

Comment

The cross-reference to 6 Cir. R. 27(f) is changed to conform to the revision of that rule.

FRAP 28.1 Cross-Appeals

- (a) **Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 28(a)–(c), 31(a)(1), 32(a)(2), and 32(a)(7(A)–(B)) do not apply to such a case, except as otherwise provided in this rule.
- (b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.
- (c) **Briefs.** In a case involving a cross-appeal:
 - (1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).
 - (2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.
 - (3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)–(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:
 - (A) the jurisdictional statement;
 - (B) the statement of the issues;
 - (C) the statement of the case;
 - (D) the statement of the facts; and
 - (E) the statement of the standard of review.

- (4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (11) and must be limited to the issues presented by the cross-appeal.
 - (5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.
- (d) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).
- (e) **Length.**
- (1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.
 - (2) **Type-Volume Limitation.**
 - (A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:
 - (i) it contains no more than 14,000 words; or
 - (ii) it uses a monospaced face and contains no more than 1,300 lines of text.
 - (B) The appellee's principal and response brief is acceptable if:
 - (i) it contains no more than 16,500 words; or
 - (ii) it uses a monospaced face and contains no more than 1,500 lines of text.
 - (C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).
 - (3) **Certificate of Compliance.** A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

- (f) **Time to Serve and File a Brief.** Briefs must be served and filed as follows:
- (1) the appellant's principal brief, within 40 days after the record is filed;
 - (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;
 - (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and
 - (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.