

**PROPOSED REVISIONS TO  
RULES OF THE  
SUPREME COURT OF THE UNITED STATES  
MARCH 2022  
REDLINE/STRIKEOUT VERSION**

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 9. Appearance of Counsel**

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(7), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record. The names of other members of the Bar of this Court or of the bar of the highest court of State acting as counsel, and, if desired, their addresses, may be added. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified. See Rule 34.1(f). Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear.

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Comment:

The added language is moved from Rule 34.1(f). It is moved here for ease of reference, and is not intended to reflect a substantive revision.

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

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ~~ordered~~ requested by the Court.

Comment:

This change is designed to reflect the Court's practice of noting a request for a response on the docket, rather than issuing a formal order that a response be filed.

### **Rule 17. Procedure in an Original Action**

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~~6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.~~

~~7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.~~

Comment:

Under current practice, the Court does not issue a summons or other form of process in original actions.

### **Rule 25. Briefs on the Merits; Number of Copies and Time to File**

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5. The time periods stated in paragraphs 1, 2 and 3 of this Rule may be extended as provided in Rule 30. An application or a motion to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

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Comment:

The Court's current practice is to deem only those requests for relief that are formally docketed as a separate application as "applications," and to deem other requests for extensions of time as "motions." This change is to conform the Rule to that practice.

## **Rule 26. Joint Appendix**

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file 40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) for cases from state courts, a listing of the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

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Comment:

Where dockets in federal cases are easily accessible through the internet, there is no reason for them to be included in the joint appendix.

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

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7. In addition to the filing requirement set forth in this Rule, all filers who are represented by counsel must submit documents to the Court's electronic filing system in conformity with the "Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System" issued by the Clerk. Submission of a document to the electronic filing system does not constitute transmission of an electronic version of the document to other parties under paragraph (3) of this Rule.

Comment:

This new language clarifies that documents must be transmitted electronically to other parties separate and apart from submission to the electronic filing system.

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

1. *Booklet Format:*

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(f) Forty copies of a booklet-format document shall be filed, ~~and one unbound copy of the document on 8½- by 11-inch paper shall also be submitted.~~ If the filing has not been submitted to the Court's electronic filing system, one unbound copy of the document on 8½- by 11-inch paper shall also be submitted.

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Comment:

The requirement that a filer submit a single 8½- by 11-inch copy of a booklet format document was instituted at the time the Court's electronic filing system was put in place, in order to facilitate the scanning of documents in which an electronic version was not available. Experience has shown that this additional paper copy is not needed where the document was submitted through the electronic filing system.

**Rule 34. Document Preparation: General Requirements**

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

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(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 9.1) and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address, e-mail address, and telephone number. Only one counsel of record may be noted on a single document, except that counsel of record for each party must be listed on the cover of a joint appendix. ~~The names of other members of the Bar of this Court or of the bar of the highest court of State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se*, in which case the party's name, address, and telephone number shall appear.~~

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2. Every document (other than a joint appendix), that exceeds 1,500 words when prepared under Rule 33.1, or that exceeds five pages when prepared under Rule 33.2, shall contain a table of contents and a table of cited authorities (*i.e.*, cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited. The table of authorities should not use the “*passim*” notation, but should instead list every page on which an authority is cited.

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4. Every appendix to a document, including a statutory appendix, must be preceded by include at the beginning of the appendix a table of contents that provides a description of each document in the appendix.

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7. Where circumstances warrant, a party may file a motion for leave to file material under seal.

(a) A motion to file material under seal should address whether the material in question was sealed in a lower court and, where applicable, provide a copy of the sealing order.

(b) If the material was filed under seal in a lower court, the motion should identify the reasons that the material was sealed, state whether the seal remains in effect as to each of the relevant documents, and address why it remains necessary to continue to maintain the confidentiality of the information in this Court. If the material was not filed under seal in a lower court, the motion should state with specificity why sealing is necessary in this Court in the first instance.

(c) The motion should address why it is necessary that the material to be sealed be included in the filing.

(d) Where possible, the movant should provide a redacted copy of the material for the public record. If this is not feasible, the motion should state the reasons that it is not. Where the material sought to be filed under seal is part of an appendix to the filing, it should be presented in a separate, supplemental volume of the appendix.

(e) Where possible, the motion itself should be drafted so that it may be filed on the public record. If this is not feasible, the motion may be filed under seal, preferably with a

redacted copy for the public record. The motion should reflect the position of other parties to the case concerning whether sealing of the material is appropriate.

(f) Material that is sought to be filed under seal should be marked “Under Seal” on the cover and on every page of the document. The redacted copy for the public record, when provided, should be marked “Public Copy – Sealed Materials Redacted” on the cover page of the document.

(g) The parties must promptly notify the Court if it is no longer necessary for material previously filed under seal to remain under seal.

A motion filed under this Rule shall comply in every respect with Rule 21. Where a motion to file under seal is filed, the parties should treat the material as under seal until the Court rules on the motion. Neither the motion to file a document under seal nor any document containing sealed material should be submitted through the Court’s electronic filing system.

Comment:

The language removed from paragraph 1 is moved to Rule 9.1. The amendment to paragraph 2 requiring the listing of every page on which an authority is cited is designed to facilitate access to cited material. New language in paragraph 4 is intended to make clear that a table of contents for an appendix should be included at the beginning of the appendix, and not simply as part of the table of contents for the entire filing. New paragraph 7 is intended to reflect existing practice concerning the sealing of records. It also outlines various types of information that a party seeking to file documents under seal should include in a motion, in order to assist the Court in ruling upon the motion and to ensure that sealing is necessary.

### **Rule 37. Brief for an *Amicus Curiae***

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2. ~~(a)~~ An *amicus curiae* brief submitted in support of a petitioner or appellant 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 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 or on exceptions to a report of a Special Master in an original action 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~~ is 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 or on exceptions to a report of a Special Master. The ~~*amicus curiae* brief shall specify whether consent was granted, and its cover~~ of an *amicus curiae* brief 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. An *amicus curiae* brief in connection with an application under Rule 22 must be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action. In light of the time-sensitivity of such applications, the filing of these briefs is discouraged, and an *amicus curiae* brief should be filed only if it brings to the attention of the Court relevant matter not already presented by the parties that will be of considerable help to the Court. An original and two copies of any such brief should be prepared as required by Rule 33.2. An *amicus curiae* brief in connection with an application is limited to 25 pages in length, subject to the exclusions in Rule 33.1(d). The notice requirement of Rules 37.2 does not apply, but electronic transmission of the brief to the parties under Rule 29.3 must be accomplished at the time of filing.~~

~~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. A brief filed under this Rule shall be accompanied by proof of service as required by Rule 29. A brief filed under subparagraphs (2) or (3) of this Rule shall comply with the applicable provisions of Rule 33.1. Any brief under this Rule shall comply with the applicable provisions of Rule 24, 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.~~

~~6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a 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. This disclosure requirement does not apply to a brief 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.

Comment:

The requirement to either obtain consent to file an *amicus curiae* brief or file a motion for leave to file the brief is removed from Rules 37.2 and 37.3. While the consent requirement may have served a useful gatekeeping function in the past, it no longer does so, and compliance with the rule imposes unnecessary burdens upon litigants and the Court. An amendment to Rule 37.3(a) also provides that the same procedures for *amicus* briefs in merits cases apply in connection with exceptions to a report of a Special Master in an original action. An amendment to Rule 37.4 sets forth requirements concerning *amicus curiae* briefs in connection with emergency applications. The new provision discourages these briefs, but provides guidance in the circumstances when they may be of use to the Court.

#### **Rule 44. Rehearing**

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2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee under Rule 38(b) if required in any case in which the filer paid the filing fee under Rule 38(a), but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ will not be extended. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

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Comment:

Language calling for the payment of a filing fee “if required” has sometimes caused confusion. This change is intended to make clear that the payment under Rule 38(b) is required unless the filer was previously granted leave to proceed *in forma pauperis* in the case. It is not intended as a substantive change.

#### **Rule 45. Process; Mandates**

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2. In a case on review from a state court, the mandate issues ~~25~~32 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

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Comment:

This amendment reflects current practice, under which the Clerk’s Office waits seven days after the period to file a petition for rehearing to issue a judgment or mandate, to account for the possibility that a petition for rehearing may have been mailed on the 25<sup>th</sup> day after a ruling in the case.

#### **Rule 48. Effective Date of Rules**

1. These Rules, adopted ~~April 18, 2019,~~ \_\_\_\_\_, 2022, will be effective ~~July 1, 2019~~ \_\_\_\_\_, 2022.

2. The Rules govern all proceedings after their effective date except ~~that the amendments to Rules 25.3 and 33.1(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 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.~~