

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to recommend amendments to Pa.R.A.P. 531. This proposal is being submitted for public comments, suggestions, and concerns prior to submission to the Supreme Court.

Proposed new material is underlined and in bold face type and deleted material is bracketed and in bold face type.

All communications in reference to the proposed amendment should be sent no later than **September 22, 2014** to:

Appellate Court Procedural Rules Committee

Pennsylvania Judicial Center

601 Commonwealth Ave., Suite 6200

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Harrisburg, Pennsylvania 17106-2635

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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court Procedural Rules Committee

Honorable Renée Cohn Jubelirer

Chair

Explanatory Comment

The Supreme Court recently adopted rules changing the method of measuring the length of briefs from page count to word count. Because Pa.R.A.P. 531, governing participation by *amicus curiae*, did not set forth the length of an *amicus curiae* brief but merely stated that such a brief should be filed and served “in the manner” of a party’s brief, the Committee examined whether an *amicus curiae* brief should be the same length as, or be required to include all of the elements of, a party’s brief.

The Committee concluded that there were certain requirements of a party’s brief, such as the statement of facts or questions presented, that did not need to be included in an *amicus curiae* brief, and therefore, the *amicus curiae* brief did not need to be as long as a party’s brief. The Committee also determined that there were requirements in the federal appellate rules governing *amicus curiae* briefs that would be beneficial for the state courts. This recommendation thus incorporates an express requirement that an *amicus curiae* set forth its statement of interest, including a representation either that no party paid for its brief in whole or in part or a disclosure of the party paying for the brief in whole or in part. The Committee believes that this statement will assist the appellate courts in understanding which *amicus curiae* briefs have been prepared by persons who are independently interested in the question before the court and those who are filing at the behest of a party.

Rule 531. Participation by Amicus Curiae.

(a) **General.—An amicus curiae is a non-party interested in the questions involved in any matter pending in an appellate court.**

(b) **Briefs.**[--Anyone interested in the questions involved in any matter pending in an appellate court, excluding Petitions for Allowance of Appeal, although not a party, may, without applying for leave to do so, file a brief amicus curiae in regard to those questions.]

(1) [Unless otherwise ordered by the court, any amicus curiae shall file and serve its brief in the manner and number required and within the time allowed by these rules with respect to the party whose position as to affirmance or reversal the amicus brief will support, or with respect to the appellant, if the amicus brief does not support the position of any party.] **Except with respect to a petition for allowance of appeal, an amicus curiae may file a brief with respect to any matter pending in an appellate court without seeking leave of court.**

(2) [In an appeal proceeding under Rules 2154(b), 2185(c) and 2187(b), any amicus curiae shall file and serve its brief within the time allowed by these rules for service of the advance text of the brief by the party whose position as to affirmance or reversal the amicus brief will support or, if the amicus brief does not support the position of any party, within the time allowed by these rules for service of the advance text by the appellant. Alternatively, the amicus curiae may, but is not required to, serve an advance text and then file and serve a definitive copy of its brief. If the amicus curiae chooses to serve an advance copy and then file and serve a definitive copy, its deadlines for each are the same as for the party whose position as to affirmance or reversal the amicus brief supports or, if the amicus brief does not support the position of any party, as for the appellant.] **An amicus curiae brief need only contain a table of contents, table of authorities, statement of interest, argument, and a conclusion. An amicus curiae brief must include a footnote in the statement of interest representing that no party to the appeal has paid in whole or in part for the preparation of the brief or identifying any party to the appeal that has paid in whole or in part for the preparation of the brief.**

(3) **An amicus curiae brief is limited to one half the length permitted by the rules for a party's brief.**

(4) **An amicus curiae brief must be filed and served at the same time as the brief of the party whose position as to affirmance or reversal the amicus curiae brief will support. If the amicus curiae brief will not support the position of any party, the amicus curiae brief must be filed when the appellant's opening brief is due. In an appeal proceeding under Pa.R.A.P. 2154(b), 2185(c) and 2187(b), any amicus curiae shall file and serve its brief within the time**

allowed by these rules for service of the advance text of the brief by the party whose position as to affirmance or reversal the *amicus curiae* brief will support or, if the *amicus curiae* brief does not support the position of any party, within the time allowed by these rules for service of the advance text by the appellant. Alternatively, the *amicus curiae* may, but is not required to, serve an advance text and then file and serve a definitive copy of its brief. If the *amicus curiae* chooses to serve an advance copy and then file and serve a definitive copy of its brief, its deadlines for each are the same as for the party whose position as to affirmance or reversal the *amicus curiae* brief supports or, if the *amicus curiae* brief does not support the position of any party, as for the appellant.

(5) *Amici curiae* must comply with Pa.R.A.P. 2171, 2172, 2173, and 2187 with regard to the preparation of the brief and the number of copies to be filed and served.

[(b)](c) *Oral argument.*—Oral argument may be presented by *amicus curiae* only as the appellate court may direct. Requests for leave to present oral argument shall be by application and will be granted only for extraordinary reasons.

Official Note: [Where the *amicus curiae* cannot comply with the requirement of this rule because of ignorance of the pendency of the question, relief may be sought under Rule 105(b). The last eight words of the rule are new. In *Piccirilli Bros. v. Lewis*, 282 Pa. 328, 336, 127 Atl. 832, 835 (1925) the court noted the applicability of this rule to public officers who are represented by official counsel with an adverse position.] The Pennsylvania Supreme Court has held that “[a]n *amicus curiae* is not a party and cannot raise issues that have not been preserved by the parties.” *Commonwealth v. Cotto*, 753 A.2d 217, 224 n.6 (Pa. 2000). In addition, the Court shares the view of the United States Supreme Court that “[a]n *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.” See U.S. Supreme Ct. R. 37.1.

The rule allows interested parties to file *amicus curiae* briefs in any appellate matter, except in relation to a petition for allowance of appeal, without seeking leave. Those seeking to file *amicus curiae* briefs in relation to a petition for allowance of appeal must seek leave of the Supreme Court.

The 2014 amendment to the rule set forth length limitations and content requirements for *amicus curiae* briefs. The amendment also established a requirement that all *amicus curiae* briefs include a footnote in the statement of interest disclosing whether any party to the appeal has paid in whole or in part for the preparation of the *amicus curiae* brief. The 2011 amendment to the rule clarified when those filing *amicus curiae* briefs should serve and file their briefs when the appellant has chosen or the parties have been directed to proceed under the rules

related to large records (**[Rule]Pa.R.A.P. 2154(b)**), advance text (**[Rule]Pa.R.A.P. 2187(b)**) and definitive copies (**[Rule]Pa.R.A.P. 2185(c)**). Under those rules, the appellant may defer preparation of the reproduced record until after the briefs have been served. The parties serve on one another (but do not file) advance texts of their briefs within the times required by **[Rule]Pa.R.A.P. 2187**. At the time they file their advance texts, each party includes certified record designations for inclusion in the reproduced record. The appellant must then prepare and file the reproduced record within 21 days of service of the appellee's advance text (**[Rule]Pa.R.A.P. 2186(a)(2)**). Within 14 days of the filing of the reproduced record, each party that served a brief in advance text may file and serve definitive copies of their briefs. The definitive copy must include references to the pages of the reproduced record, but it may not otherwise include changes from the advance text other than correction of typographical errors. Those filing **[amicus curiae]****amicus curiae** briefs may choose to serve an advance text and then file and serve definitive copies according to the procedure required of the parties or they may choose to file a definitive brief without citations to the reproduced record.