

MISCELLANEOUS RULE REVISIONS

CIRCUIT RULE 11-4. RETENTION OF PHYSICAL EXHIBITS IN THE DISTRICT COURT, TRANSMITTAL OF CLERK'S RECORD ON REQUEST

11-4.1. Retention of Clerk's Record in the District Court

[Abrogated 12/1/09]

11-4.2. Retention of Physical Exhibits in the District Court

For any exhibits not otherwise available on the electronic district court docket, aAll physical and documentary exhibits in all cases shall be retained in the district court until the mandate issues unless requested by the Court of Appeals. *(Rev. 12/1/09; 6/1/19)*

11-4.3. Transmittal of Reporter's Transcript

[Abrogated 12/1/09]

11-4.4. Transmittal of Clerk's Record Upon Requests

When the Court of Appeals at any time requires all or part of the clerk's record, the Clerk of the Court of Appeals will request the record from the district court. The district court clerk shall transmit the record, including agency records lodged or filed with the district court during the district court proceedings, to the Court within 7 days of receiving the request. In appeals from the Bankruptcy Appellate Panel, records will be treated in the same fashion as records on appeal in cases arising from the district court. *(Rev. 12/1/09; Rev. 7/1/13)*

The district court shall within 7 days after a notice of appeal is filed transmit any state court records lodged or filed in 28 U.S.C. § 2254 proceedings to this Court unless the documents are available in the district court's electronic case file or the district court determines that the notice of appeal was prematurely filed. *(New 7/1/13)*

Cross Reference: *(Rev. 12/1/09)*

- Circuit Rule 22-1. Certificate of Appealability (COA) on page **Error! Bookmark not defined.**, specifically, Circuit Rule 22-1(b)

CIRCUIT RULE 17-1. EXCERPTS OF RECORD ON REVIEW OR ENFORCEMENT OF AGENCY ORDERS

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17-1.3. Petitioner's Initial Excerpts of Record

~~At the time the petitioner's opening brief is submitted, t~~The petitioner shall, unless exempt pursuant to Circuit Rule 17-1.2, submit ~~the initial 4 copies of the~~ excerpts of record ~~at the time petitioner's opening brief is submitted~~bound separately from the briefs. The ~~excerpts shall be separate from the brief and submitted electronically unless petitioner is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, petitioner shall serve one paper copy of the excerpts on anyeach of the other parties that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If petitioner is exempt from the electronic filing requirement, petitioner shall file the 4 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve one paper copy on each of the parties~~the brief is submitted electronically, the excerpts shall be mailed to the other parties and the Court on the same day that the brief is submitted electronically. If the brief is not submitted electronically, the excerpts shall accompany the original and copies of the brief. (Rev. 12/1/09; 6/1/19)

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CIRCUIT RULE 28-5. MULTIPLE ~~REPLY~~ BRIEFS

A party or group of jointly represented parties is limited to filing a single principal or reply brief, even when responding to multiple briefs by other parties.

If multiple answering briefs or multiple combined answering and reply cross appeal briefs are filed, an appellant or group of jointly represented appellants is limited to filing a single brief in response to the multiple briefs.

In the absence of a specifically scheduled due date for the reply brief, the due date for a brief that replies to multiple answering or cross-appeal briefs is calculated from the service date of the last-served answering brief. (Rev. 1/99; 6/1/19)

Cross Reference:

Circuit Rule 32-2(b), Increased word limits for individual briefs responding to multiple briefs.

CIRCUIT RULE 29-2. BRIEF AMICUS CURIAE SUBMITTED TO SUPPORT OR OPPOSE A PETITION FOR PANEL OR EN BANC REHEARING OR DURING THE PENDENCY OF REHEARING

- (a) **When Permitted.** An amicus curiae may be permitted to file a brief when the Court is considering a petition for panel or en banc rehearing or when the Court has granted rehearing. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus curiae brief without the consent of the parties or leave of court. Subject to the provisions of subsection (f) of this rule, 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.
- (b) **Motion for Leave to File.** The motion must be accompanied by the proposed brief and include the recitals set forth at FRAP 29(a)(3).
- (c) **Format/Length.**
- (1) A brief submitted while a petition for rehearing is pending shall be styled as an amicus curiae brief in support of or in opposition to the petition for rehearing or as not supporting either party. A brief submitted during the pendency of panel or en banc rehearing shall be styled as an amicus curiae brief in support of appellant or appellee or as not supporting either party.
 - (2) A brief submitted while a petition for rehearing is pending may not exceed 15 pages unless it complies with the alternative length limit of 4,200 words. Motions for leave to file a longer brief are strongly disfavored. (*Rev. 12/1/16*)
 - (3) Unless otherwise ordered by the Court, a brief submitted after the Court has voted to rehear a case en banc may not exceed 25 pages unless it complies with the alternative length limit of 7,000 words. Motions for leave to file a longer brief are strongly disfavored. (*Rev. 7/1/16; Rev 12/1/16*)
- (d) **Number of Copies.**
- (1) If a petition for rehearing en banc has been granted and the brief is not required to be submitted electronically, an original and 20 copies of the brief shall be submitted.
 - (2) For all other briefs described by this rule that are not required to be submitted electronically, an original shall be submitted.
- The Clerk may order the submission of paper copies or additional copies of any brief filed pursuant to this rule. (*Rev. 12/1/09*)
- (e) **Time for Filing.**
- (1) **Brief Submitted to Support or Oppose a Petition for Rehearing.** An amicus curiae must serve its brief along with any necessary motion no later than 10 days after the petition or response of the party the amicus wishes to support is filed or

is due. An amicus brief that does not support either party must be served along with any necessary motion no later than 10 days after the petition is filed. Motions for extensions of time to file an amicus curiae brief submitted under this rule are disfavored. (Rev. 12/1/09)

- (2) **Briefs Submitted During the Pendency of Rehearing.** Unless the Court orders otherwise, an amicus curiae supporting the position of the petitioning party or not supporting either party must serve its brief, along with any necessary motion, no later than 21 days after the petition for rehearing is granted. Unless the Court orders otherwise, an amicus curiae supporting the position of the responding party must serve its brief, along with any necessary motion, no later than 35 days after the petition for panel or en banc rehearing is granted. Motions for extensions of time to file an amicus curiae brief submitted under this rule are disfavored. (Rev. 12/1/09)
- (f) **Circulation.** Motions for leave to file an amicus curiae brief to support or oppose a petition for panel rehearing are circulated to the panel. Motions for leave to file an amicus curiae brief to support or oppose a petition for en banc rehearing are circulated to all members of the Court. Motions for leave to file an amicus curiae brief during the pendency of en banc rehearing are circulated to the en banc court. (New 7/1/07)

Cross Reference:

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 29-2

Circuit Rule 29-2 only concerns amicus curiae briefs submitted to support or oppose a petition for panel or en banc rehearing and amicus curiae briefs submitted during the pendency of rehearing. The Court considers the filing of amicus curiae briefs related to petitions for rehearing or en banc review to be appropriate only when the post-disposition deliberations involve novel or particularly complex issues.

FRAP 29(b) permits the timely filing of a non-government entity's amicus curiae brief at this stage only with leave of the Court. Circuit Rule 29-2 also permits such a filing with the consent of all parties, as permitted in FRAP 29(a) for merits briefing. Obtaining such consent relieves the Court of the need to consider a motion. (New 6/1/19)

The Court will ordinarily deny motions and disallow stipulations for leave to file an amicus curiae brief where the filing of the brief would result in the recusal of a member of the en banc court. Any member of the Court who would be subject to disqualification in light of the amicus curiae brief may, of course, voluntarily recuse, thereby allowing the filing of the amicus curiae brief. (New 7/1/07)

CIRCUIT RULE 30-3. PRISONER APPEALS WITHOUT REPRESENTATION BY COUNSEL

In cases involving appeals by prisoners not represented by counsel, the clerk of the district court shall, within 21 days from the receipt of the prisoner's written request, forward to the prisoner copies of the documents ~~to~~ comprising the excerpts of record, so that the prisoner can prepare the briefs on appeal. If the prisoner was granted leave to proceed in forma pauperis in the district court or on appeal, the copies will be produced at no charge to the prisoner. (Rev. 12/1/09; 6/1/19)

CIRCUIT RULE 31-2. TIME FOR SERVICE AND FILING

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CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 31-2.2

If a party files a motion for a first extension of time to file a brief on or before the due date for the brief, and the Court does not rule on the motion until shortly before the due date, or on or after the due date for the brief, the Court ordinarily will grant some additional time to file the brief even if the Court does not grant the motion in full. Multiple motions for extension of time to file a brief are disfavored, however, and the Court may decline to grant relief if a successive motion fails to demonstrate diligence and substantial need.

If the Court does not act on a motion for extension of time to file a brief before the requested due date, the Court nonetheless expects the moving party to file the brief within the time requested in the motion. ~~The brief should be accompanied by a letter stating that a motion for an extension of time is pending.~~

The streamlined extension of time is available only for opening, answering, reply and cross-appeal briefs. A request to extend any other deadline must be made by way of written motion. The streamlined extension of time is intended to be the sole extension of time to file a brief; parties should file a written motion if 30 days is not sufficient time to prepare the brief. If a streamlined extension of time is approved, any further request for an extension of time to file a brief must be made in writing pursuant to Circuit Rule 31-2.2(b). The Clerk's approval of a party's streamlined extension of time to file an initial brief does not prevent that party from obtaining a streamlined extension of time to file a subsequent brief.

The streamlined extension of time replaces the former 14-day telephonic extension of time. (New 01/01; Rev. 12/1/09; Rev. 1/1/15; Rev. 6/1/19)