

OFFICE OF THE CLERK  
**UNITED STATES COURT OF APPEALS**  
FOR THE FIRST CIRCUIT

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CLERK

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**NOTICE OF ADOPTION OF AMENDMENT TO LOCAL RULE 30.0**

The United States Court of Appeals for the First Circuit previously provided notice of proposed amendments to Local Rule 30.0 ("Appendix to the Briefs"). The Court solicited comments and all comments were carefully considered. The Court hereby provides notice of the adoption of the amendments, with some additional minor modifications. A copy of Local Rule 30.0 with the amendments incorporated is attached. A notice to counsel is also attached.

The amendments and notice give guidance to counsel as to what documents should typically be included in the appendix. In the near future, the district courts will cease printing and transmitting a full paper record in cases where appellant is represented by counsel. Thus, for the convenience of the court, counsel will need to ensure that the addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal. The notice to counsel may be modified from time to time as experience warrants.

Other federal and local rules should be carefully consulted and read in conjunction with Loc. R. 30.0. Local Rule 28.0 provides detailed guidance as to the contents of the addendum. Fed. R. App. P. 30 and 32 provide additional guidance as to the form and content of the appendix. Material included in the addendum need not be reproduced in the appendix. To help keep the size of the appendix from being unwieldily, the appendix should be printed on both sides of each page.

An appendix will be necessary in all cases where appellant is represented by counsel, including cases proceeding in forma pauperis. The cost of the appendix is reimbursable where appellant's counsel is appointed under the Criminal Justice Act.

The effective date of the amendments is May 14, 2009.

April 14, 2009

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Richard Cushing Donovan  
Clerk of Court

## Local Rule 30.0. Appendix to the Briefs

- (a) **Number of Copies.** Pursuant to Fed. R. App. P. 30(a)(3), only five (5) copies of the appendix need be filed with the clerk and on motion, for cause shown, parties may be allowed to file even fewer copies.
- (b) **Reproduction.** The appendix should be printed on both sides of each page.
- (c) **Contents.** The appendix must include any relevant portions of the pleadings, transcripts, exhibits, or other parts of the record referred to in the briefs as may be necessary to understand the issues on appeal and to preserve context. Material included in the addendum bound with appellant's brief need not be reproduced in the appendix. Guidance to counsel as to the contents of the appendix is set forth in a Notice to Counsel Regarding Contents of the Appendix, which accompanies the briefing schedule and is available on the court's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov). The required and optional contents of the addendum are set forth in Local Rule 28.0(a).
- (d) **In Forma Pauperis.** All pro se appeals proceeding in forma pauperis shall be considered on the record on appeal as certified by the clerk of the district court without the necessity of filing an appendix unless otherwise ordered by this court in a specific case. An appendix is required in all other appeals unless the court rules otherwise pursuant to Fed. R. App. P. 30(f). Although an appellant may be reimbursed for the cost of preparing an appendix where appellant's counsel is appointed under the Criminal Justice Act, counsel in consolidated multi-defendant appeals should coordinate, to the extent possible, to file a consolidated appendix.
- (e) **Translations.** The court will not receive documents or cited opinions not in the English language unless translations are furnished. Whenever an opinion of the Supreme Court of Puerto Rico (or other Commonwealth of Puerto Rico court) is cited in a brief or oral argument which does not appear in the bound volumes in English, an official, certified or stipulated translation thereof with three conformed copies shall be filed. Partial translations will be accepted if stipulated by the parties or if submitted by one party not less than 30 days before the oral argument. Where partial translations are submitted by one party, opposing parties may, prior to oral argument, submit translations of such additional parts as they may deem necessary for a proper understanding of the holding.
- (f) **Sanctions.** This court may impose sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix as provided for in Local Rule 38.0.
- (g) **Inclusion of Sealed Material in Appendices.** Appendices filed with the court of appeals are a matter of public record. If counsel conclude that it is necessary to include sealed material in appendix form, then, in order to maintain the confidentiality of materials filed in the district court or agency under seal, counsel must designate the sealed material for inclusion in a supplemental appendix to be filed separately from the regular appendix and must file a specific and timely motion in compliance with Local Rules 11.0(c)(2), 11.0(c)(3), and 11.0(d) asking the court to seal the supplemental appendix.

## **Notice to Counsel Regarding Contents of the Appendix**

In cases where appellant is represented by counsel, the district courts will no longer transmit the full record except upon the rare request of the circuit clerk. Accordingly, counsel should ensure that the addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal. At the same time, the appendix should not be unduly large. Pursuant to Fed. R. App. P. 30(a)(2), counsel may cite to parts of the record not included in the appendix.

The appendix should be printed on two sides of each page. Transcript portions and other portions of the record are not considered relevant merely because they are referred to in the Statement of the Case or Statement of Facts, if not otherwise necessary for an understanding of the issues on appeal. The following is a list of items that typically should be included in the appendix if not already in the addendum:

- The district court docket report;
- The notice of appeal;
- The complaint or indictment, as finally amended;
- Where the appeal is from the grant or denial of a motion, those portions of any affidavits or exhibits submitted in the district court essential to resolution of an issue on appeal;
- Where an appeal challenges sufficiency of the evidence to support a verdict or other determination (including an argument that a finding is clearly erroneous), the evidence of record that is relevant to the challenged determination;
- Where an issue on appeal is based upon a jury instruction given or refused, the instruction or proposed instruction, any other relevant portion of the jury charge, and the specific portions of the transcript recording any discussion by the court or counsel involving the instruction, including the ruling or order, and objections;
- Where an issue of appeal is based on written exhibits (including affidavits), the exhibit or portion thereof necessary to resolve the issue;
- Where an issue on appeal concerns matters raised at a suppression hearing or is otherwise based upon a challenge to the admission or exclusion of evidence, relevant portions of the transcript, including any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;
- If the appeal is a collateral attack on a criminal conviction, copies of all relevant opinions by any federal court or state appellate court previously rendered in the criminal prosecution, any appeal, and any earlier collateral attack;
- Where an issue on appeal concerns matters raised at a change of plea hearing, a transcript of the proceeding and any plea agreement;
- If the appeal is a sentencing appeal, the sentencing hearing transcript and pre-sentence report, the latter of which should be filed in a separate sealed volume; and
- In a proceeding on a petition for review of an administrative agency decision, the relevant portions of the administrative record.

Pro se appeals proceeding in forma pauperis will be considered on the record without need to file an appendix unless otherwise ordered by the Court. Appendices are required in all other appeals. Although the cost of the appendix is reimbursable where appellant's counsel is

appointed under the Criminal Justice Act, counsel in consolidated multi-defendant appeals should coordinate, to the extent possible, to file a joint appendix.

Other federal and local rules should be carefully consulted and read in conjunction with Loc. R. 30.0. Fed. R. App. P. 30 and 32 provide additional guidance as to the form and content of the appendix. Local Rule 28.0 provides detailed guidance as to the form, content, and size limit of the addendum. Items which are required to be in the addendum include the judgments, decisions, rulings, or orders appealed from, including any supporting explanation (e.g., a written or transcript opinion), and in addition, where the district court or agency whose decision is under review was itself reviewing or acting upon the decision of a lower-level decision-maker; that lower-level decision as well (e.g., a recommended decision by a magistrate judge or an initial decision by an administrative law judge). Local Rule 28.0(b) lists optional, but encouraged items. Material included in the addendum need not be reproduced in the appendix.

Sealed or otherwise non-public items should not be included in a public appendix or addendum, but rather should be filed in a separate sealed volume. See Local Rules 11.0(d)(1), 28.0(c), 30(g). For example, a pre-sentence report in a criminal case should not be included in a public appendix or addendum. Where a judgment of criminal conviction is required to be included in the addendum, the statement of reasons should be filed in a separate, sealed volume. See Local Rule 28.0(c). Finally, counsel should comply with the privacy protection requirements of Fed. R. App. P. 25(a)(5) and should make appropriate redactions. For more information on redaction requirements see the Notice of Electronic Availability of Case Information on the First Circuit's website at [www.ca1.uscourts.gov](http://www.ca1.uscourts.gov).