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New Word Limits For Federal Appellate Briefs: How Low Is Too Low?

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Several amendments to the ***Federal Rules of Appellate Procedure*** are scheduled to take effect on December 1, and one of those amendments is causing consternation among appellate practitioners: a 1000-word reduction in the word limit for principal briefs, along with a 500-word reduction for reply briefs. Since 1998, the Rules have allotted parties 14,000 words for their principal briefs, provided that they comply with certain typeface requirements. Under the new Rules, that limit will be reduced to 13,000 words. Reply briefs will continue to be limited to half the length of principal briefs, and will therefore be shortened by 500 words.

In support of the rule change, the Advisory Committee noted that the current 14,000-word limit resulted from an attempt in 1998 to convert the 50-page limit then in effect into a cap on words. At that time, the Committee concluded that briefs generally contained about 280 words per page — and 280 words-per-page times 50 pages equaled 14,000 words. Now, the Committee has revised its view and concluded that appellate briefs prior to 1998 actually had closer to 250 words per page, which in its view justified reducing the word limit to 12,500 words. Pushback from appellate practitioners resulted in the new limit being upped from 12,500 to 13,000 words.

Commenters and bar associations who oppose the amendment have contended that the original estimate of 280 words per page *was* accurate and should not be revised to justify recalibrating word limits. But ultimately, arguing over the average number of words per page that appeared in appellate briefs before 1998 somewhat misses the point. As those commentators also point out, the 14,000-word limit has been in effect for nearly twenty years and has generally proven to be workable. It is hard to see a compelling reason to jettison a long-standing appellate rule that by and large has been working well.

To be sure, 13,000 words will be more than sufficient in some less-complicated appeals, and forcing attorneys to be more efficient in their writing can often result in better briefs. Nevertheless, in more complex cases, it already can be daunting to summarize a massive trial record and forge two or three nuanced legal arguments in 14,000 words. As Judge Easterbrook of the Seventh Circuit has observed, appeals in the Circuit courts often are just as complex as those in the Supreme Court, and yet practitioners in the Supreme Court are allotted 15,000 words for their principal briefs. In fact, Circuit appeals are often *more* complex than those at the High Court because the Supreme Court typically grants certiorari on only one or two legal questions presented.

The Rules do allow the Circuit Courts to extend word limits in particular cases or even in all cases by local rule. Hopefully, the courts will be generous in granting such extensions, at least in cases featuring robust trial records or multiple knotty legal issues.

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