

United States Court of Appeals For the Fourth Circuit

Appellate Filing Procedure



Est. 1992

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ABOUT LANTAGNE LEGAL

Lantagne Legal Printing (Est. 1992) is a family-run business serving the legal community as a professional service specializing in appellate procedure. We provide the highest levels of quality, service and expertise to our clients, drawing on over a century of combined appellate experience. Our staff is uniquely prepared to meet all of your appellate needs.

In 1997 we welcomed Brief Printing Specialists to the Lantagne Legal Printing family. At that time Kay Craig and May Serafim had worked in the appellate field for over 13 years. During those years they established an impressive reputation for quality and service. The combination of our staffs created the strongest, most experienced appellate services company operating in Richmond today.

Our commitment to our clients is to provide superior service at a fair price. Comments and suggestions on our work and how we might improve our services are always welcome and can be sent directly to me.

Sincerely,

Anthony G. Lantagne
President

ABOUT THIS HANDBOOK

This handbook provided by Lantagne Legal Printing is intended as a helpful guideline for the appellate process and is not intended as a substitute for the Rules of the Fourth Circuit Court of Appeals. For detailed and definitive answers to appellate procedures and questions, the actual Rules of the Fourth Circuit Court of Appeals should be consulted. We are more than happy to provide copies of the actual rules when requested.

Be sure to visit us on the web at lantagne.com

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United States Court of Appeals for the Fourth Circuit

FILING SCHEDULE

The following Rules of the Court, **F.R.A.P. 31(a), Local Rule 31 (a), (b) and (c)** have been condensed into the filing schedule below. All time requirements are calculated in calendar days.

Civil Appeal

Brief of Appellant: 40 days from Briefing Order

Joint Appendix: Filed with Appellant's brief

Brief of Appellee: 30 days from service of Appellant's brief

Reply Brief: 14 days from service of Appellee's brief

Criminal Appeal

Brief of Appellant: 35 days from Briefing Order

Joint Appendix: Filed with Appellant's brief

Brief of Appellee: 21 days from service of Appellant's brief

Reply Brief: 10 days from service of Appellee's brief

Specifications for the Brief of Appellant

F.R.A.P. 32(a)(b), Local Rule 32(a) and your Briefing Order:

- Paper: 8-½ x 11 inches in size
Margin lines or borders, line numbering and counsel's letterhead or logo **shall not** appear on the pages of a brief.
- Margins: 1 inch on all four sides
- Line Spacing Text: double-spaced
Headings & Footnotes: single-spaced
Quotations over two lines: indented and single-spaced
- Footnotes & Quotations: Must appear in the same **typeface** and **size** as the rest of the brief
- Type: **Monospaced type:** Courier or Courier New – 12 point
Proportional type: Times New Roman – 14 point
Note: Proportional sans-serif fonts (such as Arial) are not acceptable
- Length: 30 pages; **OR**
FRAP 32(a)(7) If over 30 pages, **counsel must**
Local Rule 32(b) **certify** the following: No more than 13,000 words (**including footnotes**) based upon word count of word processing program; **OR** 1,300 lines, based on line count of word processing program.
Limits exclude covers, corporate

disclosure statement, table of contents, table of citations, proof of service and any addendum of statutes, rules, etc. (If “Option ii” is taken in the production of the appendix per Local Rule 25(a)(1)(D)(ii) the brief may, without motion, exceed the length limitation by up to 200 words)

Cover color: Blue

Note: e-filing requires the PDF brief to be text searchable

Number of paper copies: Local Rule 31(d)

Civil/Retained Criminal – File 1*, Serve one if Sealed**

Court-Appointed Criminal – File 1*, Serve one if Sealed**

Sealed briefs must be provided in paper form.

Local Rule 25(c) requires that if sealed material needs to be referenced in the brief, that both a **sealed, highlighted version** of the brief and a **public, redacted version** of the brief, plus a **certificate of confidentiality**, must be filed. Personal data such as a *social security number, tax ID number, a minor’s name, a date of birth, a financial account number*, and (in criminal cases) a *home address* “must be excluded or partially redacted from filings in accordance with FRAP 25(a)(5).”

*The court may request additional paper copies for oral argument or if otherwise needed.

**Service of a paper copy is required in cases where the brief is sealed. Also, parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.

Content Requirements for the Brief of Appellant

The brief of appellant shall contain under appropriate headings and in the order here indicated (F.R.A.P. 28(a)):

1. Corporate Disclosure Statement (if applicable)
2. Table of Contents
3. Table of Cases, Statutes and Authorities
4. Statement of Subject Matter and Appellate Jurisdiction
5. Statement of Issue(s) Presented for Review
6. Statement of the Case (The statement of the case must include a sub-headed Statement of Facts with all the facts necessary for the Court to reach the conclusion which the brief desires, with references to the specific pages in the appendix that support each of the facts stated.)
7. Summary of Argument
8. Argument
 - Standard of Review
 - Discussion of Issues
9. Conclusion Stating Precise Relief Sought
10. Request for Oral Argument
11. Certificate of Compliance (F.R.A.P. 32(a)(7)(B)(C))
12. Certificate of Service

Content Requirements for the Joint Appendix

The joint appendix shall contain the following according to F.R.A.P. 30(a) and Local Rule 30(b). The parties must file an appendix containing all portions of the record necessary for review of the matters presented. If verbal agreement between parties on the contents of the joint appendix is not reached, the appellant must file a formal designation with the Fourth Circuit (F.R.A.P. 30(b)):

1. Table of Contents
2. Relevant Docket Entries
3. Indictment or Complaint
4. Any other parts of the record which parties wish to bring to the attention of the Court
5. Judgment or Order appealed from
6. Notice of Appeal

F.R.A.P. 30(d) – Following the Table of Contents and District Court Docket Entries, the Appendix must be set out in chronological order. Local Rule 30(b) states that “The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, recross) should be clearly indicated at the top of each page of the appendix where the witness’s testimony appears.”

The appendix cover shall be white.

Special Notes on Appendix:

Transcripts of witness's testimony must be clearly identified in the Table of Contents showing: Name; Direct; Cross; Redirect; Recross

Criminal Cases seeking review of sentencing must have the entire sentencing hearing transcript, the Presentence Report as well as the Statement of Reasons as part of the Appendix contained in a separate **sealed** volume. For multiple defendants, each defendant's confidential material must be filed in its own **separate** sealed volume with service only on counsel for the United States and that particular defendant, **not** on any other parties.

THE 4TH CIRCUIT DOES NOT ALLOW INCLUSION OF CONDENSED TRANSCRIPTS IN THE APPENDIX

Number of copies according to Local Rule 30(b):

	<u>File</u>	<u>Serve</u>
Civil/Retained Criminal	1*	1**
Court-Appointed Criminal	1*	1**
Exhibit Volume(s)	1*	1**
Sealed Volume(s)	1*	1

*The court may request additional paper copies for oral argument or if otherwise needed.

Service of paper copy is not required when the **entire Appendix is electronically filed and served on all parties

Exceptions:

- 1) Service of a paper copy is required in cases where the appendix is sealed. Also, parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.
- 2) If the Appendix **excerpt** option for electronic filing is exercised, then service of a full version of the Appendix in paper form is required.

Court Appointed Cases: Special rules apply to an appendix in court appointed appeals – please see the next page of this handbook for details.

Criminal Justice Act Court Appointed Attorneys: What You Need to Know

CONTENT REQUIREMENTS

The Brief:

Requirements for the Brief of Appellant in a criminal appeal where counsel is court appointed (or proceeding *in forma pauperis*) are identical to requirements for civil appeal briefs (see page 2 in this handbook). (**Local Rule 31(d)**).

File: 1 copy of the brief*
Serve: No paper service required except as noted below

Exception:

Service of a paper copy is required in cases where the brief is sealed. Also, parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.

The Appendix:

In addition to the appendix content requirements set forth on page 5-6 of this handbook, **Local Rule 30(b)** states: “In all criminal appeals seeking review of the application of sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate **sealed** volume.”

File: 1 copy of the appendix*
Serve: No paper service required except as noted below

Exceptions:

- 1) Service of a paper copy is required in cases where the appendix is sealed. Also, parties who are not

registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.

- 2) If the Appendix **excerpt** option for electronic filing is chosen, then service of a full version of the Appendix in paper form is required.

*The court may request additional paper copies for oral argument.

Local Rule 32(a) limits the size of the appendix to 500 pages, preferably copied two-sided. **A motion to the Court must be made and granted to exceed this limitation in advance of filing, otherwise CJA counsel will not be reimbursed for pages in excess of 500.**

Sealed Material: Local Rule 25(c) requires that if a joint appendix contains sealed material and/or a brief refers to sealed material, counsel must file a certificate of confidentiality. Additionally, the Clerk's Office requires that the cover of each brief or appendix containing or referring to sealed material be marked SEALED and that the sealed brief or appendix be filed in a separate envelope marked SEALED.

E-voucher system: All reimbursement for CJA attorneys is handled through the court's e-voucher system. Attorney must create a CJA profile in the system, and must file a CJA21 voucher electronically for the services of Lantagne Legal Printing. The e-voucher must be filed out before filing your appeal. We are happy to help in navigating this system. Please call us with any questions or if you need assistance.

Brief of Appellee: Content Requirements

1. Corporate Disclosure Statement
2. Table of Contents
3. Table of Cases, Statutes and Authorities
4. Statement of Subject Matter and Appellate Jurisdiction*
5. Statement of the Issue(s) Presented for Review*
6. Statement of the Case and Statement of Facts*
7. Summary of Argument
8. Argument
 - Standard of Review*
 - Discussion of Issues
9. Conclusion
10. Certificate of Compliance
11. Certificate of Service

*These statements need not be made unless appellee is dissatisfied with those of the appellant

Specifications for the Brief of Appellee are identical to those for the brief of appellant (see page 2-3), except the cover is **RED**.

NOTE: In cross-appeals, the word limit for an appellee's opening and response cross appeal brief is 15,300 words.

Reply Brief of Appellant: Content Requirements

1. Table of Contents
2. Table of Cases, Statutes and Authorities
3. Argument
4. Conclusion
5. Certificate of Compliance (page limitations)
6. Certificate of Service

Specifications for the Reply Brief of Appellant are identical to those for the brief of appellant with the following exceptions:

1. **GRAY** cover; **YELLOW** if cross-appeal
2. 15 page limit; **or** 6,500 words **or** 650 lines of Monospaced type

NOTE: In cross-appeals, the word limit for an appellant's response and reply cross appeal brief is 13,000 words.

In cross-appeals, the word limit for the appellee's reply brief is 6,500 words.

ELECTRONIC FILING REQUIREMENTS

F.R.A.P. 25(a)(2)(D) and **Local Rule 25(a)** establish procedures requiring electronic filing of documents, with certain exceptions, and authorizing electronic service of documents using the Court's transmission equipment, as set forth in **Administrative Order 08-01**.

The following documents must be filed **electronically** with the Court in conjunction with paper copies being mailed, dispatched to a third-party commercial carrier, or delivered to the clerk's office by the next business day:

- Brief of Appellant
- Appendix*
- Brief of Appellee
- Reply Brief
- Brief of Amicus Curiae
- Sealed Certificate (if needed)

The following items are filed **electronically only**:

- Motions
- Petition for Rehearing
- Petition for Rehearing and Petition for Rehearing En Banc
- Notice of Paper Filing (Appendix)

*Local Rule 25(a) provides two options for filing the Appendix:

(i) The full appendix (service of paper appendix on opposing counsel is not required if this option is chosen and the full version in electronic form is served on opposing counsel)

(ii) An appendix excerpt. Note that if this option is chosen, counsel must include parallel citations to the paper appendix and the docket entry and page

number of the electronic record for all references contained in the brief. Also, service of a full version of the appendix in paper form on all parties is required.

Exceptions: Service of a paper copy is required in cases where the brief and/or appendix are sealed. Also, parties who are not registered for electronic service through CM/ECF must be served conventionally, outside the CM/ECF system, with a copy of any document filed electronically.

FILING REQUIREMENTS SUMMARY (PAPER)

Brief of Appellant – Blue Cover; 30 page limit
(or 13,000 words); File 1*; Serve 1**

Brief of Appellee – Red Cover; 30 page limit
(or 13,000 words); File 1*; Serve 1**

Reply Brief of Appellant – Gray Cover; 15 page limit
(or 6,500 words); File 1*; Serve 1**

Appendix – White Cover; No page limit*** – File 1*; Serve 1**
Exhibit Volumes – File 1*; Serve 1**
Sealed Volumes – File 1*; Serve 1**

Brief of Amicus Curiae – Green Cover; Page limit is the same
as brief you are supporting;
File 1*; Serve 1**

*The court may request additional paper copies for
oral argument.

**Service of a paper copy is required in cases where the
brief and/or appendix is sealed. Also, parties who are not
registered for electronic service through CM/ECF must be
served conventionally, outside the CM/ECF system, with
a copy of any document filed electronically.

***Appendices in court appointed appeals are limited to
500 pages unless prior authorization to exceed the page
limit is granted

Common Filing Errors

The following errors are the most common ones that we find in briefs received from attorneys for filing.

Typeface: The court's rule on typeface (Local Rule 32(a)) has caused some confusion. **Monospaced** type is simply a "Courier" or "Courier New" font. If using this font, you need to select it in 12-point size on your word processor. **Proportional** type is a font such as Times New Roman. When using this type of font, you must select 14-point size. Also, the Court **will not accept all types of this font** – for example, Arial is unacceptable. The Court requires the font to be a serif font – Times New Roman, Century Schoolbook and Garamond are examples of a serif font. Arial is an example of a sans serif, unacceptable font.

References to the Joint Appendix: The Court requires that your Statement of Case include a sub-headed Statement of Facts with references to the Joint Appendix showing the source of the facts.

Summary of Argument: This is often left out of or misplaced in the brief. It must be included and be placed between the Statement of Case and the Argument.

Standard of Review: This must be included as a subsection, or incorporated in the text, of the argument. It must fall after the heading "Argument," not before.

SUMMARY OF SERVICES

=====**Briefs**=====

- Ability to accept the brief the day that it is due for filing. Receipt before noon guarantees same-day filing with the Court
- Thoroughly examine and check brief for compliance with all Rules of the Court, notifying you of any needed changes
- Prepare cover and print on the proper color cover stock
- Prepare tables of contents and authorities (optional).
- Electronic and paper filing and service.

=====**Appendix**=====

- Obtain and make sure all documents required by the court for inclusion are in the appendix
- Complete assembly of the appendix according to the rules of the court
 - ◆ Place all documents in appropriate order
 - ◆ Place asterisk symbols for omissions of text in a document
 - ◆ Digitally number each page
 - ◆ Witness testimony where needed
- Prepare table of contents
- Prepare cover and print on the proper color cover stock
- Reduce large exhibits or include at original size
- Color imaging if needed
- Duplication of CDs and/or DVDs for inclusion
- Send an advance copy of the Appendix for approval and use in finalizing your brief
- Electronic and paper filing and service

BENEFITS TO OUR CLIENTS

- A staff at your disposal with over a century of combined experience specializing in appellate filing procedures, including an attorney with extensive appellate experience in Federal and State courts.
- Convenience to court – we are located within two blocks of the Virginia Supreme Court, Virginia Court of Appeals and the U.S. Court of Appeals for the Fourth Circuit.
- Personal service/personal attention
- Samples of briefs and other pertinent documents provided upon request free of charge.
- **NO RUSH CHARGES – NO HIDDEN COSTS**
- Prompt payment discounts are shown on the invoice when available.

Here are a few of the services frequently requested by clients that we perform free of charge where other printers may charge extra:

- A copy of the docket sheets of the record on appeal transmitted to your office, when requested.
- Electronic filing and service of the designation of contents of the appendix.
- Electronic filing and service of any motions.
- Edits and corrections to briefs, if required.

Fee Schedule

United States Court of Appeals for the Fourth Circuit

Briefs and Appendices (Prices include electronic filing)
 Base Charge (applies to Brief only)\$150.00
 Preparation and filing of Briefs
 per original page.....\$3.75
 Assembly, preparation and filing Joint Appendix
 per original page.....\$3.50
 Additional CD's \$10.00 each
 (Hyperlinks available upon request – charged on an
 hourly rate basis)

Optional Service: Preparation of Tables of Contents
 and Authorities for Briefs:\$40.00

Services provided after 6:00 p.m. are subject to overtime
 charges.

**First class postage is included in our charges.
 There will be a separate line item charge for any
 overnight shipping charges.**

**There are no services billed by the hour other than
 hyperlinking**

***Please note: Our professional relationship is with
 you rather than your client, so the invoice represents
 your obligation to us.***

Additional Services if Needed

Condensed Transcript Enlargement
 Per Copy Cost\$0.50
 Retrieval of Designated Documents via PACER
 Per Page Cost\$0.10
 Color Copies
 Per Copy Cost\$0.50

The listed fees and charges are the only costs normally associated with Lantagne Legal Printing's handling of your appeal from beginning to end. Your case coordinator will be available to you at all times (weekends included, if necessary) to assure your documents are filed correctly and timely.

Lantagne Legal Printing is family-owned and operated, and is Richmond's oldest continuously owned company specializing in appellate filing and procedure. Our staff, which includes an attorney with extensive appellate court experience, has more combined years of experience in appellate filing procedure than any of our competitors in Richmond. We take pride in providing the best in both service and price. It would be our pleasure to assist you in perfecting your appeal.

SAMPLES

We are happy to provide (free of charge) samples of motions, briefs, certificates of mailing and compliance, etc.

Call or email us with your request, and we will deliver your samples promptly.

Our contact information:

Phone: (800) 847-0477
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Web: Lantagne.com

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