

Filed: April 5, 2011

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEFING ORDER
AGENCY CASES



No. 11-1301, Gemtronics, Inc. v. FTC

This case has been placed on the court's docket under the above-referenced number, which should be used on papers subsequently filed in this court. The case shall proceed on an informal briefing schedule pursuant to Local Rule 34(b). The **Informal Brief Form** is attached. Informal briefs shall be served and filed within the time provided in the following schedule. Only the original informal brief is required; no copies need be filed unless requested by the court.

Record due from agency: 05/16/2011

Informal opening brief due: 04/29/2011

Informal response brief permitted within 17 days of filing of informal opening brief

Informal reply brief permitted within 13 days of filing of informal response brief, if any.

If the informal opening brief is not served and filed within the scheduled time, the case will be subject to dismissal pursuant to Local Rule 45 for failure to prosecute. Extensions of briefing deadlines are not favored by the court and are granted only for good cause stated in writing.

The court will not consider issues that are not specifically raised in the informal opening brief.

The record is filed in the Court of Appeals in informally briefed cases; no appendix is required. Any party wishing to review the record in the clerk's office must make

advance arrangements to do so.

The court will not appoint counsel or schedule a case for oral argument unless it concludes, after having reviewed the informal opening brief, that the case cannot be decided on the basis of the informal briefs and the record.

Counsel filing an informal brief must complete and file an **Appearance of Counsel** form with the informal brief.

Parties in civil appeals **must** file a **Disclosure of Corporate Affiliations** within **14 days** of the informal briefing order, except that a disclosure statement is **not** required from the United States, from indigent parties, or from state or local governments in pro se cases.

Parties are responsible for ensuring that social security numbers, juvenile names, dates of birth, and financial account numbers are redacted from any documents filed with the court and that any sealed materials are filed in accordance with the enclosed **Memorandum on Sealed and Confidential Materials**. Attorneys must obtain an appellate CM/ECF filer account, required for any attorney filings as of June 1, 2008, as outlined in the **Notice Regarding Implementation of CM/ECF**.

/s/ PATRICIA S. CONNOR, CLERK

By: Brian Bain, Deputy Clerk

Copies: Barbara E. Bolton
FEDERAL TRADE COMMISSION
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Suite 1500
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**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DIRECTIONS FOR INFORMAL BRIEF**

1. Preparation of Brief. The Court will consider this case according to the written issues, facts, and arguments presented in the Informal Briefs. Space is provided to present up to four issues. Additional issues may be presented by attaching additional sheets. The Court will not consider issues that are not specifically raised in the Informal Briefs. Informal Briefs must be legible and concise, and any attached pages must be sequentially numbered. Informal Briefs may be filed on the form provided or in memorandum or formal briefing format.

2. Copies required.

* File the original of the Informal Brief with the Court. If you would like a file stamped copy returned, send an extra copy and a self addressed stamped envelope. The Court's address is:

Clerk
U.S. Court of Appeals, Fourth Circuit
U.S. Courthouse Annex, 5th Floor
1100 East Main Street
Richmond, VA 23219

* Send one copy of the Informal Brief to each of the parties in the case.

3. Certificate of Service Required. You must certify that you sent each of the other parties or attorneys complete copies of all documents you send the Court. Service on a party represented by counsel shall be made on counsel. Be certain that your certification shows the complete name and address of each party or attorney to whom copies were sent and the date of mailing.

4. Signature Required. You must sign your Informal Brief and all Certificates of Service. If the Informal Opening Brief is not signed, the case will be subject to dismissal under this Court's Local Rule 45.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

No. 11-1301, Gemtronics, Inc. v. FTC

1. Jurisdiction (for appellants/petitioners only)

A. Name of court or agency from which review is sought:

B. Date(s) of order or orders for which review is sought:

2. Timeliness of notice of appeal or petition for review (for prisoners only)

Exact date on which notice of appeal or petition for review was placed in institution's internal mailing system for mailing to court:

3. Issues for Review

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

Supporting Facts and Argument.

Issue 2.

Supporting Facts and Argument.

Issue 3.

Supporting Facts and Argument.

Issue 4.

Supporting Facts and Argument

4. Relief Requested

Identify the precise action you want the Court of Appeals to take:

5. Prior appeals (for appellants/petitioners only)

A. Have you filed other cases in this Court? Yes [] No []

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Signature

[Notarization Not Required]

[Please Print Your Name Here]

CERTIFICATE OF SERVICE

I certify that on _____ I served a copy of this Informal Brief on all parties, addressed as shown below:

Signature

MEMORANDUM ON SEALED AND CONFIDENTIAL MATERIALS
UNDER FRAP 25(a)(5) & LOCAL RULE 25(c)

Internet Availability of Docket & Documents (except Appendices): All Fourth Circuit case dockets are available on the Internet via the Judiciary's PACER system (Public Access to Court Electronic Records). The Fourth Circuit docket is available on the Internet even if the district court docket was sealed. If a party's name was sealed in the district court, it should be replaced by "Under Seal" or a pseudonym on appeal. Documents filed in 2008 and thereafter are available on the Internet via PACER, with the exception of appendices, which are available in paper form only. Due to the electronic availability of court documents, the federal rules prohibit including certain personal data identifiers in court filings. In addition, parties should not include any data in their filings that they would not want on the Internet. Counsel should advise their clients on this subject so that an informed decision can be made. Responsibility rests with counsel and the parties, not with the clerk.

Personal Data Identifiers Prohibited: The federal rules **prohibit** filers from including any of the following personal data identifiers (PDIs) in documents filed with the Court:

- **Social Security & TAX ID Numbers....**Use 4 digits only
- **Names of Minor Children.....**Use initials only
- **Dates of Birth.....**Use year only
- **Financial Account Numbers.....**Use last 4 digits only
- **Home Addresses in Criminal Cases....**Use city and state only

Personal Data Identifiers Permitted: The federal rules **permit** filers to include PDIs in the following situations:

- Account number or address for subject property is needed in forfeiture action
- State court records or agency records contain PDIs
- Other court records contain PDIs and redaction was not required when record was originally filed
- Documents are filed using a sealed docket entry
- Documents are filed in social security and immigration cases
- Pro se documents are filed in 28 U.S.C. §§ 2241, 2254, or 2255 cases
- Documents were filed before charging document in criminal case
- Charging document, arrest warrant, or search warrant in criminal case contain PDIs

Certificate of Confidentiality or Motion to Seal Required for Any Sealed

Filing: A document may not be filed under seal in this court unless it is accompanied by a certificate of confidentiality or motion to seal.

- Use certificate of confidentiality form when the only information being sealed is information that was sealed in the district court or agency, or consists solely of PDIs.
- Use motion to seal to request sealing of information beyond that sealed by district court or agency. The motion must specifically identify the information to be sealed, state why sealing is necessary, explain why a less drastic alternative is not effective, and state the time period for which sealing is required.

Sealed Volume of Appendix: All appendices are filed and served in **paper form only**. Sealed documents must be placed in a **separate, sealed volume** of the appendix. In consolidated criminal cases in which presentence reports are being filed for multiple defendants, **each** presentence report must be placed in a separate, sealed volume to which only Government counsel and counsel for the defendant who is the subject of the report have access.

- File four paper copies of sealed appendix volumes, with the cover marked SEALED, in an envelope marked SEALED, with four copies of certificate of confidentiality.
- File six paper copies of public appendix volumes (five if counsel is court-appointed).
- Use electronic entry **Notice of paper filing** to reflect filing of sealed and unsealed volumes.
- Serve one paper copy of sealed and unsealed volumes on counsel (serve presentence reports only on Government counsel and counsel for defendant who is the subject of the report).

Sealed Version of Brief: All briefs are filed in **electronic and paper form**. Public briefs are served in electronic form; sealed briefs are served in paper form. There are two possible ways to file a sealed brief:

1. Option One — File Sealed Version, Public Version, and Certificate of Confidentiality if it is Possible to Create Public, Redacted Version of Brief.

- File four paper copies of sealed version of brief (with sealed material highlighted and covers marked SEALED), in an envelope marked SEALED, with four copies of certificate of confidentiality.

- File eight paper copies (six if counsel is court-appointed) of public version of brief (with sealed material redacted).
- Use electronic entry **SEALED BRIEF FILED** to file sealed version electronically.
- Use electronic entry **Certificate of confidentiality filed** to file certificate electronically.
- Use electronic entry **BRIEF FILED** to file public, redacted version electronically.
- Serve one paper copy of sealed version of brief on counsel since sealed version cannot be accessed through CM/ECF. Service of paper version of public brief is not required, but may be agreed to between parties.

2. Option Two — File Sealed Brief and Motion to Seal if it is Not Possible to Create Public, Redacted Version of Brief.

- File four paper copies of sealed brief, in an envelope marked SEALED, with four paper copies of motion to seal.
- Use electronic entry **SEALED BRIEF FILED** to file sealed brief electronically.
- Use electronic entry **Motion filed / to seal** to file motion electronically. Motion must be accessible on public docket for five days prior to ruling; therefore, motion to seal **cannot**, itself, be filed under seal. If necessary, a sealed version and a public version of the motion to seal can be filed, together with a certificate of confidentiality.
- Use electronic entry **BRIEF FILED** to file public, redacted version electronically.
- Court may require filing of a redacted, public version of brief when it rules on motion.

Sealed Version of Other Documents and Motions: Other documents and motions are filed in electronic form only. If sealed information must be included, there are two possible ways to file the document:

1. Option One — File Sealed Version, Public Version, and Certificate of Confidentiality if it is Possible to Create Public, Redacted Version of Document or Motion.

- Use electronic entry **SEALED DOCUMENT OR MOTION FILED** to file sealed version electronically.
- Use electronic entry **Certificate of confidentiality filed** to file certificate electronically.

- Use the appropriate electronic entry (e.g., **Motion filed, Letter filed**) to file public, redacted version electronically.

2. Option Two — File Sealed Document and Motion to Seal if it is Not Possible to Create Public, Redacted Version of Document.

- Use electronic entry **SEALED DOCUMENT OR MOTION FILED** to file sealed document electronically.
- Use electronic entry **Motion filed / to seal** to file motion to seal electronically. Motion must be accessible on public docket for five days prior to ruling; therefore, motion to seal **cannot**, itself, be filed under seal. If necessary, a sealed version and a public version of the motion to seal can be filed, together with a certificate of confidentiality.