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APPELLATE ALERT

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Significant Pennsylvania Rules Change Requires Bigger Type and *Much* Shorter Briefs

By Carl A. Solano

On March 27, 2013, the Supreme Court of Pennsylvania promulgated a set of significant rule changes that will affect everyone who practices in a Pennsylvania appellate court. The new amendments require that briefs and some similar documents be much shorter than the rules now allow, and they mandate changes in the appearance of all appellate documents. They apply to all cases filed in an appellate court on or after May 26, 2013, but lawyers may begin complying with them now.

The Appearance Changes

The amendments change the size of the type that must be used in appellate documents. Under present Appellate Rule 124(a)(4), lettering in a document filed in an appellate court must be "no smaller than point 12." Under the amendments, lettering must be "no smaller than 14 point in the text and 12 point in footnotes." The change is intended to make documents more readable by making the type larger:

> This sentence is presented in 12-point type.
>
> This sentence is presented in 14-point type.

As you can see, the 14-point type is bigger, and easier to read. The new type-size requirement applies to *all* appellate documents, not just to briefs.

Reduction of the Maximum Length of Briefs and Related Documents

The more significant change is a pronounced reduction in the maximum length of briefs. Until now, under Appellate Rule 2135, a principal brief (that is, the opening brief of the appellant and the brief of the appellee) could be up to 70 pages long, and an appellant's reply brief could be up to 25 pages long. The amendments to Rule 2135 say that a principal brief now may not exceed 14,000 words and a reply brief may not exceed 7,000 words. By stating the maximum length in terms of a word count instead of a page limit, the amendments seek to prevent tricks and devices (alterations to line spacing or margins, for example) that some lawyers have tried to use to squeeze extra text onto a page and thereby to circumvent the page limit.

If a principal brief is 30 pages or less (15 pages for a reply brief), it will be assumed that it meets the maximum word requirements. If not, the filer must count the words in the brief and file a certification that the brief contains no more words than the rules allow. Standard word processors have features that will count the number of words in a document. When using these features, make sure to check the proper settings so that the program will count words in footnotes as well as text. The maximum word limitation under the new amendments does not apply to covers, tables, the proof of service, and other supplementary material.

The new word count limitation drastically reduces the maximum permissible length of a brief. While the number of words on a page will vary depending on such things as whether there is a substantial amount of single-spaced material (quotations or footnotes), our experience is that a brief in 12-point type contains at least 350 words per page. A 70-page brief in 12-point type therefore would contain at least 24,500 words (70 × 350); but under the amendments it now may contain only 14,000 — a decrease of more than 40 percent. This is a *huge* reduction. For example, if the amendments still permitted 12-point text, a 14,000-word brief would be no longer than 40 pages (14,000 ÷ 350), far less than the 70 pages of 12-point type that are currently permitted.

Practitioners may not immediately appreciate how big this change is because the amended rules will not permit them to have 350 words of 12-point type on a page. The amendments' new 14-point type requirement will enable fitting only about 250 words on a page. That means that a 14,000-word brief will take up about 56 pages (14,500 ÷ 250). But that number of pages of bigger type is deceiving: the amount of permissible text still will have decreased by

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more than 40 percent.

It is not just briefs that will shrink under the new rules. Comparable reductions have been imposed for jurisdictional statements in the Supreme Court (from five pages to 1,000 words) and rehearing petitions (from 15 pages to 3,000 words). Meanwhile, rules that set page limits for sections within briefs (the Statement of Questions and Summary of Argument) have been eliminated.

Implications of the New Amendments

Everyone should welcome the changes requiring larger type. They will make briefs and other documents easier to read, and no one should quarrel with that.

The reduction in the permissible length of briefs is more problematic, however. Judges always advise that a shorter brief is better than a longer one, and we strongly agree with that advice, making it our policy to try to keep our briefs as short as possible. To the extent the Pennsylvania appellate courts have been receiving wordy briefs, the new amendments should encourage better advocacy by demanding more concise writing.

But every now and then there are cases that simply demand longer briefs. Sometimes they involve complex facts that must be fully explained to give the court a proper understanding of the case. Sometimes they involve issues that are legally complex and can only be sorted out with a detailed review of the applicable law. An appeal may present difficult issues of statutory construction that call for an examination of lengthy legislative history. Or it may involve critical issues that must be fully preserved for later review — criminal appeals that present federal questions are a classic example. In cases like these, 14,000 words may not adequately do the job.

In such cases, what is a practitioner to do? When the new amendments were initially proposed, they contained an Official Note advising, "In an extraordinary case, a party may file a Rule 123 application asking for relief from the page or word count limits prior to the date on which the brief is due." For reasons that are not known, that Note did not make it into the final rule, but a Rule 123 application nevertheless remains available. Rule 2135 itself says that the new word limits apply "unless otherwise prescribed by an appellate court." The question is whether the appellate courts will be flexible in granting requests for relief from the word limits.

The new amendments are patterned on (though not identical to) rules applicable to briefs in the federal courts, and recently the Court of Appeals for the Third Circuit found that it was receiving so many requests for relief from the federal rule on word limits that it had to impose new procedures to limit the cases in which such motions will be granted. It is to be hoped that the Pennsylvania appellate courts will not impose similar restrictions — at least not until there has been an adequate opportunity for practitioners to get used to the new rules and for both the Bench and Bar to determine whether there is a general need to relax their limitations. ◆

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