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"Frank H. Easterbrook"
<fhe1@uchicago.edu>
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To Rules_Comments@ao uscourts.gov
cc
bcc
Subject Proposed amendments to Federal Rules of Appellate Procedure

The proposed amendment to Fed. R. App. P. 29(c)(6) requires an *amicus curiae* that is "a corporation" to file a disclosure statement "like that required of parties by Rule 26.1." The idea behind this requirement, I take it, is that knowing the parent corporations and other major investors in an *amicus curiae* will enable the judge to make informed decisions about recusal.

Reading the draft rule led me to wonder what a "corporation" is. I supposed that it must be a defined term. But a search of the rules shows that it is not defined, either in the text or the commentary. This seems to me an important omission, for Rule 26.1 as well as Rule 29.

On the one hand, many entities are organized as corporations even though they do not have stock (and hence cannot have "parent" corporations. Many municipalities are corporations. Harvard University is a corporation, as is the Catholic Bishop of Chicago (a corporation sole), but the University of Chicago is organized as a charitable trust rather than as a corporation. There is no need for a special statement of interest from Seattle, Harvard, or a religious prelate.

On the other hand, many business entities are not corporations. A limited liability company has "members" rather than stockholders; a limited or general partnership has partners. The identity of these members and partners may be relevant to recusal for the same reason as the identify of principal stockholders (parent corporations or persons who own more than 10% of the corporation's stock). Why are corporations included in Rule 26.1 and Rule 29(c)(6), while LLCs, LPs, business trusts, and other entities that pose the identical recusal problems omitted? This subject needs some attention.

Two observations about style. The draft Rule 29(c)(7)(A) reads: "indicates whether a party's counsel authored the brief in whole or in part". The word "author" is a noun, and nouns do not have past tenses! The word should be "wrote", not "authored".

The next subsection reads: "indicates whether a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief". This is wordy, and the reference to "intent" makes it hard to administer. Does this language suggest that a cash contribution used to prepare an amicus brief need not be reported if the donor did not "intend" to support the brief? Other words in this subsection are surplusage. Why not: "indicates whether a party or a party's counsel contributed money toward the cost of the brief"?

Frank H. Easterbrook