply brief may have no more than 650 lines of text. As with the other options, the text must be double spaced and must have one inch margins on all sides. The items excluded from the word count limit are excluded from the text line limit. As a general rule, a brief prepared in monospaced typeface in the correct size and following the rules for margins and spacing should have 26 lines per page.

**5. Certificates of Compliance.** Briefs prepared under the word count or text line limits **must** be accompanied by a certificate of compliance. This is your statement that you have reviewed the brief and certify that the brief meets the word count or text line limits. You should rely on your word processor's word or line count in preparing your certificate, and you may enclose a copy of the system's word or text line count. The certificate of compliance is to be placed as the last document in the brief before the back cover. After December 1, 2002, you should use Form 6 to the FED. R. APP. P. as the format for the Certificate of Compliance.

**B. FILING AND SERVING ELECTRONIC COPIES OF BRIEFS UNDER 5TH CIR. R. 31.1.**

5TH CIR. R. 31.1 requires counsel who prepare a brief on a computer to file an electronic copy of the brief with the clerk's office in addition to the paper copies. Counsel must also serve another electronic copy of the brief on all separate parties represented by counsel. The electronic copy of the brief must be on a 3½ inch diskette, and be the only file on the diskette. The diskette's label must contain the case name, docket number, identify the brief, i.e. appellant's brief, etc., and specify the word processing software and version used to prepare the brief. Briefing notices issued on and after December 1, 2002, will note a Rule change which requires that the electronic version MUST be in Adobe Acrobat pdf format, see information sheet.

The Certificate of Service must indicate service in both paper and electronic form.

**C. BRIEFS IN CROSS-APPEALS.**

Effective December 1, 2005, FED. R. APP. P. 28.1 governs briefs in cross-appeals. The new rule discusses the briefs, their type-volume limits, color of covers and the times in which to file and serve them. See FED. R. APP. P. 28.1 c through f.

**D. AMICUS CURIAE BRIEFS UNDER FED. R. APP. P. 29.**

New FED. R. APP. P. 29 now requires that if a motion for leave to file as an amicus is required, the amicus brief must accompany the motion. Under the Federal Rule the amicus brief must be filed "no later than 7 days after the principal brief of the party being

supported is filed." An amicus brief must comply with FED. R. APP. P. 32, except that its length may be "no more than one-half the maximum length authorized . . . for a party's principal brief." NOTE: A certificate of compliance as discussed in FED. R. APP. P. 32(a)(7) and 5TH CIR. R. 32 may be required. Also an amicus brief must meet the format requirements of 5TH CIR. R. 32 and, if applicable the electronic filing and service requirements of 5TH CIR. R. 31.1, except that an electronic copy of the computer generated brief must be served on all parties represented by counsel. Finally, to be consistent with FED. R. APP. P. 29, 5TH CIR. R. 31.2 provides that a party's principal brief's due date is not adjusted after filing of an amicus brief. See FED. R. APP. P. 29(e) and the Committee Note thereto which provides in relevant part in discussing the 7 day filing period:

. . . A 7-day period is also short enough that no adjustment need be made in the opposing party's briefing schedule. The opposing party will have sufficient time to review arguments made by the amicus and address them in the party's responsive pleading . . . .

**D. PETITIONS FOR REHEARING UNDER FED. R. APP. P. 35 AND 40.**

A petition for en banc consideration must be reproduced in the manner prescribed by FED. R. APP. P. 32(a) except that a cover is not mandated and a certificate of compliance is not required, (See FED. R. APP. P. 32(c)(2)). A petition for en banc consideration "must not exceed 15 pages, excluding material not counted under [Federal] Rule 32." For purposes of the page limit in FED. R. APP.

P. 35, "if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately . . . ." See 5TH CIR. R. 35.2.1 through 35.2.10 for other format requirements.

A FED. R. APP. P. 40 petition for panel rehearing "must comply in form with" FED. R. APP. P. 32. Copies "must be served and filed as" FED. R. APP. P. 31 prescribes, and a "petition for panel rehearing must not exceed 15 pages," See FED. R. APP. P. 40(b).

### **CONCLUSION**

We hope this guide gives you a better understanding of the rules and helps you prepare your briefs and petitions for rehearing in accordance with the rules.