

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

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

2 \* \* \* \* \*

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

4 (1) If an institution has a system designed for legal  
5 mail, an inmate confined there must use that  
6 system to receive the benefit of this Rule 4(c)(1).

7 ~~If an inmate confined in an institution files a~~  
8 ~~notice of appeal in either a civil or a criminal~~  
9 ~~case, the notice is timely if it is deposited in the~~  
10 ~~institution's internal mail system on or before the~~  
11 ~~last day for filing. If an institution has a system~~  
12 ~~designed for legal mail, the inmate must use that~~  
13 ~~system to receive the benefit of this rule. Timely~~  
14 ~~filing may be shown by a declaration in~~

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\* New material is underlined; matter to be omitted is lined through.

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15 ~~compliance with 28 U.S.C. § 1746 or by a~~  
16 ~~notarized statement, either of which must set~~  
17 ~~forth the date of deposit and state that first class~~  
18 ~~postage has been prepaid. and:~~

19 (A) it is accompanied by:

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

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

29 (B) the court of appeals exercises its discretion  
30 to permit the later filing of a declaration or

31 notarized statement that satisfies

32 Rule 4(c)(1)(A)(i).

33 \* \* \* \* \*

**Committee Note**

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

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

The amended rule also provides that a notice is timely without a declaration or notarized statement if other evidence accompanying the notice shows that the notice was deposited on or before the due date and that postage was prepaid. If the notice is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the court of appeals has discretion to accept a declaration or notarized statement at a later date. The Rule

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uses the phrase “exercises its discretion to permit”—rather than simply “permits”—to help ensure that pro se inmate litigants are aware that a court will not necessarily forgive a failure to provide the declaration initially.

1 **Rule 25. Filing and Service**

2 **(a) Filing.**

3 \* \* \* \* \*

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

5 \* \* \* \* \*

6 **(C) Inmate Filing.** If an institution has a  
7 system designed for legal mail, an inmate  
8 confined there must use that system to  
9 receive the benefit of this Rule 25(a)(2)(C).

10 A paper filed by an inmate ~~confined in an~~  
11 ~~institution~~ is timely if it is deposited in the  
12 institution's internal mailing system on or  
13 before the last day for filing. ~~If an~~  
14 ~~institution has a system designed for legal~~  
15 ~~mail, the inmate must use that system to~~  
16 ~~receive the benefit of this rule. Timely~~  
17 ~~filing may be shown by a declaration in~~

18 ~~compliance with 28 U.S.C. § 1746 or by a~~  
19 ~~notarized statement, either of which must~~  
20 ~~set forth the date of deposit and state that~~  
21 ~~first class postage has been prepaid, and:~~

22 (i) it is accompanied by:

23 • a declaration in compliance with  
24 28 U.S.C. § 1746—or a notarized  
25 statement—setting out the date of  
26 deposit and stating that first-class  
27 postage is being prepaid; or

28 • evidence (such as a postmark or  
29 date stamp) showing that the  
30 paper was so deposited and that  
31 postage was prepaid; or

32 (ii) the court of appeals exercises its  
33 discretion to permit the later filing of a

34 declaration or notarized statement that

35 satisfies Rule 25(a)(2)(C)(i).

36 \* \* \* \* \*

**Committee Note**

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

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

The amended rule also provides that a paper is timely without a declaration or notarized statement if other evidence accompanying the paper shows that the paper was deposited on or before the due date and that postage was prepaid. If the paper is not accompanied by evidence that establishes timely deposit and prepayment of postage, then the court of appeals has discretion to accept a declaration or notarized statement at a later date. The Rule uses the phrase “exercises its discretion to permit”—rather than

simply “permits”—to help ensure that pro se inmate litigants are aware that a court will not necessarily forgive a failure to provide the declaration initially.

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

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

3 \* \* \* \* \*

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

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

12 \* \* \* \* \*

**Committee Note**

A clarifying amendment is made to subdivision (a)(4). Former Rule 4(a)(4) provided that “[i]f a party timely files in the district court” certain post-judgment motions, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Responding to a circuit split concerning the meaning of “timely” in this provision, the amendment adopts the majority approach and rejects the approach taken in

*National Ecological Foundation v. Alexander*, 496 F.3d 466 (6th Cir. 2007). A motion made after the time allowed by the Civil Rules will not qualify as a motion that, under Rule 4(a)(4)(A), re-starts the appeal time—and that fact is not altered by, for example, a court order that sets a due date that is later than permitted by the Civil Rules, another party’s consent or failure to object to the motion’s lateness, or the court’s disposition of the motion without explicit reliance on untimeliness.

1 **Rule 5. Appeal by Permission**

2 \* \* \* \* \*

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

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

5 ~~Except by the court's permission, a paper must not~~

6 ~~exceed 20 pages, exclusive of the disclosure~~

7 ~~statement, the proof of service, and the accompanying~~

8 ~~documents required by Rule 5(b)(1)(E). An original~~

9 and 3 copies must be filed unless the court requires a

10 different number by local rule or by order in a

11 particular case. Except by the court's permission, and

12 excluding the accompanying documents required by

13 Rule 5(b)(1)(E):

14 (1) a paper produced using a computer must not

15 exceed 5,200 words; and

16 (2) a handwritten or typewritten paper must not

17 exceed 20 pages.

\* \* \* \* \*

**Committee Note**

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

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

3 \* \* \* \* \*

4 **(d) Form of Papers; Number of Copies; Length**

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

6 ~~Except by the court's permission, a paper must not~~

7 ~~exceed 30 pages, exclusive of the disclosure~~

8 ~~statement, the proof of service, and the accompanying~~

9 ~~documents required by Rule 21(a)(2)(C). An original~~

10 and 3 copies must be filed unless the court requires

11 the filing of a different number by local rule or by

12 order in a particular case. Except by the court's

13 permission, and excluding the accompanying

14 documents required by Rule 21(a)(2)(C):

15 (1) a paper produced using a computer must not

16 exceed 7,800 words; and

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

**Committee Note**

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

1 **Rule 27. Motions**

2 \* \* \* \* \*

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

5 \* \* \* \* \*

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

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

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

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

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

25 \* \* \* \* \*

#### **Committee Note**

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

1 **Rule 28. Briefs**

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

5 \* \* \* \* \*

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

8 \* \* \* \* \*

**Committee Note**

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

1 **Rule 28.1. Cross-Appeals**

2 \* \* \* \* \*

3 **(e) Length.**

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

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

11 (A) The appellant's principal brief or the  
12 appellant's response and reply brief is  
13 acceptable if it:

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

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

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

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

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

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

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

32 \* \* \* \* \*

### Committee Note

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

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

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

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

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

3 \* \* \* \* \*

4 **(7) Length.**

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

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

- 10 (i) A principal brief is acceptable if it:
- 11 • ~~it~~—contains no more than  
12 ~~14,000~~13,000 words; or
  - 13 • ~~it~~—uses a monospaced face and  
14 contains no more than 1,300 lines  
15 of text.
- 16 (ii) A reply brief is acceptable if it  
17 contains no more than half of the type

18 volume specified in Rule  
19 32(a)(7)(B)(i).

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

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

31 ~~(i) A brief submitted under~~  
32 ~~Rules 28.1(e)(2) or 32(a)(7)(B) must~~  
33 ~~include a certificate by the attorney, or~~  
34 ~~an unrepresented party, that the brief~~

35 complies with the type volume  
36 limitation. The person preparing the  
37 certificate may rely on the word or  
38 line count of the word processing  
39 system used to prepare the brief. The  
40 certificate must state either:

- 41 • the number of words in the brief;
- 42 or
- 43 • the number of lines of  
44 monospaced type in the brief.

45 (ii) Form 6 in the Appendix of Forms is a  
46 suggested form of a certificate of  
47 compliance. Use of Form 6 must be  
48 regarded as sufficient to meet the  
49 requirements of Rules 28.1(e)(3) and  
50 32(a)(7)(C)(i).

51 \* \* \* \* \*

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

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

- 62 ● the cover page;
- 63 ● a corporate disclosure statement;
- 64 ● a table of contents;
- 65 ● a table of citations;
- 66 ● a statement regarding oral argument;
- 67 ● an addendum containing statutes, rules, or  
68 regulations;

- 69       ● certificates of counsel;
- 70       ● the signature block;
- 71       ● the proof of service; and
- 72       ● any item specifically excluded by these rules or
- 73             by local rule.

74   **(g) Certificate of Compliance.**

75       **(1) Briefs and Papers That Require a Certificate.**

76             A brief submitted under Rules 28.1(e)(2),  
 77             29(b)(4), or 32(a)(7)(B)—and a paper submitted  
 78             under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A),  
 79             27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must  
 80             include a certificate by the attorney, or an  
 81             unrepresented party, that the document complies  
 82             with the type-volume limitation. The person  
 83             preparing the certificate may rely on the word or  
 84             line count of the word-processing system used to  
 85             prepare the document. The certificate must state

86                   the number of words—or the number of lines of  
87                   monospaced type—in the document.  
88           (2) **Acceptable Form.** Form 6 in the Appendix of  
89                   Forms meets the requirements for a certificate of  
90                   compliance.

#### Committee Note

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

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

Subdivision (e) is amended to make clear a court’s ability (by local rule or order in a case) to increase the

length limits for briefs and other documents. Subdivision (e) already established this authority as to the length limits in Rule 32(a)(7); the amendment makes clear that this authority extends to all length limits in the Appellate Rules.

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

1 **Rule 35. En Banc Determination**

2 \* \* \* \* \*

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

5 \* \* \* \* \*

6 (2) Except by the court's permission, ~~a petition for~~  
7 ~~an en banc hearing or rehearing must not exceed~~  
8 ~~15 pages, excluding material not counted under~~  
9 ~~Rule 32.:~~

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

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

16 (3) For purposes of the page-limits in Rule 35(b)(2),  
17 if a party files both a petition for panel rehearing



1 **Rule 40. Petition for Panel Rehearing**

2 \* \* \* \* \*

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

- 9 (1) a petition for panel rehearing produced using a  
10 computer must not exceed 3,900 words; and  
11 (2) a handwritten or typewritten petition for panel  
12 rehearing must not exceed 15 pages.

**Committee Note**

The page limits previously employed in Rules 5, 21, 27, 35, and 40 have been largely overtaken by changes in technology. For papers produced using a computer, those page limits are now replaced by word limits. The word limits were derived from the current page limits using the assumption that one page is equivalent to 260 words. Papers produced using a computer must include the

certificate of compliance required by Rule 32(g); Form 6 in the Appendix of Forms suffices to meet that requirement. Page limits are retained for papers prepared without the aid of a computer (i.e., handwritten or typewritten papers). For both the word limit and the page limit, the calculation excludes any items listed in Rule 32(f).

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

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

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

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

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

15 (4) (A) the movant's interest; and



32 with references to the pages of the brief  
33 where they are cited;

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

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

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

42 ~~(B)~~ (ii) a party or a party's counsel  
43 contributed money that was intended  
44 to fund preparing or submitting the  
45 brief; and

46 ~~(C)~~ (iii) a person—other than the amicus  
47 curiae, its members, or its counsel—  
48 contributed money that was intended

49 to fund preparing or submitting the  
50 brief and, if so, identifies each such  
51 person;

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

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

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

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

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

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

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

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

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

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

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

98       (5) **Time for Filing.** An amicus curiae supporting  
99               the petition for rehearing or supporting neither

100 party must file its brief, accompanied by a  
101 motion for filing when necessary, no later than 7  
102 days after the petition is filed. An amicus curiae  
103 opposing the petition must file its brief,  
104 accompanied by a motion for filing when  
105 necessary, no later than the date set by the court  
106 for the response.

#### **Committee Note**

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

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

Rule 32(a)(7)(B). Rule 29(a)(4)(G) restates Rule 32(g)(1)'s requirement functionally, by providing that a certificate of compliance is required if an amicus brief's length is computed using a word or line limit.

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

1 **Rule 26. Computing and Extending Time**

2 \* \* \* \* \*

3 (c) **Additional Time after Certain Kinds of Service.**

4 When a party may or must act within a specified time  
5 after ~~service~~being served, 3 days are added after the  
6 period would otherwise expire under Rule 26(a),  
7 unless the paper is delivered on the date of service  
8 stated in the proof of service. For purposes of this  
9 Rule 26(c), a paper that is served electronically is ~~not~~  
10 treated as delivered on the date of service stated in the  
11 proof of service.

**Committee Note**

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

Rule 25(c) was amended in 2002 to provide for service by electronic means. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow 3 added days to act after being served. There were

concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.

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

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

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

Rule 26(c) has also been amended to refer to instances when a party “may or must act . . . after being served” rather than to instances when a party “may or must act . . . after service.” If, in future, an Appellate Rule sets a

deadline for a party to act after *that party itself effects service* on another person, this change in language will clarify that Rule 26(c)'s three added days are not accorded to the party who effected service.

1 **Rule 26. Computing and Extending Time**

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

6 \* \* \* \* \*

7 **(4) “Last Day” Defined.** Unless a different time is  
8 set by a statute, local rule, or court order, the last  
9 day ends:

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

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

15 (C) for filing under Rules 4(c)(1), 25(a)(2)(B),  
16 and 25(a)(2)(C)—and filing by mail under  
17 Rule ~~13(b)~~13(a)(2)—at the latest time for

