**PROPOSED AMENDMENTS TO THE**

**FEDERAL RULES OF APPELLATE PROCEDURE[[1]](#footnote-1)\***

**Rule 4. Appeal as of Right—When Taken**

\* \* \* \* \*

**(c) Appeal by an Inmate Confined in an Institution.**

 (1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate ~~confined in an institution~~ files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution’s internal mail system on or before the last day for filing~~. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.~~ and:

 (A) it is accompanied by:

 (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

 (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

 (B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

\* \* \* \* \*

**Committee Note**

Rule 4(c)(1) is revised to streamline and clarify the operation of the inmate-filing rule.

The Rule requires the inmate to show timely deposit and prepayment of postage. The Rule is amended to specify that a notice is timely if it is accompanied by a declaration or notarized statement stating the date the notice was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage “is being prepaid,” not (as directed by the former Rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. New Form 7 in the Appendix of Forms sets out a suggested form of the declaration.

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the court of appeals has discretion to accept a declaration or notarized statement at a later date. The Rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmate litigants are aware that a court will not necessarily forgive a failure to provide the declaration initially.

**Rule 25. Filing and Service**

**(a) Filing.**

\* \* \* \* \*

(2) **Filing: Method and Timeliness.**

\* \* \* \* \*

(C) **Inmate F~~f~~iling.** If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(C). A paper filed by an inmate ~~confined in an institution~~ is timely if it is deposited in the institution’s internal mail~~ing~~ system on or before the last day for filing~~. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.~~ and:

 (i) it is accompanied by:

 ● a declaration in compliance with 28 U.S.C. § 1746**—**or a notarized statement**—**setting out the date of deposit and stating that first-class postage is being prepaid; or

 ● evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or

 (ii) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(C)(i).

\* \* \* \* \*

**Committee Note**

Rule 25(a)(2)(C) is revised to streamline and clarify the operation of the inmate-filing rule.

The Rule requires the inmate to show timely deposit and prepayment of postage. The Rule is amended to specify that a paper is timely if it is accompanied by a declaration or notarized statement stating the date the paper was deposited in the institution’s mail system and attesting to the prepayment of first-class postage. The declaration must state that first-class postage “is being prepaid,” not (as directed by the former Rule) that first-class postage “has been prepaid.” This change reflects the fact that inmates may need to rely upon the institution to affix postage after the inmate has deposited the document in the institution’s mail system. New Form 7 in the Appendix of Forms sets out a suggested form of the declaration.

The amended rule also provides that a paper is timely without a declaration or notarized statement if other evidence accompanying the paper shows that the paper was deposited on or before the due date and that postage was prepaid. If the paper is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the court of appeals has discretion to accept a declaration or notarized statement at a later date. The Rule uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmate litigants are aware that a court will not necessarily forgive a failure to provide the declaration initially.

**Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court**

United States District Court for the \_\_\_\_\_\_\_\_\_\_

District of \_\_\_\_\_\_\_\_\_\_

File Number \_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| A.B., Plaintiffv. C.D., Defendant |  Notice of Appeal |

Notice is hereby given that \_\_\_(here name all parties taking the appeal)\_\_, (plaintiffs) (defendants) in the above named case,[[2]](#footnote-2) hereby appeal to the United States Court of Appeals for the \_\_\_\_\_\_\_ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 20\_\_\_.

(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.*]

**Form 5. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel**

United States District Court for the \_\_\_\_\_\_\_\_\_\_\_\_

District of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| In re\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,Debtor\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,Plaintiffv. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,Defendant  |  File No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Notice of Appeal to United States Court of Appeals for the

\_\_\_\_\_\_\_\_\_ Circuit

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the \_\_\_\_\_\_\_\_\_ Circuit from the final judgment [or order or decree] of the district court for the district of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [or bankruptcy appellate panel of the \_\_\_\_\_\_\_ circuit], entered in this case on \_\_\_\_\_\_\_\_, 20\_\_ [here describe the judgment, order, or decree] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Attorney for Appellant*

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.*]

**Form 7. Declaration of Inmate Filing**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*insert name of court; for example,*

*United States District Court for the District of Minnesota*]

|  |  |
| --- | --- |
| A.B., Plaintiffv. C.D., Defendant |  Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

I am an inmate confined in an institution. Today, \_\_\_\_\_\_\_\_\_\_\_ [*insert date*], I am depositing the \_\_\_\_\_\_\_\_\_\_\_ [*insert title of document; for example, “notice of appeal”*] in this case in the institution’s internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

 I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed on \_\_\_\_\_\_\_\_\_\_\_\_ [*insert date*]

[***Note to inmate filers:*** *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(C).*]

**Rule 4. Appeal as of Right—When Taken**

**(a) Appeal in a Civil Case.**

\* \* \* \* \*

 (4) **Effect of a Motion on a Notice of Appeal.**

 (A) If a party ~~timely~~ files in the district court any of the following motions under the Federal Rules of Civil Procedure~~,~~**—**and does so within the time allowed by those rules**—**the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

\* \* \* \* \*

**Committee Note**

 A clarifying amendment is made to subdivision (a)(4). Former Rule 4(a)(4) provided that “[i]f a party timely files in the district court” certain post-judgment motions, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Responding to a circuit split concerning the meaning of “timely” in this provision, the amendment adopts the majority approach and rejects the approach taken in *National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Civil Rules will not qualify as a motion that, under Rule 4(a)(4)(A), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Civil Rules, another party’s consent or failure to object to the motion’s lateness, or the court’s disposition of the motion without explicit reliance on untimeliness.

**Rule 5. Appeal by Permission**

\* \* \* \* \*

**(c) Form of Papers; Number of Copies; Length Limits.** All papers must conform to Rule 32(c)(2). ~~Except by the court’s permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E).~~ An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court’s permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

 (1) a paper produced using a computer must not exceed 5,200 words; and

 (2) a handwritten or typewritten paper must not exceed 20 pages.

\* \* \* \* \*

**Committee Note**

 The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 5(b)(1)(E) and any items listed in Rule 32(f).

**Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs**

\* \* \* \* \*

**(d) Form of Papers; Number of Copies; Length Limits.** All papers must conform to Rule 32(c)(2). ~~Except by the court’s permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C).~~ An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.  Except by the court’s permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

 (1) a paper produced using a computer must not exceed 7,800 words; and

 (2) a handwritten or typewritten paper must not exceed 30 pages.

**Committee Note**

 The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 21(a)(2)(C) and any items listed in Rule 32(f).

**Rule 27. Motions**

\* \* \* \* \*

**(d) Form of Papers; Length Limits; ~~Page Limits; and~~ Number of Copies.**

\* \* \* \* \*

 (2) **~~Page~~ Length Limits.** ~~A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.~~Except by the court’s permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

 (A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

 (B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

 (C) a reply produced using a computer must not exceed 2,600 words; and

 (D) a handwritten or typewritten reply to a response must not exceed 10 pages.

\* \* \* \* \*

**Committee Note**

 The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes the accompanying documents required by Rule 27(a)(2)(B) and any items listed in Rule 32(f).

**Rule 28. Briefs**

**(a) Appellant’s Brief.** The appellant’s brief must contain, under appropriate headings and in the order indicated:

\* \* \* \* \*

 (10) the certificate of compliance, if required by Rule ~~32(a)(7)~~32(g)(1).

\* \* \* \* \*

**Committee Note**

 Rule 28(a)(10) is revised to refer to Rule 32(g)(1) instead of Rule 32(a)(7), to reflect the relocation of the certificate-of-compliance requirement.

**Rule 28.1. Cross-Appeals**

\* \* \* \* \*

**(e) Length.**

 (1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) ~~and (3)~~, the appellant’s principal brief must not exceed 30 pages; the appellee’s principal and response brief, 35 pages; the appellant’s response and reply brief, 30 pages; and the appellee’s reply brief, 15 pages.

 (2) **Type-Volume Limitation.**

 (A) The appellant’s principal brief or the appellant’s response and reply brief is acceptable if it:

 (i) ~~it~~ contains no more than ~~14,000~~13,000 words; or

 (ii) ~~it~~ uses a monospaced face and contains no more than 1,300 lines of text.

 (B) The appellee’s principal and response brief is acceptable if it:

 (i) ~~it~~ contains no more than ~~16,500~~15,300 words; or

 (ii) ~~it~~ uses a monospaced face and contains no more than 1,500 lines of text.

 (C) The appellee’s reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

 ~~(3)~~ **~~Certificate of Compliance.~~** ~~A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).~~

\* \* \* \* \*

**Committee Note**

When Rule 28.1 was adopted in 2005, it modeled its type-volume limits on those set forth in Rule 32(a)(7) for briefs in cases that did not involve a cross-appeal. At that time, Rule 32(a)(7)(B) set word limits based on an estimate of 280 words per page.

In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page. Rules 28.1 and 32(a)(7)(B) are amended to reduce the word limits accordingly.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

**Rule 32. Form of Briefs, Appendices, and Other Papers**

**(a) Form of a Brief.**

\* \* \* \* \*

(7) **Length.**

(A) **Page Limitation.**  A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) ~~and (C)~~.

(B) **Type-Volume Limitation.**

 (i) A principal brief is acceptable if it:

 ● ~~it~~ contains no more than ~~14,000~~13,000 words; or

 ● ~~it~~ uses a monospaced face and contains no more than 1,300 lines of text.

 (ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

 ~~(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.~~

 **~~(C) Certificate of compliance.~~**

 ~~(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:~~

 ~~● the number of words in the brief; or~~

 ~~● the number of lines of monospaced type in the brief.~~

 ~~(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).~~

\* \* \* \* \*

**(e) Local Variation.**  Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all ~~of~~ the form requirements of this rule or the length limits set by these rules.

**(f) Items Excluded from Length.** In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

 ● the cover page;

 ● a corporate disclosure statement;

 ● a table of contents;

 ● a table of citations;

 ● a statement regarding oral argument;

 ● an addendum containing statutes, rules, or regulations;

 ● certificates of counsel;

 ● the signature block;

 ● the proof of service; and

 ● any item specifically excluded by these rules or by local rule.

**(g) Certificate of Compliance.**

 (1) **Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

 (2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

**Committee Note**

 When Rule 32(a)(7)(B)’s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page. Rules 28.1 and 32(a)(7)(B) are amended to reduce the word limits accordingly.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (e) is amended to make clear a court’s ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (e) already established this authority as to the length limits in Rule 32(a)(7); the amendment makes clear that this authority extends to all length limits in the Appellate Rules.

A new subdivision (f) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in Rule 32(a)(7)(C) is relocated to a new Rule 32(g) and now applies to filings under all type-volume limits (other than Rule 28(j)’s word limit)—including the new word limits in Rules 5, 21, 27, 29, 35, and 40. Conforming amendments are made to Form 6.

**Rule 35. En Banc Determination**

\* \* \* \* \*

**(b) Petition for Hearing or Rehearing En Banc.**  A party may petition for a hearing or rehearing en banc.

\* \* \* \* \*

 (2) Except by the court’s permission~~, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.~~:

 (A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

 (B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

 (3) For purposes of the ~~page~~ limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

\* \* \* \* \*

**Committee Note**

 The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 32(f).

**Rule 40. Petition for Panel Rehearing**

\* \* \* \* \*

**(b) Form of Petition; Length.**  The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. ~~Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.~~Except by the court’s permission:

 (1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

 (2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages.

**Committee Note**

 The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 32(f).

**Form 6. Certificate of Compliance With ~~Rule 32(a)~~ Type-Volume Limit**

Certificate of Compliance With Type-Volume Limit~~ation~~,

Typeface Requirements, and Type-Style Requirements

1. This ~~brief~~document complies with [the type-volume limit~~ation~~ of Fed. R. App. P. ~~32(a)(7)(B)~~[*insert Rule citation; e.g., 32(a)(7)(B)*]] [the word limit of Fed. R. App. P. [*insert Rule citation; e.g., 5(c)(1)*]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [*insert applicable Rule citation, if any*]]:

 □ this ~~brief~~document contains [*state the number of*] words, ~~excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii),~~ **or**

 □ this brief uses a monospaced typeface and contains [*state the number of*] lines of text~~, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii)~~.

2. This ~~brief~~document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

 □ this ~~brief~~document has been prepared in a proportionally spaced typeface using [*state name and version of word-processing program*] in [*state font size and name of type style*], **or**

 □ this ~~brief~~document has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

(s)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_

**Appendix:**

**Length Limits Stated in the**

**Federal Rules of Appellate Procedure**

This chart summarizes the length limits stated in the Federal Rules of Appellate Procedure. Please refer to the rules for precise requirements, and bear in mind the following:

* In computing these limits, you can exclude the items listed in Rule 32(f).
* If you use a word limit or a line limit (other than the word limit in Rule 28(j)), you must file the certificate required by Rule 32(g).
* For the limits in Rules 5, 21, 27, 35, and 40:
	+ You must use the word limit if you produce your document on a computer; and
	+ You must use the page limit if you handwrite your document or type it on a typewriter.
* For the limits in Rules 28.1, 29(a)(5), and 32:
	+ You may use the word limit or page limit, regardless of how you produce the document; or
	+ You may use the line limit if you type or print your document with a monospaced typeface. A typeface is monospaced when each character occupies the same amount of horizontal space.

|  | **Rule** | **Document type** | **Word limit** | **Page limit** | **Line limit** |
| --- | --- | --- | --- | --- | --- |
| **Permission to appeal** | 5(c) | * Petition for permission to appeal
* Answer in opposition
* Cross-petition
 | 5,200 | 20 | Not applicable |
| **Extraordinary writs** | 21(d) | * Petition for writ of mandamus or prohibition or other extraordinary writ
* Answer
 | 7,800 | 30 | Not applicable |
| **Motions** | 27(d)(2) | * Motion
* Response to a motion
 | 5,200 | 20 | Not applicable |
|  | 27(d)(2) | * Reply to a response to a motion
 | 2,600 | 10 | Not applicable |
| **Parties’ briefs (where no**  | 32(a)(7) | * Principal brief
 | 13,000 | 30 | 1,300 |
| **cross-appeal)** | 32(a)(7) | * Reply brief
 | 6,500 | 15 | 650 |
| **Parties’ briefs (where cross-appeal)** | 28.1(e) | * Appellant’s principal brief
* Appellant’s response and reply brief
 | 13,000 | 30 | 1,300 |
|  | 28.1(e) | * Appellee’s principal and response brief
 | 15,300 | 35 | 1,500 |
|  | 28.1(e) | * Appellee’s reply brief
 | 6,500 | 15 | 650 |
| **Party’s supplemental letter** | 28(j) | * Letter citing supplemental authorities
 | 350 | Not applicable | Not applicable |
| **Amicus briefs** | 29(a)(5) | * Amicus brief during initial consideration of case on merits
 | One-half the length set by the Appellate Rules for a party’s principal brief | One-half the length set by the Appellate Rules for a party’s principal brief | One-half the length set by the Appellate Rules for a party’s principal brief |
|  | 29(b)(4) | * Amicus brief during consideration of whether to grant rehearing
 | 2,600 | Not applicable | Not applicable |
| **Rehearing and en banc filings** | 35(b)(2)& 40(b) | * Petition for hearing en banc
* Petition for panel rehearing; petition for rehearing en banc
 | 3,900 | 15 | Not applicable |

**Rule 29. Brief of an Amicus Curiae**

**(a) During Initial Consideration of a Case on the Merits.**

 (1) **Applicability.** This Rule 29(a) governs amicus filings during a court’s initial consideration of a case on the merits.

 (2) **When Permitted.** The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

~~(b)~~ (3) **Motion for Leave to File.**  The motion must be accompanied by the proposed brief and state:

 ~~(1)~~ (A) the movant’s interest; and

 ~~(2)~~ (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

~~(c)~~ (4) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

 ~~(1)~~ (A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

 ~~(2)~~ (B) a table of contents, with page references;

 ~~(3)~~ (C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

 ~~(4)~~ (D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

 ~~(5)~~ (E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

 ~~(A)~~ (i) a party’s counsel authored the brief in whole or in part;

 ~~(B)~~ (ii) a party or a party’s counsel contributed money that was intended to fund preparing or submitting the brief; and

 ~~(C)~~ (iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

 ~~(6)~~ (F) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

 ~~(7)~~ (G) a certificate of compliance under Rule 32(g)(1), if ~~required by Rule 32(a)(7)~~ length is computed using a word or line limit.

~~(d)~~ (5) **Length.**  Except by the court’s permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party’s principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

~~(e)~~ (6) **Time for Filing.**  An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant’s or petitioner’s principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

~~(f)~~ (7) **Reply Brief.** Except by the court’s permission, an amicus curiae may not file a reply brief.

~~(g)~~ (8) **Oral Argument.** An amicus curiae may participate in oral argument only with the court’s permission.

**(b) During Consideration of Whether to Grant Rehearing.**

 (1) **Applicability.** This Rule 29(b) governs amicus filings during a court’s consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

 (2) **When Permitted.** The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

 (3) **Motion for Leave to File.** Rule 29(a)(3) applies to a motion for leave.

 (4) **Contents**, **Form**, **and** **Length**. Rule 29(a)(4) applies to the amicus brief. The brief must not exceed 2,600 words.

 (5) **Time for Filing.** An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

**Committee Note**

 Rule 29 is amended to address amicus filings in connection with requests for panel rehearing and rehearing en banc.

Existing Rule 29 is renumbered Rule 29(a), and language is added to that subdivision (a) to state that its provisions apply to amicus filings during the court’s initial consideration of a case on the merits. Rule 29(c)(7) becomes Rule 29(a)(4)(G) and is revised to accord with the relocation and revision of the certificate-of-compliance requirement. New Rule 32(g)(1) states that “[a] brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B) . . . must include” a certificate of compliance. An amicus brief submitted during initial consideration of a case on the merits counts as a “brief submitted under Rule[] . . . 32(a)(7)(B)” if the amicus computes Rule 29(a)(5)’s length limit by taking half of a type-volume limit in Rule 32(a)(7)(B). Rule 29(a)(4)(G) restates Rule 32(g)(1)’s requirement functionally, by providing that a certificate of compliance is required if an amicus brief’s length is computed using a word or line limit.

New subdivision (b) is added to address amicus filings in connection with a petition for panel rehearing or rehearing en banc. Subdivision (b) sets default rules that apply when a court does not provide otherwise by local rule or by order in a case. A court remains free to adopt different rules governing whether amicus filings are permitted in connection with petitions for rehearing, and governing the procedures when such filings are permitted.

**Rule 26. Computing and Extending Time**

\* \* \* \* \*

**(c) Additional Time after Certain Kinds of Service.** When a party may or must act within a specified time after ~~service~~being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is ~~not~~ treated as delivered on the date of service stated in the proof of service.

**Committee Note**

 Rule 26(c) is amended to remove service by electronic means under Rule 25(c)(1)(D) from the modes of service that allow 3 added days to act after being served.

Rule 25(c) was amended in 2002 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

A parallel reason for allowing the 3 added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the 3 added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the 3 added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28- day periods that allow “day-of-the-week” counting. Adding 3 days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

 Electronic service after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond. Extensions of time may be warranted to prevent prejudice.

 Rule 26(c) has also been amended to refer to instances when a party “may or must act . . . after being served” rather than to instances when a party “may or must act . . . after service.” If, in future, an Appellate Rule sets a deadline for a party to act after *that party itself effects service* on another person, this change in language will clarify that Rule 26(c)’s three added days are not accorded to the party who effected service.

**Rule 26. Computing and Extending Time**

**(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

\* \* \* \* \*

(4) **‘‘Last Day’’ Defined.** Unless a different time is set by a statute, local rule, or court order, the last day ends:

 (A) for electronic filing in the district court, at midnight in the court’s time zone;

 (B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk’s principal office;

 (C) for filing under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C)—and filing by mail under Rule ~~13(b)~~13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

 (D) for filing by other means, when the clerk’s office is scheduled to close.

\* \* \* \* \*

**Committee Note**

**Subdivision (a)(4)(C).** The reference to Rule 13(b) is revised to refer to Rule 13(a)(2) in light of a 2013 amendment to Rule 13. The amendment to subdivision (a)(4)(C) is technical and no substantive change is intended.

1. \* New material is underlined; matter to be omitted is lined through. [↑](#footnote-ref-1)
2. See Rule 3(c) for permissible ways of identifying appellants. [↑](#footnote-ref-2)