

## VI. Filing Your Brief

You should make your arguments regarding the merits of the case in your opening brief if you are the petitioner or appellant, or in your response brief if you are an appellee or respondent. You will have the opportunity to file either an informal or a formal brief, but not both. All briefs must comply with the Federal Circuit Rules and the Federal Rules of Appellate Procedure (Rules 28, 30, 31, and 32).

The court's website includes sample formal brief covers.

To set accurate deadlines, the Clerk's Office asks that you file a notice as soon as possible advising whether you intend to file a formal or informal brief because the deadlines for each brief are different. FCR 31. In unrepresented cases, the Clerk's Office presumes you will file an informal brief unless otherwise stated.

### A. Informal Brief

#### 1. When to File an Informal Brief

If you are the petitioner or appellant in a petition for review or appeal from an agency, board, or commission, you must file an informal brief within 21 days after the certified list or index is served. If you are the appellant in an appeal from a court, you must file an informal brief within 21 days after the appeal is docketed. The other party may file either an informal brief within 21 days or a formal brief within 40 days after service of your informal brief. FCR 31(e). If you file a brief before the certified list or index is served and filed, the other party's time runs from service of the certified list or index. You may choose to file an informal reply brief within 14 days after service of the other party's brief.

If you are a respondent or appellee, you must file an informal response brief within 21 days after service of the appellant or petitioner's opening brief.

#### 2. Informal Brief Requirements

Non-electronic filers must submit three copies of your informal brief to this court. The court prefers that one copy be unbound but secured with a paper clip, binder clip, or other removable means. The other copies must be bound, though the court permits them to be secured by a single staple in the upper left-hand corner in lieu of any other binding if possible. You may elect to wait to send required paper copies beyond your original submission until after the court requests them. Refer to FCR 25(c)(3). Electronic filers must submit the brief through the court's electronic filing system but will still be

expected to provide three bound paper copies after the court requests them.

As appellant or petitioner, you must file an informal opening brief using [Forms 11, 12, 13, 14, 15, or 16](#) (depending on the type of case). If you are the respondent or appellee, you may file an informal response brief using [Form 11A](#).

The informal brief form is the only permissible substitute for the formal brief required by the Rules. Each form contains instructions for preparing and filing an informal brief. Please remember to complete all sections of the form.

An informal brief should be typewritten, but block printing or legible handwriting is permitted. The informal brief, together with any extra pages needed for answers that will not fit on the form, may not exceed 30 typewritten, double-spaced pages with 1-inch margins, or their equivalent in content. Continuation pages must be single-sided and use 8.5" x 11" paper. Any typed pages must use a 14-point font size or larger.

Your informal brief and continuation pages must be filed using the appropriate form identified above and must include the following:

- Your case number and case name
- The title of the filing (Informal Opening Brief)
- Your answers to all form questions
- Your signature
- Certificate of service, if applicable

If you file the informal brief form and do not submit any extra pages needed for answers, the form will be considered your brief. Any documents submitted after the filing of your brief that you wish to have considered as your brief or with your brief must be submitted with a motion to replace your brief or a motion to supplement or correct the brief. The same applies if you choose to file an informal reply brief.

### 3. Appendix to an Informal Brief

If you are the appellant or petitioner, you are responsible for supplying the court with an appendix consisting of materials that are part of your case record and referenced in your briefing. This appendix must, at a minimum, contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case. Other materials that are part of the record may be included if you refer to

them in your brief. You may attach these materials to your opening brief or choose to file the appendix seven days after filing your reply brief (or at the time your reply brief would have been due, should you choose not to file one). You should file three copies of the informal appendix if it is not bound to your brief. FCR 30(h). See the Practice Notes to Rule 24 (Proceeding on Original Record). The Clerk of Court is authorized to dismiss the case if you fail to file an appendix. FCR 30(a)(5).

As an unrepresented appellee or respondent, you are not required to prepare or file a separate appendix if you file an informal response brief.

## B. Formal Brief

### 1. When to File a Formal Brief

If you are the petitioner or appellant in a petition for review or appeal from an agency, board, or commission, you must file a formal brief within 60 days after the certified list or index is served. If you are the appellant in an appeal from a court, you must file a formal brief within 60 days after the appeal is docketed. The other party must file a formal response brief within 40 days after service of your formal brief or the certified list, whichever is later.

If you are a respondent or appellee, you must file a formal response brief within 40 days after service of the appellant or petitioner's opening brief, and you may not file any further briefs.

### 2. Formal Brief Requirements

If you elect to file a formal brief, the brief and appendix must comply with the strict requirements of the FRAP and FCR, or the brief and appendix will not be accepted.

Please refer to the following requirement guides at <http://www.cafc.uscourts.gov/contact/clerks-office/filing-resources>:

- [Quick Reference: Formal Brief Requirements](#)
- [Quick Reference: Appendix Requirements](#)

Non-electronic filers must submit six copies of your opening formal brief to this court. The court prefers that one copy be unbound for ease of scanning by the Clerk's Office. The other copies must be securely bound along the left margin and must lie flat when open, and the binding must not obscure any text. FRAP 32(a)(3); FCR 30(h). You may elect to wait to send required paper copies beyond your original submission until after the court requests them. Refer to FCR 25(c)(3). Electronic filers must submit the brief through the

court's electronic filing system, but they will still be expected to provide six bound paper copies after the court requests them.

### 3. Appendix to a Formal Brief

If you are the appellant or petitioner and choose to brief your case formally, you must also file an appendix that complies with FRAP 30 and FCR 30. Non-electronic filers must file six paper copies of the appendix with the court, and one additional paper copy must be served on each of the other parties. Electronic filers must submit six paper copies after the court requests them. The Clerk of Court is authorized to dismiss your case if you fail to file an appendix. FCR 30(a)(8).

A complete list of documents to include in your appendix can be found under FRAP 30 and FCR 30. You must make sure to include the entire docket sheet, certified list, or index from the proceedings below; the initial and final decision of the Merit Systems Protection Board; the final decision of another agency, board, or commission; the judgment and opinion of the trial court; or the rule or rules that are the subject of your petition for judicial review of the Veteran's Affairs rulemaking. If your case involves a patent, you must also include a copy of the patent in its entirety. You may include other record material in your appendix to the extent you refer to that material in your brief. Inclusion of material that is not required by the rules or referenced in the briefing is prohibited.

If you need access to the original record of the agency, board, commission, or court proceedings, you must contact that agency, board, commission, or court because the original record is not forwarded to this court. FCR 11(a) and 17(a).

If you are a respondent or appellee filing a formal brief in a case where the appellant or petitioner is represented by counsel, you should consult with that counsel to assist in preparing the appendix. See FCR 30(b). If you are a respondent or appellee in a case where the appellant or petitioner is unrepresented, you are authorized to file your own separate or supplemental appendix if the appellant or petitioner fails to file a compliant appendix. See FCR 30(e).

## C. Dismissal for Default

If you fail to file a brief or comply with other rules, the Clerk's Office may dismiss your case if you are the appellant or petitioner. FCR 25(h); FCR 31(d). However, if the appellee or respondent fails to comply with the rules, you are not entitled to the relief you seek solely by reason of that noncompliance. FRAP 31(c).