er, number of copies of briefs. The amendment also allows the required number to be prescribed by local rule as well as by order in a particular case.

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; a substantive change is made, however, in subdivision (b).

Subdivision (a). Paragraph (a)(2) explicitly authorizes a court of appeals to shorten a briefing schedule if the court routinely considers cases on the merits promptly after the briefs are filed. Extensions of the briefing schedule, by order, are permitted under the general provisions of Rule 26(b).

Subdivision (b). The current rule says that a party who is permitted to file ''typewritten ribbon and carbon copies of the brief'' need only file an original and three copies of the brief. The quoted language, in conjunction with current rule 24(c), means that a party allowed to proceed in forma pauperis need not file 25 copies of the brief. Two changes are made in this subdivision. First, it is anachronistic to refer to a party who is allowed to file a typewritten brief as if that would distinguish the party from all other parties; any party is permitted to file a typewritten brief. The amended rule states directly that it applies to a party permitted to proceed in forma pauperis. Second, the amended rule does not generally permit parties who are represented by counsel to file the lesser number of briefs. Inexpensive methods of copying are generally available. Unless it would impose hardship, in which case a motion to file a lesser number should be filed, a represented party must file the usual number of briefs.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (b). In requiring that two copies of each brief ''must be served on counsel for each separately represented party,'' Rule 31(b) may be read to imply that copies of briefs need not be served on unrepresented parties. The Rule has been amended to clarify that briefs must be served on all parties, including those who are not represented by counsel.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Subdivision (a)(1). Subdivision (a)(1) formerly required that the appellant's reply brief be served ''at least 3 days before argument, unless the court, for good cause, allows a later filing.'' Under former Rule 26(a), ''3 days'' could mean as many as 5 or even 6 days. See the Note to Rule 26. Under revised Rule 26(a), intermediate weekends and holidays are counted. Changing ''3 days'' to ''7 days'' alters the period accordingly. Under revised Rule 26(a), when a period ends on a weekend or holiday, one must continue to count in the same direction until the next day that is not a weekend or holiday; the choice of the 7-day period for subdivision (a)(1) will minimize such occurrences.

COMMITTEE NOTES ON RULES—2018 AMENDMENT

Subdivision (a)(1) is revised to extend the period for filing a reply brief from 14 days to 21 days. Before the elimination of the ''three-day rule'' in Rule 26(c), attorneys were accustomed to a period of 17 days within which to file a reply brief, and the committee concluded that shortening the period from 17 days to 14 days could adversely affect the preparation of useful reply briefs. Because time periods are best measured in increments of 7 days, the period is extended to 21 days.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) FORM OF A BRIEF.

(1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) *Binding.* The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) *Paper Size, Line Spacing, and Margins.* The brief must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface.* Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) *Type Styles.* A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) *Length.*

(A) *Page Limitation.* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(B) *Type-Volume Limitation.*

(i) A principal brief is acceptable if it:

• contains no more than 13,000 words; or

• uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(b) FORM OF AN APPENDIX. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½ by 11 inches, and need not lie reasonably flat when opened.

(c) FORM OF OTHER PAPERS.

(1) *Motion*. The form of a motion is governed by Rule 27(d).

(2) *Other Papers*. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) SIGNATURE. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) LOCAL VARIATION. Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(f) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- cover page;
- disclosure statement;
- table of contents;
- table of citations;
- statement regarding oral argument;
- addendum containing statutes, rules, or regulations;
- certificate of counsel;
- signature block;
- proof of service; and
- any item specifically excluded by these rules or by local rule.

(g) CERTIFICATE OF COMPLIANCE.

(1) *Briefs and Papers That Require a Certificate*. A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) *Acceptable Form*. Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 28, 2016, eff. Dec. 1, 2016; Apr. 25, 2019, eff. Dec. 1, 2019.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

Only two methods of printing are now generally recognized by the circuits—standard typographic printing and the offset duplicating process (multilith). A third, mimeographing, is permitted in the Fifth Circuit. The District of Columbia, Ninth, and Tenth Circuits permit records to be reproduced by copying processes. The Committee feels that recent and impending advances in the arts of duplicating and copying warrant experimentation with less costly forms of reproduction than those now generally authorized. The proposed rule permits, in effect, the use of any process other than the carbon copy process which produces a clean, readable page. What constitutes such is left in first instance to the parties and ultimately to the court to determine. The final sentence of the first paragraph of subdivision (a) is added to allow the use of multilith, mimeograph, or other forms of copies of the reporter's original transcript whenever such are available.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

In addition to amending Rule 32 to conform to uniform drafting standards, several substantive amendments are made. The Advisory Committee had been working on substantive amendments to Rule 32 for some time prior to completion of this larger project.

Subdivison (a). Form of a Brief.

Paragraph (a)(1). Reproduction.

The rule permits the use of ''light'' paper, not just ''white'' paper. Cream and buff colored paper, including recycled paper, are acceptable. The rule permits printing on only one side of the paper. Although some argue that paper could be saved by allowing double-sided printing, others argue that in order to preserve legibility a heavier weight paper would be needed, resulting in little, if any, paper saving. In addition, the blank sides of a brief are commonly used by judges and their clerks for making notes about the case.

Because photocopying is inexpensive and widely available and because use of carbon paper is now very rare, all references to the use of carbon copies have been deleted.

The rule requires that the text be reproduced with a clarity that equals or exceeds the output of a laser printer. That means that the method used must have a print resolution of 300 dots per inch (dpi) or more. This will ensure the legibility of the brief. A brief produced by a typewriter or a daisy wheel printer, as well as one produced by a laser printer, has a print resolution of 300 dpi or more. But a brief produced by a dot-matrix printer, fax machine, or portable printer that uses heat or dye transfer methods does not. Some ink jet printers are 300 dpi or more, but some are 216 dpi and would not be sufficient.

Photographs, illustrations, and tables may be reproduced by any method that results in a good copy.

Paragraph (a)(2). Cover.

The rule requires that the number of the case be centered at the top of the front cover of a brief. This will aid in identification of the brief. The idea was drawn from a local rule. The rule also requires that the title of the brief identify the party or parties on whose behalf the brief is filed. When there are multiple appellants or appellees, the information is necessary to the court. If, however, the brief is filed on behalf of all appellants or appellees, it may so indicate. Further, it may be possible to identify the class of parties on whose behalf the brief is filed. Otherwise, it may be necessary to name each party. The rule also requires that attorney's telephone numbers appear on the front cover of a brief or appendix.

Paragraph (a)(3). Binding.

The rule requires a brief to be bound in any manner that is secure, does not obscure the text, and that permits the brief to lie reasonably flat when open. Many judges and most court employees do much of their work at computer keyboards and a brief that lies flat when open is significantly more convenient. One circuit already has such a requirement and another states a preference for it. While a spiral binding would comply with this requirement, it is not intended to be the exclusive method of binding. Stapling a brief at the upper left-hand corner also satisfies this requirement as long as it is sufficiently secure.

Paragraph (a)(4). Paper Size, Line Spacing, and Margins.

The provisions for pamphlet-size briefs are deleted because their use is so rare. If a circuit wishes to authorize their use, it has authority to do so under subdivision (d) of this rule.

Paragraph (a)(5). Typeface.

This paragraph and the next one, governing type style, are new. The existing rule simply states that a brief produced by the standard typographic process must be printed in at least 11 point type, or if produced in any other manner, the lines of text must be double spaced. Today few briefs are produced by commercial printers or by typewriters; most are produced on and printed by computer. The availability of computer fonts in a variety of sizes and styles has given rise to local rules limiting type styles. The Advisory Committee believes that some standards are needed both to ensure that all litigants have an equal opportunity to present their material and to ensure that the briefs are easily legible.

With regard to typeface there are two options: proportionally-spaced typeface or monospaced typeface.

A proportionally-spaced typeface gives a different amount of horizontal space to characters depending upon the width of the character. A capital ''M'' is given more horizontal space than a lower case ''i.'' The rule requires that a proportionally-spaced typeface have serifs. Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of submissions to serif type, although sans-serif type may be used in headings and captions. This is the same approach magazines, newspapers, and commercial printers take. Look at a professionally printed brief; you will find sans-serif type confined to captions, if it is used at all. The next line shows two characters enlarged for detail. The first has serifs, the second does not.

Y Y

So that the type is easily legible, the rule requires a minimum type size of 14 points for proportionally-spaced typeface.

A monospaced typeface is one in which all characters have the same advance width. That means that each character is given the same horizontal space on the line. A wide letter such as a capital ''M'' and a narrow letter such as a lower case ''i'' are given the same space. Most typewriters produce mono-spaced type, and most computers also can do so using fonts with names such as ''Courier.''

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

```
This sentence is in a monospaced font; as you can
see, the m and i have the same width.
```

The rule requires use of a monospaced typeface that produces no more than 10½ characters per inch. A standard typewriter with pica type produces a monospaced typeface with 10 characters per inch (cpi). That is the ideal monospaced typeface. The rule permits up to 10½ cpi because some computer software programs contain monospaced fonts that purport to produce 10 cpi but that in fact produce slightly more than 10 cpi. In order to avoid the need to reprint a brief produced in good faith reliance upon such a program, the rule permits a bit of leeway. A monospace typeface with no more than 10 cpi is preferred.

Paragraph (a)(6). Type Styles.

The rule requires use of plain roman, that is not italic or script, type. Italics and boldface may be used for emphasis. Italicizing case names is preferred but underlining may be used.

Paragraph (a)(7). Type-Volume Limitation.

Subparagraph (a)(7)(A) contains a safe-harbor provision. A principal brief that does not exceed 30 pages complies with the type-volume limitation without further question or certification. A reply brief that does not exceed 15 pages is similarly treated. The current limit is 50 pages but that limit was established when most briefs were produced on typewriters. The widespread use of personal computers has made a multitude of printing options available to practitioners. Use of a proportional typeface alone can greatly increase the amount of material per page as compared with use of a monospace typeface. Even though the rule requires use of 14-point proportional type, there is great variation in the x-height of different 14-point typefaces. Selection of a typeface with a small x-height increases the amount of text per page. Computers also make possible fine gradations in spacing between lines and tight tracking between letters and words. All of this, and more, have made the 50-page limit virtually meaningless. Establishing a safe-harbor of 50 pages would permit a person who makes use of the multitude of printing ''tricks'' available with most personal computers to file a brief far longer than the ''old'' 50-page brief. Therefore, as to those briefs not subject to any other volume control than a page limit, a 30-page limit is imposed.

The limits in subparagraph (B) approximate the current 50-page limit and compliance with them is easy even for a person without a personal computer. The aim of these provisions is to create a level playing field. The rule gives every party an equal opportunity to make arguments, without permitting those with the best in-house typesetting an opportunity to expand their submissions.

The length can be determined either by counting words or lines. That is, the length of a brief is determined not by the number of pages but by the number of words or lines in the brief. This gives every party the same opportunity to present an argument without regard to the typeface used and eliminates any incentive to use footnotes or typographical ''tricks'' to squeeze more material onto a page.

The word counting method can be used with any typeface.

A monospaced brief can meet the volume limitation by using the word or a line count. If the line counting method is used, the number of lines may not exceed 1,300—26 lines per page in a 50-page brief. The number of lines is easily counted manually. Line counting is not sufficient if a proportionally spaced typeface is used, because the amount of material per line can vary widely.

A brief using the type-volume limitations in subparagraph (B) must include a certificate by the attorney, or party proceeding pro se, that the brief complies with the limitation. The rule permits the person preparing the certification to rely upon the word or line count of the word-processing system used to prepare the brief.

Currently, Rule 28(g) governs the length of a brief. Rule 28(g) begins with the words ''[e]xcept by permission of the court,'' signaling that a party may file a motion to exceed the limits established in the rule. The absence of similar language in Rule 32 does not mean that the Advisory Committee intends to prohibit motions to deviate from the requirements of the rule. The Advisory Committee does not believe that any such language is needed to authorize such a motion.

Subdivision (b). Form of an Appendix.

The provisions governing the form of a brief generally apply to an appendix. The rule recognizes, however, that an appendix is usually produced by photocopying existing documents. The rule requires that the photocopies be legible.

The rule permits inclusion not only of documents from the record but also copies of a printed judicial or agency decision. If a decision that is part of the record in the case has been published, it is helpful to provide a copy of the published decision in place of a copy of the decision from the record.

Subdivision (c). Form of Other Papers.

The old rule required a petition for rehearing to be produced in the same manner as a brief or appendix. The new rule also requires that a petition for rehearing en banc and a response to either a petition for panel rehearing or a petition for rehearing en banc be prepared in the same manner. But the length limitations of paragraph (a)(7) do not apply to those documents and a cover is not required if all the information needed by the court to properly identify the document and the parties is included in the caption or signature page.

Existing subdivision (b) states that other papers may be produced in like manner, or ''they may be typewritten upon opaque, unglazed paper 8½ by 11 inches in size.'' The quoted language is deleted but that method of preparing documents is not eliminated because (a)(5)(B) permits use of standard pica type. The only change is that the new rule now specifies margins for typewritten documents.

Subdivision (d). Local Variation.

A brief that complies with the national rule should be acceptable in every court. Local rules may move in one direction only; they may authorize noncompliance with certain of the national norms. For example, a court that wishes to do so may authorize printing of briefs on both sides of the paper, or the use of smaller type size or sans-serif proportional type. A local rule may not, however, impose requirements that are not in the national rule.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (a)(2). On occasion, a court may permit or order the parties to file supplemental briefs addressing an issue that was not addressed—or adequately addressed—in the principal briefs. Rule 32(a)(2) has been amended to require that tan covers be used on such supplemental briefs. The amendment is intended to promote uniformity in federal appellate practice. At present, the local rules of the circuit courts conflict. *See, e.g.*, D.C. Cir. R. 28(g) (requiring yellow covers on supplemental briefs); 11th Cir. R. 32, I.O.P. 1 (requiring white covers on supplemental briefs).

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

Subdivision (a)(7)(C). If the principal brief of a party exceeds 30 pages, or if the reply brief of a party exceeds 15 pages, Rule 32(a)(7)(C) provides that the party or the party's attorney must certify that the brief complies with the type-volume limitation of Rule 32(a)(7)(B). Rule 32(a)(7)(C) has been amended to refer to Form 6 (which has been added to the Appendix of Forms) and to provide that a party or attorney who uses Form 6 has complied with Rule 32(a)(7)(C). No court may provide to the contrary, in its local rules or otherwise.

Form 6 requests not only the information mandated by Rule 32(a)(7)(C), but also information that will assist courts in enforcing the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6). Parties and attorneys are not required to use Form 6, but they are encouraged to do so.

Subdivision (c)(2)(A). Under Rule 32(c)(2)(A), a cover is not required on a petition for panel rehearing, petition for hearing or rehearing en banc, answer to a petition for panel rehearing, response to a petition for hearing or rehearing en banc, or any other paper. Rule 32(d) makes it clear that no court can require that a cover be used on any of these papers. However, nothing prohibits a court from providing in its local rules that if a cover on one of these papers is ''voluntarily'' used, it must be a particular color. Several circuits have adopted such local rules. *See, e.g.*, Fed. Cir. R. 35(c) (requiring yellow covers on petitions for hearing or rehearing en banc and brown covers on responses to such petitions); Fed. Cir. R. 40(a) (requiring yellow covers on petitions for panel rehearing and brown covers on answers to such petitions); 7th Cir. R. 28 (requiring blue covers on petitions for rehearing filed by appellants or answers to such petitions, and requiring red covers on petitions for rehearing filed by appellees or answers to such petitions); 9th Cir. R. 40–1 (requiring blue covers on petitions for panel rehearing filed by appellants and red covers on answers to such petitions, and requiring red covers on petitions for panel rehearing filed by appellees and blue covers on answers to such petitions); 11th Cir. R. 35–6 (requiring white covers on petitions for hearing or rehearing en banc).

These conflicting local rules create a hardship for counsel who practice in more than one circuit. For that reason, Rule 32(c)(2)(A) has been amended to provide that if a party chooses to use a cover on a paper that is not required to have one, that cover must be white. The amendment is intended to preempt all local rulemaking on the subject of cover colors and thereby promote uniformity in federal appellate practice.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

Subdivisions (d) and (e). Former subdivision (d) has been redesignated as subdivision (e), and a new subdivision (d) has been added. The new subdivision (d) requires that every brief, motion, or other paper filed with the court be signed by the attorney or unrepresented party who files it, much as Fed. R. Civ. P. 11(a) imposes a signature requirement on papers filed in district court. Only the original copy of every paper must be signed. An appendix filed with the court does not have to be signed at all.

By requiring a signature, subdivision (d) ensures that a readily identifiable attorney or party takes responsibility for every paper. The courts of appeals already have authority to sanction attorneys and parties who file papers that contain misleading or frivolous assertions, *see, e.g.*, 28 U.S.C. §1912, Fed. R. App. P. 38 & 46(b)(1)(B), and thus subdivision (d) has not been amended to incorporate provisions similar to those found in Fed. R. Civ. P. 11(b) and 11(c).

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment. A line was added to the Committee Note to clarify that only the original copy of a paper needs to be signed.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

Subdivision (a)(7)(C). Rule 32(a)(7)(C) has been amended to add cross-references to new Rule 28.1, which governs briefs filed in cases involving cross-appeals. Rule 28.1(e)(2) prescribes type-volume limitations that apply to such briefs, and Rule 28.1(e)(3) requires parties to certify compliance with those type-volume limitations under Rule 32(a)(7)(C).

COMMITTEE NOTES ON RULES—2016 AMENDMENT

When Rule 32(a)(7)(B)'s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page. Rules 28.1 and 32(a)(7)(B) are amended to reduce the word limits accordingly.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing

parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

Subdivision (e) is amended to make clear a court's ability (by local rule or order in a case) to increase the length limits for briefs and other documents. Subdivision (e) already established this authority as to the length limits in Rule 32(a)(7); the amendment makes clear that this authority extends to all length limits in the Appellate Rules.

A new subdivision (f) is added to set out a global list of items excluded from length computations, and the list of exclusions in former subdivision (a)(7)(B)(iii) is deleted. The certificate-of-compliance provision formerly in Rule 32(a)(7)(C) is relocated to a new Rule 32(g) and now applies to filings under all type-volume limits (other than Rule 28(j)'s word limit)—including the new word limits in Rules 5, 21, 27, 29, 35, and 40. Conforming amendments are made to Form 6.

COMMITTEE NOTES ON RULES—2019 AMENDMENT

The phrase ''corporate disclosure statement'' is changed to ''disclosure statement'' to reflect the revision of Rule 26.1. The other amendment to subdivision (f) does not change the substance of the current rule, but removes the articles before each item because a document will not always include these items.

Rule 32.1. Citing Judicial Dispositions

(a) CITATION PERMITTED. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as ''unpublished,'' ''not for publication,'' ''non-precedential,'' ''not precedent,'' or the like; and

(ii) issued on or after January 1, 2007.

(b) COPIES REQUIRED. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(As added Apr. 12, 2006, eff. Dec. 1, 2006.)

COMMITTEE NOTES ON RULES—2006

Rule 32.1 is a new rule addressing the citation of judicial opinions, orders, judgments, or other written dispositions that have been designated by a federal court as ''unpublished,'' ''not for publication,'' ''non-precedential,'' ''not precedent,'' or the like. This Committee Note will refer to these dispositions collectively as''unpublished'' opinions.

Rule 32.1 is extremely limited. It does not require any court to issue an unpublished opinion or forbid any court from doing so. It does not dictate the circumstances under which a court may choose to designate an opinion as ''unpublished'' or specify the procedure that a court must follow in making that determination. It says nothing about what effect a court must give to one of its unpublished opinions or to the unpublished opinions of another court. Rule 32.1 addresses only the *citation* of federal judicial dispositions that have been *designated* as ''unpublished'' or ''non-precedential''—whether or not those dispositions have been published in some way or are precedential in some sense.

Subdivision (a). Every court of appeals has allowed unpublished opinions to be cited in some circumstances, such as to support a contention of issue preclusion or claim preclusion. But the circuits have differed dramatically with respect to the restrictions that they have placed on the citation of unpublished opinions for their persuasive value. Some circuits have freely permitted such citation, others have discouraged it but permitted it in limited circumstances, and still others have forbidden it altogether.

Rule 32.1(a) is intended to replace these inconsistent standards with one uniform rule. Under Rule 32.1(a), a court of appeals may not prohibit a party from citing an unpublished opinion of a federal court for its persuasive value or for any other reason. In addition, under Rule 32.1(a), a court may not place any restriction on the citation of such opinions. For example, a court may not instruct parties that the citation of unpublished opinions is discouraged, nor may a court forbid parties to cite unpublished opinions when a published opinion addresses the same issue.

Rule 32.1(a) applies only to unpublished opinions issued on or after January 1, 2007. The citation of unpublished opinions issued before January 1, 2007, will continue to be governed by the local rules of the circuits.

Subdivision (b). Under Rule 32.1(b), a party who cites an opinion of a federal court must provide a copy of that opinion to the court of appeals and to the other parties, unless that opinion is available in a publicly accessible electronic database—such as a commercial database maintained by a legal research service or a database maintained by a court. A party who is required under Rule32.1(b) to provide a copy of an opinion must file and serve the copy with the brief or other paper in which the opinion is cited. Rule 32.1(b) applies to all unpublished opinions, regardless of when they were issued.

Changes Made After Publication and Comment. (At its June 15–16, 2005, meeting, the Standing Rules Committee with the advisory committee chair's concurrence agreed to delete sections of the Committee Note, which provided background information on the justification of the proposal.) The changes made by the Advisory Committee after publication are described in my May 14, 2004 report to the Standing Committee. At its April 2005 meeting, the Advisory Committee directed that two additional changes be made.

First, the Committee decided to add ''federal'' before ''judicial opinions'' in subdivision (a) and before ''judicial opinion'' in subdivision (b) to make clear that Rule 32.1 applies only to the unpublished opinions of federal courts. Conforming changes were made to the Committee Note. These changes address the concern of some state court judges—conveyed by Chief Justice Wells at the June 2004 Standing Committee meeting—that Rule 32.1 might have an impact on state law.

Second, the Committee decided to insert into the Committee Note references to the studies conducted by the Federal Judicial Center (''FJC'') and the Administrative Office (''AO''). (The studies are described below. [Omitted]) These references make clear that the arguments of Rule 32.1's opponents were taken seriously and studied carefully, but ultimately rejected because they were unsupported by or, in some instances, actually refuted by the best available empirical evidence.

Rule 33. Appeal Conferences

The court may direct the attorneys—and, when appropriate, the parties—to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)