

The Reporters Committee for Freedom of the Press

Brief Writing Checklist

Updated: August 2014

As soon as you are assigned an amicus brief, comment or protest letter, print out this checklist, write the case name below, and keep it handy as you go through the brief writing process. It is too easy to miss a step if you do not keep this process organized, and that can lead to unnecessary delays and complications that might interfere with our ability to meet a court deadline.

Case: _____

Court: _____

Court clerk's phone #: _____

Filing deadline: _____

Local counsel info: _____

Overview:

You, the legal fellow, are the one primarily responsible for the drafting and filing of the brief. Take “ownership” of the process, and never assume that just submitting a draft is the end of your responsibility.

When the brief is assigned:

- Deadline.** Call the court and find out the deadline. (Is it a deadline for delivery of the brief to the court or is it a deadline for a postmark?) Don't always assume you know what "15 days after appellant's brief" means. Does it mean that party's deadline or actual filing date? Does it include weekends and holidays?
 - Once you know the deadline, be sure to work out with Gregg or Katie a rough calendar of due dates for a detailed outline, first draft (for supervisor), and second draft.
- Tracking.** Immediately enter the case in EDDIE, marked as a High Priority case when there is a brief in progress, and make sure to enter the deadline on the office calendar so that everyone knows a brief is due that day.
- Rules.** Check Westlaw or the court's Web site for the current court rules. For federal courts, this includes local rules and, for some federal district courts, the sitting judge's rules. Check the specific rules for brief format, amicus briefs, and service, but also skim the rules generally; some items such as certification of word count or corporate ownership may appear anywhere. Make sure you know the rules for:
 - Page or word limits, number of copies, type size, cover content and color
 - Service requirements (copies to other parties' counsel)

- Motion for leave to file (is it necessary? do we need the consent of the parties?)
- Disclosure statements and certificates (word count, corporate ownership, etc.)
- Electronic filing (is it necessary, optional or not allowed?)
- Binding requirements (Supreme Court briefs require printing in a booklet format; most other briefs are either velobound, spiral bound, or stapled. If the rules mention that the brief should lay flat when opened, use spiral binding.)
- Counsel/*pro hac vice* rules: Be sure you understand all rules governing appearance by counsel, especially *pro hac vice* rules. We will almost always work with local counsel (see below), and we will rely on them for compliance, but it is important that we understand as much as we can about the rules so we don't make them waste time helping us conform.
- ☐ **Call the clerk's office.** You must call the clerk's office to verify many of the rules, even if you think you've mastered them. Courts also have customs that they assume regular practitioners are familiar with, but that do not appear in the rules. Some of these issues include:
 - number of copies to submit
 - where to file, or how to file electronically
 - whether local counsel is necessary
 - whether any or all of the pleadings (the brief, motions, and other notices or certificates) must be signed.
 - *Sample brief*: ask the clerk (or local counsel) if there is a sample or template for the preferred format.
- ☐ **Local counsel:** In most state courts, we will have to work with local counsel. This person must be a member of the state bar, and will be counsel of record for the brief (unless their role is limited to sponsoring one of us to appear *pro hac vice*). Talk to Gregg or Katie about finding local counsel. We are always able to obtain local counsel on a *pro bono* basis. This is usually understood, especially with attorneys we have worked with before, but should be made clear if there is a risk of misunderstanding. Talk to Gregg or Katie if this ever becomes an issue.

Local counsel is also a resource to verify rules and practice in a foreign jurisdiction and should be consulted, but only after you've tried to understand the rules yourself. We don't want to waste their time when we can answer most questions on our own.

Be sure you know the rules on local counsel and have talked to the clerk's office about their practices. In some cases, we may have local counsel appear as the only counsel on the brief, if the cost of being admitted *pro hac* is too high. Be sure to talk with Gregg or Katie as soon as possible about such arrangements.

To sort out counsel requirements, check:

- is someone in our office admitted to the court?
- do we need local counsel either way?
- are there fees for appearance/admission to the court bar?
- are there specific forms to fill out? There almost always will be.

Once we have established a relationship, we will need to sort out what role the local attorney's office will play in producing, serving and filing the brief. Be sure you know this, and adjust the preparation deadlines accordingly.

Make sure you know:

- whether local counsel is required for all filings, or for a *pro hac vice* process.
- what role local counsel has agreed to play in the preparation and filing of the brief. Some are fine with us sending them a document by email that they'll print; others will expect that we're preparing everything here.

Two weeks before the filing deadline:

- ☐ **Deadlines.**
 - ☐ Be sure that you have firmly established a schedule for:
 - when a detailed outline will be distributed within the office, if it has not by this time.

- when a first draft will be available to Gregg or Katie
- when a second draft will be available for Bruce
- Verify that Gregg, Katie and Bruce will be available or able to receive the brief on the days you have scheduled.
- **Coalition creation.** Be sure to talk to Gregg or Katie about whether we will be soliciting other news organizations to join the brief. This must be factored in to the timetable for submitting drafts as well. We always need to give *amici* at least 3 days to decide whether to join, but we should always try to schedule one week of review time. Make sure you know how to use the Amici List feature of our Infobase. Katie and Gregg will maintain the lists of sign-ons, but you will need to know how to use it to generate the Statement of Interest, Disclosure Statement, party list and counsel list.
- **Office supplies.** Check with Michele or Lois to make sure we have sufficient binding supplies, cover paper in the correct color, and other supplies like binders, copier paper, envelopes and postage.

Brief preparation just before filing:

Be sure that you know:

- Must any of the pleadings be signed, or notarized? If electronic, what are the signing requirements?
- Do you have a list of all counsel who must be served? Do you have their email addresses? (Even if the rules don't require it, we should serve opposing counsel by email as a courtesy.)
- Do you know the rules for preparing a certificate of service?

Be sure that you prepare:

- A service list so we know who must receive copies (this will also include any joint amici who may not be in our Amici database, particularly local media parties.)
- A cover letter/email for the court to submit along with the brief
- A cover letter for the parties who will receive copies (separate letters for party counsel vs. amici parties)
- Make sure that you understand Word's Table of Contents, Table of Authorities and pagination features.

Filing day:

- If paper copies are required, make sure that office staff know that you are working on a brief so that you will have access to the copy machine when you need it. If you need help producing the brief, be sure to give plenty of notice.
- Discuss a press release with Bruce, Gregg, Katie and/or Deb. The fellow should draft relevant portion of the release.
- Make sure you know whether we are electronically submitting, overnighting, mailing or hand-delivering the brief and the service copies. This usually has to be specified in the certificate of service.
- ***You are responsible for making sure the brief is filed and served.*** Handing it off to someone else in the office is not enough; you need to verify that it will be picked up that day. Post Office mailboxes are right downstairs, and UPS and FedEx drop-offs are nearby (see their web sites).
- After the brief is filed: EDDIE *all* relevant documents (other briefs, opinions, etc), so that fellows and attorneys in the future can easily locate these materials. Our brief should be added to EDDIE as a Word document, so future fellows could use it as a template if necessary.
- After the brief is filed: Submit an electronic version of the brief through the "Briefs and Comments" button on the RCFP Desktop page so it can be posted on the Web site.

Brief Content Review:

Before submitting a draft brief for review to Bruce, Gregg or Katie, ensure it is in as complete a draft form as possible.

- Run MS Word spell check and read through for spelling errors not caught by automated spell check.

- ❑ There should be TWO spaces after every period.
- ❑ Citations must conform with Blue Book style. Final Blue Book review can be done after submitting a draft but you should be drafting citations in Blue Book style as you go.
- ❑ After contents of brief is in final form, do a final check to ensure the Table of Contents and Table of Authorities are correct. If you used Word's automatic generation features, they should be fine. However, if you had to make any changes after generating them, those will be lost if you re-generate the lists. Make sure your latest changes are in the final document. If you've created the TOC and TOA manually, do another check before submitting the brief.
- ❑ Ensure that all required sign-on information from fellow *amici* (e.g., corporate disclosures, *amici* description, counsel designation and contact information) is up to date and correct in the brief. You are also responsible for ensuring that all parties who have agreed to sign-on to the brief are represented within where appropriate.

Sample Briefs for Review:

Before drafting your first brief, look at the following briefs (they are posted to our website) to get a sense of content, structure and style. They are representative only, however, and court rules will dictate the structure of any particular brief.

- ❑ *McBurney v. Young* (Jan. 2, 2013). <http://www.rcfp.org/browse-media-law-resources/briefs-comments/mcburney-v-young>
- ❑ *FISA Court cases* (July 15, 2013). <http://www.rcfp.org/browse-media-law-resources/briefs-comments/fisa-court-cases>
- ❑ *Lawson v. OAG* (Jan. 28, 2013). <http://www.rcfp.org/browse-media-law-resources/briefs-comments/lawson-v-office-attorney-general>

Templates:

The RCFP Desktop page (desktop.rcfp.org) also includes templates for federal and Supreme Court briefs. Most state court briefs could be started with the federal template, then modified to meet state rules.