



**TITLE VII LOCAL RULES OF COURT
UNITED STATES SUPREME COURT
[ALL-IN-ONE DOCUMENT]**

PRACTICE AND PROCEDURE

{AS OF: 1/1/2023}

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LOCAL RULES OF COURT | 11TH CIRCUIT (US)

SECTION: VII

TITLE: PRACTICE AND PROCEDURE

RULES: 29 through 40

DATE: January 1, 2023



**RULE 29 | FILING AND SERVICE OF DOCUMENTS; SPECIAL NOTIFICATIONS;
CORPORATE LISTING**

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk in paper form.

2. A document is timely filed if it is received by the Clerk in paper form within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U.S.C. §1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U.S.C. §1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

3. Any document required by these Rules to be served may be served personally, by mail, or by third-party commercial carrier for delivery within 3 calendar days on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail or third-party commercial carrier, it shall consist of depositing the document with the United States Postal Service, with no less



than first-class postage prepaid, or delivery to the carrier for delivery within 3 calendar days, addressed to counsel of record at the proper address. When a party is not represented by counsel, service shall be made on the party, personally, by mail, or by commercial carrier. Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court. An electronic version of the document shall also be transmitted to all other parties at the time of filing or reasonably contemporaneous therewith, unless the party filing the document is proceeding *pro se* and *in forma pauperis* or the electronic service address of the party being served is unknown and not identifiable through reasonable efforts.

4.

(a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U.S.C. §2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. In such a proceeding from any court of the United States, as defined by 28 U.S.C. §451, the initial document also shall state whether that court, pursuant to 28 U.S.C. §2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).



(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U.S.C. §2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U.S.C. §451, the initial document also shall state whether that court, pursuant to 28 U.S.C. §2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see 18 U.S.C. §3006A(d)(7), or under any other applicable federal statute; or



(c) a notarized affidavit or declaration in compliance with 28 U.S.C. §1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U.S.C. §3006A(d)(7), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed. In addition, whenever there is a material change in the identity of the parent corporation or publicly held companies that own 10% or more of the corporation's stock, counsel shall promptly inform the Clerk by letter and include, within that letter, any amendment needed to make the statement current.

7. In addition to the filing requirements set forth in this Rule, all filers who are represented by counsel must submit documents to the Court's electronic filing system in conformity with the "Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System" issued by the Clerk. Submission of a document to the electronic filing system does not constitute transmission of an electronic version of the document to other parties under paragraph 3 of this Rule.

Clerk's Comments

This new language clarifies that documents must be transmitted electronically to other parties separate and apart from submission to the electronic filing system.



RULE 30 | COMPUTATION AND EXTENSION OF TIME

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U.S.C. §6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application or motion seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing of any judgment or decision of the Court on the merits shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. A motion to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The motion may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the motion be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.



RULE 31 | TRANSLATIONS

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.



RULE 32 | MODELS, DIAGRAMS, EXHIBITS, AND LODGINGS

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, exhibits, and other items placed in the custody of the Clerk shall be removed by the parties no more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

3. Any party or *amicus curiae* desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court. The material proposed for lodging may not be submitted until and unless requested by the Clerk.



RULE 33 | DOCUMENT PREPARATION: BOOKLET FORMAT; 8½-BY 11-INCH PAPER FORMAT

1. *Booklet Format:*

(a) Except for a document expressly permitted by these Rules to be submitted on 8½-by 11-inch paper, see, e.g., Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 61/8-by 91/4-inch booklet format using a standard typesetting process (e.g., hot metal, photocomposition, or computer typesetting) to produce text printed in typographic (as opposed to typewriter) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 10-point type with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 41/8 by 71/8 inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.



(d) Every booklet-format document shall comply with the word limits shown on the chart in subparagraph 1(g) of this Rule. The word limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix. The word limits include footnotes. Verbatim quotations required under Rule 14.1(f) and Rule 24.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the word limits, but application for such leave is not favored. An application to exceed word limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed. If the filing has not been submitted to the Court's electronic filing system, one unbound copy of the document on 8½-by-11-inch paper shall also be submitted.

(g) Word limits and cover colors for booklet-format documents are as follows:



Type of Document	Word Limits	Color of Cover
<p>(i) Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)</p>	9,000	white
<p>(ii) Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4); Respondent's Brief in Support of Certiorari (Rule 12.6)</p>	9,000	orange
<p>(iii) Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)</p>	3,000	tan
<p>(iv) Supplemental Brief (Rules 15.8, 17, 18.10, and 25.6)</p>	3,000	tan



(v) Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	13,000	light blue
(vi) Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	13,000	light red
(vii) Reply Brief on the Merits (Rule 24.4)	6,000	yellow
(viii) Reply to Plaintiff 's Exceptions to Report of Special Master (Rule 17)	13,000	orange
(ix) Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	13,000	Yellow



(x) Brief for an *Amicus curiae* at the Petition Stage or pertaining to a Motion for Leave to file a Bill of Complaint (Rule 37.2)

6,000

cream

(xi) Brief for an *Amicus curiae* Identified in Rule 37.6 in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)

9,000

light green

(xii) Brief for any Other *Amicus curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)

8,000

light green

(xiii) Brief for an *Amicus curiae* Identified in Rule 37.6 in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)

9,000

dark green

(xiv) Brief for any Other *Amicus curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)

8,000

dark green



(xv) Petition for Rehearing (Rule 44)	3,000	tan
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(h) A document prepared under Rule 33.1 must be accompanied by a certificate signed by the attorney, the unrepresented party, or the preparer of the document stating that the brief complies with the word limitations. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The word-processing system must be set to include footnotes in the word count. The certificate must state the number of words in the document. The certificate shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 U.S.C. §1746.

2. *8½-by 11-Inch Paper Format:*

(a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½-by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding pro se or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U.S.C. §3006A(d)(7), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.



(b) Page limits for documents presented on 8½-by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The exclusions specified in subparagraph 1(d) of this Rule apply.

Clerk's Comments

The requirement in subsection (f) that a filer submit a single 8½- by 11-inch copy of a booklet format document was instituted at the time the Court's electronic filing system was put in place, in order to facilitate the scanning of documents in which an electronic version was not available. Experience has shown that this additional paper copy is not needed where the document was submitted through the electronic filing system. The change to subsection (g) reflects the movement of relevant language from Rule 37.4 to Rule 37.6.



RULE 34 | DOCUMENT PREPARATION: GENERAL REQUIREMENTS

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the caption of the case as appropriate in this Court;

(d) the nature of the proceeding and the name of the court from which the action is brought (e.g., "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(e) the title of the document (e.g., "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 9.1) and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address, e-mail address, and telephone number. Only one counsel of record may be noted on a single document, except that counsel of record for each party must be listed on the cover of a joint appendix.

(g) The foregoing shall be displayed in an appropriate typographical manner and, except for identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document (other than a joint appendix), that exceeds 1,500 words when prepared under Rule 33.1, or that exceeds five pages when prepared under Rule 33.2, shall contain a table of contents and a table of cited authorities (i.e., cases alphabetically arranged, constitutional provisions,



statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited. The table of authorities should not use the "passim" notation, but should instead list every page on which an authority is cited. Page ranges may be used if the authority is cited on every page in the range (e.g., "7-10" instead of "7, 8, 9, 10").

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(f) of this Rule, as may be desired.

4. Every appendix to a document, including a statutory appendix, must include at the beginning of the appendix a table of contents that provides a description of each document in the appendix.

5. All references to a provision of federal statutory law should ordinarily be cited to the United States Code, if the provision has been codified therein. In the event the provision has not been classified to the United States Code, citation should be to the Statutes at Large. Additional or alternative citations should be provided only if there is a particular reason why those citations are relevant or necessary to the argument.

6. A case in which privacy protection was governed by Federal Rule of Appellate Procedure 25(a)(5), Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same Rule in this Court. In any other case, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case. If the Court schedules briefing and oral argument in a case that was governed by Federal Rule of Civil Procedure 5.2(c) or Federal Rule of Criminal Procedure 49.1(c), the parties shall submit electronic versions of all prior and subsequent filings with this Court in the case, subject to the redaction Rules set forth above.

7. Where circumstances warrant, a party may file a motion for leave to file material under seal.



(a) A motion to file material under seal should address whether the material in question was sealed in a lower court and, where applicable, provide a copy of the sealing order.

(b) If the material was filed under seal in a lower court, the motion should identify the reasons that the material was sealed, state whether the seal remains in effect as to each of the relevant documents, and address why it remains necessary to continue to maintain the confidentiality of the information in this Court. If the material was not filed under seal in a lower court, the motion should state with specificity why sealing is necessary in this Court in the first instance.

(c) The motion should address why it is necessary that the material to be sealed be included in the filing.

(d) Where possible, the movant should provide a redacted copy of the material for the public record. If this is not feasible, the motion should state the reasons that it is not. Where the material sought to be filed under seal is part of an appendix to the filing, it should be presented in a separate, supplemental volume of the appendix.

(e) Where possible, the motion itself should be drafted so that it may be filed on the public record. If this is not feasible, the motion may be filed under seal, preferably with a redacted copy for the public record. The motion should reflect the position of other parties to the case concerning whether sealing of the material is appropriate.

(f) Material that is sought to be filed under seal should be marked "Under Seal" on the cover and on every page of the document. The redacted copy for the public record, when provided, should be marked "Public Copy - Sealed Materials Redacted" on the cover page of the document.

(g) The parties must promptly notify the Court if it is no longer necessary for material previously filed under seal to remain under seal.

A motion filed under this Rule shall comply in every respect with Rule 21. Where a motion to file under seal is filed, the parties should treat the material as under seal until the



Court rules on the motion. Neither the motion to file a document under seal nor any document containing sealed material should be submitted through the Court's electronic filing system.

Clerk's Comments

The language removed from paragraph 1 is moved to Rule 9.1. The amendment to paragraph 2 requiring the listing of every page on which an authority is cited is designed to facilitate access to cited material. New language in paragraph 4 is intended to make clear that a table of contents for an appendix should be included at the beginning of the appendix, and not simply as part of the table of contents for the entire filing. New paragraph 7 is intended to reflect existing practice concerning the sealing of records. It also outlines various types of information that a party seeking to file documents under seal should include in a motion, in order to assist the Court in ruling upon the motion and to ensure that sealing is necessary.

RULE 35 | DEATH, SUBSTITUTION, AND REVIVOR; PUBLIC OFFICERS

1. If a party dies after the filing of a petition for a writ of certiorari to this Court, or after the filing of a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.



RULE 36 | CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3.

(a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.



RULE 37 | BRIEF FOR AN AMICUS CURIAE

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. An *amicus curiae* brief may be filed only by an attorney admitted to practice before this Court as provided in Rule 5.

2. An *amicus curiae* brief submitted in support of a petitioner or appellant before the Court's consideration of a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ shall be filed within 30 days after the case is placed on the docket or a response is called for by the Court, whichever is later, and that time will not be extended. An *amicus curiae* brief in support of a motion of a plaintiff for leave to file a bill of complaint in an original action shall be filed within 60 days after the case is placed on the docket, and that time will not be extended. An *amicus curiae* brief in support of a respondent, an appellee, or a defendant shall be submitted within the time allowed for filing a brief in opposition or a motion to dismiss or affirm. An *amicus curiae* filing a brief under this subparagraph shall ensure that the counsel of record for all parties receive notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief, unless the *amicus curiae* brief is filed earlier than 10 days before the due date. Only one signatory to any *amicus curiae* brief filed jointly by more than one *amicus curiae* must timely notify the parties of its intent to file that brief. The *amicus curiae* brief shall indicate that counsel of record received timely notice of the intent to file the brief under this Rule, and its cover shall identify the party supported.

3. An *amicus curiae* brief in a case before the Court for oral argument or on exceptions to a report of a Special Master in an original action may be filed if it is submitted within 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the time allowed for filing the petitioner's or appellant's brief. Motions to extend the time for filing an *amicus curiae* brief will not be entertained. The 10-day notice requirement of paragraph 2 of this Rule does not apply to an *amicus curiae*



brief in a case before the Court for oral argument or on exceptions to a report of a Special Master. The cover of an amicus curiae brief shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

4. An amicus curiae brief in connection with an application under Rule 22 must be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action. In light of the time-sensitivity of such applications, the filing of these briefs is discouraged, and an amicus curiae brief should be filed only if it brings to the attention of the Court relevant matter not already presented by the parties that will be of considerable help to the Court. An original and two copies of any such brief should be prepared as required by Rule 33.2. An amicus curiae brief in connection with an application is limited to 25 pages in length, subject to the exclusions in Rule 33.1(d). The notice requirement of Rule 37.2 does not apply, but electronic transmission of the brief to the parties under Rule 29.3 must be accomplished at the time of filing.

5. A brief filed under this Rule shall be accompanied by proof of service as required by Rule 29. A brief filed under subparagraphs (2) or (3) of this Rule shall comply with the applicable provisions of Rule 33.1. Any brief under this Rule shall comply with the applicable provisions of Rule 24, except that it suffices to set out in the brief the interest of the amicus curiae, the summary of the argument, the argument, and the conclusion.

6. A brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution. The disclosure shall be made in the first footnote on the first page of text. This disclosure requirement does not apply to a brief presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal



representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of an Indian Tribe, city, county, town, or similar entity when submitted by its authorized law officer.

Clerk's Comments

The requirement to either obtain consent to file an amicus curiae brief or file a motion for leave to file the brief is removed from Rules 37.2 and 37.3. While the consent requirement may have served a useful gatekeeping function in the past, it no longer does so, and compliance with the rule imposes unnecessary burdens upon litigants and the Court. An amendment to Rule 37.3 also provides that the same procedures for amicus briefs in merits cases apply in connection with exceptions to a report of a Special Master in an original action. An amendment to Rule 37.4 sets forth requirements concerning amicus curiae briefs in connection with emergency applications. The new provision discourages these briefs, but provides guidance in the circumstances when they may be of use to the Court. A revision to Rule 37.6 also exempts Indian Tribes from the disclosure requirement applicable for amicus curiae briefs.



RULE 38 | FEES

Under 28 U.S.C. §1911, the fees charged by the Clerk are:

- (a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, \$300;
- (b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, \$200;
- (c) for reproducing and certifying any record or paper, \$1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, \$.50 per page;
- (d) for a certificate bearing the seal of the Court, \$10; and
- (e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, \$35.



RULE 39 | PROCEEDINGS IN FORMA PAUPERIS

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U.S.C. §1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the court below appointed counsel for an indigent party, no affidavit or declaration is required, but the motion shall cite the provision of law under which counsel was appointed, or a copy of the order of appointment shall be appended to the motion.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion, and affidavit or declaration if required, shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every document presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge



the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, 18 U.S.C. §3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis*.



RULE 40 | VETERANS, SEAMEN, AND MILITARY CASES

1. A veteran suing under any provision of law exempting veterans from the payment of fees or court costs, may proceed without prepayment of fees or costs or furnishing security therefor and may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U.S.C. §1916 may proceed without prepayment of fees or costs or furnishing security therefor and may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a seaman and be accompanied by an affidavit or declaration setting out the moving party's seaman status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the seaman.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U.S.C. §1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.



APPENDIX



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