

NRAP 30 - Proposed

RULE 30. APPENDIX TO THE BRIEFS

(a) Joint Appendix; Duty of the Parties. Counsel have a duty to confer and attempt to reach an agreement concerning a possible joint appendix. In the absence of an agreement, the parties may file separate appendices to their briefs.

(b) Contents of the Appendix. Except as otherwise required by this Rule, all matters not essential to the decision of issues presented by the appeal ~~shall~~must be omitted. Brevity is required; the court may impose costs upon parties or attorneys who unnecessarily enlarge the appendix.

(1) Transcripts. Copies of all transcripts that are necessary to the Supreme Court's or Court of Appeals' review of the issues presented on appeal ~~shall~~must be included in the appendix.

(2) Documents Required for Inclusion in Joint Appendix. In addition to the transcripts required by Rule 30(b)(1), the joint appendix ~~shall~~must contain:

(A) Complaint, indictment, information or petition (including all amendments);

(B) All answers, counterclaims, cross-claims and replies, and all amendments thereto;

~~(C) Pretrial-Relevant pretrial~~ orders;

(D) ~~All-Relevant~~ jury instructions given to which exceptions were taken, and excluded when offered;

(E) Verdict or findings of fact and conclusions of law with direction for entry of judgment thereon;

(F) ~~Any relevant Master's-master's~~ report, ~~if any,~~ in nonjury cases;

~~(G) Opinion;~~

Commented [WJD1]: The analog FRAP 30(a)(1) provides that the appendix must contain the following:

"(A) the **relevant** docket entries in the proceeding below;
(B) the **relevant** portions of the pleadings, charge, findings, or opinion;
(C) the judgment, order, or decision **in question**; and
(D) other parts of the record to which the parties wish to direct the court's attention."

As such, the subcommittee recommends incorporating similar limiting language providing that **relevant** documents must be included in the appendix.

(H) All judgments or orders ~~appealed from~~ being challenged on appeal;

(I) All notices of appeal; and

(J) Proof of service, if any, of:

(i) the summons and complaint;

(ii) written notice of entry of the judgment or order appealed

from;

(iii) post-judgment motions enumerated in Rule 4(a); and

(iv) written notice of entry of an order resolving any post-judgment motions enumerated in Rule 4(a).

(3) Appellant's Appendix. If a joint appendix is not prepared, appellant's appendix to the opening brief ~~shall~~must include those documents required for inclusion in the joint appendix under this Rule, and any other portions of the record essential to determination of issues raised in appellant's appeal.

(4) Respondent's Appendix. If a joint appendix is not prepared, respondent's appendix to the answering brief may contain any transcripts or documents which should have been but were not included in the appellant's appendix, and ~~shall~~must otherwise be limited to those documents necessary to rebut appellant's position on appeal which are not already included in appellant's appendix.

(5) Reply Appendix. Appellant may file an appendix to the reply brief which ~~shall~~must include only those documents necessary to reply to respondent's position on appeal.

(6) Presentence Investigation Report. If a copy of appellant's presentence investigation report is necessary for the Supreme Court's or Court of Appeals' review in a criminal ~~case and a copy of the report cannot be included~~

~~in the appendix~~, appellant ~~or respondent~~ shall must file a motion with the clerk of the Supreme Court within the time period for filing ~~an opening brief or fast track statement~~ the party's appendix, requesting that the court direct the district court clerk to transmit the report to the clerk of the Supreme Court in a sealed envelope. The motion must demonstrate that the report is necessary for the appeal.

Commented [WJD2]: Subcommittee recommends adoption of this language to ensure that both the appellant and respondent in criminal cases are able to request transmission of the PSI report.

(c) Arrangement and Form of Appendix. The appendix shall must be in the form required by Rule 32(b), shall must be bound separately from the briefs, and shall must be arranged as set forth in this Rule. Documents filed electronically must be filed in a searchable Portable Document Format (PDF), except that exhibits and attachments to a filed document that cannot be imaged in a searchable format may be scanned.

Commented [WJD3]: Language comes from Ninth Circuit Local Rule IA 10-(b).

(1) Order and Numbering of Documents. All documents included in the appendix shall must be placed in chronological order by the dates of filing beginning with the first document filed, and shall must bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below. Transcripts that are included in the appendix shall must be placed in chronological order by date of the hearing or trial. Each page of the appendix shall must be numbered consecutively in the lower right corner of the document.

(2) Page Limits; ~~Index of Appendix.~~ Each volume of the appendix shall must contain no more than 250 pages. ~~The appendix shall contain an alphabetical index identifying each document with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. The index shall preface the documents comprising the appendix. If the appendix is comprised of more than one volume, one alphabetical index for all~~

~~documents shall be prepared and shall be placed in each volume of the appendix.~~

(3) Cover. The cover of an appendix ~~shall~~must be white and ~~shall~~must contain the same information as the cover of a brief under Rule 32(a), but ~~shall~~must be prominently entitled “JOINT APPENDIX,” or “APPELLANT’S APPENDIX,” or “RESPONDENT’S APPENDIX” or “APPELLANT’S REPLY APPENDIX.”

(4) Indices to Appendix. ~~The party filing the appendix must prepare both an alphabetical index and a chronological index identifying each document in the appendix with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. These indices must be filed contemporaneously with the appendix as a separate document. The cover of the indices must contain the same information as the cover of a brief under Rule 32(a).~~

(d) Exhibits. Copies of relevant and necessary exhibits ~~shall~~must be clearly identified, and ~~shall~~must be included in the appendix as far as practicable. If the exhibits are too large or otherwise incapable of being reproduced in the appendix, the parties may file a motion requesting the court to direct the district court clerk to transmit the original exhibits. The court will not permit the transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the court’s review of the original exhibits is necessary to the determination of the issues.

(e) Time for Service and Filing of Appendix. A joint appendix ~~shall~~must be filed and served no later than the filing of appellant’s opening brief. An appellant’s appendix ~~shall~~must be served and filed with appellant’s opening brief. A respondent’s appendix ~~shall~~must be served and filed with

Commented [WJD4]: Subcommittee recommends that the alphabetical index appear only once to save space and prevent duplicative filings; Julie Ollom's proposed language addresses this concern.

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respondent's answering brief. If a reply brief is filed, any reply appendix ~~shall~~must be served and filed with the reply brief.

(f) Number of Copies to Be Filed and Served.

(1) Paper Copies. One paper copy of the appendix ~~shall~~must be filed with the clerk, and one copy ~~shall~~must be served on counsel for each party separately represented, unless the court orders otherwise.

(2) Electronic Copies. A party represented by counsel must submit every appendix on a CD-ROM, and serve a CD-ROM version on all opposing counsel, in addition to filing the required number of paper copies, unless the appendix has been electronically filed in the court or counsel certifies that submitting a CD-ROM version of the appendix would constitute extreme hardship.

(g) Filing as Certification; Sanctions for Nonconforming Copies or for Substantial Underinclusion.

(1) Filing an appendix constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the district court file. Willful or grossly negligent filing of an appendix containing nonconforming copies is an unlawful interference with the proceedings of the Supreme Court or Court of Appeals, and subjects counsel, and the party represented, to monetary and any other appropriate sanctions.

(2) If an appellant's appendix is so inadequate that justice cannot be done without requiring inclusion of documents in the respondent's appendix which should have been in the appellant's appendix, or without the court's independent examination of portions of the original record which should have been in the appellant's appendix, the court may impose monetary sanctions.

(h) Costs. Each party ~~shall~~must, initially, bear the cost of preparing its separate appendices. The appellant ~~shall~~must, initially, bear the cost of

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preparing a joint appendix; where several parties appeal from the same judgment or any part thereof, or there is a cross-appeal, the initial expense of preparing a joint appendix ~~shall~~must be borne equally by the parties appealing, or as the parties may agree.

(i) Pro Se Party Exception. This Rule does not apply to a party who is not represented by counsel. A pro se party ~~shall~~must not file an appendix except as otherwise provided in these Rules or ordered by the court. If the court's review of the complete record is necessary, the court will direct the district court to transmit the record as provided in Rule 11.