

## **RULE 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), 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 all purposes. If the 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 Opening Brief on Appeal.** The appellant must file an opening brief in the appeal. That brief must comply with Rule 28(a).

**(2) Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal.** The respondent must file a combined answering brief on appeal and opening brief on cross-appeal. That brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the respondent is dissatisfied with the appellant's statement.

**(3) Appellant's Reply Brief on Appeal and Answering Brief on Cross-Appeal.** The appellant must file a brief that responds to the opening 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)(1)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the respondent's statement in the cross-appeal:

- (A) the jurisdictional statement;
- (B) the routing statement;
- (C) the statement of the issues;
- (D) the statement of the case; and
- (E) the statement of the standard of review.

**(4) Respondent’s Reply Brief on Cross-Appeal.** The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(1)-(2) 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.** The front cover of a brief must contain the information required by Rule 32(a)(2).

**(e) Length.**

**(1) Opening Brief or Combined Reply/Answering Brief.** The appellant’s opening brief or the appellant’s combined reply/answering brief is acceptable if it complies with the page or type-volume limitation for an opening brief under Rule 32(a)(7).

**(2) Combined Answering Brief/Opening Brief.** In a noncapital case, the respondent’s combined answering and opening brief is acceptable if it does not exceed 40 pages, contains no more than 18,668 words or, if it uses a monospaced typeface, contains no more than 1,732 lines of text. In a capital case, these limitations are 100 pages, 46,670 words, or 4,330 lines of text.

**(3) Reply Brief.** The respondent’s reply brief is acceptable if it complies with the page or type-volume limitation for a reply brief under Rule 32(a)(7).

**(f) Time to Serve and File a Brief.** Unless the court orders a different briefing schedule in a particular case, briefs in cross-appeals must be served and filed as provided in this Rule. Motions for extensions of time are governed by Rule 31(b).

**(1) All Cross-Appeals Except Child Custody and Termination of Parental Rights Cases.** The appellant’s opening brief must be filed and served within 120 days after the date on which the appeal is docketed in the

Supreme Court. All subsequent briefs must be filed and served within 30 days of service of the opposing party's brief.

**(2) Cross-Appeals in Child Custody or Termination of Parental Rights Cases.** The appellant's opening brief must be filed and served within 90 days after the date on which the appeal is docketed in the Supreme Court. The respondent's combined answering brief/opening brief and the appellant's combined reply brief/answering brief must be filed and served within 21 days of service of the opposing party's brief. The respondent's reply brief on cross-appeal must be filed and served within 14 days after service of the appellant's combined reply brief/answering brief.

**(g) Certificate of Compliance.** A brief submitted pursuant to this Rule must include the certificate of compliance required by Rule 32(a)(9).

#### **REVIEWING NOTE**

Rule 28.1 is revised to clarify its application in various kinds of cross-appeals and to conform to amendments in Rule 32. Subdivision (e) clarifies the page, line, and word limitations in both noncapital and capital cases. Subdivision (f) clarifies the briefing schedule for cross-appeals in cases involving termination of parental rights.