

STEVEN FINELL

Attorney at Law
777 FRAZIER AVENUE
SANTA ROSA, CA 95404-5823

(707) 578-3827

EMAIL: Finell@StevenFinell.com

NEW YORK OFFICE:
STEVEN FINELL LLC
30 WALL STREET, 8TH FLOOR
NEW YORK, NY 10005-2205

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Jonathan C. Rose, Secretary
Committee on Rules of Practice and Procedure of
the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
One Columbus Circle N.E., Suite 7-240
Washington, DC 20544

*Proposed Amendments to Federal Rules of Appellate Procedure:
Type Volume Limits and Typography*

Dear Mr. Rose:

I join in the comments submitted by the American Bar Association Council of Appellate Lawyers concerning the proposal to reduce the maximum length of briefs and other papers. I write separately to address additional issues.

Rule 32(a)(7)(A)

The proposed amendments would not change Fed. R. App. P. 32(a)(7)(A), which retains page limits as the default rule for a merits brief “unless it complies with Rule 32(a)(7)(B) and (C).” The proposed amendments would delete Rule 32(a)(7)(C), which requires a certificate of compliance, and move its content (with substantial amendments) to Rule 32(g). Therefore, if Rule 32(a)(7)(A) is retained, the reference to “(C)” must be changed to “Rule 32(g).”

An Amended Rule Can Simplify Type Volume Limits

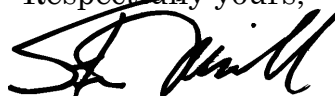
I support the proposal to adopt type volume limits for all length limits in the Federal Rules of Appellate Procedure. I believe everyone agrees that type volume limits are fair and avoid gamesmanship. However, the structure of the proposed amendments is unnecessarily complex.

For briefs and other papers prepared on a computer, a word limit suffices. All word processing programs give a word count. Therefore, having a line limit for monospaced fonts adds unnecessary complication. Also, no reason exists to give computer users an alternative page limit. If someone is determined to exceed the

type volume limit, hideously narrow, hard-to-read, condensed serif fonts exist to satisfy the page limit while exceeding the word limit. To cram even more words into the page limit, one can reduce letter and word spacing to, say, 80%–85% of normal, which further reduces legibility.¹

Since type volume limits are now the rule rather than the exception, the rule should not be structured to make type volume limits an exception to page limits, as Rule 32(a)(7)(A) now does. In my opinion, each type of brief or other document should have a word limit if prepared on a computer, and a page limit only for persons who do not have reasonable access to a computer on which to prepare the document.

Respectfully yours,

A handwritten signature in black ink, appearing to be "S. D. Smith", written over the closing "Respectfully yours,".

¹In a lawyer's email list that I subscribe to, a lawyer asked for advice on "Font-cramming best practices for maximum words per page." My reply began, "There is no best practice for a worst practice," and recommended some sources on concise legal writing.