

need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the page limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e.g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction. Any respondent or appellee who supports the petitioner or appellant shall meet the petitioner's or appellant's time schedule for filing documents.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 35 days after the brief for the petitioner or appellant is filed.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 35 days after the brief for the respondent or appellee is filed, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

7. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file 40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the

joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e.g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

7. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause, the time limits specified in this Rule may be shortened or extended by the

Court or a Justice, or by the Clerk under Rule 30.4.

Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 no more than 15 days after the petitioner's or appellant's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed no more than 15 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argument shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be