

United States Court of Appeals
For the First Circuit

No. 09-1879

CITY OF PITTSFIELD, MASSACHUSETTS

Petitioner

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent

PETITIONER'S BRIEFING NOTICE

— Issued: August 12, 2009

The record on appeal now being complete with the filing of the administrative record or certified list, petitioner's brief must be filed by **September 21, 2009**. Unless petitioner is pro se and proceeding in forma pauperis, an appendix must also be filed by **September 21, 2009**.

The deadline for filing respondent's brief will be set in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0. Parties are advised that extensions of time are not normally allowed without timely motion for good cause shown.

The parties are advised to review the First Circuit Rulebook, with particular attention to the following Federal and Local Rules of Appellate Procedure:

1st Cir. R. 11.0, 28.0 and 28.1

Briefs are public documents and will not be sealed absent timely motion. Sealed or non-public documents must be filed in a separate volume of the addendum or appendix clearly marked "FILED UNDER SEAL."

1st Cir. R. 28.0

An addendum must be attached to the petitioner's brief. The addendum must contain the judgments, rulings or orders appealed from and any supporting opinions or memoranda. It must also contain pertinent portions of any document in the record that is the subject of an issue on appeal as well as items or short excerpts from the record, if necessary for understanding the specific issues on appeal.

Fed. R. App. P. 28(a)(11)

If a principal brief exceeds 30 pages, or a reply brief exceeds 15 pages, the brief must include a certificate of compliance certifying that the brief complies with the typeface and length limitations of Fed. R. App. P. 32(a)(7).

Fed. R. App. P. 30
1st Cir. R. 30.0

An appendix is required in all counseled cases and should be printed on two sides of each page. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. If the parties are unable to agree as to the contents of the appendix, they must follow the procedure outlined in Fed. R. App. P. 30(b).

Fed. R. App. P. 30(a) and 31(b)
1st Cir. R. 30.0(a) and 31.0(b)

Represented parties must file nine paper copies of their brief, a disk containing the entire brief and addendum, and five copies of the appendix. Two copies of the brief and appendix must be served on each unrepresented party and on opposing counsel for each separately represented party.

Pro se parties must file ten paper copies of the brief and five copies of the appendix. One copy of the brief and appendix must be served on each unrepresented party and on opposing counsel for each separately represented party. **Caveat: Pro se parties proceeding in forma pauperis** need only file four paper copies of the brief. An appendix is not required.

1st Cir. R. 32.0

A represented party must submit one copy of its brief, in a single electronic file, on a 3½" disk or Windows-based CD or DVD, in Portable Document Format (PDF). The disk must contain any supplemental material that is bound with the paper version such as an addendum. For tips on converting a document to PDF, please visit <http://www.ca1.uscourts.gov/files/faq/WPConversion.pdf>.

Fed. R. App. P. 32(a)(2)

Except for filings by pro se parties, the cover of the petitioner's brief must be blue, the cover of the respondent's brief must be red and the cover of any reply brief must be gray. The cover of the appendix must be white.

Fed. R. App. P. 32(a)(5)

Briefs must be produced using either a 14 point proportionally spaced typeface, such as Times New

Roman, or a 12 point monospaced typeface, such as Courier.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, First Circuit Local Rules and First Circuit Internal Operating Procedures, is available on the court's website at www.ca1.uscourts.gov. Please note that the court's website also contains tips on filing briefs and appendices, including a checklist of what your brief must contain.

Failure to file a brief in compliance with the Federal and Local Rules will result in entry of an order directing the party to file a conforming brief and could lead to dismissal of the appeal. See 1st Cir. R. 3.0 and 45.0.

Richard Cushing Donovan, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: George - (617) 748-9055

United States Court of Appeals For the First Circuit

NOTICE TO COUNSEL REGARDING CONTENTS OF THE APPENDIX

In cases where appellant is represented by counsel, 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 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 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;
- 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.

Other federal and local rules should be carefully consulted and read in conjunction with Loc. R. 30.0. Fed. R. App. P. 30 and 32 provide additional guidance as to the form and content of the appendix. Local Rule 28.0 provides detailed guidance as to the form, content, and size limit of the addendum. Items which are 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). Local Rule 28.0(b) 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, but rather should be filed in a separate sealed volume. See Local Rules 11.0(d)(1), 28.0(c), 30(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 Local Rule 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.

cc:

Donald L. Anglehart

Laurel A. Bedig

Eurika Durr

Ann Williams