cuits state that an amicus may not file a reply brief. The role of an amicus should not require the use of a reply brief.

Subdivision (g). The language of this subdivision stating that an amicus will be granted permission to participate in oral argument ''only for extraordinary reasons'' has been deleted. The change is made to reflect more accurately the current practice in which it is not unusual for a court to permit an amicus to argue when a party is willing to share its argument time with the amicus. The Committee does not intend, however, to suggest that in other instances an amicus will be permitted to argue absent extraordinary circumstances.

COMMITTEE NOTES ON RULES—2010 AMENDMENT

Subdivision (a). New Rule 1(b) defines the term ''state'' to include ''the District of Columbia and any United States commonwealth or territory.'' That definition renders subdivision (a)'s reference to a ''Territory, Commonwealth, or the District of Columbia'' redundant. Accordingly, subdivision (a) is amended to refer simply to ''[t]he United States or its officer or agency or a state.''

Subdivision (c). The subparts of subdivision (c) are renumbered due to the relocation of an existing provision in new subdivision (c)(1) and the addition of a new provision in new subdivision (c)(5). Existing subdivisions (c)(1) through (c)(5) are renumbered, respectively, (c)(2), (c)(3), (c)(4), (c)(6) and (c)(7). The new ordering of the subdivisions tracks the order in which the items should appear in the brief.

Subdivision (c)(1). The requirement that corporate amici include a disclosure statement like that required of parties by Rule 26.1 was previously stated in the third sentence of subdivision (c). The requirement has been moved to new subdivision (c)(1) for ease of reference.

Subdivision (c)(5). New subdivision (c)(5) sets certain disclosure requirements concerning authorship and funding. Subdivision (c)(5) exempts from the authorship and funding disclosure requirements entities entitled under subdivision (a) to file an amicus brief without the consent of the parties or leave of court. Subdivision (c)(5) requires amicus briefs to disclose whether counsel for a party authored the brief in whole or in part and whether a party or a party's counsel contributed money with the intention of funding the preparation or submission of the brief. A party's or counsel's payment of general membership dues to an amicus need not be disclosed. Subdivision (c)(5) also requires amicus briefs to state whether any other ''person'' (other than the amicus, its members, or its counsel) contributed money with the intention of funding the brief's preparation or submission, and, if so, to identify all such persons. ''Person,'' as used in subdivision (c)(5), includes artificial persons as well as natural persons.

The disclosure requirement, which is modeled on Supreme Court Rule 37.6, serves to deter counsel from using an amicus brief to circumvent page limits on the parties' briefs. *See Glassroth v. Moore*, 347 F.3d 916, 919 (11th Cir. 2003) (noting the majority's suspicion ''that amicus briefs are often used as a means of evading the page limitations on a party's briefs''). It also may help judges to assess whether the amicus itself considers the issue important enough to sustain the cost and effort of filing an amicus brief.

It should be noted that coordination between the amicus and the party whose position the amicus supports is desirable, to the extent that it helps to avoid duplicative arguments. This was particularly true prior to the 1998 amendments, when deadlines for amici were the same as those for the party whose position they supported. Now that the filing deadlines are staggered, coordination may not always be essential in order to avoid duplication. In any event, mere coordination—in the sense of sharing drafts of briefs—need not be disclosed under subdivision (c)(5). *Cf*. Eugene Gressman et al., Supreme Court Practice 739 (9th ed. 2007) (Supreme Court Rule 37.6 does not ''require disclosure of any coordination and discussion between party counsel and amici counsel regarding their respective arguments....'').

Changes Made After Publication and Comment. No changes were made to the proposed amendment to Rule 29(a). However, the Committee made a number of changes to Rule 29(c).

One change concerns the third subdivision of the authorship and funding disclosure requirement. As published, that third subdivision would have directed the filer to ''identif[y] every person—other than the amicus curiae, its members, or its counsel—who contributed money that was intended to fund preparing or submitting the brief.'' A commentator criticized this language as ambiguous, because the commentator argued that the provision as drafted did not make clear whether it is necessary for the brief to state that no such persons exist (if that is the case). The Committee revised this portion of the requirement to require a statement that indicates whether ''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.''

Another set of changes concerns the placement of the disclosure requirement. As published, the Rule 29(c) proposal would have placed the new authorship and funding disclosure requirement in a new subdivision (c)(7) and would have moved the requirement of a corporate disclosure statement from the initial block of text in Rule 29(c) to a new subdivision (c)(6). New subdivision (c)(7) would have directed that the authorship and funding disclosure be made ''in the first footnote on the first page.'' Commentators criticized this directive as ambiguous and suggested that a better approach would be to direct that the authorship and funding disclosure follow the statement currently required by existing Rule 29(c)(3). The Committee found merit in these suggestions and decided to add the authorship and funding disclosure provision to existing subdivision (c)(3). However, a further revision to the structure of subdivision (c) was later made in response to style guidance from Professor Kimble, as discussed below.

Subsequent to the Appellate Rules Committee's meeting, the language adopted by the advisory committee was circulated to Professor Kimble for style review. Professor Kimble argued that the authorship and funding disclosure provision should be placed in a separate subdivision rather than being placed in existing subdivision (c)(3). In the light of the Appellate Rules Committee's goal of listing the required components in the order in which they should appear in the brief, the decision was made to place the authorship and funding disclosure provision in a new subdivision following existing subdivision (c)(3). Though this requires renumbering the subparts of Rule 29(c), those subparts have only existed for about a decade (since the 1998 restyling) and citations to the specific subparts of Rule 29(c) do not appear in the caselaw. Given that this change entails renumbering some subparts of Rule 29(c), it also seems advisable to move the corporate disclosure provision into a new subdivision (c)(1) and to renumber the subsequent subdivisions accordingly. Professor Kimble also suggested two stylistic changes to the language of what will now become new subdivision (c)(5). First, instead of using the language ''unless filed by an amicus curiae listed in the first sentence of Rule 29(a),'' the provision now reads ''unless the amicus curiae is one listed in the first sentence of Rule 29(a).'' Second, the words ''indicates whether'' have been moved up into the introductory text in 29(c)(5) instead of being repeated at the outset of the three subsections (29(c)(5)(A), (B) and (C)). Also, a comma has been added to what will become Rule 29(c)(3).

Rule 30. Appendix to the Briefs

(a) APPELLANT'S RESPONSIBILITY.

(1) *Contents of the Appendix*. The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) *Excluded Material.* Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) *Time to File; Number of Copies.* Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) ALL PARTIES' RESPONSIBILITIES.

(1) *Determining the Contents of the Appendix.* The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) *Costs of Appendix.* Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) DEFERRED APPENDIX.

(1) *Deferral Until After Briefs Are Filed.* The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) *References to the Record.*

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) FORMAT OF THE APPENDIX. The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) REPRODUCTION OF EXHIBITS. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) APPEAL ON THE ORIGINAL RECORD WITHOUT AN APPENDIX. The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

Subdivision (a). Only two circuits presently require a printed record (5th Cir. Rule 23(a); 8th Cir. Rule 10 (in civil appeals only)), and the rules and practice in those circuits combine to make the difference between a printed record and the appendix, which is now used in eight circuits and in the Supreme Court in lieu of the printed record, largely nominal. The essential characteristics of the appendix method are: (1) the entire record may not be reproduced; (2) instead, the parties

are to set out in an appendix to the briefs those parts of the record which in their judgment the judges must consult in order to determine the issues presented by the appeal; (3) the appendix is not the record but merely a selection therefrom for the convenience of the judges of the court of appeals; the record is the actual trial court record, and the record itself is always available to supply inadvertent omissions from the appendix. These essentials are incorporated, either by rule or by practice, in the circuits that continue to require the printed record rather than the appendix. See 5th Cir. Rule 23(a)(9) and 8th Cir. Rule 10(a)–(d).

Subdivision (b). Under the practice in six of the eight circuits which now use the appendix method, unless the parties agree to use a single appendix, the appellant files with his brief an appendix containing the parts of the record which he deems it essential that the court read in order to determine the questions presented. If the appellee deems additional parts of the record necessary he must include such parts as an appendix to his brief. The proposed rules differ from that practice. By the new rule a single appendix is to be filed. It is to be prepared by the appellant, who must include therein those parts which he deems essential and those which the appellee designates as essential.

Under the practice by which each party files his own appendix the resulting reproduction of essential parts of the record is often fragmentary; it is not infrequently necessary to piece several appendices together to arrive at a usable reproduction. Too, there seems to be a tendency on the part of some appellants to reproduce less than what is necessary for a determination of the issues presented (see *Moran Towing Corp. v. M. A. Gammino Construction Co.*, 363 F.2d 108 (1st Cir. 1966); *Walters v. Shari Music Publishing Corp.*, 298 F.2d 206 (2d Cir. 1962) and cases cited therein; *Morrison v. Texas Co.*, 289 F.2d 382 (7th Cir. 1961) and cases cited therein), a tendency which is doubtless encouraged by the requirement in present rules that the appellee reproduce in his separately prepared appendix such necessary parts of the record as are not included by the appellant.

Under the proposed rule responsibility for the preparation of the appendix is placed on the appellant. If the appellee feels that the appellant has omitted essential portions of the record, he may require the appellant to include such portions in the appendix. The appellant is protected against a demand that he reproduce parts which he considers unnecessary by the provisions entitling him to require the appellee to advance the costs of reproducing such parts and authorizing denial of costs for matter unnecessarily reproduced.

Subdivision (c). This subdivision permits the appellant to elect to defer the production of the appendix to the briefs until the briefs of both sides are written, and authorizes a court of appeals to require such deferred filing by rule or order. The advantage of this method of preparing the appendix is that it permits the parties to determine what parts of the record need to be reproduced in the light of the issues actually presented by the briefs. Often neither side is in a position to say precisely what is needed until the briefs are completed. Once the argument on both sides is known, it should be possible to confine the matter reproduced in the appendix to that which is essential to a determination of the appeal or review. This method of preparing the appendix is presently in use in the Tenth Circuit (Rule 17) and in other circuits in review of agency proceedings, and it has proven its value in reducing the volume required to be reproduced. When the record is long, use of this method is likely to result in substantial economy to the parties.

Subdivision (e). The purpose of this subdivision is to reduce the cost of reproducing exhibits. While subdivision (a) requires that 10 copies of the appendix be filed, unless the court requires a lesser number, subdivision (e) permits exhibits necessary for the determination of an appeal to be bound separately, and requires only 4 copies of such a separate volume or volumes to be filed and a single copy to be served on counsel.

Subdivision (f). This subdivision authorizes a court of appeals to dispense with the appendix method of reproducing parts of the record and to hear appeals on the original record and such copies of it as the court may require.

Since 1962 the Ninth Circuit has permitted all appeals to be heard on the original record and a very limited number of copies. Under the practice as adopted in 1962, any party to an appeal could elect to have the appeal heard on the original record and two copies thereof rather than on the printed record theretofore required. The resulting substantial saving of printing costs led to the election of the new practice in virtually all cases, and by 1967 the use of printed records had ceased. By a recent amendment, the Ninth Circuit has abolished the printed record altogether. Its rules now provide that all appeals are to be heard on the original record, and it has reduced the number of copies required to two sets of copies of the transmitted original papers (excluding copies of exhibits, which need not be filed unless specifically ordered). See 9 Cir. Rule 10, as amended June 2, 1967, effective September 1, 1967. The Eighth Circuit permits appeals in criminal cases and in habeas corpus and 28 U.S.C. §2255 proceedings to be heard on the original record and two copies thereof. See 8 Cir. Rule 8 (i)–(j). The Tenth Circuit permits appeals in all cases to be heard on the original record and four copies thereof whenever the record consists of two hundred pages or less. See 10 Cir. Rule 17(a). This subdivision expressly authorizes the continuation of the practices in the Eighth, Ninth and Tenth Circuits.

The judges of the Court of Appeals for the Ninth Circuit have expressed complete satisfaction with the practice there in use and have suggested that attention be called to the advantages which it offers in terms of reducing cost.

NOTES OF ADVISORY COMMITTEE ON RULES—1970 AMENDMENT

Subdivision (a). The amendment of subdivision (a) is related to the amendment of Rule 31(a), which authorizes a court of appeals to shorten the time for filing briefs. By virtue of this amendment, if the time for filing the brief of the appellant is shortened the time for filing the appendix is likewise shortened.

Subdivision (c). As originally written, subdivision (c) permitted the appellant to elect to defer filing of the appendix until 21 days after service of the brief of the appellee. As amended, subdivision (c) requires that an order of court be obtained before filing of the appendix can be deferred, unless a court permits deferred filing by local rule. The amendment should not cause use of the deferred appendix to be viewed with disfavor. In cases involving lengthy records, permission to defer filing of the appendix should be freely granted as an inducement to the parties to include in the appendix only matter that the briefs show to be necessary for consideration by the judges. But the Committee is advised that appellants have elected to defer filing of the appendix in cases involving brief records merely to obtain the 21 day delay. The subdivision is amended to prevent that practice.

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

Subdivision (a). During its study of the separate appendix [see Report on the Advisory Committee on the Federal Appellate Rules on the Operation of Rule 30, — FRD — (1985)], the Advisory Committee found that this document was frequently encumbered with memoranda submitted to the trial court. *United States v. Noall,* 587 F.2d 123, 125 n. 1 (2nd Cir. 1978). See generally *Drewett v. Aetna Cas. & Sur. Co.,* 539 F.2d 496, 500 (5th Cir. 1976); *Volkswagenwerk Aktiengesellschaft v. Church,* 413 F.2d 1126, 1128 (9th Cir. 1969). Inclusion of such material makes the appendix more bulky and therefore less useful to the appellate panel. It also can increase significantly the costs of litigation.

There are occasions when such trial court memoranda have independent relevance in the appellate litigation. For instance, there may be a dispute as to

whether a particular point was raised or whether a concession was made in the district court. In such circumstances, it is appropriate to include pertinent sections of such memoranda in the appendix.

Subdivision (b). The amendment to subdivision (b) is designed to require the circuits, by local rule, to establish a procedural mechanism for the imposition of sanctions against those attorneys who conduct appellate litigation in bad faith. Both 28 U.S.C. §1927 and the inherent power of the court authorized such sanctions. See *Brennan v. Local 357, International Brotherhood of Teamsters*, 709 F.2d 611 (9th Cir. 1983). See generally *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980). While considerations of uniformity are important and doubtless will be taken into account by the judges of the respective circuits, the Advisory Committee believes that, at this time, the circuits need the flexibility to tailor their approach to the conditions of local practice. The local rule shall provide for notice and opportunity to respond before the imposition of any sanction.

Technical amendments also are made to subdivisions (a), (b) and (c) which are not intended to be substantive changes.

TAXATION OF FEES IN APPEALS IN WHICH THE REQUIREMENT OF AN APPENDIX IS DISPENSED WITH

The Judicial Conference of the United States at its session on October 28th and 29th approved the following resolution relating to fees to be taxed in the courts of appeals as submitted by the Judicial Council of the Ninth Circuit with the proviso that its application to any court of appeals shall be at the election of each such court:

For some time it has been the practice in the Ninth Circuit Court of Appeals to dispense with an appendix in an appellate record and to hear the appeal on the original record, with a number of copies thereof being supplied (Rule 30f, Federal Rules of Appellate Procedure). It has been the practice of the Court to tax a fee of $5 in small records and $10 in large records for the time of the clerk involved in preparing such appeals and by way of reimbursement for postage expense. Judicial Conference approval heretofore has not been secured and the Judicial Council of the Ninth Circuit now seeks to fix a flat fee of $15 to be charged as fees for costs to be charged by *any* court of appeals ''in any appeal in which the requirement of an appendix is dispensed with pursuant to Rule 30f, Federal Rules of Appellate Procedure.''

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

Subdivision (b). The amendment requires a cross appellant to serve the appellant with a statement of the issues that the cross appellant intends to pursue on appeal. No later than ten days after the record is filed, the appellant and cross appellant must serve each other with a statement of the issues each intends to present for review and with a designation of the parts of the record that each wants included in the appendix. Within the next ten days, both the appellee and the cross appellee may designate additional materials for inclusion in the appendix. The appellant must then include in the appendix the parts thus designated for both the appeal and any cross appeals. The Committee expects that simultaneous compliance with this subdivision by an appellant and a cross appellant will be feasible in most cases. If a cross appellant cannot fairly be expected to comply until receipt of the appellant's statement of issues, relief may be sought by motion in the court of appeals.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

Subdivision (a). The only substantive change is to allow a court to require the filing of a greater number of copies of an appendix as well as a lesser number.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

Subdivision (a). Paragraph (a)(3) is amended so that it is consistent with Rule 31(b). An unrepresented party proceeding in forma pauperis is only required to file 4 copies of the appendix rather than 10.

Subdivision (c). When a deferred appendix is used, a brief must make reference to the original record rather than to the appendix because it does not exist when the briefs are prepared. Unless a party later files an amended brief with direct references to the pages of the appendix (as provided in subparagraph (c)(2)(B)), the material in the appendix must indicate the pages of the original record from which it was drawn so that a reader of the brief can make meaningful use of the appendix. The instructions in the current rule for cross-referencing the appendix materials to the original record are unclear. The language in paragraph (c)(2) has been amended to try to clarify the procedure.

Subdivision (d). In recognition of the fact that use of a typeset appendix is exceedingly rare in the courts of appeals, the last sentence—permitting a question and answer (as from a transcript) to be in a single paragraph—has been omitted.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (b)(1). The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 26.

Rule 31. Serving and Filing Briefs

(a) TIME TO SERVE AND FILE A BRIEF.

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) NUMBER OF COPIES. Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) CONSEQUENCE OF FAILURE TO FILE. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Mar. 30, 1970, eff. July 1, 1970; Mar. 10, 1986, eff. July 1, 1986; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)