

## **Appellate Court Procedural Rules Committee**

The Appellate Court Procedural Rules Committee proposes to amend Pa.Rs.A.P. 124, 2116, 2118, 2135, and 2140. These amendments are being submitted for public comments and suggestions prior to their submission to the Supreme Court.

Proposed new material is underlined and in bold faced type and deleted material is bracketed and in bold faced type.

All communications in reference to the proposed amendment should be sent no later than May 7, 2012 to:

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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court Procedural Rules Committee*

Honorable Renée Cohn Jubelirer  
Chair

## **Explanatory Comment**

The Appellate Court Procedural Rules Committee proposes amendments to Rules of Appellate Procedure 124, 2116, 2118, 2135, and 2140 that would provide an optional word count as an objective method for measuring the length of briefs. See Rules 124, 2135 and 2140. The proposal would eliminate incentives to abuse the use of footnotes and to evade the formatting rules in order to increase the length of briefs. The requirement of 14 point font size will make briefs more readable. The proposal would also eliminate page limits on the statement of questions involved, see Pa.R.A.P. 2116, and the summary of the argument, see Pa.R.A.P. 2118. The proposed word count limits are consistent with those used in the Federal Rules of Appellate Procedure. See Fed.R.A.P. 32.

**Rule 124. Form of Legal Papers; Number of Copies.**

(a) *Size and other physical characteristics.*—All **[documents] legal papers** filed in an appellate court shall be on 8 1/2 inch by 11 inch paper and shall comply with the following requirements:

(1) The **[document] legal paper** shall be prepared on white paper (except for covers, dividers and similar sheets) of good quality.

(2) The first sheet (except the cover of a brief or reproduced record) shall contain a 3 inch space from the top of the paper for all court stampings, filing notices, etc.

(3) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Except as provided in subdivision (2), margins must be at least one inch on all four sides.

(4) The lettering shall be clear and legible and no smaller than **14 point [12] in the body of the legal papers and point 12 in footnotes**. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents, briefs and reproduced records may be lettered on both sides of a page.

(5) Any metal fasteners or staples must be covered. **[Documents and] Legal** papers must be firmly bound.

(6) No backers shall be necessary.

(b) *Nonconforming papers.*—The prothonotary of an appellate court may accept any nonconforming paper or other document.

(c) *Copies.*—Except as otherwise prescribed by these rules:

(1) An original of an application for continuance or advancement of a matter shall be filed.

(2) An original and eight copies of any other application in the Supreme Court and an original and three copies of any other application in the Superior Court or the Commonwealth Court shall be filed but the court may require that additional copies be furnished.

**[Explanatory Comment—2006**

**\* \* \* \* \*]**

**Official Note: The 2012 amendment increases the minimum font size from point 12 to point 14 for the text of any legal papers and expressly imposes a requirement that footnotes be in a minimum font size of point 12. See Rules 2135 and 2140 regarding length of briefs—page limits and word counts.**

**Rule 2116. Statement of Questions Involved.**

(a) *General rule.* The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement **[shall be no more than two pages and]** will be deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby. Each question shall be followed by an answer stating simply whether the court or government unit agreed, disagreed, did not answer, or did not address the question. If a qualified answer was given to the question, appellant shall indicate the nature of the qualification, or if the question was not answered or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

Official Note: **[Based on former Supreme Court Rule 52, and makes no change in substance. See also former Superior Court Rule 42 and former Commonwealth Court Rule 93.]**

**[The 2008 amendments are intended to reinforce the importance placed upon a party's statement] The Rule requires a statement** of a limited number of concise questions that enable the court to understand the nature of the legal issue, and in a general way what points it will be called on to decide. Thus, a party should incorporate the pertinent terms and circumstances of the case, but without details such as names, dates, amounts or particulars that are irrelevant to the resolution of the issues presented to the court.

**[Previously, some practitioners violated Pa.R.A.P. 124 to avoid the 15-line and one-page restrictions of Pa.R.A.P. 2116 by adjusting fonts, spacing, and margins. Appellate courts may find issues to be waived when they are not set forth in compliance with the Rules of Appellate Procedure. The increase from one to two pages should provide ample space for most parties to articulate their questions in an informative yet concise manner. A party requiring more than two pages for a statement of questions should file an application under Pa.R.A.P. 123 asking for extra pages, explaining why additional pages are needed, and attaching the proposed questions to the application. See Pa.R.A.P. 105.]**

**In 2008, this Rule was amended to limit the statement of questions involved to two pages. Prior to that time the limit was a single page. In conjunction with 2012 amendments to Rules 2135 and 2140 adopting an optional word limit in lieu of page limits, the 2012 amendment eliminates the page limit for the statement of questions involved. Parties are advised that the appellate courts strongly disfavor a statement that is not concise.**

The current language of the Rule is consistent with the standard set forth in Pa.R.A.P. 1115(a)(3) for questions presented for review in a Petition for Allowance of Appeal to the Supreme Court.

### **Rule 2118. Summary of Argument.**

The summary of argument shall be a concise summary of the argument of the party in the case, suitably paragraphed. **[The summary of argument should not exceed one page and should never exceed two pages. The summary of argument should not be a mere repetition of the statement of questions presented.]** The summary should be a succinct, although accurate and clear picture of the argument actually made in the brief concerning the questions.

Official Note: **[Based on former Supreme Court Rule 54 and former Superior Court Rule 47 and extends the rule to the Commonwealth Court.]**

Because the summary of argument, if properly prepared, will be helpful to the court in following oral argument and will often render unnecessary inquiries by the court which consume time allowed for argument, counsel are urged to prepare the summary with great care. **In conjunction with 2012 amendments to Rules 2135 and 2140 adopting an optional word limit in lieu of page limits, the 2012 amendment eliminates a two page limit on the length of the summary of argument. Parties are advised that the appellate courts strongly disfavor a summary that is not concise.**

### **Rule 2135. Length of Briefs.**

(a) *General Rule.* **The length of briefs shall be measured by either page count or word count.** Unless otherwise provided by an appellate court:

(1) a principal brief shall not exceed **[70] 30** pages **[of production]** when produced on a word processor/computer or typewriter **if the page count method is**

**used, or 14,000 words, as verified by a certificate of compliance, if the word count method is used.**

(2) a reply brief shall not exceed **[25] 15** pages **[of production]** when produced on a word processor/computer or typewriter **if the page count method is used, or 7,000 words, as verified by a certificate of compliance, if the word count method is used.**

(b) *Supplementary Matter.* **The cover of the brief and p[P]ages** containing the table of contents, tables of citations, **certificate of service** and any addendum containing opinions, etc., or any other similar supplementary matter provided for by these rules shall not count against the page limitations **or word counts** set forth in subdivision (a) of this rule.

**(c) Neither an attorney nor an unrepresented party shall evade the page limitation requirements by inappropriate and excessive use of footnotes or by materially altering the requirements for margins and font size set forth in Rule 124.**

**(d) Size and physical characteristics. Size and other physical characteristics of briefs shall be consistent with the requirements of Rule 124 for legal papers generally.**

**(e) Certificate of compliance. A principal or reply brief that relies on the word count provisions of this rule must include a certificate by the attorney or unrepresented party stating that the brief complies with the volume limitation. The person preparing the certificate may rely on the word count of the word processing system used to prepare the brief.**

[Explanatory Comment—2003] **Official Note:**

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**The 2012 amendments are intended to provide objective criteria for the length of briefs and to eliminate incentives to adjust margins, reduce font size or improperly use footnotes to avoid the existing brief length page limitations by incorporating an optional word count following the Federal Rules of Appellate Procedure. Brief length may be measured either by page count or by word count; if the word count method is used, the brief must be accompanied by a certificate of compliance indicating that the word count does not exceed the applicable limitation. Concurrent amendments to Rule 124 regarding margins, font sizes, and line spacing, in conjunction with permitting the use of word counts, promote readability of briefs. Where page limits are used rather than word counts, filers**

**are cautioned to comply strictly with Rule 124 requirements concerning font size, line spacing, and margins and to avoid misusing footnotes in order to include more words on a page. 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.**

#### **Rule 2140. Brief on Remand or Following Grant of Reargument or Reconsideration.**

(a) *General Rule.*—Following a remand from the Supreme Court to the Superior Court or the Commonwealth Court, or an Order allowing reargument or reconsideration by any appellate court, unless otherwise directed by the Court having jurisdiction of the case, each party shall, within the time period specified below, either refile the brief previously filed together with a supplemental brief if desired, or prepare and file a substituted brief in accordance with this Rule.

(b) *Cover on brief.*—The brief (whether new or refiled) shall be appropriately titled to reflect the current status of the case (e.g. brief on remand, supplemental brief on remand, brief on reargument, supplemental brief on reargument).

(c) *Order and time for filing.*—On reargument or reconsideration, the party which petitioned for reargument or reconsideration shall file its brief, including any supplemental brief, within 21 days of the order allowing reargument or reconsideration. The respondent shall file its brief within 21 days after service of the petitioner's brief. The petitioner may file a reply brief within 10 days after service of the respondent's brief.

On remand the original appellant or original petitioner shall file its brief, including any supplemental brief, within 21 days of the remand order. The original appellee or respondent shall file its brief within 21 days after service of the appellant's or petitioner's brief. The original appellant or original petitioner may file a reply brief within 10 days after service of the appellee's or respondent's brief.

(d) *Page limits.*—A substituted brief shall not exceed **[70 pages when produced on a word processor/computer or typewriter] the maximum length of a principal brief as set forth in Rule 2135(a)(1)**. A supplemental brief shall not exceed **[40 pages] 20 pages in length** when produced on a word processor/computer or typewriter **if the page count method is used, or 9,300 words, as verified by a certificate of compliance, if the word count method is used**. A reply brief shall not exceed **[25 pages when produced on a word processor/computer or typewriter] the maximum length of a reply brief as set forth in Rule 2135(a)(2)**.

**(e) Certificate of compliance. A brief subject to this rule that relies on the word count provisions of this rule must include a certificate by the attorney or an unrepresented party stating that the brief complies with the volume limitation. The person preparing the certificate may rely on the word count of the word processing system used to prepare the brief.**

Official Note: The number of copies of original, substituted and supplemental briefs to be filed on reargument or reconsideration is to be set by the Prothonotary of the Appellate Court with jurisdiction over the appeal and may be changed from time to time without notice to bar.

**See 2012 amendments to Rule 2135 (length of briefs) and the Note regarding word counts and page limits generally.**