

April 28, 2016

Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 9, 2015; a redline version of the rules with Committee Notes; an excerpt from the September 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 4, 2015 Report of the Advisory Committee on Appellate Rules.

Sincerely,

/s/ John G. Roberts

April 28, 2016

Honorable Joseph R. Biden, Jr.
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendments to the Federal Rules of Appellate Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2075 of Title 28, United States Code.

Accompanying these rules are the following materials submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 9, 2015; a redline version of the rules with Committee Notes; an excerpt from the September 2015 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the May 4, 2015 Report of the Advisory Committee on Appellate Rules.

Sincerely,

/s/ John G. Roberts

April 28, 2016

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Appellate Procedure be, and they hereby are, amended by including therein amendments to Appellate Rules 4, 5, 21, 25, 26, 27, 28, 28.1, 29, 32, 35, and 40, and Forms 1, 5, and 6, new Form 7 and new Appendix.

[*See infra* pp. __ __ __.]

2. That the foregoing amendments to the Federal Rules of Appellate Procedure shall take effect on December 1, 2016, and shall govern in all proceedings in appellate cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Appellate Procedure in accordance with the provisions of Section 2075 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE**

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 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:

* * * * *

(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

2 FEDERAL RULES OF APPELLATE PROCEDURE

system to receive the benefit of this Rule 4(c)(1).

If an inmate 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 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).

* * * * *

Rule 5. Appeal by Permission

* * * * *

(c) Form of Papers; Number of Copies; Length

Limits. All papers must conform to Rule 32(c)(2).

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.

* * * * *

**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). 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.

Rule 25. Filing and Service

(a) Filing.

* * * * *

(2) Filing: Method and Timeliness.

* * * * *

(C) Inmate Filing. 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 is timely if it is deposited in the institution's internal mail system on or before the last day for filing 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).

* * * * *

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(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.

* * * * *

(c) Additional Time after Certain Kinds of Service.

When a party may or must act within a specified time after 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 treated as delivered on the date of service stated in the proof of service.

Rule 27. Motions

* * * * *

(d) Form of Papers; Length Limits; Number of Copies.

* * * * *

(2) **Length Limits.** 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.

* * * * *

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(g)(1).

* * * * *

Rule 28.1. Cross-Appeals

* * * * *

(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.

14 FEDERAL RULES OF APPELLATE PROCEDURE

(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).

* * * * *

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.
- (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 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.

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).

(B) Type-Volume Limitation.

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- 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).

* * * * *

(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 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.

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) 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 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.

* * * * *

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. 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.

**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., Plaintiff

v.

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,* 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.]

* See Rule 3(c) for permissible ways of identifying appellants.

**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 _____, Plaintiff v. _____, 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 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements

1. This document complies with [the type-volume limit of Fed. R. App. P. [*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 document contains [*state the number of*] words, **or**
- this brief uses a monospaced typeface and contains [*state the number of*] lines of text.

2. This 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 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 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: _____

Form 7. Declaration of Inmate Filing

*[insert name of court; for example,
United States District Court for the District of Minnesota]*

A.B., Plaintiff

v.

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).]

**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)	<ul style="list-style-type: none"> • Petition for permission to appeal • Answer in opposition • Cross-petition 	5,200	20	Not applicable

	Rule	Document type	Word limit	Page limit	Line limit
Extraordinary writs	21(d)	<ul style="list-style-type: none"> • Petition for writ of mandamus or prohibition or other extraordinary writ • Answer 	7,800	30	Not applicable
Motions	27(d)(2)	<ul style="list-style-type: none"> • Motion • Response to a motion 	5,200	20	Not applicable
	27(d)(2)	<ul style="list-style-type: none"> • Reply to a response to a motion 	2,600	10	Not applicable
Parties' briefs (where no cross-appeal)	32(a)(7)	<ul style="list-style-type: none"> • Principal brief 	13,000	30	1,300
	32(a)(7)	<ul style="list-style-type: none"> • Reply brief 	6,500	15	650
Parties' briefs (where cross-appeal)	28.1(e)	<ul style="list-style-type: none"> • Appellant's principal brief • Appellant's response and reply brief 	13,000	30	1,300
	28.1(e)	<ul style="list-style-type: none"> • Appellee's principal and response brief 	15,300	35	1,500
	28.1(e)	<ul style="list-style-type: none"> • Appellee's reply brief 	6,500	15	650
Party's supplemental letter	28(j)	<ul style="list-style-type: none"> • Letter citing supplemental authorities 	350	Not applicable	Not applicable

	Rule	Document type	Word limit	Page limit	Line limit
Amicus briefs	29(a)(5)	<ul style="list-style-type: none"> 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)	<ul style="list-style-type: none"> 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)	<ul style="list-style-type: none"> Petition for hearing en banc Petition for panel rehearing; petition for rehearing en banc 	3,900	15	Not applicable