

## RULE 31. FILING AND SERVICE OF BRIEFS

(a) **Time for Serving and Filing Briefs.** Unless a different briefing schedule is provided by a court order ~~or in a particular case or by these or any other court rules~~, parties ~~shall~~must observe the briefing schedule set forth in this Rule.

(1) **All Appeals Except Termination of Parental Rights Child Custody, Visitation, or and Direct-Appeal Capital Cases.**

(A) The appellant ~~shall~~must serve and file the opening brief ~~within~~no later than 120 days after the date on which the appeal is docketed in the Supreme Court.

(B) The respondent ~~shall~~must serve and file the answering brief ~~within~~no later than 30 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed ~~within~~no later than 30 days after the respondent's brief is served.

(2) **~~Child Custody or Visitation~~Termination of Parental Rights Cases.** If an appeal is taken from any district court order ~~affecting the custody or visitation of minor children, including actions in~~ an action seeking termination of parental rights:

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(A) The appellant ~~shall~~must serve and file the opening brief ~~within~~no later than 90 days after the date on which the appeal is docketed in the Supreme Court.

(B) The respondent ~~shall~~must serve and file the answering brief ~~within~~no later than 21 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed ~~within~~no later than 14 days after the respondent's brief is served.

(D) The ~~Supreme Court or Court of Appeals~~ may order oral argument at its discretion. Where oral argument is not ordered, the matter ~~shall~~will be submitted for decision on the briefs and the appendix ~~within~~no later than 60 days of the date that the final brief is due.

**(3) ~~Direct~~ Direct Appeals in Capital Cases.** On direct appeal from a judgment of conviction and sentence of death:

(A) The appellant ~~shall~~must serve and file the opening brief ~~within~~no later than 120 days from the date that the record on appeal is filed in the Supreme Court.

(B) The respondent ~~shall~~must serve and file the answering brief ~~within~~no later than 60 days after the appellant's brief is served.

(C) The appellant's reply brief must be served and filed within no later than 45 days after the respondent's brief is served.

~~(4) Postconviction Appeals in Capital Cases. On appeal from a judgment or order resolving an application for postconviction relief in a capital case:~~

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~~(A) The appellant shall serve and file the opening brief within 120 days after the date on which the appeal is docketed in the Supreme Court.~~

~~(B) The respondent shall serve and file the answering brief within 30 days after service of the opening brief.~~

~~(C) The appellant's reply brief must be served and filed within 30 days after the respondent's brief is served.~~

**(b) Extensions of Time for Filing Briefs.**

**(1) Telephonic Requests.** No telephonic extensions are permitted in termination of parental rights or direct-appeal capital cases. In all other cases, unless the Court orders otherwise, A party may request by telephone a single 1430-day extension of time for filing a brief under Rule 26(b)(1)(B). A telephonic request may be made only if there have been no prior requests for extension of time for filing the brief. No further

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extensions for filing the brief may will be granted except on motion under Rule 31(b)(~~32~~).

~~(2) Stipulations. No extensions of time by stipulation are permitted in child custody, visitation, or capital cases. Unless the court orders otherwise, in all appeals except child custody, visitation, or capital cases, the parties may extend the time for filing any brief for a total of 30 days beyond the due dates set forth in Rule 31(a)(1) by filing a written stipulation with the clerk of the Supreme Court on or before the brief's due date. No extensions of time by stipulation are permitted in child custody, visitation, or capital cases.~~

**(32) Motions for Extensions of Time.** A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.

**(A) Contents of Motion.** A motion for extension of time for filing a brief shall must include the following:

- (i) ~~The date w~~When the brief is due and was first due;
- (ii) The number of extensions ~~of time~~ previously granted (including a 1430-day telephonic extension), ~~and if extensions were granted, the original date when the brief was due~~;

(iii) Whether any previous ~~requests for~~ extensions ~~of time~~ have been denied or denied in part;

(iv) The reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances ~~under Rule 26(b)(1)(B)~~, if required); and

(v) The length of the extension requested and ~~the date on which~~when the brief would become due.

**(B) Motions in All Appeals Except ~~Child Custody, Visitation, or Termination of Parental Rights and Direct-Appeal Capital Cases.~~** Applications for extensions of time beyond that to which the parties are permitted ~~to stipulate~~ under Rule 31(b)(~~2~~1) are not favored. The court will grant an initial motion for extension of time for filing a brief, including after any telephonic extension, only upon a ~~clear~~ showing of good cause. The court ~~shall~~will not grant additional extensions of time except upon a showing of extraordinary and compelling circumstances ~~and extreme need~~.

**(C) Motions in ~~Child Custody or Visitation Cases~~Termination of Parental Rights Cases.** The court will grant a motion for extension of time for filing a brief in ~~child custody or~~

~~visitation~~termination of parental rights cases only in extraordinary and compelling cases that present unforeseeable circumstances ~~justifying an extension of time.~~

**(D) Motions in Direct-Appeal Capital Cases.** The ~~Supreme Court~~court may grant an initial motion for an extension of time of up to 60 days for filing a brief in a capital case upon a showing of good cause. The court ~~shall~~will not grant additional extensions of time except upon a showing of extraordinary and compelling circumstances ~~and extreme need.~~

**(c) ~~Number of Copies to Be Filed and Serviced.~~** ~~An original and 2 copies of each brief shall~~must be filed with the clerk unless the court by order in a particular case ~~shall~~must direct a different number, ~~and 1~~A copy ~~of each brief shall~~must be served on counsel for each party separately represented. The ~~original brief~~ must be signed in compliance with Rules 25(a)(5), ~~28.232(a)(9),~~ and 32(d).

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**(d) Consequences of Failure to File Briefs or Appendix.**

**(1) Appellant.** If an appellant fails to timely file an opening brief or appendix ~~within the time provided by this Rule, or within the time extended,~~ a respondent may move for dismissal of the appeal or the court

may dismiss the appeal on its own motion. If an appellant has not filed a reply brief, oral argument will be limited as provided by Rule 34(c). This Rule does not apply to postconviction appeals in which the appellant is not represented by counsel. In those cases, the court may decide the appeal based on the record without briefing as provided in Rule 34(g).

**(2) Respondent.** ~~At a~~ respondent who fails to timely file an answering brief, ~~respondent~~ will not be heard at oral argument unless except by permission of the court grants permission, and such. ~~The failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made.~~ Unless the court has ordered the respondent to file an answering brief as provided in Rule 46A(c), this Rule does not apply to appeals in which the appellant is not represented by counsel.

~~**(c) Supplemental Authorities.** If When pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument, but before a decision a, a party may promptly advise the Supreme Court or Court of Appeals court by filing and serving a notice of supplemental authorities, setting forth the citations. The notice shall must refer either to the page of a brief or to a~~

~~point argued orally provide references to the page(s) of the brief that is being supplemented. The notice shall must further state concisely and without argument the legal proposition for which each supplemental authority is cited. The notice may not raise any new points or issues. Any response must be made promptly and must be similarly limited. If filed less than 14 days before oral argument, a notice of supplemental authorities shall will not be assured of consideration by the court at oral argument; provided, however, that, but no notice of supplemental authorities shall will be rejected for filing on the that ground that it was filed less than 14 days before oral argument.~~

**Commented [PJK5]:** I suggest we move this to NRAP 28. It has always seemed an odd fit in this rule and it is in NRAP 28 so practitioners familiar with FRAP would look for it there most likely. Also suggest edits to track FRAP 28j wording.