

March 17, 2021

VIA E-MAIL

Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposal for Federal Rule of Civil Procedure on District Court Amicus Briefs

Dear Secretary:

We respectfully submit this proposal to the Advisory Committee on Civil Rules, proposing a Federal Rule of Civil Procedure governing the filing of amicus briefs in the district courts. Along with many of our colleagues at Gibson, Dunn & Crutcher LLP, we frequently serve as amicus counsel to a diverse range of corporations and organizations in federal district courts across the United States. District court amicus briefs provide our clients with an important opportunity to impact the outcome of cases that affect their interests and the development of the law. These briefs also add value to the judiciary, as our clients are able to provide a unique voice to assist the court and to add expertise and perspective that the parties may not be able to offer. Despite the significance and value of district court amicus briefs, guidance on how and when to file an amicus brief in a federal trial court is scarce and haphazard. No uniform federal rule exists to govern the procedural or substantive requirements for district court amicus briefs. And while some district courts have adopted local rules on the issue, for example D.D.C. Local Civil Rule 7(o), *see* Ex. A, most have not.

Instead, parties are generally left to consider a hodgepodge of often unwritten local practices and guidance that vary by the district and even the individual district judge. As frequent district court amicus counsel, we have many times searched in vain for applicable rules governing the circumstances in which a particular district court will accept or refuse amicus briefs, how such briefs should be formatted, and when and how to file such a brief. Frequently, we find no firm answers to these questions and only sparse common-law style authority. While we are ultimately able to rely on our own experience and judgment from prior cases, we do so at the expense of uniformity and predictability across cases, judges, and geographic locations. And parties and counsel without prior experience in this area are forced to muddle through without fixed guideposts.

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The absence of uniformity across courts ultimately stems from the fact that district courts generally lack any express statutory or rules-based authority or guidance regarding amicus briefs and instead consider whether to allow amicus briefs based only on the courts' inherent docket-management authority and discretion. *See, e.g., Club v. Fed. Emergency Mgmt. Agency*, 2007 WL 3472851, at *1 (S.D. Tex. Nov. 14, 2007) (“No statute, rule, or controlling case defines a federal district court’s power to grant or deny leave to file an amicus brief.”); *see also Lehman XS Trust, Series 2006–GP2 v. Greenpoint Mortg. Funding*, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014) (“Resolution of a motion for leave to file an amicus brief thus lies in the ‘firm discretion’ of the district court.”); *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (“District courts have inherent authority to appoint or deny amici . . .”). District courts have thus adopted inconsistent standards regarding when district court amicus briefs will be accepted. For example, some courts have restricted amicus submissions to situations where “a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Cobell v. Norton*, 246 F. Supp. 2d 59, 62-63 (D.D.C. 2003). Meanwhile, other courts have taken a more permissive approach, allowing amicus submissions even when “plaintiffs are represented by competent counsel and some of the arguments proffered in the proposed amicus brief are duplicative of those raised by plaintiffs.” *C & A Carbone v. Cty. of Rockland*, 2014 WL 1202699, at *3 (S.D.N.Y. March 24, 2014). The result is inconsistency between courts and confusion among litigants and counsel. Moreover, while a far smaller percentage of district court cases receive amicus briefs than do circuit court cases (0.1% of civil cases in the former, compared to 1-2% of cases in the latter), in raw terms the district courts are in the same general realm—300 cases per year in all district courts, compared to 500-1,000 cases per year in all circuit courts, according to our analysis.¹

In light of these circumstances and facts, we respectfully submit that the time has come for this Committee to promulgate and adopt a Federal Rule of Civil Procedure governing amicus practice in the district courts, just as it is standardized in the Federal Rules of Appellate Procedure, *see* Ex. B, and the Rules of the Supreme Court, *see* Ex. C. Such a rule will bring much needed clarity, predictability, and uniformity to this important practice area. It will ensure that, as with any other filing, any litigant from those most ably counseled to the pro se can pick up the federal rules and understand the procedures and standards for participating as a district court amicus.

¹ *See* Akiva Shapiro, Lee R. Crain & Amanda L. LeSavage, *Tips for District Court Amicus Brief Success*, 264 N.Y.L.J. 122 (Dec. 24, 2020).

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I. Elements That Should Be Included in a District Court Amicus Brief Rule

Based on our experience, we set out below several elements we believe should be included in a Federal Rule of Civil Procedure governing district court amicus brief practice. We also set out below the proposed text of a rule that embodies those elements—text drawn from a well-drafted and practical local rule adopted by the U.S. District Court for the District of Columbia, *see* Ex. A, as well as from Rule 29 of the Federal Rules of Appellate Procedure, *see* Ex. B—which we hope will be helpful in the Committee’s consideration.

Any rule should have the following four elements:

Procedure for Seeking Leave. A uniform federal amicus rule should provide guidelines on whether and how putative amici should request leave to file a brief, and whether they should first obtain consent from the parties. We respectfully submit that the positions of the parties should be obtained and included in any leave application, and that leave of the court should not need to be obtained unless one or both parties do not provide consent. This proposal, which is consistent with Federal Rule of Appellate Procedure 29, *see* Ex. B, and U.S. Supreme Court Rule 37, *see* Ex. C, will save district courts from wasting their limited resources deciding leave applications where the parties agree that amicus participation is appropriate. Nevertheless, we suggest that the rule permit district courts to prohibit the filing of an amicus brief or strike a brief that would result in a judge’s disqualification, again following the Federal Rules of Appellate Procedure.

Substance. A rule should provide a uniform standard that governs the circumstances in which an amicus party will be granted leave to participate so litigants and counsel can evaluate with more clarity whether amicus participation in a given case is appropriate, and, where necessary, can explain with greater clarity to the district court why participation is appropriate. The substantive standard should generally permit amicus participation whenever helpful to the district court’s resolution of the issues presented. At a high level, amicus parties should bring a unique perspective that leverages the expertise of the party submitting the brief and adds value by drawing on materials or focusing on issues not addressed in detail in the parties’ submissions, instead of repeating arguments that the parties or other amici have already raised. A rule should therefore require a party seeking leave to explain why their participation would be helpful to the court, including why the matters to be addressed in the amicus brief are relevant to the disposition of the case or motion and why their position or expertise is not adequately represented by a party.

Timing. A federal amicus rule should ensure that amici are required to file in a timely manner that does not prejudice the existing parties by unduly delaying the pending matter. It is crucial that a leave application and accompanying amicus brief is filed in time to give parties the opportunity to respond to the brief in advance of the motion, hearing, or trial to

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which it is directed. This means that that an amicus brief should typically be filed after the party the amicus is supporting files its principal brief, but sufficiently in advance of the opposing party's responsive brief (i.e., its opposition brief or reply, depending on which party the amicus is supporting). Providing a uniform timing rule will provide transparency and uniformity for potential amici and existing parties and will also provide courts clear bases to deny late-filed briefs that would otherwise prejudice the parties or delay proceedings. Such a rule will therefore better preserve the courts' ability to manage their docket and to efficiently resolve motions.

Length and Format. A federal amicus rule should give clear, uniform guidance as to the lengths of amicus briefs along the lines of the amicus brief rules set forth in appellate courts. Specifically, an amicus brief should be materially shorter than the parties' briefs, consistent with Federal Rule of Appellate Procedure 29(a)(5), *see* Ex. B, and U.S. Supreme Court 33, *see* Ex. C. This principle arises out of the common sense notion that as a friend of the court and not a party, amici should be saying less than the parties themselves. Providing a uniform rule—such as one that tethers the length of a party's amicus brief to a percentage of the parties' principal briefs—will ensure litigants have clarity on how long their briefs may be.

II. Proposed Rule

We respectfully propose the following rule, which is adapted from Local Civil Rule 7(o) adopted by the U.S. District Court for the District of Columbia, *see* Ex. A, and from Rule 29 of the Federal Rules of Appellate Procedure, *see* Ex. B. Based on our experience, the proposed rule is sensible and reasonable, and will provide clear and consistent guidance to district court judges, amicus counsel, and litigants.

Specifically, we propose the following rule:

Rule __. Brief of an Amicus Curiae

(1) 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 upon consent of all parties (exclusive of other amicus curiae), which consent shall be noted in the brief, or upon leave of Court, which may be granted after the submission of a motion for leave to file or upon the Court's own initiative. Even if all parties consent to the filing of an amicus curiae brief, a court may prohibit the filing of or strike a brief that would result in a judge's disqualification, or for such other reasons as the court determines in the interests of justice.

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(2) A motion for leave to file an amicus brief shall concisely state the nature of the movant's interest; identify the party or parties supported, if any; and set forth the reasons why the proposed amicus brief would be helpful to the court, including why the matters to be addressed in the brief are relevant to the disposition of the case or motion and why the movant's position or expertise is not adequately represented by a party. The motion shall state the position of each party as to the filing of such a brief and be accompanied by a proposed order. The motion must be accompanied by the proposed brief. Amicus participation should be permitted whenever deemed helpful, in the sound discretion of the district court, to the resolution of the issues presented.

(3) The motion for leave shall be filed in a timely manner such that it does not unduly prejudice any party or delay the Court's ability to rule on any pending matter. Any party may file an opposition to a motion for leave to file an amicus brief, concisely stating the reasons for such opposition, within 14 days after service of the motion or as ordered by the Court. There shall be no further briefing unless otherwise ordered by the Court.

(4) An amicus curiae must file its brief, accompanied by a motion for leave when necessary, no later than 7 days after the filing of the principal brief of the party being supported. Any amicus brief that does not support either party must be filed no later than 7 days after the principal brief of the moving party. In no circumstances shall an amicus curiae file an amicus brief less than 7 days before the filing deadline for the final brief of the party not being supported. A court may grant leave for later filing if just cause is shown, specifying the time within which any adverse party may respond.

(5) Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules or any superseding local 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.

(6) An amicus curiae may file a reply brief or participate in oral argument only with the court's permission.

Thank you for your consideration of this proposal.

GIBSON DUNN

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Respectfully,

/s/ Akiva Shapiro
Akiva Shapiro
Partner

/s/ Lee R. Crain
Lee R. Crain
Associate Attorney

/s/ Amanda L. LeSavage
Amanda L. LeSavage
Associate Attorney

Exhibit A

RULES
OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA



EFFECTIVE AS OF
SEPTEMBER 2015

Updated: July 2019

E. Barrett Prettyman
United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

raised in the motion or opposition. Unless so requested by the Court, the entire administrative record shall not be filed with the Court.

- (2) The appendix shall be prepared jointly by the parties and filed within 14 days following the final memorandum on the subject motion. The parties are encouraged to agree on the contents of the appendix which shall be filed by plaintiff. In the absence of an agreement, the plaintiff must serve on all other parties an initial designation and provide all other parties the opportunity to designate additional portions of the administrative record. Plaintiff shall include all parts of the record designated by all parties in the appendix.
- (3) In appropriate cases, the parties may request the option to submit separate appendices to be filed with any memorandum in support of, or in opposition to, the dispositive motion.

***COMMENT TO LCvR 7(h):** This provision recognizes that in cases where review is based on an administrative record the Court is not called upon to determine whether there is a genuine issue of material fact, but rather to test the agency action against the administrative record. As a result the normal summary judgment procedures requiring the filing of a statement of undisputed material facts is not applicable.*

***COMMENT TO LCvR 7(m):** The changes to this rule are designed to bring non-incarcerated pro se litigants within the scope of the duty to confer on nondispositive motions, so as to extend the benefits of the rule to cases in which such litigants are parties.*

***COMMENT TO LCvR 7(n):** This rule is intended to assist the Court in cases involving a voluminous record (e.g., environmental impact statements) by providing the Court with copies of relevant portions of the record relied upon in any dispositive motion. This rule is patterned after Local Rule 17 and Local Rule 30 of the D.C. Circuit and Rule 30 of the Federal Rules of Appellate Procedure. Pages in the appendix should retain the original pagination from the administrative record.*

(o) BRIEF OF AN AMICUS CURIAE.

- (1) 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 upon leave of Court, which may be granted after the submission of a motion for leave to file or upon the Court's own initiative.
- (2) A motion for leave to file an amicus brief shall concisely state the nature of the movant's interest; identify the party or parties supported, if any; and set forth the reasons why an amicus brief is desirable, why the movant's position is not adequately represented by a party, and why the matters asserted are relevant to the disposition of the case. The motion shall state the position of

each party as to the filing of such a brief and be accompanied by a proposed order. The motion shall be filed in a timely manner such that it does not unduly delay the Court's ability to rule on any pending matter. Any party may file an opposition to a motion for leave to file an amicus brief, concisely stating the reasons for such opposition, within 14 days after service of the motion or as ordered by the Court. There shall be no further briefing unless otherwise ordered by the Court.

- (3) The *amicus* brief shall be filed within such time as the Court may allow.
- (4) Unless otherwise ordered by the Court, a brief filed by an *amicus curiae* shall conform to the requirements of LCvR 5.4 and may not exceed 25 pages.
- (5) An *amicus* brief shall comply with the requirements set forth in FRAP 29(a)(4).
- (6) An *amicus curiae* may participate in oral argument only with the court's permission.

LCvR 9.1

APPLICATIONS FOR A STATUTORY THREE-JUDGE COURT

In every case in which by statute a Three-Judge Court is required, there shall be filed with the complaint a separate document entitled "Application for Three-Judge Court," together with a memorandum of points and authorities in support of the application. Upon the convening of a Three-Judge Court, each party shall submit to the Clerk two additional copies of all pleadings and papers previously filed by the party, and all subsequent filings shall be in quadruplicate.

LCvR 9.2

HABEAS CORPUS PETITIONS, SECTION 1983 COMPLAINTS, AND SECTION 2255 MOTIONS

Petitions for a *writ of habeas corpus* and complaints pursuant to 42 U.S.C. § 1983 filed by a petitioner incarcerated in the District of Columbia, and motions filed pursuant to 28 U.S.C. § 2255 (attacking a sentence imposed by the Court), must be filed on standard forms to be supplied upon request to the petitioner or plaintiff by the Clerk without cost. Counsel filing a petition for a *writ of habeas corpus*, a complaint under 42 U.S.C. §1983, or a motion under 28 U.S.C. § 2255 need not use a standard form, but any such petition, complaint or motion shall contain essentially the same information set forth on the standard form.

Exhibit B

FEDERAL RULES
OF
APPELLATE PROCEDURE

WITH FORMS

DECEMBER 1, 2019



Printed for the use
of

THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

(4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)–(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) Length.

(1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2), 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) contains no more than 13,000 words; or
- (ii) 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) contains no more than 15,300 words; or
- (ii) 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).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

- (1) the appellant's principal brief, within 40 days after the record is filed;
- (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;
- (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and
- (4) the appellee's reply brief, within 21 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.

(As added Apr. 25, 2005, eff. Dec. 1, 2005; amended Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 16, 2013, eff. Dec. 1, 2013; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

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 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, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

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

(A) the movant's interest; and

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

(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:

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

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

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

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

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

(i) a party's counsel authored the brief in whole or in part;

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

(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;

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

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

(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.

(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.

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

(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 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.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 26, 2018, eff. Dec. 1, 2018.)

Rule 30. Appendix to the Briefs

(a) Appellant's Responsibility.

(1) **Contents of the Appendix.** The appellant must prepare and file an appendix to the briefs containing:

- (A) the relevant docket entries in the proceeding below;
- (B) the relevant portions of the pleadings, charge, findings, or opinion;
- (C) the judgment, order, or decision in question; and
- (D) other parts of the record to which the parties wish to direct the court's attention.

(2) **Excluded Material.** Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) **Time to File; Number of Copies.** Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) All Parties' Responsibilities.

(1) **Determining the Contents of the Appendix.** The parties are encouraged to agree on the contents of the appendix. In

Exhibit C

RULES
OF THE
Supreme Court of the
United States

ADOPTED APRIL 18, 2019

EFFECTIVE JULY 1, 2019

(g) Word limits and cover colors for booklet-format documents are as follows:

Type of Document	Word Limits	Color of Cover
(i) Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	9,000	white
(ii) Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4); Respondent’s Brief in Support of Certiorari (Rule 12.6)	9,000	orange
(iii) Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	3,000	tan
(iv) Supplemental Brief (Rules 15.8, 17, 18.10, and 25.6)	3,000	tan
(v) Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	13,000	light blue
(vi) Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	13,000	light red
(vii) Reply Brief on the Merits (Rule 24.4)	6,000	yellow
(viii) Reply to Plaintiff’s Exceptions to Report of Special Master (Rule 17)	13,000	orange
(ix) Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	13,000	yellow
(x) Brief for an <i>Amicus Curiae</i> at the Petition Stage or pertaining to a Motion for Leave to file a Bill of Complaint (Rule 37.2)	6,000	cream
(xi) Brief for an <i>Amicus Curiae</i> Identified in Rule 37.4 in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	9,000	light green
(xii) Brief for any Other <i>Amicus Curiae</i> in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in		

	an Original Action at the Exceptions Stage (Rule 37.3)	8,000	light green
(xiii)	Brief for an <i>Amicus Curiae</i> Identified in Rule 37.4 in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	9,000	dark green
(xiv)	Brief for any Other <i>Amicus Curiae</i> in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	8,000	dark green
(xv)	Petition for Rehearing (Rule 44)	3,000	tan

(h) A document prepared under Rule 33.1 must be accompanied by a certificate signed by the attorney, the unrepresented party, or the preparer of the document stating that the brief complies with the word limitations. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The word-processing system must be set to include footnotes in the word count. The certificate must state the number of words in the document. The certificate shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746.

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. An *amicus curiae* brief may be filed only by an attorney admitted to practice before this Court as provided in Rule 5.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be filed if it reflects that written consent of all parties has been provided, or if the Court grants leave to file under subparagraph 2(b) of this Rule. An *amicus curiae* brief in support of a petitioner or appellant shall be filed within 30 days after the case is placed on the docket or a response is called for by the Court, whichever is later, and that time will not be extended. An *amicus curiae* brief in support of a motion of a plaintiff for leave to file a bill of complaint in an original action shall be filed within 60 days after the case is placed on the docket, and that time will not be extended. An *amicus curiae* brief in support of a respondent, an appellee, or a defendant shall be submitted within the time allowed for filing a brief in opposition or a motion to dismiss or affirm. An *amicus curiae* filing a brief under this subparagraph shall ensure that the counsel of record for all parties receive notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief, unless the *amicus curiae* brief is filed earlier than 10 days before the due date. Only one signatory to any *amicus curiae* brief filed jointly by more than one *amicus curiae* must timely notify the parties of its intent to file that brief. The *amicus curiae* brief shall indicate that counsel of record received timely notice of the intent to file the brief under this Rule and shall specify whether consent was granted, and its cover shall identify the party supported. Only one signatory to an *amicus curiae*

brief filed jointly by more than one *amicus curiae* must obtain consent of the parties to file that brief. A petitioner or respondent may submit to the Clerk a letter granting blanket consent to *amicus curiae* briefs, stating that the party consents to the filing of *amicus curiae* briefs in support of either or of neither party. The Clerk will note all notices of blanket consent on the docket.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if it reflects that written consent of all parties has been provided, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the time allowed for filing the petitioner's or appellant's brief. Motions to extend the time for filing an *amicus curiae* brief will not be entertained. The 10-day notice requirement of subparagraph 2(a) of this Rule does not apply to an *amicus curiae* brief in a case before the Court for oral argument. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing. Only one signatory to an *amicus curiae* brief filed jointly by more than one *amicus curiae* must obtain consent of the parties to file that brief. A petitioner or respondent may submit to the Clerk

a letter granting blanket consent to *amicus curiae* briefs, stating that the party consents to the filing of *amicus curiae* briefs in support of either or of neither party. The Clerk will note all notices of blanket consent on the docket.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed 1,500 words. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such

a monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, \$300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, \$200;

(c) for reproducing and certifying any record or paper, \$1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, \$.50 per page;

(d) for a certificate bearing the seal of the Court, \$10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, \$35.

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the court below appointed counsel for an indigent party, no affidavit or declaration is required, but the motion shall cite the provision of law under which counsel was appointed, or a copy of the order of appointment shall be appended to the motion.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institu-