

## **RULE 31. FILING AND SERVICE OF BRIEFS**

**(a) Time for Serving and Filing Briefs.** Unless a different briefing schedule is provided by court order or rule, including fast track rules, parties must observe the briefing schedule set forth in this Rule.

**(1) All Appeals Except Termination of Parental Rights and Direct-Appeal Capital Cases.**

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

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

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

**(2) Termination of Parental Rights Cases.** If an appeal is taken from any district court order in an action seeking termination of parental rights:

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

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

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

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

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

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

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

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

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


**(1) Telephonic Requests.** No telephonic extensions are permitted for filing any brief.

**(2) Streamlined Extensions of Time.** 

**(A)** If a party has not previously filed a motion for an extension of time to file an opening, answering, reply or cross-appeal brief under subsection (b)(3) of this rule, that party may obtain a single streamlined extension of time to file that brief not to exceed 30 days. The streamlined extension of time is not available:

- i. if a case has previously been expedited,
- ii. in a case challenging the termination of parental rights, or
- iii. when a party is seeking emergency or injunctive relief.

**(B)** A party may request a streamlined extension by completing Form \_\_\_ and submitting it for filing in compliance with Rule 25(a)(2). A request must be made on or before the brief's due date. Timeliness of the request is governed by Rule 25(a)(2).

**(C)** The Clerk will approve  requests that comply with the rule and will provide the parties with a new schedule. The Clerk will

inform parties not eligible for relief under this subsection as to the appropriate method to obtain relief.

**(D)** No further extensions for filing the brief will be granted except on motion under Rule 31(b)(3).

**(3) 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. Timeliness of the request is governed by Rule 25(a)(2).

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

- (i) When the brief is due and was first due;
- (ii) The number of extensions previously granted (including any streamlined extension);
- (iii) Whether any previous extensions have been denied or denied in part;
- (iv) The reasons or grounds why an extension is necessary; and
- (v) The length of the extension requested and when the brief would become due.

**(B) Motions in All Appeals Except Termination of Parental Rights Cases.** Applications for extensions of time beyond that to which the parties are permitted under Rule 31(b)(1) are not favored. The court will grant a motion for extension of time for filing a brief only upon a showing of good cause.

**(C) Motions in Termination of Parental Rights Cases.** The court will grant a motion for extension of time for filing a brief in termination of parental rights cases only in extraordinary and compelling circumstances.

**(c) Service.** A copy of each brief must be served on counsel for each party separately represented. The brief must be signed in compliance with Rules 25(a)(5), 32(a)(9), and 32(d).

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

**(1) Appellant.** If an appellant fails to timely file an opening brief or appendix, 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.** A respondent who fails to timely file an answering brief will not be heard at oral argument unless the court grants permission, and such failure may be treated as a confession of error. 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.

**Comment:** New Rule 31 clarifies when to file various kinds of briefs and amends the process for extending those deadlines.

Subsection (a) clarifies that Rule 31 does not govern the briefing schedule in fast track appeals. Because appeals involving child custody and visitation are now governed by Rule 3E, subsection (a)(2) now governs the briefing schedule only for termination of parental rights cases. Former subsection (a)(4) (post-conviction appeals in capital cases) is now subsumed within subsection (a)(1), which adheres to the same deadlines the eliminated subsection.

Subsection (b)(1) replaces the provisions on telephonic and stipulated extensions with a 30-day streamlined extension, akin to the streamlined extension available in the Ninth Circuit under 9th Cir. R. 31-2.2(a).

Subsection (b)(2) eliminates inconsistent standards for extensions by motion. In cases except termination of parental rights cases, a motion must demonstrate good cause. In termination of parental rights cases, the motion must demonstrate extraordinary and compelling

circumstances. The court retains discretion to prescribe another standard in particular cases.

Supplemental authorities, formerly addressed in subsection (e), now appear in Rule 28(j).

