

**PROPOSED REVISIONS TO
RULES OF THE
SUPREME COURT OF THE UNITED STATES
NOVEMBER 2018**

The Clerk's Comments that accompany the revisions to the Rules are not part of the Rules. They are furnished solely to assist readers in understanding the revisions.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order indicated:

* * *

(b) (i) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), ~~and~~;

(ii) a corporate disclosure statement as required by Rule 29.6; ~~and~~

(iii) A listing of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court. For each such proceeding, the listing should include the court in question, the docket number and case caption for the proceeding, and the date of entry of the judgment. For the purposes of this rule, a proceeding is "directly related" if it arises from the same trial court case as the case in this Court (including the proceedings directly on review in this case), or if it challenges the same criminal conviction or sentence as is challenged in this Court, whether on direct appeal or through state or federal collateral proceedings.

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Comment:

A complete listing of directly related cases will assist in evaluating whether a Justice's involvement in a case before joining the Court might require recusal.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

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2. A brief in opposition should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition. A brief in opposition should identify any directly related cases that were not identified in the petition under Rule 14.1(b)(iii), including for each such case the information called for by Rule 14.1(b)(iii).

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Comment:

This addition requires that errors and omissions in the listing provided under Rule 14.1(b)(iii) be corrected by the respondent in a brief in opposition.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

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3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 30 days after the brief for the respondent or appellee is filed, but any reply brief must actually be received by the Clerk not later than 2 p.m. ~~one week~~10 days before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

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Comment:

This amendment provides additional time for the Court to review reply briefs.

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk in paper form.

2. A document is timely filed if it is received by the Clerk in paper form within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

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Comment:

This amendment is intended to make clear that paper remains the official form of filing, and that the timeliness of a filing turns upon when the paper version was submitted to the Clerk's Office.

Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:*

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(g) Word limits and color covers for booklet-format documents are as follows:

Type of Document	Word Limits	Color of Cover
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* * *

(v) Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	15,000 <u>13,000</u>	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)	15,000 <u>13,000</u>	light red
(vii) Reply Brief on the Merits (Rule 24.4)	6,000 <u>4,500</u>	yellow
(viii) Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17)	15,000 <u>13,000</u>	orange
(ix) Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	15,000 <u>13,000</u>	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> 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 <u>8,000</u>	light green
(xii) Brief for an <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)	9,000 <u>8,000</u>	dark green

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Comment:

Experience has shown that litigants in this Court are able to present their arguments effectively, and without undue repetition, with word limits slightly reduced from those under the current rule. Reductions similarly designed were implemented for briefs in the federal courts of appeals in 2016.

Rule 48. Effective Date of Rules

1. These Rules, adopted _____, 2018, will be effective _____, 2018.

2. The Rules govern all proceedings after their effective date except ~~to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies~~that the amendments to Rules 25.3 and 33(g) will apply only to cases in which certiorari was granted, or a direct appeal or original action was set for argument, after the effective date.