

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-05

Title	Action Requested
Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.204 and 8.268	January 1, 2020
Proposed by	Contact
Appellate Advisory Committee	Christy Simons, 415-865-7694
Hon. Louis R. Mauro, Chair	christy.simons@jud.ca.gov

Executive Summary and Origin

To establish limits on briefing that reflect the limited scope of petitions for rehearing, the Appellate Advisory Committee proposes reducing the maximum length of petitions and answers by amending the rule that governs the content and form of briefs in the Court of Appeal. Currently, the rule provides maximum limits of 14,000 words for briefs produced on a computer and 50 pages for briefs produced on a typewriter. These limits apply to all types of briefs, including petitions for rehearing and answers to those petitions. This proposal would provide lower limits of 7,000 words and 25 pages for petitions for rehearing and answers. This proposal arises out of suggestions from appellate practitioners, including a current committee member, that the committee consider reducing word limits for civil briefs in the Court of Appeal.

Background

Until 2002, Court of Appeal briefs were subject only to a page limit: “Excluding tables and indices, a brief shall not be longer than 50 pages, whether the brief is typewritten or proportionally spaced.” (Cal. Rules of Court, rule 15(e) [2001, repealed].)

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

In 2002, as part of a project to rewrite and reorganize the appellate rules, a word count was added as an alternative to a page count.¹ The amended rule was based on the Federal Rules of Appellate Procedure (FRAP), as explained in the July 3, 2001 report: “Length of brief measured by word count. Revised rule 14(c)(1), which governs the maximum permissible length of a brief, is derived from the federal procedure for measuring the length of a brief produced on a computer by the number of words in the brief. (FRAP 32(a)(7).) Like FRAP 32(a)(7)(B)(i), revised rule 14(c)(1) imposes a limit of 14,000 words if the brief is produced on a computer. If the brief is produced on a typewriter, revised rule 14(c)(2) continues the existing limit of 50 pages. (See existing rule 15(e).)”²

Rule 14 was renumbered in 2007 as rule 8.204, which now governs the content and form of briefs in the Court of Appeal. Rule 8.204(c) retains the limits of 14,000 words³ and 50 pages.

Rehearing in the Court of Appeal is governed by rule 8.268. Subdivision (b)(3) states that “[t]he petition and answer must comply with the relevant provisions of rule 8.204.” Thus, the rules expressly provide that the 14,000-word and 50-page limits of rule 8.204(c) apply to petitions for rehearing and answers thereto.

The Proposal

This proposal would amend rule 8.204(c) to add new paragraph (5) providing for a word limit of 7,000 words and a page limit of 25 pages for petitions for rehearing and answers to those petitions. The proposal is intended to encourage brevity and concise, focused arguments; eliminate repetition; and set length limits that reflect the limited purpose of petitions for rehearing. Such petitions are appropriate to raise particular issues such as that the court’s opinion contains a material omission or misstatement of fact or a material misstatement of the law, or is based on an issue that was not raised or briefed by the parties, or that the court lacked subject-matter jurisdiction. Conversely, a petition for rehearing is not an opportunity to reargue the case, raise arguments the parties did not address, or generally argue that the court reached the wrong result. In addition, the court is familiar with the case, so no summary of the factual and procedural background in the petition is needed. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee is proposing new limits of 7,000 words and 25 pages to reduce by 50 percent the permissible length of these briefs. The committee expects that this change will assist courts by

¹ Judicial Council of Cal., Advisory Com. Rep., *Revision of Rules on Appeal: First Installment, Rules 1-18* (July 3, 2001).

² *Id.* at p. 20.

³ In 2016, FRAP 32 was amended to reduce the 14,000-word limit to 13,000, based on what the committee notes to the rule explain as a revision to the conversion ratio: “When Rule 32(a)(7)(B)’s type-volume limits for briefs were adopted in 1998, the word limits were based on an estimate of 280 words per page. In the course of adopting word limits for the length limits in Rules 5, 21, 27, 35, and 40, and responding to concern about the length of briefs, the Committee has reevaluated the conversion ratio (from pages to words) and decided to apply a conversion ratio of 260 words per page.” (FRAP, rule 32, Com. Notes on Rules—2016 Amend.)

reducing the time it takes for Court of Appeal justices to review these petitions. The reduced limits may also save litigants time, effort, and expense. In the rare instance when longer briefing may be necessary, rule 8.204 provides, and will continue to provide, that, “[o]n application, the presiding justice may permit a longer brief for good cause.”

To ensure that litigants are aware of the new word and page limits, the committee also proposes amending rule 8.268, which governs rehearing in the Court of Appeal. Currently, rule 8.268(b)(3) provides: “The petition and answer must comply with the relevant provisions of rule 8.204.” The proposed amendment would refer specifically to the new length limits for petitions for rehearing in rule 8.204(c)(5).

Alternatives Considered

The committee considered whether to propose reduced limits for other types of briefs in unlimited civil appeals. The topic is timely because the U.S. Supreme Court is currently considering reducing the length of briefs filed in that court. However, the committee recognizes that the topic is complex and implicates a number of competing concerns. The committee would want to further consider the issues before making any such proposal in the future.

The committee also considered not proposing any change to the length of briefs. The committee rejected this option because the benefits of reducing the length of petitions for rehearing—reducing time spent by justices to review them and resources expended by the parties to prepare them—seem clear, and any downsides—a possible increase in applications to file an overlong brief—seem minimal.

In addition, the committee considered whether to place the new word and page limits in rule 8.204 regarding briefs or rule 8.268 regarding rehearing. There were good reasons for both options, but the committee decided to include the new length limits in rule 8.204 because “briefs” are defined to include petitions for rehearing in rule 8.10, and litigants are accustomed to finding format requirements for briefs in rule 8.204. To ensure that litigants who are seeking or opposing rehearing are aware of the new briefing length limits, the committee proposes adding a specific reference in rule 8.268 to the new length limits in rule 8.204.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operational impacts and no costs of implementation other than informing courts and litigants of the new rule amendments.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rules 8.204 and 8.268, at page 5

Rules 8.204 and 8.268 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 8.204. Contents and form of briefs**

2
3 (a)–(b) * * *

4
5 (c) **Length**

6
7 (1) Except as provided in (5), a brief produced on a computer must not exceed
8 14,000 words, including footnotes. Such a brief must include a certificate by
9 appellate counsel or an unrepresented party stating the number of words in
10 the brief. The person certifying may rely on the word count of the computer
11 program used to prepare the brief.

12
13 (2) Except as provided in (5), a brief produced on a typewriter must not exceed
14 50 pages.

15
16 (3)–(4) * * *

17
18 (5) A petition for rehearing or an answer to a petition for rehearing produced on
19 a computer must not exceed 7,000 words, including footnotes. A petition or
20 answer produced on a typewriter must not exceed 25 pages.

21
22 ~~(5)~~(6) On application, the presiding justice may permit a longer brief for good
23 cause.

24
25 (d)–(e) * * *

26
27
28 **Rule 8.268. Rehearing**

29
30 (a) * * *

31
32 (b) **Petition and answer**

33
34 (1)–(2) * * *

35
36 (3) The petition and answer must comply with the relevant provisions of rule
37 8.204, including the length provisions in subdivision (c)(5).

38
39 (4) * * *

40
41 (c)–(d) * * *