

RULE 28.1. CROSS-APPEALS

(a) **Applicability.** This Rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this Rule.

(b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for all purposes. If the notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) **Briefs.** In a case involving a cross-appeal:

(1) **Appellant's Opening Brief on Appeal.** The appellant ~~shall~~ must file an opening brief in the appeal. That brief must comply with Rule 28(a).

(2) **Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal.** The respondent ~~shall~~ must file a combined answering brief on appeal and opening brief on cross-appeal. That brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the respondent is dissatisfied with the appellant's statement.

Commented [JO1]: Subcommittee has question about applicability to fast track cases. Should this rule apply, or should there be a separate provision in the fast track rules that covers briefing in cross-appeals.

(3) Appellant’s Reply Brief on Appeal and Answering Brief on

Cross-Appeal. The appellant ~~shall~~must file a brief that responds to the opening brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(1)-(10) and (12), except that none of the following need appear unless the appellant is dissatisfied with the respondent’s statement in the cross-appeal:

(A) the jurisdictional statement;

~~(B) a the routing statement, setting forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls. If the appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;~~

(~~B~~C) the statement of the issues;

(~~C~~D) the statement of the case;

Commented [OJ2]: Seems unnecessary to repeat a jurisdictional statement in the combined reply/answer. I note FRAP does not require the equivalent brief to include a jurisdictional statement

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~~(DE)~~ the statement of the facts; and

~~(EF)~~ the statement of the standard of review.

(4) Respondent's Reply Brief on Cross-Appeal. The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(1)-(2) and (12) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. ~~The cover of the appellant's opening brief must be blue; the respondent's combined answering brief on appeal and opening brief on cross-appeal, red; the appellant's combined reply brief on appeal and answering brief on cross-appeal, yellow; the respondent's reply brief on cross-appeal, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan.~~ The front cover of a brief must contain the information required by Rule 32(a)(2). ~~A pro se party who is incarcerated is not required to comply with the provisions of this Rule regarding the color of the cover of a brief filed by that party.~~

(e) Length.

~~**(1) — (1) Noncapital Cases.**~~

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~~**Page or Type Volume Limitation.** Unless it complies with Rule 28.1(e)(2) and (3) or permission of the court is obtained under Rule 32(a)(7)(D), the appellant's opening brief must not exceed 30 pages; the respondent's combined answering brief on appeal and opening brief on cross appeal, 40 pages; the appellant's combined reply brief on appeal and answering brief on cross appeal, 30 pages; and the respondent's reply brief, 15 pages.~~

~~**(2) Type Volume Limitation.**~~

~~**(A) Opening brief or combined reply/answering brief.** The appellant's opening brief or the appellant's combined reply/answering brief is acceptable if it complies with the page or type-volume limitations for an opening brief under Rule 32(a)(7)(A).~~

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~~**(2) (i) it contains no more than 14,000 words; or**~~

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~~**(ii) it uses a monospaced typeface and contains no more than 1,600 lines of text.**~~

~~**(Bii) Combined answering brief/opening brief.** In a noncapital case, The respondent's combined answering and opening brief is acceptable if it does not exceed 40 pages.~~

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~~(i) it contains no more than 18,500 words; or if~~

~~(ii) it uses a monospaced typeface, and contains no more than 1,600,750 lines of text. In a capital case, these limitations are~~

~~100 pages, 46,670 words, or 4,330 lines of text.~~

~~(3) (Ciii) Reply brief. The respondent's reply brief is acceptable if it complies with the page or type-volume limitations for a reply brief under Rule 32(a)(7)(A) contains no more than half of the type-volume specified in Rule 28.1(c)(2)(A).~~

~~(3) Certificate of Compliance. A brief submitted pursuant to this Rule shall comply with Rule 32(a)(8). (2) Capital Cases.~~

~~Page or Type Volume Limitation:~~

~~(i) Opening brief or combined reply/answering brief. The appellant's opening brief or the appellant's combined reply/answering brief is acceptable if it complies with the page or type volume limitations for an opening brief under Rule 32(a)(7)(B).~~

~~(ii) Combined answering brief/opening brief. The respondent's combined answering and opening brief is acceptable if it~~

Commented [OJ3]: This didn't match the equivalent as stated in Rule 32.

Commented [SA4]: The subcommittee did not want an entire section for cross-appeals in capital cases, which are rare. Without an exception for capital cross-appeals, however, this subsection would drastically reduce the limits permitted under Rule 32.

The subcommittee also considered omitting specific limitations for capital cross-appeals and letting parties move for excess words/pages under NRCP(a)(7)(D) in those rare cases.

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Commented [JO5]: I recommend removing this from here and making it its own subsection (g) below.

Commented [OJ6]: Need to add this, otherwise, if you have a cross-appeal in a capital case, you end up getting less pages or type-volume limitation than is permitted under Rule 32 for capital cases.

~~does not exceed 100 pages, contains no more than 46,670 words, or if it uses a monospaced typeface, contains no more than 4,330 lines of text.~~

~~(iii) **Reply brief.** The respondent's reply brief is acceptable if it complies with the page or type volume limitations for a reply brief under Rule 32(a)(7)(B).~~

(f) Time to Serve and File a Brief. Unless the court orders a different briefing schedule in a particular case, briefs in cross-appeals must be served and filed as provided in this Rule. Motions for extensions of time are governed by Rule 31(b).

(1) All Cross-Appeals Except ~~Child—Custody—and Visitation~~Termination of Parental Rights.

~~(A) The appellant's opening brief, shall be filed and served within 120 days after the date on which the appeal is docketed in the Supreme Court. All subsequent briefs shall be filed and served within 30 days of service of the opposing party's brief.~~

~~(B) the respondent's combined answering brief on appeal and opening brief on cross-appeal, within 30 days after the appellant's opening brief is served;~~

~~_____ (C) the appellant's combined reply brief on appeal and answering brief on cross appeal, within 30 days after the respondent's combined answering brief on appeal and opening brief on cross appeal is served; and~~

~~_____ (D) the respondent's reply brief on cross appeal, within 14 days after the appellant's combined reply brief on appeal and answering brief on cross appeal is served.~~

(2) Cross-Appeals Involving ~~Child Custody or Visitation~~ Termination of Parental Rights.

~~_____ (A) †The appellant's opening brief, shall be filed and served within 90 days after the date on which the appeal is docketed in the Supreme Court.;~~

~~_____ (B) †The respondent's combined answering brief/~~on appeal and~~ opening brief ~~on cross appeal~~ and appellant's combined reply brief/answering brief, shall be filed and served within 21 days of service of the opposing party's brief, ~~after the appellant's opening brief is served;~~~~

~~_____ (C) the appellant's combined reply brief on appeal and answering brief on cross appeal, within 21 days after the respondent's combined~~

Commented [JO7]: If commission determines that this Rule also applies to fast track appeals, this section will need to be renamed and committee may want to reconsider times for filing briefs.

~~answering brief on appeal and opening brief on cross appeal is served;~~
~~and~~

~~(D) The respondent's reply brief on cross-appeal shall be filed~~
~~and served,~~ within 14 days after service of the appellant's combined reply
brief ~~on appeal and~~ answering brief ~~on cross appeal is served~~.

(g) Certificate of Compliance. A brief submitted pursuant to
this Rule must include the certificate of compliance required by Rule
32(a)(9).

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