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FOR THE FIRST CIRCUIT

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NOTICE OF PROPOSED AMENDMENT TO LOCAL RULE 30.0

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes the attached amendments to Local Rule 30.0 ("Appendix to the Briefs"). Additions are noted in *italic* print; deletions are noted in ~~strikeout~~ print. The proposed amendments are accompanied by a proposed notice to counsel regarding contents of the appendix.

In the near future (though not until some time after the amendment is in effect), the district courts will cease printing and transmitting a full paper record in counseled cases. Thus, for the convenience of the court, counsel will need to ensure that the printed addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal.

A printed appendix will be necessary in all counseled appeals, including those proceeding in forma pauperis. The cost of the appendix is reimbursable where appellant's counsel is appointed under the Criminal Justice Act.

The proposed amendments and notice give guidance to counsel as to what documents should typically be included 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. Other proposed amendments to the rule are minor and largely self-explanatory.

Existing subsection (b) is deleted since it is unnecessary for the court to have a copy of the designation, statement of issues, or counter-designation served pursuant to Fed. R. App. P. 30(b) unless and until a dispute arises that requires court intervention.

An amendment to the section on translations clarifies that a party must provide a translation of any Commonwealth of Puerto Rico court opinion cited in a brief or at oral argument and not just opinions of the Supreme Court of Puerto Rico. The same is true of any other document or opinion cited which is not in the English language.

The Court of Appeals invites public comments on the proposed amendments to the local rule and the proposed notice to counsel regarding the contents of the appendix. Comments should be received by January 23, 2009, and addressed to:

Office of the Clerk, U.S. Court of Appeals for the First Circuit
John Joseph Moakley United States Courthouse
1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210

December 10, 2008

Richard Cushing Donovan

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) Filing of Designation.** One copy of any designation, statement of issues, or counter-designation served pursuant to Fed. R. App. P. 30(b), or any notice of agreement thereunder, shall be simultaneously filed with the clerk.~~
- (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. The required and optional contents of the addendum are set forth in Local Rule 28.0(a).*
- (c) (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. 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.*
- (d) (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.*
- (e) (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.*

(f) (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.

Proposed Notice to Counsel Regarding Contents of the Appendix

In counseled cases, 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 printed addendum and appendix, combined, include those parts of the record necessary to understand the issues on appeal. At the same time, the printed 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 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 supports 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 social security appeal or petition for review of an administrative agency decision, 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.