



Yale Law School

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Clerk of the Court
Attn: Rules Committee
Supreme Court of the United States
Washington, D.C., 20543

Re: *Comments on Proposed Rule Changes*

To the Rules Committee of the Supreme Court:

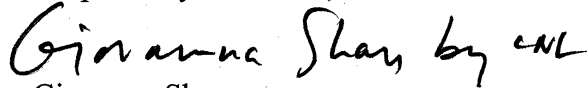
We write to comment on the proposed revisions to the Court's rules which would require that counsel submit electronic versions of briefs – but only in limited circumstances. Revised Rule 25.8 would require an electronic version of every brief *on the merits* to be transmitted to the Clerk and to opposing counsel at the time of filing. Similarly, Revised Rule 37.3(a) would require electronic transmission of amicus briefs “in a case before the Court for oral argument.” We believe the proposed rules changes appropriately demand electronic filing, which is already required in many of the district courts. However, we encourage the Court to adopt a more expansive rule which would require counsel (but not a party proceeding *pro se*) to transmit an electronic version of any document filed with the Court.

We advocate this more expansive requirement in order to promote openness and transparency at the Court, and to facilitate access to Court documents. Currently, it is fairly easy to gain access to both cert-stage and merits-stage filings in “paid” cases. Such filings are available electronically on services such as U.S. Law Week/BNA and Westlaw. However, it is more difficult to get access to documents filed in *in forma pauperis* cases. The latter category includes not only *pro se* prisoners' filings, but also filings by lawyers on behalf of indigent clients. We believe this comprises a great number, perhaps even a majority, of the criminal cases that come before the Court. Our belief is that because fewer paper copies of briefs must be filed in an *in forma pauperis* case, documents are not made available to subscription services such as U.S. Law Week or Westlaw. Similarly, while paper copies of the Court's documents are also stored at repositories such as that maintained at the Lillian Goldman Law Library of the Yale Law School, copies of the documents in *in forma pauperis* cases are sent to repositories only if certiorari is granted. This significant gap in coverage makes it difficult for researchers such as ourselves to learn what questions are being presented to the Court in indigent litigants' cases, particularly in petitions that are denied. We believe that the only way to access the documents in *in forma pauperis* cases in which certiorari is not granted is to travel to the Clerk's office or the National Archives.

Requiring electronic versions of all documents filed by counsel would facilitate the transmission of valuable information to repositories and on-line research services. It would not impose any great additional burden on counsel. Because so many lower federal courts and state courts now mandate electronic filing, we believe most lawyers already have access to the programs necessary for electronic filing. Those who do not currently have access could purchase such programs with relatively little expense. On balance, the increase in transparency at the Court would be well worth the one-time cost imposed on counsel. To allow for unusual circumstances, the Court could consider allowing counsel to avoid the electronic transmission requirement "for good cause," mirroring the flexibility in the Court's rules respecting time and page limits (Rules 13.5, 18.3, 26.8, 33.1(d)).

We appreciate the opportunity to comment on the Court's proposed changes. Thank you for your consideration.

Respectfully submitted,

Handwritten signature of Giovanna Shay in black ink, written in a cursive style.

Giovanna Shay

Robert M. Cover Clinical Teaching Fellow

Handwritten signature of Christopher N. Lasch in black ink, written in a cursive style.

Christopher N. Lasch

Robert M. Cover Clinical Teaching Fellow