

United States Court of Appeals

District of Columbia Circuit

Washington, D.C. 20001-2866

Mark J. Langer
Clerk

General Information
(202) 216-7000

NOTICE OF PROPOSED CIRCUIT RULE CHANGE AND OPPORTUNITY FOR COMMENT

Notice is hereby given that the court, pursuant to D.C. Circuit Rule 47, proposes amendments to Circuit Rule 29 regarding the time for filing amicus curiae briefs and motions seeking leave of court to participate as amicus curiae, and the court's policy in the event that the proposed participation of amici would cause a recusal. Corresponding changes to the Circuit's Handbook of Practice and Internal Procedures will be made.

Currently, Circuit Rule 29(b) requires an individual or non-governmental entity seeking to participate as amicus to file a notice of intent (with the consent of all parties) or a motion for leave to participate, within 60 days of the docketing of the case. The current rule allows the court to extend the time on a showing of good cause, or in some circumstances the clerk can grant motions filed beyond the 60-day period. A governmental entity planning to file an amicus brief is required to notify the court within the same 60-day period or as promptly thereafter as possible.

The court proposes to repeal the timing provisions of Circuit Rule 29(b). Instead, the time limitations imposed by Federal Rule of Appellate Procedure (FRAP) 29(e) will govern the filing of briefs accompanied by motions for leave to participate as amicus and the filing of amici briefs that do not require leave of court pursuant to FRAP 29(a), i.e., an amicus brief that states that all parties have consented to its filing and an amicus brief of a governmental entity.

The court encourages those who wish to participate as amici to notify the court as soon as practicable after a case is docketed in this court, by filing a notice of intent to participate or a motion for leave of court when necessary. Prompt notification will enable the court to accommodate amici briefs in setting the briefing format and schedule in each case, and assist the court in the early identification of potential recusals caused by the participation of amici. The court retains its current Rule 29(c), which provides that an amicus brief generally will be due as set by the briefing order in each case; in the absence of provision for such a brief in the order, the brief must be filed in accordance with the time limitations of FRAP 29(e).

The court proposes an addition to Circuit Rule 29(b), stating that leave to participate as amicus will not be granted and an amicus brief will not be accepted if the participation of amicus would result in the recusal of a member of the panel that has been assigned to the case or a member of the en banc court when participation is sought at the rehearing stage. The new provision incorporates existing court policy, which is currently set out in the Handbook of Practice and Internal Procedures, Part IX.A.4.

OPPORTUNITY FOR COMMENT

Comments on the proposed amendment may be submitted to the court's Advisory Committee on Procedures within 45 days from the date of the publication of this Notice in *The Daily Washington Law Reporter*. Written comments should be sent to:

Advisory Committee on Procedures
c/o Clerk of Court
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W., Room 5509
Washington, D.C. 20001

The Committee will consider any comments received from interested persons and organizations and formulate recommendations to the court.

Copies of this Notice have been published this day by the means specified in D.C. Circuit Rule 47(c).

Date: April 12, 2010

Mark J. Langer,
Clerk

NOTE: The text of the proposed Circuit Rule amendment is available below.

Proposed Amendment to Circuit Rule 29
New language is marked by underlining and deletions are marked by strike-outs.

Circuit Rule 29

Brief of an Amicus Curiae

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(b) Leave to File. Any individual or non-governmental entity ~~seeking leave~~ intending to participate as amicus curiae must, ~~within 60 days of the docketing of the case in this court,~~ file either a written representation that all parties consent to such participation, or, in the absence of such consent, a motion for leave to participate as amicus curiae. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) ~~The court may extend this time on a showing of good cause. A governmental entity planning to~~

~~participate as amicus curiae must, within the same 60 days, or as promptly thereafter as possible, submit a notice of intent to file an amicus brief. A motion for leave to participate as amicus curiae, filed more than 60 days after the appeal or petition has been docketed, may be granted by the clerk as long as the motion is unopposed and as long as the brief will be filed within the time allowed by FRAP 29(e) and this rule.~~ Any disclosure statement required by Circuit Rule 26.1 must accompany a written representation of consent to participate as amicus curiae or a motion for leave to participate as amicus. The time for filing is governed by FRAP 29(e); however, the court encourages early notification of intent to participate as amicus by individuals and non-governmental entities as well as governmental entities. A written representation of consent, motion for leave to participate, and notice of intent to file an amicus brief by a governmental entity should be filed as promptly as practicable after the case is docketed in this court. Leave to participate as amicus will not be granted and an amicus brief will not be accepted if the participation of amicus would result in the recusal of a member of the panel that has been assigned to the case or a member of the en banc court when participation is sought with respect to a petition for rehearing en banc.

(c) **Timely Filing.** Generally, a brief for amicus curiae will be due as set by the briefing order in each case. In the absence of provision for such a brief in the order, the brief must be filed in accordance with the time limitations described in FRAP 29(e).

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