

DATE: September 18, 2008

TO: Court Executive Committee

FROM: Molly C. Dwyer, Clerk of Court

RE: Proposed Revisions to Form 8, Appendix of Forms

The court developed Form 8 in conjunction with former Circuit Rule 32-1, which governed brief format. When Federal Rule of Appellate Procedure 32 was adopted, the court abrogated the circuit rule in deference to the new corresponding federal rule. Although Federal Rule of Appellate Procedure 32(a)(7)(C)(ii) requires the circuits to accept Form 6 in the federal appendix of forms as confirmation that the brief complies with Rules 28.1(e)(2) or 32(a)(7)(B) and prohibits local variations on the form, the court neglected to abrogate Form 8.

In three instances the court's rules provide for the filing of briefs that exceed the length limits set forth in Rule 32(a)(7)(B):

- Circuit Rule 28-4 permits an enlargement if a brief is filed by separately represented parties, responds to a joint brief filed pursuant to the rule or responds to multiple briefs;
- Circuit Rule 32-2 allows a party to file a brief that exceeds the limits set forth at Rule 32(a)(7) upon successful application to the court for that relief; and
- Circuit Rule 32-4 affords lengthier limits for briefs filed in capital cases.

Circuit Rule 29(c)(2) and (3) contemplates that the court may permit oversize post-disposition friend of the court briefs.

Federal Form 6 is designed to address standard size briefs and does not lend itself to the types of briefs noted above. As the prohibition against promulgation of alternative forms is limited to instances where the party submits a brief of the length set forth at Rule 32(a)(7)(C), adoption of a local form designed to address the lengthier briefs permitted by the circuit rules would not be at variance with the federal rule; omission of the overlapping provisions does seem mandatory. Circuit Rule 32-1 should be stricken as well. A proposed revised form is attached.

