

Revisions to Handbook of Practice and Internal Procedures

(New language is marked by underlining and deletions are marked by strike-outs.)

VI. APPEALS *IN FORMA PAUPERIS* AND PURSUANT TO THE CRIMINAL JUSTICE ACT; APPOINTMENT OF COUNSEL

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D. APPOINTMENT OF COUNSEL

1. *Time and Manner of Appointment*

The CJA, 18 U.S.C. § 3006A, does not provide for the appointment of counsel in non-criminal cases. Thus, even though a party in a civil appeal may be granted leave to proceed *in forma pauperis*, counsel will not ordinarily be provided by the Court. The appellant may file a motion for the appointment of counsel. If the Court grants the motion or elects to appoint *amicus curiae* in lieu of counsel, it may select a member of a legal aid organization or a law school clinical program, or it may appoint an attorney who has indicated a willingness to serve without compensation in non-criminal cases. The decision whether to appoint counsel or an *amicus curiae* in a civil case is usually made by the special panel, and the Court will appoint a private attorney or *amicus* only when a panel determines it is in the interest of the Court.

~~In civil cases the appointment of counsel or *amicus curiae* is usually made by the special panel.~~ Counsel who wish to be considered for appointment in civil cases should write to the Clerk, providing information about their background and experience, and listing any cases they have previously handled in this Court. Counsel and *amici* appointed in civil appeals serve without compensation. Counsel are encouraged to volunteer their services for civil matters.

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IX. BRIEFS AND APPENDIX

A. BRIEFS

(See Fed. R. App. P. 28-32.1; D.C. Cir. Rules 25, 28-32.1)

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4. *Amici Curiae and Intervenors*

(See Fed. R. App. P. 29; D.C. Cir. Rules 28(d), 29, 32.)

A brief of an *amicus curiae* may be filed only by consent of all the parties or by leave of the Court, unless the *amicus* is the United States or an officer or agency thereof, a state, a territory, a commonwealth, or the District of Columbia, or has been appointed by the Court. ~~Governmental entities, however, must submit a notice of an intent to file an *amicus* brief. See D.C. Cir. Rule 29(b).~~ A motion for leave to file an *amicus* brief must set forth the movant's interest, the reason why briefing is desirable, and why the matters asserted are relevant. Motions for leave to participate as *amicus curiae*, or written representation of the consent of all parties to such

participation, ~~are due within 60 days of docketing, unless the Court grants an extension for good cause, and~~ must be accompanied by any disclosure statement required by Circuit Rule 26.1. Parties seeking leave to participate as *amicus curiae* after the merits panel has been assigned or at the rehearing stage should be aware that the Court will not accept an *amicus* brief where it would result in the recusal of a member of the panel or recusal of a member of the *en banc* Court.

The court encourages those who wish to participate as amici, including governmental entities, to notify the court as soon as practicable after a case is docketed in this court, by filing a notice of intent to participate, a representation of consent, 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. An amicus brief 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).

An amendment to FRAP 29(c), which took effect December 1, 2010, requires an amicus (other than the United States or its officer or agency, or a state) to disclose whether a party's counsel authored the amicus brief in whole or in part and whether a party or a party's counsel contributed money with the intention of funding the preparation or submission of the brief, and to identify every person (other than the amicus, its members, and its counsel) who contributed money that was intended to fund the brief's preparation or submission.

The brief of an *amicus curiae* not appointed by the Court may not exceed one-half the maximum length authorized by the Federal Rules of Appellate Procedure for a party's main brief. *See* Fed. R. App. P. 29(d). The brief of an *amicus* appointed by the Court is usually subject to the length limitations set forth in Federal Rule of Appellate Procedure 32(a)(7).

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