

SEVENTH CIRCUIT BRIEF FILING CHECKLIST

NOTE: Items 1-2 are in Monospaced type and items 3-30 are in Proportional type.

1. The docketing fee, if applicable, must be paid. Cir. R.3(b).
2. Lead counsel must be admitted to practice before the Seventh Circuit within thirty days of docketing. See Cir. R. 46. Attorneys for any federal, state or local government office or agency may appear in connection with their official duties without being admitted to practice before the court.
3. Fed. R. App. P. 32(a)(2) requires that the front cover contain:
 - a) The number of the case and any consolidated case still pending at the time of filing, centered at the top;
 - b) The name of the court;
 - c) The title of the case (see Cir. R. 12(a));
 - d) The nature of the proceeding (e.g. Appeal, Petition for Review, etc.) and the name of the court, agency or board below; the name of the judge magistrate judge or ALJ below.
 - e) The title of the brief identifying the party or parties for whom the brief is filed (e.g. Brief of Appellant, Brief of Appellee (if separate briefs of appellants or appellees are being filed, name the individual on the cover of the brief); and
 - f) The name, address and telephone number(s) of counsel representing the party or parties for whom the brief is filed.
4. 15 copies of a brief or petition for rehearing must be submitted. Cir. R. 31(b) (except that 30 are required for a petition for rehearing en banc.) Cir. R. 40(b).
5. Any record withdrawn must be returned. Cir. R. 11(d).
6. The brief must be timely filed. Fed. R. App. P. 31(a) and Cir. R. 31(a). If scheduled by order, Fed. R. App. P. 26(c), which allows for three additional days after service by mail, does not apply.
7. Being an appellee on one aspect of the case (as in a cross-appeal) does not eliminate the need to perform an appellant's duties under Circuit Rules 30(a), (b), (c), and (d), *United States v. White*, 888 F.2d 490 (7th Cir. 1989), regarding the party's own appeal.
8. The brief should be clearly readable and the page size, margin and spacing requirements must be adhered to. Fed. R. App. P. 32(a)(4). Rule 32(a)(5) allows either proportionally spaced or monospaced type. Proportional type must include serifs for text and footnotes but sans-serif type may be used for headings and captions. Proportional type must be 12 points or larger (footnotes 11 points or larger). Cir. R. 32(b). Monospaced type may not contain more than 10.5 characters per inch. The typed matter must be set in plain

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roman style although italics or boldface may be used for emphasis and case names must be italicized or underlined. Fed. R. App. P. 32(a)(6). This type size rule applies to briefs, petitions, answers, motions and responses. Fed. R. App. P. 32.

9. Dot-matrix or fax machine quality reproductions are not acceptable in a brief, petition, answer, appendix, motion or response. Text must be reproduced with a clarity that equals or exceeds the output of a laser printer. Fed. R. App. P. 32(a)(1)(B).
10. The appellant's or petitioner's opening brief must contain, under appropriate headings and in the order indicated, the following eleven sections indicated in Fed. R. App. P. 28(a);
 - a. A Disclosure Statement, which must be updated if the information contained in it changes. If updated, it should be entitled an "Amended Disclosure statement." Fed R. App. P. 26.1; Cir. R. 26.1; Fed. R. App. P. 28(a)(1).
 - b. A table of contents; with page references. Fed. R. App. P. 28(a)(2).
 - c. A table of authorities/cases (alphabetically-arranged), statutes and other authorities with references to pages where they are cited in the brief. Fed. R. App. P.28(a)(3).
 - d. A complete jurisdictional statement which complies with Fed. R. App. P. 28(a)(4) and Cir. R. 28(a). Counsel must consult these rules as they have very specific and detailed requirements.
 - (i) The appellee must provide a statement that the appellant's jurisdictional statement is "complete and correct." If the appellant's jurisdictional statement is not complete and correct, the appellee must provide, in full, a complete and correct jurisdictional statement. Merely pointing out an error in the appellant's jurisdictional statement is not sufficient. Cir. R. 28(b). *United States v. Naud*, 830 F.2d 768 (7th Cir. 1987) (The appellee is advised to state that the appellant's jurisdictional statement is not complete and correct).
 - e. A statement of issues presented for review. Fed. R. App. P. 28(a)(5).
 - f. The brief must contain a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below. Fed. R. App. P. 28(a)(6).
 - g. The brief must contain a statement of the facts relevant to the issues submitted for review, with appropriate references to the record. Fed. R. App. P. 28(a)(7) and 28(e); Cir. R. 28(c).
 - h. A summary of argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings. Fed. R. App. P. 28(a)(8).
 - i. An argument which must contain: Fed. R. App. P. 28(a)(9)

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(1) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(2) **for each issue, a concise statement of the applicable standard of review** (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issue). Fed. R. App. P. 28(a)(9)(B). If the appellee disagrees, the appellee should set forth its contention as to the correct standard of review in its brief. Fed. R. App. P. 28(b).

j. A short conclusion stating the precise relief sought. Fed. R. App. P. 28(a)(10).

k. A certificate of compliance with the length requirements of Fed. R. App. P. 32(a)(7) [also see item # 13 of this checklist].

11. There must be a certificate of service. Fed. R. App. P. 25(d).

12. The color of the cover must be as follows: Fed. R. App. P. 32(a)(2).

Appellant's Brief - BLUE

Separate Appendix - WHITE - (10 copies required; no page limitation.)

Appellee's Brief - RED

Appellant's Reply Brief - GRAY

Appellant/Cross-Appellee's Combined Reply/Responsive Brief - YELLOW

Appellee/Cross Appellant's Reply Brief in the Cross Appeal - GRAY

Intervenor Brief - GREEN

Amicus Curiae - GREEN - (limited to 15 pages or 7000 words.)

Supplemental Brief - TAN

Any Petition For Rehearing (Or Answer, By Order) - WHITE

Motions - White - (8 ½" x 11", 20 page limit)

13. Fed. R. App. P. 32(a)(7) requires principal briefs not exceed 30 pages unless it contains no more than the greater of 14,000 words or 1,300 lines of text if a monospaced face is used. Reply briefs must contain no more than half of the type volume specified in Rule 32(a)(7)(B)(i). In cross-appeals the appellants' principle brief - 30 pages or 14,000 words; appellees' combined principle brief/response brief - 35 pages or 16,500 words; appellants' combined reply brief responsive brief - 30 pages or 14,000 words; appellees' reply brief in cross appeal - 15 pages or 7000 words. Fed. R. App. P. 28.1(e). Briefs

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submitted under the word count sections of the rules require a certificate of compliance that the brief complies with the volume limitations. **NOTE TO USERS OF MICROSOFT WORD** – Be advised that the word counting feature of some early versions of Microsoft Word may not properly count words in footnotes. Counsel must assure that they count all words in the brief before certifying compliance with Rule 32 or 28.1. See *DeSilva v. DiLeonardi*, 185 F.3d 815 (7th Cir. 1999). Briefs less than 30 pages do not require a certificate of compliance. Fed. R. App. P. 32(a)(7)(C).

14. The brief must be within the volume limitations. Oversize briefs are rarely allowed and only with prior leave of the court. An oversize brief should not be submitted without prior order of the court. *Fleming v. County of Kane*, 855 F.2d 496 (7th Cir. 1988).
15. If you are filing an ANDERS brief, it must be accompanied by a separate motion to withdraw and should include the prisoner's identification number as well as his/her place of incarceration. Cir. R. 51(b).
16. Briefs of Amicus Curiae must comply with the above requirements of Fed. R. App. P. 32 as well as the additional requirements of Fed. R. App. P. 29 and must avoid unnecessary repetition.
17. Filing briefs or appendices "under seal" is not generally favored and is allowed only with prior leave of court. If allowed, parties must file public briefs but may add sealed supplements if the motion to file under seal is granted. *In The Matter Of Grand Jury Proceedings: Victor Krynicki*, 983 F.2d 74 (7th Cir. 1992).
18. The full contents of the brief, from the cover to the conclusion, and available appendix materials must be provided in digital form (upload, CD-ROM or disk). Cir. R. 31(e)(1). Uploading via the internet is preferred. Counsel should see the court's web site, <http://www.ca7.uscourts.gov>, for instructions.
19. Digital version *must* be in Portable Document Format (PDF) generated by printing to PDF from the original word processing file. Scanned PDF image files are not allowed. Cir. R. 31(e)(3).
20. A disk or CD-ROM, if used, must be clearly labeled. Cir. R. 31(e)(2).
21. The disk/CD must not contain a virus and counsel must verify that the disk/CD is virus free before submitting it to the clerk.
22. If electronic version is not provided, the brief must contain a certification that a digital version is not available (i.e. brief produced on a typewriter). Cir. R. 31(e)(1).
23. The appellant's or petitioner's main (opening) brief must contain, attached to the brief, a "**required short appendix.**" See Circuit Rules 30(a) and (b).
24. Appellant's brief must contain counsel's affirmative statement that all materials required by Cir. R. 30(a) & (b) are included in the appendix. Cir. R. 30(d). False

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certificate under Rule 30(d) is sufficient reason for substantial fines or summary affirmance. *United States v. Rogers*, 270 F.3d 1076, 1084 (7th Cir. 2001); *In re: Mix, Disciplinary Case D-134*, 901 F.2d 143 (7th Cir. 1990); *Mortell v. Mortell*, 887 F.2d 1322 (7th Cir. 1989).

25. The appendix must not contain copies which have notations or underlining on documents or court opinions, *Allen v. Seidman*, 881 F.2d 375, 381 (7th Cir. 1989), and generally should not contain fax copies of documents. Two sided copies of documents should not be inserted in an appendix. All documents must be on single sided copies. Fed. R. App. P. 32 (b)
26. The appendix must not contain the Presentence Investigation (PSI). Although counsel may have a copy in their possession, the material is confidential and should not be duplicated. Counsel should ascertain if the original sealed PSI has been transmitted to the court as part of the record on appeal.
27. If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in the appendix.
28. If pertinent and significant authorities come to a party's attention after the party's brief has been filed- or after oral argument but before decision-a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited. Citations of supplemental authority require an original and ten copies of the authority and accompanying letter. Counsel may not cite or discuss a case at oral argument unless the case has been cited in one of the briefs or drawn to the attention of the court and opposing counsel by filing under Fed. R. App. P. 28(j). The filing may be made on the day of oral argument, if absolutely necessary, but should be made sooner. See Cir. R. 34(g).
29. A petition for rehearing en banc must contain the required statement at the beginning of the petition why the appeal is of exceptional importance or with what decision of the United States Supreme Court, the Seventh Circuit or another court of appeals the panel decision is claimed to be in conflict. Fed. R. App. P. 35(b).
30. A Petition for Rehearing en Banc must include a disclosure statement. Cir. R. 35.

NOTE: Although every effort is made to keep this checklist current, counsel are encouraged to contact the clerk's office with any questions or concerns. Counsel are also advised that a draft brief may be sent to the Clerk's Office for review prior to duplication.