

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. BOX 193939
SAN FRANCISCO, CALIFORNIA 94119-3939

M E M O R A N D U M

TO: Parties in Cross-Appeals

FROM: Clerk's Office of the U.S. Court of Appeals
for the Ninth Circuit

SUBJECT: Briefing Schedules in Cross-Appeals

This memorandum will serve as a Ninth Circuit interpretation and clarification of the cross-appeals briefing schedule referenced in the Federal Rules of Appellate Procedure (FRAP). Regarding the filing of briefs, the parties in cross-appeals should generally refer to FRAP and Circuit Rules 28 and 32.

In cross-appeals in this court each of the two adversary positions is allowed to file two briefs. Unless the parties stipulate otherwise, the party filing the first appeal should file the first brief as cross-appellant/appellee. This brief is due by court order approximately 40 days from the filing of the Certificate of Record in the U.S. Court of Appeals. The party filing the subsequent or second appeal (appellee/cross-appellant in these cases) shall have 30 days to file a brief which shall contain the issues and argument in the cross-appeal as well as answering the opening brief of the party who first appealed (cross-appellant/appellee). The third brief should be filed by the party who first appealed (cross-appellant/appellee) within 30 days from the filing of brief number two by the appellee/cross-appellant. This third brief is filed as a reply brief in the principal appeal and as an answering brief in the cross-appeal. The fourth brief is filed by the appellee/cross-appellant only as a reply brief in the cross-appeal. It is optional and should be filed within 14 days of the filing of the combined brief of cross-appellant/appellee.

If the parties agree, a written stipulation may be filed in this court which exchanges the role of the adversary parties in filing the foregoing briefs.

The following chart is offered as a synopsis of the briefing schedule.

A formal motion is required in order to request an enlargement of time in order to file any brief in the cross-appeals briefing schedule, except a party may receive a single oral extension of no more than 14 days within which to file a brief. Likewise a formal motion is required in order to file an "oversized" brief and any such motions must be in conformance with FRAP and Circuit Rule 32.

CHART OF BRIEFING SCHEDULE FOR CROSS-APPEALS

BRIEF No.	BY	RELATIONSHIP OF BRIEF TO APPEAL #1	RELATIONSHIP OF BRIEF TO APPEAL #2	COLOR OF COVER	TIME LIMIT*	PAGE LIMIT*
1	cross-appellant/appellee (first appealing party) Excerpts required	opening		blue	40 days from the filing of the Certificate of Record by the Clerk of the U.S. Court of Appeals or by Time Schedule Order	14,000 words or 30 pgs.
2	appellee/cross-appellant (second appealing party) Excerpts required	appellee's (answering) brief [combined]	opening briefs]	red	30 days from the service of brief #1 or by Time Schedule Order	16,500 words or 35 pgs.
3	cross-appellant/appellee (first appealing party)	reply [combined]	appellee's (answering) brief briefs]	Yellow	30 days from the service of brief #2 or by Time Schedule Order	14,000 words or 30 pgs.
4	appellee/cross-appellant (second appealing party)		reply	gray	14 days from the service of brief #3	7,000 words or 15 pgs.

* See FRAP and Circuit Rule 32.