

Sills Cummis & Gross

A Professional Corporation

The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Tel: (973) 643-7000
Fax (973) 643-6500

Peter G. Verniero
Member
Admitted, NJ Bar
Direct Dial: 973-643-5485
Email: pverniero@sillscummis.com

101 Park Avenue, 28th Floor
New York, NY 10178
Tel: (212) 643-7000
Fax: (212) 643-6500

222 Lakeview Avenue, Suite 800
West Palm Beach, FL 33401
Tel: (561) 693-0440
Fax: (561) 828-0142

December 3, 2025

Via Email & U.S. Regular Mail

Heather Joy Baker
Clerk of the Supreme Court
Hughes Justice Complex
Post Office Box 970
Trenton, New Jersey 08625-0970

RE: Comments on Proposed Rule Amendments re Merits Briefing

Dear Ms. Baker:

Please accept these comments regarding the amendments on merits briefing before the Supreme Court as proposed in the November 3, 2025, Notice to the Bar.

The proposed revision to Rule 1:13-9(e)(2) provides, "In appeals, an answer opposing amicus participation may be filed together with the response brief addressing the merits of the proposed amicus brief, pursuant to Rule 2:6-11(a)(2)." That latter rule, if amended as proposed, would require that a party (either the appellant or respondent) respond or reply to the opposing party and any amici supporting that party in a single brief. I suggest that the proposal refer specifically to the page limits and other requirements for general appellate briefing found under Rule 2:6, except for those provisions that the Court wishes to change for merits briefing (such as the limitation, as contained under the proposal, of 30 pages for amici briefs, reduced from the current limit of 50 pages for such briefs).

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More substantively, as the proposal acknowledges, under current rules if there are multiple amici aligned against a party, that party is permitted to respond to each opposing amicus in a separate brief. Under the proposed requirement of a combined response, a party may be faced with having to respond to the proposed amicus brief of three or four prospective amici, possibly more—in addition to the opposing party’s merits brief—in a single response or reply brief. This would allow only limited space (presumably 15 pages if the general appellate rule for replies is followed) to be devoted, potentially, to several separate arguments.

As a result, in instances in which there are several amici aligned against a party, but few or none aligned against the other party, there would be an unfair briefing imbalance against the party who is confronting numerous opposing amici. In addition to that unfairness, the Court would be deprived of a more complete, better-informed response or reply.

To address that concern, I suggest that the proposed rule explicitly provide for leave to request an expansion of the page limit when responding to multiple opposing amici or make some other allowance for responding to multiple amici either as the appellant or respondent. If the Court wishes to reduce the potential for motion practice, an alternative suggestion would be to automatically allow an additional five pages in reply or response to each separate opposing amicus. Such allowance would reduce the likelihood of highly compressed replies or responses and thereby improve their utility or usefulness to the Court.

The proposed rule also could be reasonably read as to require that any opposition to an amicus motion be contained within the same response or reply to the proposed amicus merits brief. The drafters might want to clarify what is meant by the phrase “filed together” in the proposed amendment to Rule 1:13-9(e)(2). If the intent is to include, in a single brief, a party’s response or reply to all three submissions—the appellant’s or respondent’s merits brief; the motion brief or certification supporting the participation of the proposed amicus; and the proposed merits brief of that amicus—that would buttress the need for an additional five pages in reply or response to each separate opposing amicus.

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Also, as to page limits generally, both the current and proposed briefing rules are silent on whether the conclusion and/or signature pages are included within the applicable page limit. I construe the rules to include such pages, but some practitioners seem to construe the rules to exclude such pages, especially when there are several co-counsel signing or being listed on the same brief. This practice of numerous co-signers occurs with some frequency. I suggest that the rules clarify the intent of the drafters as to whether all applicable page limits are either inclusive or exclusive of the conclusion and/or signature pages.

Additionally, on the cover of each proposed merits brief, proposed amici should be required to identify the party whom that amicus is supporting or an indication that the amicus is not aligned with any party. This more closely resembles the practice before the United States Supreme Court.

Lastly, because the deadlines for filing proposed amici briefs are measured by the respective filings of the parties' merits briefs, I suggest the proposed rules contain some mechanism for potential amici to readily access such party briefs without having to rely on the parties themselves to supply them. Access to the party briefs would be especially important for those potential amici who are not aligned with any particular party.

Thank you in advance for considering these comments.

Respectfully submitted,


Peter G. Verniero