

United States Court of Appeals
For the Eighth Circuit
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September 3, 2013

The Honorable Steven M. Colloton
United States Circuit Judge
Des Moines, Iowa

Re: Advisory Committee on Federal Appellate Rules

Dear Judge Colloton:

During this past spring's Advisory Committee meeting, some questions arose concerning the length of briefs and Federal Rule of Appellate Procedure 32(a)(7)(B)(i). You asked me to take a look at the length of briefs under the former version of FRAP 32, FRAP 28(g), which set the length of briefs at 50 pages.

As part of this inquiry, I contacted Mark Langer, the clerk of the D.C. Circuit, regarding his court's adoption of word limits for briefs. Mr. Langer confirmed the information provided in Doug Letter's June 6, 2013 e-mail to Professor Struve, which recounts Mr. Letter's recollections of the DC Circuit Rule Advisory Committee's discussions on the topic. As you will recall, Mr. Letter and some other members of the DC bar conducted informal surveys of their own briefs and determined that 50-page briefs were about 12,500 words in length. Based on this informal survey, the DC Circuit set a 12,500 word limit for principal briefs as an alternative to the 50-page limit. Mr. Langer did not have any backup materials, reports, or statistical analysis to share with the Advisory Committee.

In addition to discussing this with Mr. Langer, I conducted my own study of principal briefs. I retrieved 20 boxes of closed 1995-1998 files from the Federal Archives; these were the last four years in which FRAP 28(g) and its 50-page limit were in effect. These boxes contained 210 attorney-filed briefs. I had my summer intern, Ms. Robyn Parkinson, a first-year student at Westminster College in Fulton, Missouri, perform a full word count for each brief, counting the words in the sections that counted against the page limit under Rule 28(g). (The following sections counted against the page limits: Jurisdictional Statement, Statement

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of Issues, Statement of the Case, Statement of Facts, Summary of Argument, Argument, and Conclusion.)

As might be expected, the range of words on a page varied greatly, from as few as 1 to as many as 472. Averaging all of the word counts from all of the briefs, however, yielded an average word count per page of 259 words (and a median of 261 words). Multiplying that average by 50 pages yields a total of 12,950 words. It would appear, therefore, that the informal survey conducted by Mr. Letter and the other members of the DC Circuit Rules Advisory Committee may have slightly underestimated the length of 50-page briefs under the Rule 28(g) by between 3 and 4%.

I also undertook one other study. I used CM/ECF to run a report on the word length of principal briefs filed in the 2008 calendar year. There were 1,175 attorney-filed briefs which reported word length in 2008 (some attorney-filed briefs are filed under the page or line limits and do not report words). Of those 1,175 briefs, 32 (3%) were filed under an order permitting an overlength brief. My count showed 180 briefs (15%) were between 12,500 and 14,000 words, while the remaining 963 briefs were less than 12,500 words in length. In other words, 82% of the principal briefs filed in 2008 under FRAP 32(a)(7)(B)(i) would have been an acceptable length under FRAP Rule 28(g), assuming 50 pages equals 12,500 words. If we use 12,950 words as the equivalent of 50 pages, the number of 2008 briefs which would have been an acceptable length under the old rule rises to 85%, and the number between 12,950 and 14,000 words falls to around 12%.

I hope this information is useful. Please let me know if you wish me to undertake any other studies or analysis.

Sincerely,
Michael E. Gans
Clerk of Court