

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).

D. Filing a Reply Brief

After the other party has filed a response to your brief, as appellant or petitioner, you have the option to submit a reply brief. If you followed an informal briefing schedule, you may file an informal reply brief within 14 days after respondent or appellee's brief is served. FCR 31(e)(3). If you followed a formal briefing schedule, you may file a formal reply brief within 21 days after respondent or appellee's brief is served. FRAP 31(a). You are **NOT** required to file a reply brief. If you choose to file one, you must follow the same format and rules as with your opening brief except that your reply brief must be 15 pages or shorter. You may use [Form 17](#) for your informal reply brief.

As an appellee or respondent, you are not entitled to a brief beyond your formal or informal response brief.

VII. Filing a Motion

Motions are used to ask this court to do something, also known as "asking for relief." Motions are governed by FRAP 27 and FCR 27 (and not the Federal Rules of Civil Procedure). You may file a motion or a response to a motion from the other party. If you file a motion or response, it may not exceed 5,200 words if produced electronically, or 20 pages otherwise. FRAP 27(d)(2). When filing a motion, you are required to contact the opposing party to see if they will agree to the request (known as "consent"), and your motion should reflect whether the other party agrees or disagrees. FCR 27(a)(5). A party may respond to a motion, but in many instances, the court may act before the response is due. FRAP 27(b). Only one copy of a motion must be filed. If a party files a response to your motion, you may file a reply within seven days after the response is served. Any reply is limited to 2,600 words if produced electronically, or ten pages otherwise.

A. Motion Requirements

Your motion must include the following:

- Name of this court
- Caption
- Case number
- The title of the motion (the title should succinctly explain what you are asking for)
- Statement of other party's consent or opposition

- Statement regarding the relief sought and supporting legal grounds
- Your signature
- Certificate of service, if applicable

If necessary, you may attach relevant documents to your motion as exhibits, which do not count toward your page limit. Label all exhibits and attach them to your motion. FCR 27(d).

You will be notified when a decision has been made regarding a motion. You may check the status through your PACER account.

B. Sample Types of Motions

Below are examples of common motions and special procedures associated with filing them.

1. Motion to Extend Time

Motions to extend time to file a document should be received by the court at least seven days before the deadline for filing the document. FCR 26(a)(2).

2. Motion for Reconsideration, Vacatur, or Modification of an Order or Action

If you are adversely affected by an order of the court, you may file a motion for reconsideration, vacatur, or modification within 14 days of the order or action. FCR 27(j) and 45(b). If you would like to petition for rehearing from an adverse court decision on the merits of your case, please refer to FRAP 35 and 40, FCR 35 and 40, and the information included in this guide.

3. Motion for Reconsideration of Dismissal by Clerk of Court

The Clerk of Court may dismiss an appeal for failure to follow the Federal Rules of Appellate Procedure or the Federal Circuit Rules. Motions for reconsideration of a dismissal must be filed within 14 days after the issuance of the order of dismissal and may not exceed five pages. The motion must otherwise follow the guidelines under FRAP 27 and FCR 27. An unrepresented party may file an informal motion for reconsideration, which may be in the form of a letter, and must not exceed five typewritten double-spaced pages. A copy of the dismissal order must be attached to the motion. FCR 45(a).

4. Motion to Correct/Supplement

A motion to correct or supplement may be filed at any time and should specify what it is you would like to correct or supplement.

C. Responses to Motions

If the other party files a motion that you wish to oppose, you may file a response within ten days of the date the motion was served. A decision may be made on a motion before you have a chance to respond. Motions for extension of time are commonly acted on without waiting for a response. The court will not act on an opposed dispositive motion before the time to respond has expired. FRAP 27(b), FCR 27(b).

If a party files a response to a motion you submitted, you may file a reply to that response within seven days of the date the response was served.