

United States Court of Appeals For the First Circuit

NOTICE TO COUNSEL REGARDING CONTENTS OF THE APPENDIX

The district courts no longer transmit the full record except upon the rare request of the circuit clerk. Although the electronic district court record is available to the court of appeals whether or not individual documents are transmitted, litigants 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 filed electronically. The clerk's office will then review the electronically tendered appendix and, if it is compliant with federal and local rules, send a notification accepting the appendix as filed and setting a deadline for the filing of paper copies. Paper copies of 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 will be considered on the record without need to file an appendix unless otherwise ordered by the Court. In such cases, litigants can expect that in lieu of an appendix the court will rely on the electronic district court record whether or not individual documents are transmitted, as well as any paper documents or exhibits transmitted to the court of appeals by the district 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 1st Cir. R. 30.0. Fed. R. App. P. 30 and 32 provide additional guidance as to the form and content of the appendix. 1st Cir. R. 28.0 provides detailed guidance as to the form, content, and size limit of the addendum. Items 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). 1st Cir. R. 28.0(a)(2) 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 and should not be filed electronically, but rather should be filed in a separate sealed volume in paper only. See 1st Cir. R. 11.0(d)(1), 28.0(c), 30.0(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 1st Cir. R. 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.