

Amendments to the Federal Rules of Appellate Procedure

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By Peabody and Arnold on January 4, 2017

Pursuant to the Rules Enabling Act, 28 U.S.C. §§ 2071-75, amendments to the Federal Rules of Appellate Procedure took effect on December 1, 2016. The First Circuit has adopted the amendments in full.

Significant changes to the Federal Rules of Appellate Procedure include, among others:

- Filings made under Rules 5, 21, 27, 35, and 40 now have word limits, rather than page limits. These include petitions for permission to appeal and their oppositions and cross-petitions pursuant to Rule 5 (limited to 5,200 words) and any rehearing and en banc filings pursuant to Rules 35 and 40 (limited to 3,900 words). These filings must now also contain a Certificate of Compliance with Type-Volume Limit, included as a revised Form 6 in the new Rules.
- Word limits for briefs filed pursuant to Rules 28.1 and 32 have been reduced. Briefs filed under Rule 32, where there is no cross-appeal, have a 13,000 word limit for principal briefs (formerly 14,000) and 6,500 words for opposition and amicus briefs (formerly 7,000). Briefs filed under Rule 28.1, where there is a cross-appeal, have 13,000 words for the appellant's principal brief; 15,300 words for the appellee's opening and response brief (formerly 16,500); 13,000 words for the appellant's response and reply brief (formerly 14,000); and 6,500 words for appellee's reply brief (formerly 7,000). Amicus briefs in a Rule 32 appeal have 6,500 words in support of an appellant's opening brief and 7,650 words in support of appellee's opening and response brief. A Certificate of Compliance with Type-Volume Limit is still required for briefs filed under these Rules (see revised Form 6).
- These word limit changes are summarized in a new Appendix to the Federal Rules of Appellate Procedure for easy consultation.
- Parties can still rely on the page limits set forth in Rules 28.1 and 32, which remain at 30 pages for principal briefs, 35 pages for an opening and response cross-appeal brief, and 15 pages for a reply brief. No Certificate of Compliance is required if a brief complies with these page limits.
- Cover pages, corporate disclosures statements, tables of contents, tables of citations, statements regarding oral argument, addenda, certificates of counsel, signature blocks, proof of service, and any other items are still excluded from the word limits.
- The Rules also eliminate a three-day service period for documents served electronically under Rule 26. Deadlines will now run from the date of service of a document when served electronically upon another party.

Certain of the Rules' numbering has been changed, so be aware of that as well. For example, the list of items excluded from word count limits can now be found in Rule 32(f), rather than 32(a)(7)(B)(iii).

Though changes to the Federal Rules of Appellate Procedure primarily involve word limits, attorneys must be careful to consult the new Appendix to the Rules, as well as the revised Form 6 setting forth the proper Certificate of Compliance.