

October 4, 2024



Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed revisions to the following Circuit Rules:

- Circuit Rules 29-1 through 29-3 (Amicus Curiae Briefs)
- Advisory Committee Note to Circuit Rule 32-1 (Form and Contents of Briefs)

The revisions to Circuit Rules 29-1 through 29-3 would eliminate the filing of non-governmental amicus curiae briefs by consent. Instead, any non-governmental amicus curiae brief will require a motion for leave to file and will only be filed with the permission of the Court. This change would allow the Court to manage potential recusal issues that could arise upon the filing of an amicus brief without permission of the Court before a merits or en banc panel is assigned to the case.

The revision to the Advisory Committee Note to Circuit Rule 32-1 would make clear that, by signing a brief as required by the Rule, an attorney or unrepresented party is attesting that they have reviewed and verified the contents of the brief, regardless of how the brief was prepared.

If ultimately approved by the Court, these rules would become effective no earlier than June 1, 2025.

Please direct comments to Molly C. Dwyer, Clerk of Court, at Molly_Dwyer@ca9.uscourts.gov, and Susan V. Gelmis, Chief Deputy Clerk, at Susan_Gelmis@ca9.uscourts.gov.

Comments must be submitted no later than December 5, 2024.

CIRCUIT RULES 29-1 to 29-3

Circuit Rule 29-1. ~~Reply Brief of an Amicus Curiae~~ During Principal Briefing

~~No reply brief of an amicus curiae will be permitted.~~

- (a) **When Permitted.** The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus brief without leave of court. Any other amicus curiae may file a brief only by leave of court, and the Court may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.
- (b) **Disclosure Requirement.** Pursuant to Circuit Rule 26.1-1, amicus briefs must be accompanied by a completed Form 34 Disclosure Statement. (New 12/1/25)

Circuit Advisory Committee Note to Rule 29-1

The filing of multiple amici curiae briefs raising the same points in support of one party is disfavored. Prospective amici are encouraged to file a joint brief. Movants are reminded that the Court will review the amicus curiae brief in conjunction with the briefs submitted by the parties, so that amici briefs should not repeat arguments or factual statements made by the parties.

The elimination of the option for non-government entities or individuals to file an amicus brief by consent of the parties without leave of the Court is intended to avoid judicial recusal issues, not to discourage the filing of amicus briefs generally. (Rev. 12/1/25)

~~Amici who wish to join in the arguments or factual statements of a party or other amici are encouraged to file and serve on all parties a short letter so stating in lieu of a brief. If the letter is not required to be filed electronically, the letter shall be provided in an original. (Rev. 7/94; 12/1/09)~~

Circuit Rule 29-2. Brief of an 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, A~~ny 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.~~ The Court may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. (Rev. 12/1/25)
- (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) ~~and Circuit Rule 29-3.~~ (Rev. 12/1/25)
- (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;12/1/16)*
- ~~(3)~~(4) Pursuant to Circuit Rule 26.1-1, amicus briefs must be accompanied by a completed Form 34 Disclosure Statement. *(New 12/1/25)*

(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 18 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; 12/1/19)*

(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)

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. Amicus briefs filed to support or oppose a rehearing petition should not be re-filed if rehearing is granted.

FRAP 29(b) and Circuit Rule 29-2 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. (Rev. 6/1/19; 12/1/25)

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 29-3. ~~Motions for Leave to File Amicus Curiae Briefs~~ Reply Brief of an Amicus Curiae

~~A motion for leave to file an amicus brief shall state that movant endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief. No reply brief of an amicus curiae will be permitted under these rules. (Moved from 29-1 12/1/25)~~

Circuit Advisory Committee Note to Rule 29-3

~~FRAP 29(a) and Circuit Rule 29-2(a) permit the timely filing of an amicus curiae brief without leave of the Court if all parties consent to the filing of the brief; obtaining such consent relieves the Court of the need to consider a motion. (New 1/1/12; Rev. 12/1/22)~~

Circuit Advisory Committee Note to Rule 32-1

Rule 32(d) requires that all filings be signed. If the party does not have an attorney, the party should sign each filing. If the party has an attorney, the attorney should sign each filing. The rules do not directly regulate the process by which a party or an attorney produces the filing—the process could include writing it personally with no assistance, delegating part of its preparation to a subordinate, or employing generative artificial intelligence. Regardless of how the filing is prepared, the signature is an attestation that the signer has reviewed the filing and is responsible for its contents. Parties and attorneys should therefore be careful to ensure the reliability of any filing.

Demonstrative visual images should not be used to replace quotations from the record, but rather only for illustrative purposes. Parties should paraphrase the text from the image in the preceding or subsequent sentence to explain its relevance to the legal issues before the court.

Some images, such as screenshots of handwritten notes or transcript excerpts, or tables used to convey information, are intended to be read by the court. In such cases, the words in the image must be counted and added to the certificate of compliance. Because FRAP 32's font size and formatting rules are essential to readability, and because those rules do not apply to visual images, screenshots of text should be used sparingly, and screenshots of lengthy excerpts of text are strongly disfavored and may cause a brief to be rejected by the Clerk.

In other cases, a visual image is intended to show the court that something exists, or what something looks like, and any words in the picture or screenshot are incidental and need not be counted. For example, where a brief includes a photograph of an intersection that has a stop sign, the word "stop" need not be added to the brief's word count.

Finally, some visual images fall somewhere in between. For example, with respect to a screenshot of a judgment of conviction included to resolve a dispute about which controlled substance was at issue, the pertinent words identifying the controlled substance must be counted, but other incidental words in the judgment need not be counted. (New 12/1/22)