

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 ~~**[in a particular case or by these or any other court rules]**~~ or rules, including fast track rules, parties **[shall]** must observe the briefing schedule set forth in this Rule.

(1) **All Appeals Except ~~[Child Custody, Visitation, or]~~ Termination of Parental Rights 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:

(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]**~~ court 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-Appeal[s] ~~[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:~~

~~(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 for filing any brief. ~~[A party may request by telephone a single 14-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 extensions for filing the brief may be granted except on motion under Rule 31(b)(3).]~~

~~[(2) Stipulations. 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.]~~

(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 Rule 31(b)(3), 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 the Streamlined Request for Extension of Time to File Brief Form that is available on the Nevada Supreme Court website 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 of the Supreme Court will approve requests that comply with this Rule and will provide the parties with a new schedule. The clerk will inform parties not eligible for relief under Rule 31(b)(2) 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 motion is governed by Rule 25(a)(2).

(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 14-day telephonic]~~ any streamlined 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 Capital]~~ Termination of Parental Rights Cases. Applications for extensions of time beyond that to which the parties are permitted ~~[to stipulate]~~ under Rule 31(b)(2) are not favored. The court will grant ~~[an initial]~~ a motion for extension of time for filing a brief only upon a ~~[clear]~~ showing of good cause. ~~[The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.]~~

(C) Motions in ~~[Child Custody or Visitation]~~ 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 ~~[eases that present unforeseeable]~~ circumstances ~~[justifying an extension of time]~~.

~~[(D) Motions in Capital Cases. The Supreme 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 not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.]~~

(c) ~~[Number of Copies to Be Filed and Served]~~ Service. ~~[An original and 2 copies of each brief shall be filed with the clerk unless the court by order in a particular case shall direct a different number, and 1]~~ A copy of each brief ~~[shall]~~ must be served on each unrepresented party and on counsel for each ~~[party]~~ separately represented party. The ~~[original]~~ brief must be signed in compliance with Rules 25(a)(5), ~~[28.2(a)]~~ 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 ~~[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(e).]~~ 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. ~~[If a]~~ A respondent who fails to timely file an answering brief~~[, respondent]~~ will not be heard at oral argument ~~[except by permission of]~~ unless 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.

~~[(e) Supplemental Authorities. When pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision, a party may promptly advise the Supreme Court or Court of Appeals by filing and serving a notice of supplemental authorities, setting forth the citations. The notice shall provide references to the page(s) of the brief that is being supplemented. The notice shall 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 not be assured of consideration by the court at oral argument; provided, however, that no notice of supplemental authorities shall be rejected for filing on the ground that it was filed less than 14 days before oral argument.]~~

REVIEWING NOTE

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

Subdivision (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, subdivision (a)(2) now governs the briefing schedule only for termination of parental rights cases. Former subdivision (a)(4) (postconviction appeals in capital cases) is now subsumed within subdivision (a)(1), which adheres to the same deadlines as the eliminated subdivision.

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 and direct-appeal capital 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).