

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

December 1, 2016, Amendments to the Federal Rules of Appellate Procedure

PLEASE BE ADVISED that the December 1, 2016, amendments to the Federal Rules of Appellate Procedure make significant changes to appellate practice. See full text of amendments here - <http://www.uscourts.gov/file/19848/download>. A summary of major changes follows:

New Certificate of Compliance Requirement and Word Limits for Motions, Responses, Replies, Petitions, and Answers (Rules 5, 21, 27, 35, 40).

- Amendments to Rules 5, 21, 27, 35, and 40 convert existing page limits to word counts for petitions for permission to appeal and answers thereto, petitions for mandamus or other extraordinary writ and answers thereto, motions and responses and replies thereto, and rehearing and en banc filings.
- The amendments apply a conversion rate of 260 words per page to the current page limits, to yield the following word limits:
 - Rule 5 petitions for permission to appeal, answers in opposition, and cross-petitions are limited to 5,200 words (formerly 20 pages);
 - Rule 21 petitions for mandamus or other extraordinary writ and answers thereto are limited to 7,800 words (formerly 30 pages);
 - Rule 27 motions and responses thereto are limited to 5,200 words (formerly 20 pages);
 - Rule 27 replies are limited to 2,600 words (formerly 10 pages);
 - Rule 35 and 40 rehearing and en banc filings are limited to 3,900 words (formerly 15 pages).
- The words limits apply to any document prepared on a computer; the current page limits apply to handwritten documents or documents prepared on a typewriter.
- A Certificate of Compliance with Type-Volume Limit is required for all documents prepared on a computer.
- Any cover page, corporate disclosure statement, table of contents, table of citations, statement regarding oral argument, addendum, certificates of counsel, signature block, proof of service, and any other item specifically excluded by the applicable rule do not count towards the length limits.
- A new Appendix was added to the Federal Rules of Appellate Procedure, listing the limits for all documents in table form.

Reduction in Word Limits for Briefs (Rules 28.1, 32).

- Amendments to Rules 28.1 and 32 reduce the word limits for briefs by applying the assumption that one page is equivalent to 260 words, in lieu of the former assumption that there are 280 words to a page.
- Rule 32 reduces the length limits for briefs filed where there is no cross-appeal as follows:
 - Principal briefs are limited to 13,000 words (formerly 14,000 words);
 - Reply briefs are limited to 6,500 words (formerly 7,000 words);
 - Amicus briefs are limited to 6,500 words (formerly 7,000 words).
- Rule 28.1 reduces the length limits for briefs filed in cross-appeals as follows:
 - Appellant's opening brief is limited to 13,000 words (formerly 14,000 words);
 - Appellee's opening and response cross-appeal brief is limited to 15,300 words (formerly 16,500 words);
 - Appellant's response and reply cross-appeal brief is limited to 13,000 words (formerly 14,000 words);
 - Appellee's reply brief is limited to 6,500 words (formerly 7,000 words);
 - An amicus brief in support of an opening brief is limited to 6,500 words (formerly 7,000 words);
 - An amicus brief in support of an opening and response cross-appeal brief is limited to 7,650 words (formerly 8,250 words).
- A Certificate of Compliance with Type-Volume Limit is required for briefs filed in reliance upon a word count or line count. Allowable line counts for briefs using a monospaced typeface remain unchanged at 1,300 lines for principal briefs; 1,500 lines for an opening and response cross-brief; and 650 lines for reply briefs.
- No Certificate of Compliance with Type-Volume Limit is required for briefs filed in reliance upon page limits. Allowable page limits remain unchanged at 30 pages for principal briefs, 35 pages for an opening and response cross-appeal brief, and 15 pages for a reply brief.
- Any cover page, corporate disclosure statement, table of contents, table of citations, statement regarding oral argument, addendum, certificates of counsel, signature block, proof of service, and any other item specifically excluded by the applicable rule do not count towards the length limits.

Elimination of 3-Day Service Period for Documents Served Electronically (Rule 26).

- The amendment to Rule 26(c) removes service by electronic means from the modes of service that allow 3 added days to act after being served. For deadlines running from the date of service of a document, 3 days will no longer be added if the document was served electronically.
- Elimination of the 3 days formerly allowed for electronic service shortens the time period for filing a response brief after electronic service of the opening brief and shortens the time period for filing a reply brief after electronic service of the response brief.
- Elimination of the 3 days formerly allowed for electronic service also shortens the time period for filing a response after electronic service of the motion and shortens the time period for filing a reply after electronic service of the response.

New Provisions for filing Amicus Briefs in Connection with Requests for Panel or En Banc Rehearing (Rule 29).

- Amendment of Rule 29 establishes procedures for amicus briefs filed during consideration of whether to grant panel or en banc rehearing, extending most of the provisions applicable to amicus briefs filed at the merits stage to amicus briefs filed at the petition for rehearing stage.
- The United States, its officer or agency, or a state may file an amicus brief in connection with a request for panel or en banc rehearing without consent of the parties or leave of court. Leave of court is required for any other amicus brief.
- An amicus brief at the petition for panel or en banc rehearing stage may not exceed 2,600 words.
- An amicus curiae supporting a rehearing petition or supporting neither party must file its amicus brief, accompanied by a motion if required, within 7 days of filing of the rehearing petition. An amicus curiae opposing a rehearing petition must file its amicus brief, accompanied by a motion if required, no later than the date set by the court for a response to the petition.

Clarification Regarding Timeliness of Post-Judgment Motions (Rule 4(a)(4))

- Amendments to Rule 4(a)(4) clarify that a post-judgment motion must be filed within the time allowed by the Federal Rules of Civil Procedure (generally 28 days) in order to toll the appeal period.
- A post-judgment motion filed within an extension of time granted by the district court does not toll the time period for appeal.

Clarification of Inmate Filing Rules (Rules 4 & 25)

- Amendments to Rules 4(c)(1) and 25(a)(2)(C) clarify the operation of the inmate

filing rules, which provide that a filing is timely if it is deposited in the institution's internal mail system on or before the last day for filing.

- Timely filing may be shown by a declaration under penalty of perjury setting out the date of deposit and stating that first-class postage is being prepaid. The court of appeals may exercise its discretion to permit the later filing of the declaration.
- Timely filing may also be shown by evidence such as a postmark or date stamp showing that the filing was timely deposited with necessary postage.