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Appellate Practice Corner

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Recent Amendments to the Supreme Court Rules Governing Appellate Filings

The rules that govern civil appellate procedure in the state courts are always changing to reflect shifting concerns, evolving priorities, and developing technology. Some of those changes are obviously procedural in nature, and some are more substantive; sometimes it can be hard to tell. A number of amendments took effect early in 2016, and at first blush, most of them might seem to concern technical matters with little practical importance to substantive appellate practice.

Many of those procedural changes, however, will permit meaningful improvements in appellate practice, to the benefit of bench and bar alike. This edition of the Appellate Practice Corner reviews some recent amendments that affect the procedural and technical requirements for certain filings in the reviewing courts—and offer significant substantive opportunities to those attorneys who can take advantage of them.

Many Limits on Content— But Not All—May be Measured by Words Instead of Pages

One of the most significant amendments promises great improvement in the written product submitted to the reviewing courts. As of January 1, 2016, Supreme Court Rule 341 allows appellate briefs to be measured by the number of words, as an alternative to the page limitations. Regardless of how many pages it contains, an appellant's initial brief or an appellee's brief is compliant if it contains 15,000 words or fewer; an appellant's reply brief may contain 7,000 words or fewer. Ill. S. Ct. R. 341(b)(1) (eff. Jan. 1, 2016). A reply brief that includes a response to arguments made by the appellee in a cross-appeal may include an additional 8,400 words. *Id.* Like the page limits, the word limits do not include the cover, the points and authorities, the certificate of compliance, the certificate of service, or the appendix. *Id.* The certificate of compliance required by Rule 341(c) may reflect compliance with the word limit. Ill. S. Ct. R. 341(c).

Though the availability of word limits should reduce the need for a party to seek leave to exceed the page limits, Rule 341(b)(2) permits such motions—though it still cautions that they are "not favored"—and now provides that a party may request an extension of either the page limit or the word limit (or presumably both, so as to preserve the option of choosing between them). Ill. S. Ct. R. 341(b)(2).

Likewise, Supreme Court Rule 367 now includes an alternative word limit for petitions for rehearing, which may comply with a new 8,000-word limit instead of the 27-page limit. Ill. S. Ct. R. 367(a) (eff. Jan. 1, 2016). The same page and word limits apply to an answer to such a petition. Ill. S. Ct. R. 367(d). A reply in further support of a petition for rehearing may contain 10 pages, as before, or 3,500 words under the amended rule. *Id.* (The rule still provides, however, that no answer to a petition for rehearing "will be received unless requested by the court or unless the petition is granted." *Id.*)

Though the amendments that took effect in January did not affect Supreme Court Rule 315, governing petitions for leave to appeal in the supreme court, the court amended that rule on March 15—effective immediately—to provide a

7,000-word limit as an alternative to the 20-page limit. *See* Ill. S. Ct. R. 315(d) (eff. March 15, 2016). The same limits apply to answers to petitions for leave to appeal. Ill. S. Ct. R. 315(f).

For all of these rules, the adoption of word limits is all to the good. The federal appeals courts have used word counts for quite some time, without any apparent difficulty. As in the federal courts, the amendments to the Illinois rules still accommodate those attorneys who might be resistant to this change; such attorneys need not alter their practice in any way, as the page limits remain in force and unchanged.

For those who are willing to use word limits, however, these amendments make it possible to produce documents that are easier to read, without running afoul of page limits. Word limits enable authors of such filings to use type that is larger, or otherwise easier to read, but might make the brief exceed the page limits. Attorneys who are savvy in principles of page design—including such things as the use of point headings and white space—need not sacrifice those tools so as to adhere to a page limitation. The word limits are not intended to increase the amount of text a litigant may submit; even if they allow any such expansion in a given filing, the effect is likely to be *de minimus*. But the trade-off in visual appeal can be significant, allowing attorneys to make their documents more readable—improving the experience of the justices who read those filings and possibly making them more receptive to the arguments the filings contain. Attorneys should be eager to embrace such opportunities, since improved readability ought to be welcome to justices who have many lengthy filings to read.

A word of caution, however: The benefits of word-limit alternatives are not available for all appellate filings. Supreme Court Rule 307(d), for instance, contains only page limitations, and has not been amended to allow compliance with word limits. Rule 307(d)(2) imposes a 15-page limit on any legal memorandum in support of or response to a petition seeking review of the granting or denial of a temporary restraining order or of an order modifying, dissolving, or refusing to dissolve or modify a temporary restraining order. Ill. S. Ct. R. 307(d)(2) (eff. Jan. 1, 2016). (In a seeming anachronism, this rule is one of the few that still refer expressly to "typewritten pages" without also permitting word-processed or professionally typeset documents.) Because the rule does not provide a corresponding word limit to be used as an alternative, legal memoranda filed under this rule should comply with the page limit.

Nor is there any word limit under Supreme Court Rule 303A, which provides for appellate review when a circuit court denies a waiver of notice under the Parental Notice of Abortion Act, 750 ILCS 70/1 *et seq.* Ill. S. Ct. R. 303A(c)–(e) (eff. Sept. 30, 2006). Rule 303A(e) allows a petitioner to file a brief statement of facts and supporting memorandum of law, "which together shall not exceed 15 typewritten pages"—and does not provide a word limit as an alternative.

The new word-count limitations have no apparent effect on petitions for leave to appeal to the appellate court under Rule 306 or applications for leave to appeal under Rule 308—because for most such filings, those rules contain no page limits in the first place. *See* Ill. S. Ct. R. 306 (eff. March 8, 2016); Ill. S. Ct. R. 308 (eff. Jan. 1, 2016). There is one exception, though it too is unaffected by the recent amendments: Rule 306(b), governing review of orders affecting the care and custody of unemancipated minors, imposes a 15-page limit on the legal memorandum a party may file in support of or in opposition to a petition for leave to appeal such an order. Ill. S. Ct. R. 306(b) (eff. Jan. 1, 2016). Like Rules 307(d) and 303A(e), Rule 306(b) has not been amended to include a word limit, and should be treated as having only the stated page limit.

The rules that do include the new word limits, however, apply to some of the most significant documents that are filed in the reviewing courts. Those amendments are all but certain to deliver significant improvement in the readability of those filings. Let us hope that the Supreme Court will recognize those improvements, and allow for similar word limits on all filings now governed by page limits alone.

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More Time to Brief an Application for Leave to Appeal a Certified Question Under Rule 308

Another meaningful procedural amendment expands the time for an interlocutory appeal of a certified question under Supreme Court Rule 308. The rule now permits the filing of an application for leave to appeal in the appellate court up to 30 days after the circuit court certifies such a question. Ill. S. Ct. R. 308(b). This amendment more than doubles the 14 days previously allowed. Depending on the calendar, in fact, the amended rule might allow even more than 30 days. The amendment makes this one of the few time allotments not measured in multiples of seven days, making for a greater chance that the initial deadline will fall on a weekend and be extended automatically to the next court day.

This amendment took effect exactly a year after the previous amendment to Rule 308, which lengthened the time for an answer to a Rule 308 application from 14 days to 21. *See* Ill. S. Ct. R. 308(c). Thus, in the space of a single year, the total briefing period for an application for leave to appeal has nearly doubled—from a total of 28 days to a total of 51. Similarly, Rule 315 was amended in 2015 to expand the time for answering a petition for leave to appeal in the Supreme Court from 14 days to 21. *See* Ill. S. Ct. R. 315(f).

These modest expansions of what had been fairly short briefing periods should be welcome to most attorneys. In particular, the previous 14-day deadlines applied to filings that could have played a crucial role in whether the reviewing court accepted or rejected discretionary appeals. To a busy attorney, especially one who might be engaged in a trial or handling a personal matter—or even just on vacation—having to prepare a significant appellate filing in just two weeks' time can be a substantial burden. These amendments are unlikely to have any noticeable impact on how long it takes for an application (or petition) for leave to appeal to be decided. The time for filing an application under Rule 308, for instance, is more than twice what it was before, but is still only 30 days—less time than the rules provide for an initial appellate brief or an appellee's response.

Still, these amendments provide welcome expansions of previously tight time constraints. This is particularly notable under Rule 308, which expressly pertains to situations in which "an immediate appeal ... may materially advance the ultimate termination of the litigation[.]" *See* Ill. S. Ct. 308(a). The recent amendments to that rule appear to recognize that advancement of litigation need not be accomplished at the price of needless haste in the preparation of such filings.

Conclusion

These amendments demonstrate that even formal adjustments to procedural rules can have positive, substantive effect. By providing an alternate way to gauge compliance with content limits and expanding the time allotted for certain significant filings, the amended rules allow for greater emphasis on substance rather than form. Attorneys practicing in the reviewing courts should treat them not just as new rules to learn, but as opportunities for improvement.

About the Author

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