

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 2016

Filed On: December 1, 2016

BEFORE: Garland, Chief Judge; Henderson, Rogers, Tatel, Brown, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of the notice of proposed amendments to Circuit Rules 5, 8, 18, 27, 29, 32, and 35 published on October 11, 2016, with an opportunity for comment, and the written comment that was received on November 16, 2016, it is, by the en banc court,

ORDERED that Circuit Rules 5, 8, 18, 27, 29, 32, and 35, be amended, as set out in the attachment to this order, effective December 1, 2016.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

/s/

Mark J. Langer

ATTACHMENT TO ORDER AMENDING CIRCUIT RULES

Circuit Rule 5

Appeal by Permission

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(b) Reply. A party may file a reply to an answer within 7 days after the answer is served. A reply may not exceed 2,600 words if produced using a computer, and may not exceed 10 pages if handwritten or typewritten.

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Circuit Rule 8

Stay and Emergency Relief Pending Appeal from a Judgment or Order of the District Court

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(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion, the combined pleading may not exceed 7,800 words if produced using a computer and 30 pages if handwritten or typewritten. The response to such a combined pleading may not exceed 3,900 words if produced using a computer and 15 pages if handwritten or typewritten. ~~and t~~The final reply may not exceed 2,600 words if produced using a computer and 10 pages if handwritten or typewritten.

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Circuit Rule 18

Stay and Emergency Relief Pending Review of an Agency Order

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(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the petition for review or direct appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion,

the combined pleading may not exceed 7,800 words if produced using a computer and 30 pages if handwritten or typewritten. The response to such a combined pleading may not exceed 3,900 words if produced using a computer and 15 pages if handwritten or typewritten; and the final reply may not exceed 2,600 words if produced using a computer and 10 pages if handwritten or typewritten.

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Circuit Rule 27

Motions

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(c) **Response That Also Seeks Affirmative Relief.** When a party opposing a motion also seeks affirmative relief, that party must submit with the response a motion so stating. Such a combined motion and response may not exceed 7,800 words if produced using a computer and 30 pages if handwritten or typewritten. The response to such a combined filing may not exceed 5,200 words if produced using a computer and 20 pages if handwritten or typewritten; and the final reply for such a combined filing may not exceed 2,600 words if produced using a computer and 10 pages if handwritten or typewritten.

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Circuit Rule 29

Brief of an Amicus Curiae

This rule governs the brief for an amicus curiae during the court's initial consideration of the case on the merits and applies only The rules stated below apply with respect to the brief for an amicus curiae not appointed by the court. A brief for an amicus curiae appointed by the court is governed by the provisions of Circuit Rule 28.

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(b) **Leave to File.** Any individual or non-governmental entity intending to participate as amicus curiae must 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.) 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)~~ 29(a)(6); however, the court encourages individuals and non-governmental entities to file a written representation of consent or motion for leave to participate, and governmental entities to file a notice of intent to file an amicus brief, 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)~~ 29(a)(6).

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See Circuit Rule 28(d) (Briefs for Intervenors), and Circuit Rule 34(e) (Participation in Oral Argument by Amici Curiae), and Circuit Rule 35(f) (Limitation on amici briefs during consideration whether to grant rehearing).

Circuit Rule 32

Form of Briefs, Appendices, and Other Papers

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(e) Form of Briefs. Except as provided below, the form of briefs is governed by FRAP 28.1 and 32(a).

(1) **Length of Briefs.** In calculating the number of words and lines that do not count toward the word and line limitations, the certificate required by Circuit Rule 28(a)(1), the glossary, and any addendum containing evidence in support of the claim of standing required by Circuit Rule 28(a)(7), may be excluded, in addition to the items listed in FRAP ~~32(a)(7)(B)(iii)~~ 32(f).

(2) **Length of Briefs for Intervenors.**

(A) **Page limitation.** A principal brief for an intervenor may not exceed 19 pages, and a reply brief 9 pages, unless it complies with Circuit Rule 32(e)(2)(B).

(B) **Type-volume limitation.**

(i) A principal brief is acceptable if:

- it contains no more than ~~8,750~~ 9,100 words; or
- it uses a monospaced face and contains no more than 813 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Circuit Rule 32(e)(2)(B)(i).

(C) **Certificate.** If a type-volume limitation is used, the brief must contain the certificate of compliance required by FRAP ~~32(a)(7)(c)~~ 32(g)(1).

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Circuit Rule 35

Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc

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(b) Number of Copies and Length. An original and 4 copies of a petition for panel rehearing, and an original and 19 copies of a petition for hearing or rehearing en banc must be filed. Such petitions must conform to the page length limits of FRAP 35. This court disfavors motions to exceed page length limits, and such motions will be granted only for extraordinarily compelling reasons.

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(f) Brief of an Amicus Curiae. No amicus curiae brief in response to or in support of a petition for rehearing en banc will be received by the clerk except by invitation of the court, and an amicus brief will not be accepted if the participation of amicus would result in the recusal of a member of the en banc court.