
CIRCUIT RULE 29-1. REPLY BRIEF OF AN AMICUS CURIAE

No reply brief of an amicus curiae will be permitted. (Rev. 12/1/09)

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.

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 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) and Circuit Rule 29-3.
- (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 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*)

Cross Reference:

- FRAP 29. Brief of an Amicus Curiae on page 115
- Circuit Rule 25-4. Calendared Cases on page 83

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. (Rev. 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 29-3. MOTIONS FOR LEAVE TO FILE AMICUS CURIAE BRIEFS

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. (New 1/1/12)

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)