



Advanced Appellate Practice: Federal Procedure & Novel State Issues

March 12, 2019
6:00 p.m. – 8:00 p.m.

CBA Law Center
New Britain, CT

CT Bar Institute Inc.

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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Advanced Appellate Practice: Federal Procedure & Novel State Issues (EYL190312)

Tuesday, March 12, 2019

Agenda

5:30 p.m. – 6:00 p.m. Registration and Light Dinner

6:00 p.m. – 6:40 p.m.

Federal Appeals

- **Filing the Notice of Appeal**
- **Post Appeal Motion Practice**
- **Record**
- **Briefs and Joint Appendix**
- **Oral Argument**
- **Post Judgment Motion Practice**

Speaker:

Dana M. Hrelie, Horton Dowd Bartschi & Levesque P.C., Hartford

6:40 p.m. – 6:50 p.m.

Break

6:50 p.m. – 7:30 p.m.

Connecticut / State Court Appeals

- **Filing the Appeal**
- **Post Appeal Motion Practice**
- **Record**
- **Briefs and Appendices**
- **Oral Argument**
- **Post Judgment Motion Practice**
- **Case Manager**

Speaker:

Laura Pascale Zaino, Halloran Sage, Hartford

7:30 p.m. – 8:00 p.m. **Q&A**

Faculty Biographies



Dana M. Hrelc is a partner at Horton, Dowd, Bartschi & Levesque, P.C. in Hartford, Connecticut. She is admitted to practice in Connecticut and New York state courts, as well as in the United States District Court for the District of Connecticut, the United States Courts of Appeals for the Second Circuit, the Third Circuit, the Eleventh Circuit, and the Federal Circuit, and the Supreme Court of the United States. She is presently admitted to practice *pro hac vice* in the Supreme Court of the U.S. Virgin Islands. Attorney Hrelc joined Horton, Dowd, Bartschi & Levesque in August of 2009 after serving as a law clerk for the Honorable Christine S. Vertefeuille of the Connecticut Supreme Court.

Attorney Hrelc represents clients in civil, family, juvenile, and criminal appeals before the Connecticut appellate courts as well as the Supreme Court of the U.S. Virgin Islands, the Third Circuit Court of Appeals, the Second Circuit Court of Appeals, the Federal Circuit Court of Appeals, and the Supreme Court of the United States. She has experience working on appellate matters in the Eleventh Circuit. Attorney Hrelc regularly consults with clients and attorneys on civil, family, and complex litigation matters and provides assistance at all stages of litigation—including both pre- and post-judgment. She was selected as a Connecticut and a New England Super Lawyers Rising Star in Appellate Practice each year from 2013 to 2018. In 2017, she was selected as one of three Finalists for Connecticut Attorney of the Year by the *Connecticut Law Tribune*.

Attorney Hrelc earned a Juris Doctor from the University of Connecticut School of Law in 2008 and a Bachelor of Arts with distinction from the University of North Carolina at Chapel Hill in 2005. At the University of Connecticut School of Law, she was the Managing Editor of the Connecticut Law Review. Attorney Hrelc is active in the American Bar Association, where she serves in the House of Delegates and is the Immediate Past Chair of the ABA Young Lawyers Division. She is also a former Chair of the Connecticut Bar Association Young Lawyers Section. Attorney Hrelc served as a Trustee on the University of Connecticut School of Law Board of Trustees and is currently both a Fellow with the American Bar Foundation and a Fellow with the Connecticut Bar Foundation.



Laura Zaino is a partner at Halloran Sage in Hartford. She is a litigator who focuses primarily on appellate advocacy and her experience spans a broad range of practice areas. She represents individual and corporate clients in both state and federal court throughout all stages of the litigation process.

As a member of Halloran Sage’s appellate practice group, Laura has handled a wide variety of appeals, including million-dollar contract disputes, property boundary disputes, municipal liability and taxation issues, professional malpractice claims, foreclosure, dram shop claims and personal injury matters. Laura also works closely with and assists trial counsel with preserving issues and perfecting the record for appeal.

Laura is also committed to the firm’s pro-bono initiative and, in that regard, serves as appointed counsel for children in child protection cases through Lawyers for Children America.

Laura has served as an adjunct professor at the University of Connecticut School of Law in its Moot Court Program. She is also an active member of the CBA. She currently serves on the executive committee of its

Appellate Advocacy Section, has lectured at its annual meeting and has served, and will again be serving, as a faculty member for its Appellate Advocacy Institute. Laura is also the incoming chair of the Connecticut Supreme Court Historical Society's membership committee.

Ms. Zaino received her BA, *magna cum laude* from Wheaton College and her JD from the University of Connecticut School of Law. Ms. Zaino began her association with Halloran Sage as a law clerk while she was in law school.

**ADVANCED APPELLATE PRACTICE:
FEDERAL PROCEDURE & NOVEL STATE ISSUES CLE**

FEDERAL APPEALS

Keep in mind: *Check both the Circuit's Local Appellate Rules (LAR) in addition to the Federal Rules of Appellate Procedure (FRAP) at every step of the appeal. If they are different, the Circuit's LAR apply.*

I. FILING THE NOTICE OF APPEAL

A. Timing/deadlines

FRAP 4(a)(1) Notice of appeal must be filed within **thirty days** from entry of judgment.

FRAP 3(a)(1) Notice of appeal is filed directly with the District Court.

Practice Tip: The appeal period is **jurisdictional**, unlike in state courts. "The courts have uniformly held that the taking of an appeal within the prescribed time is mandatory and jurisdictional." *United States v. Robinson*, 361 U.S. 220, 229 (1960).

FRAP 4(a)(5) MET (filed with District Court) – A party filing a motion for extension of time **before the appeal period expires or within the 30 days after the appeal period expired** may show either excusable neglect or good cause to receive an extension of time.

Practice Tip: This is how the appeal begins.

B. District Court Jurisdiction while appeal is pending

Filing a notice of appeal **divests the District Court of jurisdiction**. This is unlike practice in state courts.

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

There is typically **no automatic stay** of execution of the District Court's judgment pending appeal. Thus, a federal court appellant must take

affirmative action to ensure that the execution of the judgment will be stayed, which is contrary to the general rule in state court where an appellant typically receives an automatic stay of execution pending appeal.

Practice Tip: See below on Motions for Stay.

C. Procedure for multiple appellants – Joint appeals, Consolidation

FRAP 3(b)(1) Where two or more parties are entitled to appeal from a judgment, and their interests make joinder practicable, they can file a joint notice of appeal. They then proceed as a single appellant.

Practice Tip: Filing a joint notice of appeal typically means that the joining appellants must file a single, consolidated brief subject to the normal type-volume limitations at the briefing stage of the proceeding. Check the Circuit's LAR.

FRAP 3(b)(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

D. Cross appeals

FRAP 4(a)(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within **fourteen days** after the date when the first notice was filed.

Practice Tip: The party who files the notice of appeal first is the appellant. If the notices of appeal are filed on the same day, the party who is the plaintiff in the below proceeding is the appellant. FRAP 28.1.

Practice Tip: The briefing order/schedule for cross appeals is different in federal court than state court. See below for specifics.

E. Amended notices of appeal

FRAP 4(a)(4)(B) A party intending to challenge a District Court's post-judgment decision on a motion or a judgment's alteration or amendment, the party must file an amended notice of appeal within **the same time limitations** as an initial notice of appeal (FRAP 4).

There is no additional fee for an amended notice of appeal.

Practice Tip: Amended notices of appeal are rare because of the divestiture of the District Court's jurisdiction with the filing of the initial notice of appeal. You might only need to file one if you prematurely file a notice of appeal before the District Court's decision on a pending post-verdict/post-judgment motion, such as a motion for attorney's fees or a motion for new trial.

II. POST APPEAL MOTION PRACTICE

A. Motion Practice

FRAP 27(a)(2) Contents of a motion: (A) Must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it; and (B) If there are accompanying documents necessary to support the motion, they must be served and filed with the motion. A separate brief supporting a motion must not be filed.

A party has **10 days** to respond to a motion. A reply to a response must be filed within **7 days**. FRAP 27(a)(3) & (4).

FRAP 28(d)(2) In general, motions are limited to 5,200 words. A reply is limited to 2,600 words.

There will be no oral argument on motions unless the court orders otherwise. FRAP 27(e).

Practice Tip: Check the Circuit's LAR for how to file the motions and how many copies you need to file. These differ by Circuit.

Example: FRAP 27(d)(3) requires filing the original + 3 paper copies; the 3d Circuit requires only the electronic filing with no paper copies.

Practice Tip: There are strict guidelines for the page size, typeface, margin size, structure and format of motions. *Check the rules: FRAP 27.*

B. Motions for extension of time

FRAP 26(b) Permits extensions of time for good cause. This rule does not apply to METS related to the time to file a notice of appeal (FRAP 4).

The timing requirements for a MET to file a brief differ by Circuit.

2d Cir 27.1(f) Absent an extraordinary circumstance, such as serious personal illness or death in counsel's immediate family, the court will not grant a MET to file a brief. A party filing a MET to file a brief must move as soon as practicable after the extraordinary circumstance arises.

3d Cir 34.1 A party's first MET to file a brief must set forth good cause. A first request for an extension of 14 days or less may be made by telephone or in writing. Counsel should endeavor to notify opposing counsel in advance of making the request. The clerk, not the court, grants or denies the extension. A first request must be made at least 3 days in advance of the due date for filing the brief. Subsequent METs must be in writing. Only one MET to file a reply brief may be granted.

Practice Tip: Always contact all counsel before making a request or filing a MET to file a brief in order to provide notice to all parties of your intent to request extra time. The rule does not require consent, and is often acted upon before an objection may be received. That being said, even where not required by the rules, doing so is a professional courtesy and best practice.

C. Motions to dismiss

As in state court, subject matter jurisdiction may be challenged by way of a motion to dismiss at any time in a proceeding. *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). It may even be raised multiple times in the same proceeding. See, e.g., *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988).

There is no specific rule governing motions to dismiss. Unlike in state court, where claims that an appeal is untimely filed must be filed within 10 days after the filing of the appeal, the untimeliness of an appeal may be raised at any time or by the court *sua sponte*.

Practice Tip: Best practices advise filing a motion to dismiss as soon as possible after the reason for dismissal becomes known.

D. Motions for stay

Practice Tip: As noted above, there is typically **no automatic stay** of execution of the District Court's judgment pending appeal.

FRAP 8(a)(1) A party must ordinarily move first in the District Court for a stay of the judgment or order pending appeal.

FRAP 8(a)(2) If moving for a stay first in the District Court is impracticable or if the District Court has denied the motion, a party may file a motion for stay in the Circuit Court of Appeals.

Practice Tip: Usually, a panel of the Circuit Court considers the motion, although in the exceptional case in which time requirements make that impracticable, the motion may be made to and considered by a single judge.

Practice Tip: In rare cases, the U.S. Supreme Court will consider an application for stay of a decision by a District Court pending an appeal in the Court of Appeals. See *Northern California Power Agency v. Grace Geothermal Corp.*, 469 U.S. 1306, 1308 (1984) (Rehnquist, J., in chambers). Applications for stay are made to the Circuit Justice of the Court. 1st Circuit: Justice Breyer; 2d Circuit: Justice Ginsburg; 3d Circuit: Justice Alito, Jr.)

E. Motions to seal

There is a general **presumption of openness** of courtrooms and court documents. That presumption "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Superior Court of California, Riverside Cty.*, 464 U.S. 501, 510 (1984).

Practice Tip: Check Circuit LAR; each Circuit handles these motions differently.

Practice Tip: The existence of an order sealing documents in the District Court does not necessarily mean the material will remain sealed in the Circuit Court of Appeals.

Best Practice: If documents were sealed in the District Court and you would like to include them in the Appendix or refer to them on appeal, file a new motion to seal in the Circuit Court.

F. Motions to Certify Question of State Law

P.B. § 82.1 CT Supreme Court may answer questions of law certified to it by a federal court if the answer may be determinative of an issue in pending litigation in the certifying court and if there is no controlling appellate decision, constitutional provision, or statute of this state.

Practice Tip: The FRAP have no specific guidelines or procedures on motions to certify. Review the Circuit LAR for guidance.

2d Cir 27.2 A party may move to certify a question of state law by filing a separate motion or by including a request for certification in its brief.

Practice Tip: Best practices advise filing the motion before or concurrent with filing your appellant's opening brief. The Court will typically wait until oral argument to consider it, but may act sooner.

III. Record

FRAP 10 Composition of record on appeal:
(1) The original papers and exhibits filed in the District Court;
(2) The transcript of proceedings, if any; and
(3) A certified copy of the docket entries prepared by the District Court.

FRAP 10(b) Transcripts must be ordered by appellant within **14 days** of filing the notice of appeal. Ordering party pays.

The District Court Clerk is responsible for forwarding the completed record to the Circuit Court after a notice of appeal is filed. FRAP 11. The Circuit Court Clerk is responsible for docketing the appeal and filing the record upon receiving it from the District Court Clerk. FRAP 12.

FRAP 30(a)(2) Parts of the record may be relied on by the court or the parties even though not included in the appendix.

Practice Tip: See below re: the appendix. Because the record includes the entirety of the below proceedings, and because the court and the party may rely on parts of the record not included in the appendix, it is not necessary to be over-inclusive when compiling the appendix on appeal.

FRAP 28(e) References to the record in briefs should be either to the appendix or, if to an unreproduced part of the record, the reference must be to the page of the original document. Example = Answer p. 7, or Motion for Judgment p. 2.

IV. Briefs & Joint Appendix

A. Appellant's Brief

- Due 40 days after record is filed FRAP 31(a)
 - *Practice Tip*: Call Case Manager after the appeal has been docketed; Circuit Clerk generally issues briefing order that sets the due dates well beyond the initial 40 days.
 - *Practice Tip*: 2d Cir LAR 31.2: within 14 days of record being filed or receipt of last transcript, appellant must notify clerk in writing of the due date that it wants for its opening brief, must be within 91 days. If no written request is made, default is 40 days.
- Must contain: FRAP 28(a)
 - Corporate disclosure statement (FRAP 26.1)
 - Table of contents
 - Table of authorities
 - Jurisdictional statement
 - Statement of the issues
 - Concise statement of the case
 - Summary of the argument
 - Argument with separate standard of review for each issue
 - Short conclusion
- Certifications at end: FRAP 32(g)
 - Of compliance with type-volume. Must state number of words.
 - Of service (usually electronic through EC/EMF)
 - *Practice Tip*: Check LAR. Circuit Courts usually have their own specific requirements for additional certifications (bar admission, virus check).
- Typeface: proportionally-spaced face; in a plain, roman style FRAP 32
- Blue cover FRAP 32
- Copies (check LAR for Circuit-specific requirements):
 - 25 copies of each brief + 2 for each counsel/party FRAP 31
 - 2d Circuit: Electronic filing + 6 paper copies 2d Cir 31.1
 - 3d Circuit: Electronic filing + 10 paper copies 3d Cir 31.1
- Limits (check LAR for Circuit-specific requirements):
 - 13,000 words FRAP 32
 - 2d Circuit: 14,000 words 2d Cir 32.1
- Use party names' or "defendant" / "plaintiff," not "appellant", etc. FRAP 28(d)
- For other details check FRAP 28 & 32.

B. Appellee's Brief

- Due 30 days after appellant's brief is served FRAP 31(a)
 - *Practice Tip:* 2d Cir LAR 31.2: within 14 days of filing of appellant's brief, appellee must notify clerk in writing of the due date that it wants for its responsive brief, must be within 91 days. If no written request is made, default is 30 days.
- Must contain: FRAP 28(b)
 - Corporate disclosure statement (FRAP 26.1)
 - Table of contents
 - Table of authorities
 - Summary of the argument
 - Argument
 - Short conclusion
 - ****May contain statements of jurisdiction, issues, case, standards of review if appellee is dissatisfied with appellants' statement.**
- Certifications at end: FRAP 32(g)
 - Of compliance with type-volume. Must state number of words.
 - Of service (usually electronic through EC/EMF)
 - *Practice Tip:* Check LAR. Circuit Courts usually have their own specific requirements for additional certifications (e.g., bar admission, virus check).
- Typeface: proportionally-spaced face; in a plain, roman style FRAP 32
- Red cover FRAP 32
- Copies (check LAR for Circuit-specific requirements):
 - 25 copies of each brief + 2 for each counsel/party FRAP 31
 - 2d Circuit: Electronic filing + 6 paper copies 2d Cir 31.1
 - 3d Circuit: Electronic filing + 10 paper copies 3d Cir 31.1
- Limits (check LAR for Circuit-specific requirements):
 - 13,000 words FRAP 32
 - 2d Circuit: 14,000 words 2d Cir 32.1
- Use party names' or "defendant" / "plaintiff," not "appellant", etc. FRAP 28(d)
- For other details check FRAP 28 & 32.
- An Appellee who fails to file a brief will not be heard at oral argument without the court's permission. FRAP 31(c)

C. Appellant's Reply Brief

- Due 21 days after appellant's brief is served FRAP 31(a)
 - ****This change is new, effective Dec. 1, 2018.**
 - *Practice Tip:* 2d Circuit still permits only 14 days to file a reply brief. 2d Cir LAR 31.2.
- Must contain: FRAP 28(b)
 - Table of contents
 - Table of authorities

- Certifications at end: FRAP 32(g)
 - Of compliance with type-volume. Must state number of words.
 - Of service (usually electronic through EC/EMF)
 - *Practice Tip*: Check the Circuit's LAR for additional certifications.
- Typeface: proportionally-spaced face; in a plain, roman style FRAP 32
- Gray cover FRAP 32
- Copies (check LAR for Circuit-specific requirements):
 - 25 copies of each brief + 2 for each counsel/party FRAP 31
 - 2d Circuit: Electronic filing + 6 paper copies 2d Cir 31.1
 - 3d Circuit: Electronic filing + 10 paper copies 3d Cir 31.1
- Limits (check LAR for Circuit-specific requirements):
 - 6,500 words FRAP 32
 - 2d Circuit: 7,000 words 2d Cir 32.1
- Use party names' or "defendant" / "plaintiff," not "appellant", etc. FRAP 28(d)
- For other details check FRAP 28 & 32.

D. Briefs in Cross-Appeals

FRAP 28.1 The party who files the notice of appeal first is the appellant. If the notices of appeal are filed on the same day, the party who is the plaintiff in the below proceeding is the appellant.

Procedure: Appellant files principal brief first. Blue cover; 13,000 word limit; due 40 days after record is filed.

Appellee files principal & responsive brief in one. Red cover; 15,300 word limit; due 30 days after appellant's brief is filed.

Appellant files response & reply brief in one. Yellow cover; 13,000 word limit; due 30 days after appellee's brief is filed.

Appellee files reply brief. Gray cover; 7,500 word limit; due 21 days after appellant's brief is filed. No further briefs.

Practice Tip: Check the Circuit LAR. In the 2d Circuit, the word limits are longer: 14,000 for appellant's briefs, 16,500 for appellee's brief, 7,000 for appellee's reply brief. The due dates may also be different by Circuit.

E. Joint Appendix

It is the **Appellant's responsibility** to compile, bind, file and pay for the Joint Appendix. FRAP 30(a).

Practice Tip: The cost of the Joint Appendix is taxable. FRAP 30(b)

Cover: If separately bound, must be white. FRAP 32.

Format: Must have a table of contents. FRAP 30.

References in brief: JA__.

One volume or two? Check with Circuit LAR.

2d Cir 32.1(b) An appendix that exceeds 300 pages must be divided into separate volumes no larger than 300 pages. TOC must be detailed, including the sequential page numbers where each document is located. Must provide a description of each document; designation solely by exhibit number is insufficient.

2d Cir 32.1(c) If appendix, exclusive of orders/judgments being appealed, exceeds 300 pages, then the parties must file a Special Appendix containing the orders/judgments being appealed and the text of any significant statute/rule/etc. May be an addendum at the end of the brief or separately bound volume designated "Special Appendix."

Number to be filed (check with Circuit LAR):

- 10 copies with brief + 1 per counsel/party FRAP 30(a)
- 2d Circuit: electronically file + 6 paper copies 2d Cir 30.1
- 3d Circuit: electronically file + 4 paper copies 3d Cir 30.1

The Joint Appendix **must** contain: FRAP 30(a)

- Relevant docket entries from the proceeding below;
- Relevant portions of pleadings, charge, findings, or opinion;
- The judgment, order or decision being appealed; and
- "[O]ther parts of the record to which the parties wish to direct the court's attention."

Excluded material: FRAP 30(a)

- Memoranda of law in the District Court unless they have "independent relevance."
- *Practice Tip:* Check the Circuit LAR. Circuit Courts are sometimes more specific as to what should be excluded.

FRAP 30b) "The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court."

FRAP 30(b) Determining the contents of the Appendix means working with the other side. The parties are encouraged to work together to agree on the contents.

What if there is a **dispute**?

FRAP 30(b) If the appellant considers any part of the record designated by the appellee to be unnecessary, the appellant may advise the appellee “who must then advance the cost of including those parts.”

Practice Tip: If the appellee refuses to advance the cost of including the disputed parts of the appendix, it is possible for the appellant to file the joint appendix without those disputed parts. When doing so, the appellant should advise the appellee that it should file a supplemental appendix containing the disputed documents with its responsive brief. The appellant should then advise the Case Manager of the situation.

If a portion of the appendix is or must be sealed:

- Check Circuit LAR!
- 2d Cir 25.1(j)(2): a sealed document or documents that are the subject of a motion to seal are exempt from electronic filing requirements and must be filed by paper form with the clerk. Within 7 days, a redacted version must be filed electronically.
- 3d Cir 30.3(b): records sealed in District Court and not unsealed by order of the court must not be included in the paper appendix; must be filed in a separate sealed envelope.
- *Practice Tip:* You may also need to file an accompanying motion to seal that portion of the appendix, even if the documents were sealed in the District Court and have not been unsealed by order of the court. A sealing order in the District Court does not necessarily carry over to the Circuit Court for the appeal.

V. Oral Argument

Federal Circuit Courts of Appeal generally do not hear oral argument in every case.

FRAP 34(a)(2) Oral argument “must be allowed” in every case unless a panel of 3 judges unanimously agree that it is unnecessary for any one of three reasons (it is frivolous, the dispositive issue has already been authoritatively decided, or the decisional process would not be significantly aided by oral argument).

FRAP 34(a)(1) Any party may file a statement explaining why oral argument should, or need not, be permitted.

Circuit courts often set their own rules about oral argument.

2d Cir 34.1 Within 14 days after the filing of the last appellee's brief, all parties must file an Oral Argument Statement form. Not filing one signifies that the party does not seek oral argument.

3d Cir 34.1 Any party may file a statement with the court setting forth the reasons why oral argument should be heard. Must be filed with the clerk within 7 days after the filing of the appellee's brief. Must set forth amount of argument time sought.

Location: The Second Circuit hears cases in New York City. The Third Circuit hears cases in Philadelphia, with rotating panels every May and December visiting the U.S. Virgin Islands.

Scheduling: Oral argument is scheduled by convenience of the court, usually within **1 to 3 months** after the appellee's brief is filed.

Length: Set by the Court. The clerk notifies the parties ahead of time. Usually between 8 to 12 minutes each side (not each party).

The Court typically hears cases in panels of three judges, unless the case is heard en banc (which is rare).

- A petition for an en banc hearing in the first instance may be filed by the date the appellant's brief is due. FRAP 36(c).

VI. Post Judgment Motion Practice

A. Petitions for Panel Rehearing or Rehearing En Banc

FRAP 35 Hearing or rehearing en banc may be ordered by a majority of the circuit judges in regular active service. It is not favored and will not be ordered unless en banc consideration (1) is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.

The attorney filing the petition must sign a specific statement that one of the two conditions is met.

FRAP 40(a) Must be filed within 14 days after entry of judgment.

No answer is permitted unless requested by the court.

Practice Tip: There are Circuit specific limitations and requirements. Check the Circuit LAR.

B. Mandate

This is the mechanism by which the Circuit court closes the appeal and transfers jurisdiction to another court.

FRAP 41 The mandate consists of a certified copy of the judgment, a copy of the Circuit Court's opinion, and any direction about costs. Must issue 7 days after the time to file a petition for rehearing expires, or 7 days after the entry of an order denying a timely petition for panel or en banc rehearing.

The mandate is effective as of the time it is issued.

FRAP 41(d) A party may move to stay the mandate pending the filing of a petition for writ of certiorari in the U.S. Supreme Court. Must show that the petition would present a substantial question and that there is good cause for a stay.

C. Petitions for Writ of Certiorari, filed with U.S. Supreme Court

USSC Rule 13 Must file petition for writ of certiorari to review a judgment within **90 days** after entry of the judgment – not issuance of the mandate. Motions for rehearing toll the start of the 90-day period.

Four of the nine justices are required to grant a petition for writ of certiorari. This is referred to as the "rule of four." The Court typically grants 100 to 150 of the more than 7000 petitions that are presented to it each year.

There is a fee and there are requirements for what must be included. Check the USSC rules specifically for these requirements.

**ADVANCED APPELLATE PRACTICE: FEDERAL PROCEDURE & NOVEL STATE
ISSUES CLE**

CONNECTICUT / STATE COURT APPEALS

Keep in mind: *20 days run quickly. 10 days fly.*

I. FILING THE APPEAL

A. Timing/deadlines

P.B. § 63-1 Generally “appeal must be filed within **twenty days** of the date notice of the judgment or decision is given.”

P.B. § 66-1 MET – trial judge, if not stat/legis prohibited – **20 days**

Potential Pitfall: New appeal period may be created by the filing of certain motions within the appeal period that “if granted, would render the judgment, decision or acceptance of the verdict ineffective”

i.e. timely motion to open the judgment or motion to reargue pursuant to PB 11-11.

But, motion reargue motion to open (or any motion that would, in the first instance, render the judgment ineffective) – or a motion seeking clarification or modification as opposed to alteration – will not create a new appeal period.

B. Trial Court Jurisdiction while appeal is pending

Unlike the federal and most state trial courts, the Connecticut trial courts have plenary authority to issue orders within their jurisdiction while appeal is pending. *Ruiz v. Victory Properties*, 180 Conn. App. 818, 832 n. 13 (2018)

If the subsequent order grants the relief sought on appeal, the appeal may become moot. *RAL Mgmt., Inc. v. Valley View Assocs.*, 278 Conn. 672, 682 (2006).

It is well established that a trial court properly may open a judgment while an appeal is pending, even to address the issue raised on appeal. *Ahneman v. Ahneman*, 243 Conn. 471, 482–83, 706 A.2d 960 (1998), and cases cited therein. *RAL Mgmt., Inc.*, 278 Conn. at 682.

C. Procedure for multiple appellants – Joint appeals, Consolidation

P.B. § 61-7 Two or more plaintiffs or defendants in the same case may file jointly or severally

Joint appeal: One entry fee
Generally, one brief and appx. *for both appellants and appellees*
May move for permission to file separately
Brief = right to argue
Multiple briefs ≠ extended argument time

Consolidation: Both AC and SC, upon motion or *sua sponte*, may order
No refund

D. Cross appeals

P.B. § 61-8 Any appellee aggrieved by judgment decision appealed may file cross appeal within **10 days** from the filing of the appeal.

No entry fee

Potential Pitfall: Cross appeal or alt. ground for affirmance
Appellee who wishes to attack the judgment/result in any way **MUST** file a cross appeal.
Different result = cross appeal
Same result = Alt. ground

E. Amended appeals

P.B. § 61-9 If TC makes decision after appeal is filed that appellant would like reviewed, amended appeal within **20 days** from issuance of notice of decision

II. POST APPEAL MOTION PRACTICE

A. Motions to dismiss

P.B. § 66-8 Any claim that an appeal (or writ of error) should be dismissed, whether based on lack of jurisdiction, failure to

file papers within the time allowed or other defect, shall be made by motion to dismiss the appeal (or writ).

A motion to dismiss an appeal that claims any defect other than lack of jurisdiction must be filed within **10 days** after the filing of the appeal.

But: If the ground alleged for dismissal of an appeal or writ of error, other than a lack of jurisdiction, subsequently arises, a motion to dismiss must be filed within **10 days** after such ground for dismissal arises.

Potential Pitfall: Waiver

B. Motions to stay – to terminate stay

P.B. §§ 61-11, 61-12, 61-13

General overview – topic in and of itself

Rules expressly address: non-criminal, criminal, family, foreclosure

Automatic versus discretionary

P.B. § 61-11 Stay of Execution in Noncriminal cases

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the CT Supreme Court), and Section 71-7 (petitions for certiorari by the United States Supreme Court)

P.B. § 61-12 Discretionary stays

In non-criminal matters in which the automatic stay provisions of 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the superior court pending appeal shall be filed in the trial court.

Effects of Stay: A stay affects the entire judgment, even those parts that are not attacked on appeal.

BUT, if appeal is taken from a portion of a judgment that is severable from the rest of the judgment, the appeal does not stay execution on the remainder.

When in doubt, be proactive and/or creative. A party filing a motion to terminate automatic stay does not by doing so concede that order is automatically stayed.

Potential Pitfalls: Proceeding despite stay – actions/results void
Delay
Not requesting stay = moot
Not immediately appealable = no automatic stay

REVIEW of stay order P.B. §§ 61-14, 66-6

C. Motions to seal – closure order

Connecticut Rules of Appellate Procedure, Chapter 77

P.B. § 77-3 Except as otherwise provided by law, there shall be a presumption that documents filed with the appellate clerk shall be available to the public

Same is true across the board: Presumption of openness

P.B. § 77-2 TC sealing order continues unless otherwise ordered

P.B. § 77-4 Procedure for moving to seal

REVIEW of closure order P.B. § 77-1

Except as provided in subsection (b), any person affected by a court order which prohibits the public or any person from attending any session of court, or any order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding, may seek review of such order by filing a petition for review with the appellate court within **seventy-two hours** after the issuance of the order.

Potential Pitfall: Review vs. Appeal

D. Motion to Strike

P.B. § 60-2(3) provides that the court may “order improper matter[s] stricken from the record or from a brief or appendix.”

Potential Pitfall: Strike vs. Dismiss

E. Motions for Articulation/Rectification P.B. § 66-5 (RECORD, *Infra.*)

F. Other points to keep in mind

- 10 page limit for motions (but for MET)
- Oppositions allowed **10 days** after motion
- Replies to oppositions not allowed without permission
- format for appellate motions
- no argument

III. RECORD

P.B. §§ 61-10, 60-5 It is the appellant's responsibility to provide an adequate record for review

old yellow "record" v. appendices / "Record"

P.B. § 63-8 **Transcript**
Parties responsible for procuring/providing

P.B. §§ 6-2 and 6-3 **Draft judgment file** (where applicable)
§ 63-4 comments

P.B. §§ 66-5, 66-6, 66-7 **Motions for articulation/rectification - review**
Directed to Trial Judge through Appellate Court
Improper to try to change judgment

Potential Pitfalls: Review declined
Result not possible
Brief/appendices rejected – returned

IV. BRIEFS AND APPENDICES

Connecticut Rules of Appellate Procedure, Chapter 67

A. Appellant's Brief

- 45 days from appeal or transcript or PAC unless MET § 67-3
- Plaintiff and Defendant, not appellant and appellee § 67-1
- Table of Contents w/page citations § 67-4
- Concise statement of issue(s) § 67-1
- Table of Authorities w/ page citations and regional reporter cites § 67-4
- Statement of nature of proceedings and facts w/citations to record § 67-4

- Argument, divided, standard/s of review § 67-4
 - error in refusing to charge: portions charge, exceptions, evidence
 - error in charge given: portions charge, exceptions
 - error in evidentiary ruling: question or offer, objection, ground offered for admissibility, answer, ruling
- Conclusion stating precise relief sought § 67-4
- Text of pert. Statutes etc. (if not in appx) § 67-4
- 35 pages § 67-3
- Light blue cover § 67-2
- Margins/font/page numbering § 67-2
- Cover requirements § 67-2
- One Electronic copy prior to paper copies (15 SC/10AC) § 67-2
- Certification § 67-2

C. Appellee's Brief

- 30 days after appellant brief unless MET § 67-3
- Plaintiff and Defendant, not appellant and appellee § 67-1
- Concise counter statement of issue(s) § 67-5
- Table of Contents w/page citations § 67-5
- Table of Authorities w/ page citations and regional reporter cites § 67-5
- Statement of nature of proceedings and facts w/citations to record § 67-5
- Argument, divided, standard/s of review § 67-5
 - error in refusing to charge: portions charge, exceptions, evidence
 - error in charge given: portions charge, exceptions
 - error in evidentiary ruling: question or offer, objection, ground offered for admissibility, answer, ruling
- Conclusion stating precise relief sought § 67-5
- Text of pert. Statutes etc. (if not in appx) § 67-5
- 35 pages § 67-3
- Pink cover § 67-2
- Margins/font/page numbering § 67-2
- Cover requirements § 67-2
- One Electronic copy prior to paper copies (15 SC/10AC) § 67-2
- Certification § 67-2

D. (Appellant's) Reply Brief

- 20 days after appellee brief unless MET (optional) § 67-3
- 15 pages § 67-3
- White cover § 67-2

E. Appendices

1. Appellant's

§ 67-8(b)

- Part One
 - Table of Contents
 - Docket Sheets
 - Relevant Pleadings, Requests chronologically
 - Opinions or Findings or Decisions
 - Draft judgment file (where applicable)
 - Appeal form
 - Docketing Statement
 - Appellate motions or orders
 - (order/certified question if SC)
- Part Two
 - Any other portions deemed necessary
 - i.e. transcript excerpts, exhibits, statutes, unpublished decisions

2. Appellee's

§ 67-8(c)

- Part One
 - Anything missing from appellant's part one
- Part Two
 - Any other portions deemed necessary

F. Practice Book § 67-10 ; Errata letters

Potential Pitfalls: Return for non-compliance with requirements *But see 62-7*
No appellant's brief = dismissal
No appellee's brief = considered on appellant alone
Improper use of reply (substantive)
Improper/impertinent material (substantive/motion to strike)
Over or under inclusion (appendix)

V. ORAL ARGUMENT

Connecticut Rules of Appellate Procedure Chapter 70

- allowed as of right with few exceptions § 70-1
- can request submission without § 70-2
- Appellant – Appellee- Appellant rebuttal § 70-3
- Unless otherwise ordered, 30 mins each side § 70-4
- of v SC

Advanced Appellate Practice

Federal Procedure &
Novel State Issues



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OVERVIEW

- I. Filing the Appeal
- II. Post-Appeal Motion Practice
- III. The Record
- IV. Briefs & Joint Appendix
- V. Oral Argument
- VI. Post-Judgment Motion Practice



I. FILING THE APPEAL

- Federal Timing/Deadlines
 - **Notice of Appeal** must be filed within **30 days** from entry of judgment
 - Filing a notice of appeal **divests the District Court of jurisdiction**
 - *Practice Tip: There is no automatic stay of execution of the District Court's judgment pending appeal.*
- Connecticut Timing/Deadlines
 - **Appeal** must be filed within **20 days** of notice of judgment
 - Trial courts have plenary authority to issue orders within their jurisdiction while appeal is pending.

I. FILING THE APPEAL

- Federal Motions for Extension of time to file Notice of Appeal
 - A party filing a MET **before the appeal period expires or within the 30 days after the appeal period expired** may show either excusable neglect or good cause to receive an extension of time. FRAP 4(a)(5)
- Connecticut Motions for Extension of time to file Appeal
 - A party filing a MET to file an appeal must do so within the initial appeal period and may receive no more than an additional 20 days to file the appeal. P.B. § 66-1

I. FILING THE APPEAL

- Federal Procedure for Multiple Appellants – Joint Appeals, Consolidation

- Where two or more parties are entitled to appeal from a judgment, they can file a joint notice of appeal and proceed as a single appellant. FRAP 3(b)(1)

- Connecticut Procedure for Multiple Appellants – Joint Appeals, Consolidation

- Two or more plaintiffs or defendants in the same case may file jointly or severally. P.B. § 61-7

I. FILING THE APPEAL

- Federal Cross Appeals

- If one party timely files a notice of appeal, any other party may file a notice of appeal within **fourteen days** after the date when the first notice was filed. FRAP 4(a)(3)

- Connecticut Cross Appeals

- Any appellee aggrieved by judgment decision appealed may file a cross appeal within **ten days** from the filing of the appeal. P.B. § 61-8

I. FILING THE APPEAL

- Federal Amended Notice of Appeal

- A party intending to challenge a District Court's post-judgment decision on a motion or a judgment's alteration or amendment, the party must file an amended notice of appeal within **the same time limitations** as an initial notice of appeal. FRAP 4(a)(4)(B)

- Connecticut Amended Appeal

- If the trial court makes a decision after the appeal is filed that appellant would like reviewed, an amended appeal must be filed within **twenty days** from issuance of the notice of decision. P.B. § 61-9

II. POST APPEAL MOTION PRACTICE

- Federal Motion Practice

- Contents of a motion: (A) Must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it; and (B) if there are accompanying documents necessary to support the motion, they must be served and filed with the motion. A separate brief supporting the motion must not be filed. FRAP 27(a)(2)
- A party has **ten days** to respond to a motion. A reply to a response must be filed within **seven days**. FRAP 27(a)(3) & (4)

II. POST APPEAL MOTION PRACTICE

- Connecticut Motion Practice

- Motions shall be specific. No motion will be considered unless it clearly sets forth in separate paragraphs appropriately captioned:

- (1) A **brief history** of the case
- (2) The **specifics facts** upon which the moving party relies; and
- (3) The **legal grounds** upon which the moving party relies.

P.B. § 66-2

II. POST APPEAL MOTION PRACTICE

- Federal Motion for Extension of Time
 - FRAP 26(b) permits extensions of time for good cause. This rule does not apply to Motions for Extension of Time related to the time to file a notice of appeal (FRAP 4)
- Connecticut Motion for Extension of Time
 - Motions to extend the time limit for filing any appellate document, other than the appeal, must be filed with the appellate clerk. The MET must set forth a good faith reason for the requested extension and must certify that it has been sent to the client. The MET must also include a statement as to whether opposing counsel consents or objects to the motion, as well as the current status of the brief. P.B. § 66-1

II. POST APPEAL MOTION PRACTICE

- Federal Motion to Dismiss

- There is no specific rule governing motions to dismiss. However, best practices advise filing a Motion to Dismiss as soon as possible after the reason for dismissal becomes known.

- Connecticut Motion to Dismiss

- A Motion to Dismiss an appeal that claims any defect other than lack of jurisdiction must be filed with **ten days** after the filing of the appeal. P.B. § 66-8

II. POST APPEAL MOTION PRACTICE

- Federal Motion for Stay

- As noted above, there is typically **no automatic stay** of execution of the District Court's judgment pending appeal. A party must ordinarily move first in the District Court for a stay of the judgment or order pending appeal. FRAP 8(a)(1).

- Connecticut Motion to Stay

- In noncriminal cases, the proceedings are automatically stayed upon filing the appeal until the final determination of the case. P.B. § 61-11(a). If automatic stays are not applicable, a motion for stay must be filed in the trial court. P.B. § 61-12.

II. POST APPEAL MOTION PRACTICE

- Federal Motion to Seal
 - Circuit specific. The existence of an order sealing documents in the District Court does not necessarily mean the material will remain sealed in the Circuit Court of Appeals. If documents were sealed in the District Court and you would like to include them in the Appendix or refer to them on appeal, file a new motion to seal in the Circuit Court.
- Connecticut Motion to Seal
 - The trial court sealing order continues unless otherwise ordered. P.B. § 77-2.

II. POST APPEAL MOTION PRACTICE

- Motions to Certify Question of State Law
 - The Connecticut Supreme Court may answer questions of law certified to it by a federal court if the answer may be determinative of an issue in pending litigation in the certifying court and if there is no controlling appellate decision, constitutional provision, or statute of this state. P.B. § 82.1.
 - *Practice tip: The Federal Rules of Appellate Procedure have no specific guidelines or procedures on motions to certify. Review the Circuit Court's Local Rules for guidance.*
 - A party may move to certify a question of state law by filing a separate motion or by including a request for certification in its brief. 2d Cir. R. § 27.2.

III. THE RECORD

- Federal Record

- The Record is composed of:

- (1) The original papers and exhibits filed in the District Court; (2) The transcript of proceedings, if any; and (3) A certified copy of the docket entries prepared by the District Court. FRAP 10

- Parts of the record may be relied on by the court or the parties even though they are not included in the appendix. FRAP 30(a)(2).

- Connecticut Record

- It is the responsibility of the Appellant to provide an adequate record for review. P.B. §§ 61-10, 60-5.

IV. BRIEFS & APPENDICES

- Federal Appellant's Brief

- The Appellant's brief is due **forty days** after the record is filed. FRAP 31(a)

- *Practice tip: Call the Case Manager after the appeal has been docketed. Circuit Clerk generally issues briefing order that sets the due dates well beyond the initial **forty days**.*
- *Practice tip – **Second Circuit**: Within **fourteen days** of the record being filed or receipt of the last manuscript, appellant must notify the Circuit Clerk in writing of the due date that it wants for its opening brief, but must be within **ninety one days**. If no written request is made, the default is **forty days**. 2d Cir. R. § 28(a)*

IV. BRIEFS & APPENDICES

- Federal Appellant's Brief Must Contain:
 - Corporate Disclosure Statement (FRAP 26.1)
 - Table of Contents
 - Table of Authorities
 - Jurisdictional Statement
 - State of the Issues
 - Concise statement of the case
 - Summary of the argument
 - Argument with separate standard of review for each issue
 - Short conclusion

IV. BRIEFS & APPENDICES

- Federal Appellant's Brief Must Also Contain:
 - Certifications of compliance with Type-Volume and state the number of words and Certification of Service. FRAP 32(g)
 - *Practice Tip: Check Local Rules. Circuit Courts usually have their own specific requirements for additional certifications, i.e., bar admission, virus check.*
 - Proportionally-spaced typeface, in a plain, roman style. FRAP 32
 - Blue cover. FRAP 32
 - Check Local Rules for Circuit-specific requirements on number of copies and length.
 - Use party names or “defendant” and “plaintiff,” not “appellant” and “appellee.” FRAP 28(d)

IV. BRIEFS & APPENDICES

- Connecticut Appellant's Brief

- Must be filed **forty five days** from appeal, transcript delivery, or PAC, unless you file a motion for extension of time. P.B. § 67-3
- Use “plaintiff” and “defendant,” not “appellant” and “appellee.” P.B. § 67-1
- Must have a Table of Contents with page citations (P.B. § 67-4); concise statement of issues (P.B. § 67-1); Table of Authorities with page citations and regional reporter cites (P.B. § 67-4); Statement of nature of proceedings and facts, with citations to record (P.B. § 67-4); Argument, divided, with standard of review (P.B. § 67-4); and Conclusion (P.B. § 67-4).

IV. BRIEFS & APPENDICES

- Connecticut Appellant's Brief

- Must contain the text of pertinent statutes, if not included in appendix. P.B. § 67-4.
- Cannot exceed 35 pages. P.B. § 67-3.
- P.B. § 67-2 details the format of the brief, including margins, font, page numbering, and cover requirements.
- After filing brief electronically, deliver 15 copies to Supreme Court and 10 copies to Appellate Court with light blue covers.
- Certification.

IV. BRIEFS & APPENDICES

- Federal Appellee's Brief

- The Appellee's brief is due **thirty days** after appellant's brief is served. FRAP 31(a)
 - *Practice tip – **Second Circuit**: Within **fourteen days** of filing appellant's brief, appellee must notify the Circuit Clerk in writing of the due date that it wants for its responsive brief, but must be within **ninety one days**. If no written request is made, the default is **thirty days**.*
- An Appellee's brief in the Circuit Court follows the same requirements as those for the Appellant's brief, but has a red cover. (See above.)
- An Appellee who fails to file a brief will not be heard at oral argument without the court's permission. FRAP 31(c)

IV. BRIEFS & APPENDICES

- Connecticut Appellee's Brief

- Must be filed **thirty days** after appellant's brief, unless you file a motion for extension of time. P.B. § 67-3
- Use "plaintiff" and "defendant," not "appellant" and "appellee." P.B. § 67-1
- Must contain a concise counter statement of issues; Table of Contents with page citations Table of Authorities with page citations and regional reporter cites; Statement of nature of proceedings and facts with citations to the record; argument, divided, with standard of review; conclusion (P.B. § 67-5)
- Pink cover.

IV. BRIEFS & APPENDICES

- Connecticut Appellee's Brief

- Must contain the text of pertinent statutes, if not included in appendix. P.B. § 67-4.
- Cannot exceed 35 pages. P.B. § 67-3.
- P.B. § 67-2 details the format of the brief, including margins, font, page numbering, and cover requirements.
- After filing brief electronically, deliver 15 copies to Supreme Court and 10 copies to Appellate Court.
- Certification.

IV. BRIEFS & APPENDICES

- Federal Appellant's Reply Brief

- The Appellant's reply brief is due **twenty one days** after appellee's brief is served. FRAP 31(a)

- *Practice tip: 2d Circuit still permits only **fourteen days** to file a reply brief. 2d Cir. R. § 31.2*

- A reply brief requires a Table of Contents and Table of Authorities (FRAP 28(b)), along with all other formatting and filing requirements as those for the Appellant's or Appellee's briefs. FRAP 32.

- Gray cover.

IV. BRIEFS & APPENDICES

- Connecticut Appellant's Reply Brief
 - Must be filed **twenty days** after appellee's brief, unless you file a motion for extension of time. P.B. § 67-3
 - Cannot exceed 15 pages.
 - P.B. § 67-2 details the format of the brief, including margins, font, page numbering, and cover requirements.
 - White cover.

IV. BRIEFS & APPENDICES

- Federal Briefs in Cross Appeals
 - The party who files the notice of appeal first is the appellant. If the notices of appeal are filed on the same day, the party who is the plaintiff in the below proceeding is the appellant. FRAP 28.1
 - Appellant files principal brief first, with a blue cover; has a 13,000 word limit; and is due **forty days** after the record is filed.
 - Appellee files principal and responsive brief in one, with a red cover; 15,300 word limit; and is due **thirty days** after appellant's brief is file.

IV. BRIEFS & APPENDICES

- Federal Briefs in Cross Appeals

- The Appellant files a response and reply brief in one, with a yellow cover; a 13,000 word limit; and is due **thirty days** after appellee's brief is filed.
- The Appellee files a reply brief, with a gray cover; a 7,500 word limit; and is due **twenty one days** after appellant's brief is file.
 - *Practice Tip: Check the Local Rules. In the 2d Circuit, the word limits are longer, i.e., 14,000 words for appellant's briefs, 16,500 for appellee's brief; and 7,000 for appellee's reply brief. The due dates may also be different for each Circuit.*

IV. BRIEFS & APPENDICES

- Federal Joint Appendix

- It is the Appellant's responsibility to compile, bind, file and pay for the Joint Appendix. FRAP 30(a).
 - *Practice tip: The cost of the Joint Appendix is taxable. FRAP 30(b)*
- The cover, if separately bound, must be white. FRAP 32
- The Joint Appendix must have a Table of Contents. FRAP 30
- The references in the brief to the Joint Appendix must be: JA____

IV. BRIEFS & APPENDICES

- Federal Joint Appendix

- Must contain:

- Relevant docket entries from the proceeding below;
 - Relevant portions of pleadings, charge, findings, or opinion;
 - The judgment, order or decision being appealed; and
 - “[O]ther parts of the record to which the parties wish to direct the court’s attention.

FRAP 30(a)

IV. BRIEFS & APPENDICES

- Federal Joint Appendix

- Excluded material:

- Memoranda of law in the District Court unless they have “independent relevance.” FRAP 30(a)

- What if there is a **dispute**?

- If the appellant considers any part of the record designated by the appellee to be unnecessary, the appellant may advise the appellee “who must then advance the case of including those parts.” FRAP 30(b)

IV. BRIEFS & APPENDICES

- Connecticut Appendices

- Appellant's Appendix, Part One (P.B. § 67-8(b))

- Table of Contents

- Docket Sheets

- Relevant Pleadings and Requests, chronologically (no memoranda of law)

- Opinions, Findings, or Decisions

- Draft Judgment File (where applicable)

- Appeal Form

(cont...)

IV. BRIEFS & APPENDICES

- Connecticut Appendices

- Docketing Statement
- Appellate Motions or Orders
- Order/Certified Question (if Supreme Court)
- Appellant's Appendix, Part Two
 - Any other portions deemed necessary, i.e., memoranda of law, transcript excerpts, trial exhibits, statutes, and unpublished decision.

IV. BRIEFS & APPENDICES

- Connecticut Appendices

- Appellee's Appendix P.B. § 67-8(c)

- Part One: Anything missing from appellant's part one.

- Part Two: Any other portions deemed necessary.

V. ORAL ARGUMENT

- Federal Oral Argument

- Federal Circuit Courts of Appeal generally do not hear oral argument in every case.
- Within **fourteen days** after filing the last of appellee's brief, all parties must file an Oral Argument Statement form. Not filing one signifies that the party does not seek oral argument. 2d Cir. R. § 34.1
- The 2d Circuit hears cases in New York City. The 3d Circuit hears cases in Philadelphia, with rotating panels every May and December visiting the U.S. Virgin Islands.

V. ORAL ARGUMENT

- Federal Oral Argument

- Oral argument is scheduled by convenience of the court, usually within **one to three months** after the appellee's brief is filed.
- Length is set by the court. The Clerk will notify counsel ahead of time. Usually argument is between **eight to twelve minutes** for each side.

V. ORAL ARGUMENT

- Connecticut Oral Argument

- Oral argument is allowed as of right with a few exceptions. P.B. § 70-1
- Counsel of record may file a request to submit the case for a decision without oral argument. P.B. § 70-2
- Unless otherwise ordered, **thirty minutes** for each side in Supreme Court. P.B. § 70-4
- Unless otherwise ordered, **twenty minutes** for each side in Appellate Court. P.B. § 70-4
- No argument is allowed to any party who has not filed or joined a brief. P.B. § 70-4

VI. POST JUDGMENT MOTION PRACTICE

- Federal Post Judgment Motions
 - Petitions for Panel Rehearing or Rehearing En Banc (FRAP 35) must be filed within **fourteen days** after entry of judgment
- Connecticut Post Judgment Motions
 - Motion for Reconsideration/Reconsideration En Banc
 - Generally filed in Appellate Court, but can seek reconsideration in Supreme Court, within **ten days** of published decision. P.B. § 71-5

(cont...)

VI. POST JUDGMENT MOTION PRACTICE

- Federal Mandate

- This is the mechanism by which the Circuit Court closes the appeal and transfers jurisdiction to another court.
- The Mandate consists of a certified copy of the judgment, a copy of the Circuit Court's opinion, and any direction about costs. Must issue **seven days** after the time to file a petition for rehearing expires, or **seven days** after the entry of an order denying a timely petition for a panel or en banc rehearing.
- The Mandate is effective as of the time it is issued.

VI. POST JUDGMENT MOTION PRACTICE

- Federal Post Judgment Motions

- Petition for Writ of Certiorari filed with U.S. Supreme Court (USSC Rule 13) must be filed within **ninety days** after entry of judgment, not issuance of the mandate.

- Connecticut Post Judgment Motions

- Petition for Certification to Connecticut Supreme Court
 - Must be filed in Appellate Court within **twenty days** of the Appellate Court Judgment or denial of Motion for Reconsideration. P.B. § 84-4





The End