

Client Alert

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Shorter Deadlines, Shorter Briefs: The 2016 Amendments to the Federal Rules of Appellate Procedure

On December 1, 2016, several revisions to the Federal Rules of Appellate Procedure go into effect. Of particular importance to appeals in civil actions are the changes to the method of counting days for deadlines after electronic service and the reductions in length limits imposed on briefs and other papers filed with the appellate court.

The “Three-Day Rule” Will No Longer Apply to Electronic Service

Starting in 2002, Rule 26(c) of the Appellate Rules treated electronic service like service by traditional mail, and thus allowed a party to tack on three additional days to respond to a filing served electronically. The Advisory Committee noted at that time that, although electronic service is “usually instantaneous,” there remained the potential for “technical problems,” thus justifying the extra buffer of three days to respond. Fourteen years of experience with electronic filing belied those concerns, and the 2016 revisions remove the benefit of the three-day rule for documents filed electronically. Specifically, revised Rule 26(c) clarifies that electronic service must be construed “as delivery on the date of service stated in the proof of service,” thus making electronic service equivalent to same-day, in-person service. The Advisory Committee has explained that its earlier concerns regarding electronic service “have been substantially alleviated by advances in technology and widespread skill in using electronic transmission.” Recognizing that electronic service can be accomplished at any time and date, however, the Committee also emphasized that service “after business hours, or just before or during a weekend or holiday, may result in a practical reduction in the time available to respond.” In such circumstances, parties may seek extensions from the court “to prevent prejudice.”

Word Limits Will Shrink for Filings

The 2016 amendments also reduce the length limits imposed on briefs and other papers filed in appeals. In 1998, the Advisory Committee first accounted for technological advances in word processing by converting the limits for briefs from pages to words, using a conversion ratio of 280 words per page (e.g., the 50-page limit for principal briefs became a 14,000-word limit). Starting on December 1, the Rules will now (a) convert the page limits for all filings generated on computer to word limits; and (b) impose a lower conversion ratio of 260 words per page. Accordingly, the new length limits for computer-generated filings will be as follows:

Rule	2016 Limits
Rule 5: Appeals by Permission	5,200 words
Rule 21: Writs of Mandamus, Prohibition and Other Extraordinary Writs	7,800 words
Rule 27: Motions and Responses	5,200 words
Rule 27: Replies	2,600 words
Rule 35 and 40: Petitions for Rehearing	3,900 words
Rule 32: Briefs on Appeal	
Principal Brief	13,000 words
Responsive Brief	13,000 words
Reply Brief	6,500 words
Amicus Brief	6,500 words
Rule 28.1: Briefs in Cross-Appeals	
Opening Brief	13,000 words
Cross-Appellant's Brief	15,300 words
Cross-Appellee's Reply Brief	13,000 words
Cross-Appellant's Reply Brief	6,500 words
Amicus Brief in Support of Appellant	6,500 words
Amicus Brief in Support of Cross-Appellant	7,650 words

The New Rules Will Go into Effect in (Almost) All of the Circuits on December 1, 2016

Unless noted otherwise in its local rules, each federal court of appeals will adopt the changes to the three-day rule for electronic service and shortened length limits as of December 1, 2016. Some of the circuits, however, have already announced that they will be retaining the older, longer limits for briefs. And the Ninth Circuit has even announced that it will be retaining the three-day rule for electronic service. The chart below reflects each circuit's response to the above-discussed 2016 amendments. Those circuits following the 2016 revisions are marked "New," and those adhering to the pre-2016 rules are marked "Old."

Circuit	Brief Length Limits	Other Papers Length Limits	Three-Day Rule
1st	New	New	New
2d	Old	New	New
3d	New	New	New
4th	New	New	New
5th	New	New	New
6th	New	New	New
7th	Old	New	New
8th	New	New	New
9th	Old	Old	Old
10th	New	New	New
11th	New	New	New
D.C.	New	New	New
Federal	Old	New	New

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