

Proposed Amendments to Federal Rule of Appellate Procedure 29 – Brief of an Amicus Curiae

Important Information on Proposed Rule & Instructions for Testifying and Filing Comments

Formal Comment Period Now Open!

Comments MUST be submitted by February 17 at 11:59 p.m. EST

The Committee on Rules of Practice and Procedure (“Standing Committee”) has published [proposed amendments](#) to Federal Rule of Appellate Procedure 29 to provide direction to the public and the courts with additional disclosure requirements for amicus curiae.

Under the proposed amendments, a party may file an amicus only with leave of court; consent by parties is no longer permitted. Additional disclosures are required between both a party and amicus curiae and a non-party and amicus curiae. A detailed Committee Note accompanies the rule text and provides context for implementing the rule.

AAJ encourages members who file amicus briefs to review the proposed amendments and submit a comment on [firm letterhead](#) by February 17, 2025. Comments can be of any length, but please identify yourself as a plaintiff-side practitioner. Members may also testify at a public hearing (information below).

Guidelines for Drafting Your Comment

- Build in time to review the rule fully and write your comment in advance of the deadline. The proposed amendments are comprehensive and will take time to understand the nuances.
- Write about one or two aspects of the proposed amendment. It is fine to support some of the proposed changes, but not all of them.
- The public comment period is the time to suggest improvements to the proposed rule text and committee note.
- It is helpful to use examples from your practice to illustrate your points.
- Your comment can reference other public comments that you agree or disagree with, but please *write your own* comment.
- DO NOT submit anonymous comments.

Public Comment Period

Comments **must be submitted electronically by February 17, 2025, at 11:59 p.m. EDT** through [regulations.gov](https://www.regulations.gov) and should be addressed to:

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

The U.S. Courts website is not the easiest to navigate for first-time users and it's important to remember that the rule docket runs on the *Eastern* time zone. Here are some helpful instructions:

1. On the landing page on [regulations.gov](https://www.regulations.gov) for filing on proposed amendments in this comment period, there are two tabs. Click on the "Browse Documents" Tab.
2. Locate the box that says, "Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate Procedure" and then click on the tab marked "Comment."
3. The "Comment" page will allow you to upload your comment directly. We strongly urge you to write your comment out first and put on letterhead to upload. (There is also an option to write your comment directly on the page, but it's much easier to write your comment first, edit it and then upload it when it's complete).
4. After uploading, you will be asked to choose how you are filing: are you an individual, an organization, or anonymous. You are going to file either using your individual name or your law firm name (under the organization tab).
5. The rules staff will review each comment to ensure that it's appropriate, and then it will be officially posted on the website.

Public Hearings

There is one public hearing scheduled for this proposed rule, on **February 14, 2025**.

- If you wish to present testimony regarding the proposed amendments to FRAP 29 at this hearing, you must notify the office of Rules Committee Staff **at least 30 days before the scheduled hearing** (January 15, 2025) by emailing RulesCommittee_Secretary@ao.uscourts.gov.
- You will receive confirmation that your email has been received shortly after making your request. If you do not receive confirmation, please send another email asking if the request to testify has been received.

AAJ-Identified Issues for Comments

- General comments on whether the amendments provide clear and appropriate disclosure requirements to amici and judges.
 - *If there are instances of confusion, or the amendments miss the mark, what are the issues and is there better language to address these concerns?*

- Comments on the removal of the party consent option. The proposed amendments require leave of court for all amicus briefs. Consent of the parties is no longer an option. By contrast, the Supreme Court has changed its rules in the opposite direction, freely allowing the filing of amicus briefs without leave of court or consent of the parties. The rationale for this proposed change is that the “unconstrained filing of amicus briefs in the courts of appeal would produce recusal issues.”¹
 - *Do you agree or disagree with this proposed amendment?*
 - *Does this provision place an additional burden on the court? If so, whether the burden outweighs the proposed amendment’s purpose?*
 - *Could this provision result in unintended consequences for the court or parties?*

- Comments on the proposed content restrictions. The proposed amendments address the purpose of amicus curiae briefs and restrict the content of those briefs in an effort to reduce redundancy. Specifically, proposed FRAP 29(a)(2) states that amicus briefs must bring to the court’s attention relevant matters *not* mentioned by the parties and disfavors briefs that discuss matters already mentioned by other amici.
 - *Given that the proposed amendment also requires leave of court for the filing of amicus briefs, does this language create additional burdens for courts and amici?*
 - *Without coordination between amici and parties, how is redundancy prevented?*
 - *Will this amendment significantly increase the rate of amicus denials, thereby chilling amicus curiae filings?*

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 - *Given that the proposed amendment also requires leave of court for the filing of amicus briefs, does this language create additional burdens for courts and amici?*
 - *Without coordination between amici and parties, how is redundancy prevented?*
 - *Will this amendment significantly increase the rate of amicus denials, thereby chilling amicus curiae filings?*

- Comments on the relationship between a party and amicus curiae. The Advisory Committee decided that two new disclosure requirements should be added to the rule: (1) disclosure of whether “a party, its counsel, or any combination of parties or their counsel has a majority ownership interest in or majority control of a legal entity submitting the brief; and (2) disclosure of contributions by a party to an amicus must be disclosed if a party, its counsel, or any combination of parties or their counsel has, during the 12-month period before the brief was

¹ For a more in-depth discussion of this and other issues considered by the Advisory Committee on Appellate Rules, see pages 135–152 of the Standing Committee’s June 2024 Agenda Book, <https://www.uscourts.gov/rules-policies/archives/agenda-books/committee-rules-practice-and-procedure-june-2024>.

filed, contributed an amount equal to 25% or more of the total revenue of the amicus for the prior fiscal year. The rule also provides a backstop, requiring self-disclosure by a party or counsel who knows that they should have been disclosed by an amicus but were not.

- *Is this 25% threshold reasonable?* The AMICUS Act (proposed legislation from Congress regulating Amicus Curiae) sets the threshold at 3%. There are arguments for setting it at 10% (corporate disclosure rule, Rule 26.1) and or higher at 50%.
 - *Consider whether these disclosure rules are helpful to the court or provide additional information or transparency to the public?*
- Comments on the relationship between a non-party and amicus curiae. The disclosure requirements between a non-party and an amicus are not parallel to the disclosure requirements between a party and an amicus.²
 - The non-party is required to name in the brief any person who contributed or pledged to contribute \$100 or more to pay for preparing, drafting, or submitting the brief unless the person has been a member of the amicus for the prior 12-months. *Does this rule seem balanced, considering both the threshold amount for disclosure and the timing for membership?*
 - If an amicus has existed for less than 12 months, the amicus must disclose the date the amicus was created rather than provide a list of members. *Does this provision seem reasonable or does it skirt the purpose of the disclosure requirement?*
 - Comments on the clarity of the Committee Note.
 - *Is the Committee Note accurate and easy to understand?*
 - *Does it provide clear guidance for implementing the rule text?*
 - *Do you have any suggested edits?*

Proposed rule text and Committee Note on next page.

² The Advisory Committee concluded, in part, that most people contribute to organizations that submit amicus briefs for reasons that have nothing to do with the submission of amicus briefs, making disclosures of their identity less useful in evaluating an amicus brief and possibly quite burdensome to the organizations involved.

NOTE: Proposed additions are underlined in red. Proposed deletions to the rule text are ~~struck through~~. The draft Committee Note is the explanation of the textual changes. Comments may address on the proposed amendments to the rule text, the Committee Note, or both.

Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability.** This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) **Purpose; When Permitted.** An amicus curiae brief that brings to the court's attention relevant matter not already mentioned by the parties may help the court. An amicus brief that does not serve this purpose—or that is redundant with another amicus brief—is disfavored. The United States ~~or, its officer or agency, or a state~~ may file an amicus brief without ~~the consent of the parties or~~ leave of court. Any other amicus curiae may file a brief only with by leave of court ~~or if the brief states that all parties have consented to its filing, but a court of appeals.~~ The court may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) **Motion for Leave to File.** ~~The~~ A motion for leave to file must be accompanied by the proposed brief and state:

(A) the movant's interest;

(B) the reason ~~why an amicus~~ the brief is helpful ~~desirable~~ and why it serves the purpose set forth in (a)(2); and ~~the matters asserted are relevant to the disposition of the case.~~

(C) the information required by Rules 29(a)(4)(A), (b), (c), and (e).

(4) **Contents and Form.** An amicus brief must comply with Rule 32. ~~In addition to the requirements of Rule 32,~~ The cover must identify name the party or parties supported and indicate whether the brief supports affirmance or reversal. ~~An amicus~~ The brief need not comply with Rule 28, but it must include the following:

(A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities—cases (alphabetically arranged), statutes, and other authorities, ~~—with references to~~ together with the pages of ~~the brief~~ where they are cited;

~~(D)~~ a concise ~~statement~~ description of the identity, history, experience, and interests of the amicus curiae, ~~its interest in the case, and the source of its authority to file~~ together with an explanation of how the brief and the perspective of the amicus will help the court;

~~(E)~~ if an amicus has existed for less than 12 months, the date the amicus was created;

~~(E)(F)~~ unless the amicus is the United States, its officer or agency, or a state, the disclosures required by Rule 29(b), (c), and (e); ~~curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:~~

~~(i)~~ a party's counsel authored the brief in whole or in part;

~~(ii)~~ a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

~~(iii)~~ a person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;

~~(F)(G)~~ an argument, which may be preceded by a summary ~~and which~~ but need not include a statement of the applicable standard of review; and

~~(G)(H)~~ a certificate of compliance under Rule 32(g)(1), ~~if length is computed using a word or line limit.~~

(5) Length. Except by with the court's permission, an amicus brief must not exceed 6,500 words ~~may be no more than one half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.~~

(6) Time for Filing. An amicus curiae must file its brief, ~~accompanied by a motion for filing when necessary,~~ no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. The ~~A~~ court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) Reply Brief. An amicus curiae may file a reply brief only with the court's permission. ~~Except by the court's permission, an amicus curiae may not file a reply brief.~~

(8) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(b) Disclosing a Relationship Between an Amicus and a Party. An amicus brief must disclose whether:

(1) a party or its counsel authored the brief in whole or in part;

(2) a party or its counsel contributed or pledged to contribute money intended to pay for preparing, drafting, or submitting the brief;

(3) a party, its counsel, or any combination of parties, their counsel, or both has a majority ownership interest in or majority control of a legal entity submitting the brief; and

(4) a party, its counsel, or any combination of parties, their counsel, or both has, during the 12 months before the brief was filed, contributed or pledged to contribute an amount equal to 25% or more of the total revenue of the amicus curiae for its prior fiscal year.

(c) Naming the Party or Counsel. Any disclosure required by Rule 29(b) must name the party or counsel.

(d) Disclosure by the Party or Counsel. If the party or counsel knows that an amicus has failed to make the disclosure required by Rule 29(b) or (c), the party or counsel must do so.

(e) Disclosing a Relationship Between an Amicus and a Nonparty. An amicus brief must name any person—other than the amicus or its counsel—who contributed or pledged to contribute more than \$100 intended to pay for preparing, drafting, or submitting the brief, unless the person has been a member of the amicus for the prior 12 months. If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members, but must disclose the date the amicus was created.

~~(b)~~(f) During Consideration of Whether to Grant Rehearing.

(1) Applicability. ~~This Rule 29(b) governs~~ **Rules 29(a)-(e)** governs amicus filings **briefs filed** during a court's consideration of whether to grant panel rehearing or rehearing en banc, **except as provided in Rules 29(f)(2) and (3), and** unless a local rule or order in a case provides otherwise.

(2) When Permitted. ~~The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.~~

(3) Motion for Leave to File. ~~Rule 29(a)(3) applies to a motion for leave.~~

(4)(2) Contents, Form, and Length. ~~Rule 29(a)(4) applies to the amicus brief.~~ **An amicus** The brief must not exceed 2,600 words.

(5)(3) Time for Filing. An amicus curiae supporting the **a** petition for

rehearing or supporting neither party must file its brief, ~~accompanied by a motion for filing when necessary~~, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, ~~accompanied by a motion for filing when necessary~~, no later than the date set by the court for ~~the~~ [a](#) response.

DRAFT COMMITTEE NOTE

The amendments to Rule 29 make changes to the procedure for filing amicus briefs, including to the disclosure requirements.

The amendments seek primarily to provide the courts and the public with more information about an amicus curiae. Throughout its consideration of possible amendments, the Advisory Committee has carefully considered the relevant First Amendment interests.

Some have suggested that information about an amicus is unnecessary because the only thing that matters about an amicus brief is the merits of the legal arguments in that brief. At times, however, courts do consider the identity and perspective of an amicus to be relevant. For that reason, the Committee thinks that some disclosures about an amicus are important to promote the integrity of court processes and rules.

Careful attention to the various interests and the need to avoid unjustified burdens is reflected throughout these amendments. For example, the amendment treats disclosures about the relationship between a party and an amicus differently than disclosures about the relationship between a nonparty and an amicus. While the public interest in knowing about an amicus—in order to evaluate its arguments and a court's consideration of those arguments—is relevant in both situations, there is an additional interest in disclosing the relationship between a party and an amicus: the court's interest in evaluating whether an amicus is serving as a mouthpiece for a party, thereby evading limits imposed on parties in our adversary system and misleading the court about the independence of an amicus. Moreover, the burden on an amicus of disclosing a relationship with a party is much lower than having to disclose a relationship with nonparties. Disclosing a relationship with a party requires an amicus to check its records (and perhaps make a disclosure) regarding only the limited number of persons who are parties to the case. Disclosing a relationship with a nonparty would, by contrast, require an amicus to check its records (and perhaps make a disclosure) regarding the much larger universe of all persons who are not parties to the case.

To take another example, the amendment treats contributions by a nonparty that are earmarked for a particular brief differently than general contributions by a nonparty to an amicus. People may make contributions to organizations for a host of reasons, including reasons that have nothing to do with filing amicus briefs. Requiring the disclosure of non-earmarked contributions provides less useful information for those who seek to evaluate a brief and imposes far greater burdens on contributors.

Subdivision (a). The amendment to Rule 29(a)(2) adds a statement of the purpose of an amicus brief: to bring to the court's attention relevant matter not already mentioned by the parties that may help the court. By contrast, if an amicus curiae brief is redundant with the parties' briefs or other amicus curiae briefs, it is a burden rather than a help. The amendment also eliminates the ability of a nongovernmental amicus to file a brief based solely on the consent of the parties. Most parties follow a norm of granting consent to anyone who asks. As a result, the consent requirement fails to serve as a useful filter. Some

parties might not respond to a request to consent, leaving a potential amicus needing to wait until the last minute to know whether to file a motion. Under the amendment, all nongovernmental parties must file a motion, eliminating uncertainty and providing a filter on the filing of unhelpful briefs. Rule 29(a)(3) is amended to require the motion to state why the brief is helpful and serves the purpose of an amicus brief; the motion must also include the disclosures required by Rules 29(a)(4)(A), (b), (c), and (e).

The amendment to Rule 29(a)(4)(D) expands the required statement regarding the identity of an amicus and its interest in the case and requires “a concise description of the identity, history, experience, and interests of the amicus curiae, together with an explanation of how the brief and the perspective of the amicus will help the court.” The amendment calls for this broader disclosure to help the court and the public evaluate the likely reliability and helpfulness of an amicus, particularly those with anodyne or potentially misleading names. It also requires that the amicus explain how the brief and the perspective of the amicus will further the goal of helping the court. Rule 29(a)(4)(E) is new. It requires an amicus that has existed for less than 12 months to state the date of its creation, helping identify amici that may have been created for the purpose of this litigation. Subsequent provisions are re-lettered.

Existing disclosure requirements about the relationship between the amicus and both parties and nonparties are removed from subdivision (a) and placed in separate subdivisions, one dealing with parties (subdivision (b)) and one dealing with nonparties (subdivision (e)).

Rule 29(a)(5) is amended to directly impose a word limit on amicus briefs, replacing the provision that establishes length limits for amicus briefs as a fraction of the length limits for parties. This results in removing the option to rely on a page count rather than a word count. This change enables Rule 29(a)(4)(H) (formerly 29(a)(4)(G)) to be simplified and require a certification of compliance under Rule 32(g)(1) in all amicus briefs.

Subdivision (b). Subdivision (b) dealing with disclosure of the relationship between the amicus and a party is new, but it draws on existing Rule 29(a)(4)(E). Because of the important interest in knowing whether a party has significant influence or control of an amicus, these disclosures are more far reaching than those involving nonparties, which are addressed in (e).

Rule 29(b)(1) carries forward the existing requirement that authorship of an amicus brief by a party or its counsel must be disclosed.

Rule 29(b)(2) carries forward the existing requirement that money contributed by a party or party’s counsel that was intended to fund the preparation or submission of the brief must be disclosed. But in an effort to counteract the possibility of an amicus interpreting the existing rule narrowly, the amendment explicitly refers to “preparing, drafting, or submitting the brief,” thereby making clear that it applies to every stage of the process.

Subdivision (b)(3) is new. It requires disclosure of whether a party, its counsel, or any combination of parties or counsel either has a majority ownership interest in or majority control of an amicus. If a party has such control over an amicus, it is in a position to control the content of an amicus brief. If undisclosed, the court and the public may be misled about the independence of an amicus from a party, and a party may be able to effectively exceed the limitations otherwise imposed on parties.

Subdivision (b)(4) is new. It requires disclosure of whether a party, its counsel, or any combination of parties or counsel either has contributed or pledged to contribute 25% or more of the revenue of an amicus. The 25% figure is chosen because the Committee believes that someone who provides that high a percentage of the revenue of an amicus is likely to have substantial power to influence that amicus. Because the concern is about contributions or pledges made sufficiently near in time to the filing of the brief to influence the brief, contributions or pledges made within 12 months before the filing of the brief must be disclosed. To minimize the burden of disclosure on the amicus, the 25% calculation is based on the total revenue of the amicus for its prior fiscal year. This means that such a calculation of the disclosure threshold needs to be done only once a year rather than each time an amicus brief is filed. And by using the prior fiscal year, an amicus can rely on its ordinary accounting process. The term “total revenue” is used because that is the term used by a tax-exempt organization on its IRS Form 990. A non-tax-exempt entity is likely to prepare an income statement which includes its total revenue. Individual amici can rely on their total income from the prior fiscal year reported on IRS Form 1040.

Subdivision (c). Subdivision (c) requires that any disclosure required by paragraph (b) name the party or counsel. This builds upon the requirement in current Rule 29(a)(4)(D)(iii) that certain persons who make earmarked contributions be identified.

Subdivision (d). Subdivision (d) is new. It operates as a backstop to the disclosure requirements of (b) and (c): If the amicus fails to make a required disclosure, and the party or counsel knows it, the party or counsel must make the disclosure.

Subdivision (e). Subdivision (e) focuses on the relationship between the amicus and a nonparty. It makes several changes to the existing Rule 29(a)(4)(E)(iii), which currently requires the disclosure of any contribution earmarked for a brief, no matter how small, by anyone other than the amicus itself, its members, or its counsel. Earmarked contributions run the risk that the amicus is being used as a paid mouthpiece by the contributor. Knowing about earmarked contributions helps courts and the public evaluate the arguments and information in the amicus brief by providing information about possible reasons for the filing other than those explained by the amicus itself.

The Committee considered requiring the disclosure of nonparties who make any significant contributions to an amicus, whether earmarked or not. But it decided against doing so because of the burdens it could impose on amici and their contributors, even when the reason for the contribution had nothing to do with the brief. Instead, it retained the focus of the existing rule on earmarked contributions.

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to “pass the hat” when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

Instead, the amendment retains the member exception, but limits it to those who have been members of the amicus for the prior 12 months. In effect, the amendment is an

anti-evasion rule that treats new members of an amicus as non-members.

This then raises the question of what to do with a newly-formed amicus organization. Rather than eliminate the member exception for such organizations, the amendment protects members from disclosure. But Rule 29(a)(4)(E) requires an amicus that has existed for less than 12 months to disclose the date of its creation. This requirement works in conjunction with the expanded disclosure requirement of Rule 29(a)(4)(D) to reveal an amicus that may have been created for purposes of particular litigation or is less established and broadly-based than its name might suggest. Unless adequately explained, a court and the public might choose to discount the views of such an amicus.

The amendment also provides a \$100 threshold for the disclosure requirement. Under the existing rule, a non-member of an amicus who contributes any amount, no matter how small, that is earmarked for a particular brief must be disclosed. This can hamper crowdfunding of amicus briefs while providing little useful information to the courts or the public. Contributions of \$100 or less are unlikely to run the risk that an amicus is being used as a mouthpiece for others.

Subdivision (f). Subdivision (f) retains most of the content of existing subdivision (b) and governs amicus briefs at the rehearing stage. It is revised to largely incorporate by reference the provision applicable to amicus briefs at the initial consideration of the case. Rule 29(f)(1) makes Rule 29(a) through (e) applicable, except as provided in the rest of Rule 29(f) or if a local rule or order in a particular case provides otherwise. As a result, duplicative provisions are eliminated.