

## **6 Cir. R. 30 Appendix to the Briefs; Designation of Relevant District Court Documents**

- (a) **When an Appendix is Required.** Unless the court specifically directs, an appendix is required only in the following cases:
- (1) Appeals from a district court where there are documents that are not part of the district court's electronic record that must be included in an appendix as provided in 6 Cir. R. 30(f)(1).
  - (2) Appeals in cases under 28 U.S.C. §2254.
  - (3) Appeals from the United States Tax Court.
  - (4) Petitions to review or enforce the decision of a federal administrative agency, except social security cases (see 6 Cir. R. 30(l)).

Otherwise, because the court will have the electronic record of district court proceedings available, an appendix is not necessary and is not to be filed.

- (b) **Designation of Relevant District Court Documents in Certain Cases.** In appeals from the district court where there is an electronic record in the district court, documents in the electronic record must not be included in an appendix. To facilitate the court's reference to the electronic record in such cases, each party must include in its principal brief a designation of relevant district court documents; see 6 Cir. R. 30(f)(1). The designation must appear at the end of the brief as an addendum and include for each document the record entry number from the district court docket and a description of the document.
- (c) **Responsibility and Time for Filing the Appendix.**
- (1) **Appellant.** Where an appendix is required, the appellant must prepare an appendix, file it simultaneously with its principal brief, and serve it, except as provided in 6 Cir. R. 30 (m) and (n).
  - (2) **Appellee.** If the appellee determines that the appellant did not include a necessary part of the record in the appendix, the appellee may prepare a separate appendix including the omitted part(s) and file and serve it when the appellee files its brief. The pagination of the appellee's appendix must be consecutive, beginning with the next page number after the last page of the appellant's appendix.
- (d) **Items Not Included in the Appendix.** Counsel should consult the contents requirements in 6 Cir. R. 30(f). The parties and the court may rely on parts of the record not included in the appendix.

In determining the contents of the appendix, counsel should be mindful that inclusion of parts of the record unnecessary to disposition of the case, or omission of parts of the record

necessary to disposition of the case, imposes a burden on the court and may result in sanctions under 6 Cir. R. 30(o).

(e) **Manner of Filing.**

- (1) **Generally.** Except as provided in sub-rule (e)(2), the appendix must be filed as an electronic document in PDF format. A paper appendix may not be filed without leave of court.
- (2) **Death Penalty Cases.** In cases involving a state prisoner under sentence of death where the district court record includes portions of the state court record, five copies of the appendix must be filed in paper format.

(f) **Contents of the Appendix.**

- (1) **Appeals from the District Court.** In appeals from a district court where all items listed in this sub-rule (f)(1) are in the district court's electronic record, no appendix may be filed. In all other appeals from a district court, the appendix must include the current district court docket sheet and those items listed below that are not part of the district court's electronic record:
  - (A) the complaint or indictment;
  - (B) all other pleadings or motions relevant to the arguments presented on appeal;
  - (C) the judgment from which the appeal is taken;
  - (D) all memorandum opinions or opinions from the bench, findings of fact and conclusions of law, and reports and recommendations of a magistrate judge and objections to the reports and recommendations;
  - (E) the notice of appeal;
  - (F) any other parts of the record, including all or part of any exhibit or transcript pages necessary for effective understanding of the issues raised in the briefs, in chronological order; and
  - (G) counsel's certification that all documents included in the appendix are copies of documents properly made a part of the record.
- (2) **Appeals from the Tax Court.** In appeals from the Tax Court, the appendix must include--
  - (A) the current Tax Court docket sheet;

- (B) the complaint;
  - (C) all other pleadings or motions relevant to the arguments presented on appeal;
  - (D) the judgment from which the appeal is taken;
  - (E) all memorandum opinions or opinions from the bench and findings of fact and conclusions of law;
  - (F) the notice of appeal;
  - (G) any other parts of the record, including all or part of any exhibit or transcript pages necessary for effective understanding of the issues raised in the briefs, in chronological order; and
  - (H) counsel's certification that all documents included in the appendix are copies of documents properly made a part of the record.
- (3) **Agency Proceedings.** The appendix in agency proceedings must include--
- (A) the order sought to be reviewed or enforced;
  - (B) all supporting opinions, findings of fact or conclusions of law; and
  - (C) the petition for review or application for enforcement.
- (4) **Habeas Corpus Cases where there is no Written State Court Record.**
- (A) 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 must include a written transcript of all portions of the state court record that any party deems relevant to this court's resolution of the issues raised on appeal. Notwithstanding the provision of 6 Cir. R. 30(d), a party may not rely on a part of the state court record not reduced to written form.
  - (B) Appellant must provide to this court and appellee a transcript of the necessary portions from the official state court record within 30 days of filing the notice of appeal. The circuit clerk may grant an additional 30 days. Where, by reason of the length of the necessary portions of the state court record, more than 60 days are required, appellant must request additional time by written motion within the 60-day period.
  - (C) An appellee who believes that a transcript of other portions of the state court record is necessary must provide that transcript to this court and appellant

within 30 days of the appellant's filing of the transcript, with extensions of time as provided in sub-rule (f)(4)(B).

- (D) the transcript may be prepared by any method that provides an adequate typewritten record.
- (E) Upon filing of a transcript in this court, a party has 15 days to notify the 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 must be resolved by the procedure in FRAP 10(e).

- (5) **Inclusion of Sealed Record Items.** If in counsel's opinion it is necessary to include sealed items, a copy of the sealed item(s) must be placed in a separate sealed envelope and filed 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 item 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. That relief can be had only by way of a timely motion specifically requesting that relief.

- (g) **Certificate of Service.** The appendix will not be deemed to have been filed unless the certificate of service required by FRAP 25(d) is included with it.
- (h) **Table of Contents.** The appendix must be paginated. The appendix must have a table of contents that, for each document--
  - (1) describes the document in the appendix;
  - (2) includes the record entry number from the docket of the court below, where available; and
  - (3) shows the page in the appendix where the document first appears.
- (i) **Index.** Following the table of contents, the appendix must contain an alphabetical list of witnesses whose testimony is included in the appendix, with the date and proceeding, if other than trial, where the testimony begins and the page(s) in the appendix.
- (j) **Multi-Volume Appendix.** Where the appendix has more than one volume, each volume must be consecutively paginated and must contain the full table of contents and index required by 6 Cir. R. 30(h) and (i). The table of contents and index in each volume must include the contents of all volumes of the appendix.

- (k) **Format.** Following the table of contents and index, the appendix must contain the items in the order set out in 6 Cir. R. 30(f). Portions of the transcript or exhibits that have been properly made a part of the record may appear at the end of the appendix or in a separate volume or volumes. The original pagination of each part of the transcript must be placed in brackets in the margin of the appendix. The name of each witness must appear on each page of the appendix where the testimony of that witness begins.
- (l) **Social Security Cases - No Appendix Required.** In appeals from a district court involving review of a decision of the Commissioner of Social Security, the attorney representing the Commissioner must file with the brief four paginated copies of the administrative record. No appendix is required.
- (m) **Duty to File in State Habeas Cases.**
  - (A) **Appendix.** In state habeas corpus cases filed pro se and in forma pauperis, the state attorney general must file an adequate appendix that includes copies of the opinion and order from which the appeal is taken and any magistrate judge's report and objections to the report.
  - (B) **Other Material.** In state habeas corpus cases the state attorney general must 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.
- (n) **Duty to File Appendix in Black Lung Cases.** Where a pro se in forma pauperis litigant seeks review of an administrative decision regarding a claim for black lung benefits, counsel for the Director must file, with the Director's brief, an adequate appendix that includes the decision to be reviewed and any other items of record necessary for this court's informed review.
- (o) **Sanctions.** Failure to file an appendix when required, or filing an appendix substantially out of compliance with the requirements of this rule, may result in dismissal of the appeal or other sanctions. The court may require counsel who so complicates the proceedings in a case by unreasonably and vexatiously failing to comply with the requirements of this rule to satisfy personally any excess costs, under 28 U.S.C. § 1927, and may subject counsel to disciplinary sanctions.