

6 Cir. R. 30 Appendix to the Briefs

- (a) **When Required.** In all appeals other than those specified below, the court will have the entire record of district court proceedings available to it in electronic format, see 6 Cir. R. 10(a), to which counsel will refer in their briefs. For that reason, an appendix is not necessary and not to be filed in those cases. Unless specifically called for by the court in any other particular case, an appendix to the briefs is to be filed only in:

Appeals in cases brought pursuant to 28 U.S.C. §2254;
Appeals from decisions of the United States Tax Court;
Petitions to review or enforce the decision of a federal administrative agency.

Where an appendix is required it is the responsibility of the appellant to file it, except as set forth in section (k) of this rule.

- (b) **Contents.** Counsel should consult the contents requirements set forth in section (f) of this local rule. Parts of the record not included in the appendix may, nevertheless, be relied upon by the parties in presenting arguments and by this court in disposing of the case.

In determining the contents of the 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 the court and may result in sanctions pursuant to section (m) of this local rule.

- (c) **Time for Filing.** The appellant has the responsibility of preparing the appendix and shall serve and file it at the same time as it files its brief.
- (d) **Separate Appendix of Appellee.** If the appellee determines that a necessary part or parts of the record has not been included in the appendix filed in accordance with section (a) of this rule it may prepare a separate appendix including the omitted part(s) and file that appendix at the same time as it files its brief. The pagination of the appellee's appendix should be consecutive, beginning with the next page number after the last page of the appellant's appendix.
- (e) **Manner of Filing.** Except as provided in subsection (1) below, the appendix shall be filed as an electronic document in PDF format, in the same manner as are filed all other documents in the case. No paper appendix shall be filed without leave of court to do so.
- (1) **Appendix in Death Penalty Cases.** In cases involving a state prisoner under sentence of death where the record before the district court includes portions of the state court record, five copies of the appendix shall be filed in paper format.

(f) **Contents.**

- (1) **Appendix in Appeals from the District Court or Tax Court.** The 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 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 appendix;
 - (F) counsel's certification that all documents included in the appendix are copies of documents properly made a part of the record.

- (2) **Appendix in Agency Proceedings.** The 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 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 section (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) **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 filed, in its original format, with the clerk. An appropriate notation on the cover of the envelope should specify the nature of the sealed enclosure. The balance of the 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 hold 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.

- (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 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 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 section. The index or indices contained in each volume shall include the contents of all volumes of the appendix.

- (i) **Format.** Following the index, the appendix must contain the items in the order set out in 6 Cir.R.30(f). 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.
- (j) **Social Security Cases - No Appendix Required.** 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.
- (k) **Duty to File Appendix in State Habeas Cases.** In state habeas cases filed pro se and in forma pauperis, it will be the responsibility of the state attorney general 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 an appendix when required, or the filing of an appendix substantially out of compliance with the requirements of this local rule, may result in dismissal of the appeal or other sanctions. 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.