



February 15, 2023

Patricia S. Dodszuweit
Clerk of Court
United States Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106
LARS_comments@ca3.uscourts.gov

Re: Proposed Amendments to L.A.R. 26.1 and L.A.R. MISC. 113.3

Dear Ms. Dodszuweit:

A majority of the Board of Governors of the Third Circuit Bar Association respectfully opposes the proposed amendments to 3d Cir. L.A.R. 26.1 and 3d Cir. L.A.R. MISC. 113.3.¹

The proposed amendments appear to be aimed primarily at improving attorney and staff quality of life. Although that is certainly an important objective, in our view, the proposed amendments would not serve that objective and could have the opposite effect. The current midnight filing deadline fosters significant flexibility by providing attorneys and staff more time to manage a filing deadline while also addressing other matters, such as family care, medical appointments, unforeseen circumstances, and other work obligations. The proposed amendments would impair that flexibility. Additionally, advancing the filing deadline would likely not decrease the prospect of after-hours work since it would not preclude after-hours work on other matters and may increase the likelihood of after-hours work on the day preceding the deadline. There would likely be occasions, moreover, when a 5 p.m. deadline would impose an added burden on attorneys and staff (as well as the Court). Attorneys who find themselves unable to meet the 5 p.m. deadline due to an unexpected circumstance would likely be compelled—while working to finalize a brief—to file a written motion requesting a short extension, which would require action by the Court.

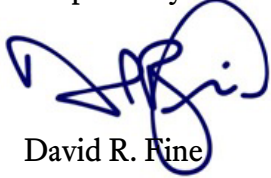
We recognize that the proposed amendments may also be aimed at other objectives, such as improving fairness. In our view, however, the current midnight filing deadline does not hinder fair litigation. Nearly all Third Circuit litigants are on equal footing since attorneys are required to file electronically and *pro se* parties (except for prisoners) are permitted to do so. In a typical appeal, moreover, a party gains no material advantage by waiting a few extra hours to file since the normal deadline for a responsive brief is 21 or 30 days. Although certain circumstances may present a concern about fairness, we suggest that the problem can be better remedied on an as-needed basis. For

¹ Please note that board members Laura Irwin, Carl Marchioli and Karl Myers recused themselves from the board's vote on this matter.

example, in expedited matters or in matters involving cross-filings, the Court could (as it sometimes does) set a time-of-day filing deadline appropriate for a particular case.

We appreciate the opportunity to comment on the proposed amendments and the Court's consideration of these views.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Fine", with a large, stylized loop at the end.

David R. Fine

President