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via email only

Administrative Director Glenn A. Grant
Administrative Office of the Courts
Attn: Rules Comment
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

**Re: Comments on the Civil Practice Committee's
Recommendation to Amend Rules 2:6-7 and 2:6-10**

Dear Administrative Director Grant:

Please allow this correspondence to serve as my comment on the above-referenced recommended amendment to the New Jersey Court Rules. I appreciate the Civil Practice Committee's recommendation to move away from the current version of the court rule, which generally means the use of Courier New, 12-point type, which commentators disfavor and research has shown is a less desirable font. I believe that the *Requirements and Suggestions for Typography in Briefs and Other Papers* authored by the United States Court of Appeals for the Seventh Circuit, *Painting with Print*, which appeared in the *Journal of the Association for Legal Writing Directors* in Fall 2004, and *Typography for Lawyers* by Matthew Butterick, all of which are excellent reads, generally support the use of proportional typefaces for readability purposes. Research indicates that they are easier to read, and *requiring* submissions to

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be made in monospaced typeface makes the jobs of our justices, judges, law clerks, and other court staff *harder* than necessary.¹ I thus believe that the proposed revisions to use a proportional typeface are an excellent step in the right direction, and is consistent with the current typeface conventions used by the Supreme Court and the Appellate Division for opinions, neither of which use Courier or Courier New any longer..²

I also believe, however, that attorneys and the courts would be better served with an alternative rule similar to that set forth in *Federal Rule of Appellate Procedure* 32, specifically *Rule* 32(a)(5), (6), and (7). Those rules indicate that:

- “Either a proportionally spaced or a monospaced face may be used,” and when using a proportionally spaced face, it “must include serifs, but sans-serif type may be used in headings and captions,” and a “proportionally spaced face must be 14-point or larger,” while a “monospaced face may not contain more than 10 ½ characters per inch.” F.R.A.P. 32(a)(5).

¹ One study suggests that monospaced typefaces cause a 4.7% reading delay when compared to proportional typefaces. See Miles A. Tinker, *Criteria for Determining the Readability of Type Faces*, 35 J. Educ. Psychol. 385 (Oct. 1944); Miles A. Tinker, *Legibility of Print*, 57 (Iowa State U. Press 1964), n.24 at 52, tbl 4.4.

² This letter uses the Lyon Text, 14-point typeface, instead of Times New Roman. It is the same typeface used by [The Atlantic](#) on its website.

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- Briefs “must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.” F.R.A.P. 32(a)(6)
- With regard to length, it limits principal briefs to thirty pages, and reply briefs to fifteen pages, unless they comply with F.R.A.P. 32(a)(7)(B), which is the “Type-Volume Limitation.” That limits principal briefs to no more than 13,000 words (or no more than 1,300 lines of text for a monospaced font), and reply briefs are limited to half those amounts. F.R.A.P. 32(a)(7).

I believe that these rules, which have been in effect for quite some time in the U.S. Courts of Appeals, will serve judges and attorneys better than the current proposed revision to *Rule 2:6-10*. Since the New Jersey Courts allow for lengthier submissions than the Federal Rules of Appellate Procedure (26 lines of monospaced fonts over 65 pages, which is 1,690 lines, and is approximately 30% longer than the FRAP limit of 1,300 lines), I thus propose that having a type-volume limitation of 17,000 words (or 1,700 lines for a monospaced font).

I would thus modify *Rule 2:6-7* and *Rule 2:6-10(a)* as set forth on the following page. Please note that I used bold text for additions to the text, rather than underlining, which is consistent with the Seventh Circuit’s admonition against underlining.³

³ See *Requirements and Suggestions for Typography in Briefs and Other Papers* at 5 (“Use italics, not underlining, for case names and emphasis. Case names are

Rule 2:6-7

(a) The initial briefs of parties shall not exceed [65] 50 pages and reply briefs shall not exceed [20] 15 pages, **unless they comply with Rule 2:6-7(b)**. The brief of a respondent/cross appellant filed pursuant to R. 2:6-2(d) shall not exceed [90] 75 pages, and the brief of an appellant/cross respondent filed pursuant to R. 2:6-4(e) shall not exceed [65] 50 pages, **unless they comply with Rule 2:6-7(b)**. These page limitations shall be exclusive of tables of contents and citations [and may be relaxed by leave of court].

(b) **Type-Volume Limitation.** Briefs are acceptable if they comply with the following limits on words (for briefs using a proportionally spaced face) or lines of text (for those using a monospaced face): For initial briefs, no more than 17,000 words or 1,700 lines of text; reply briefs, no more than 8,500 words or 850 lines of text; briefs of a respondent/cross appellant filed pursuant to R. 2:6-2(d), no more than 23,000 words or 2,300 lines of text; and the brief of an appellant/cross respondent filed pursuant to R. 2:6-

not underlined in the United States Reports, the Solicitor General's briefs, or law reviews, for good reason. Underlining masks the descenders (the bottom parts of g, j, p, q, and y). This interferes with reading, because we recognize characters by shape. An underscore makes characters look more alike, which not only slows reading but also impairs comprehension").

4(e), no more than 17,000 words or 1,700 lines of text. These page limitations shall be exclusive of tables of contents and citations and may be relaxed by leave of court.

(c) Parties may seek a relaxation of these page limitations or type-volume limitations of the party's first brief upon a showing of good cause by motion filed no later than 20 days before expiration of the time for filing the brief; the movant must certify the motion is made in good faith and not for purposes of delay.

Rule 2:6-10

All briefs, [appendices,] petitions, and motions, [transcripts, and other papers may be reproduced by any method capable of providing plainly legible copies. Paper shall be of good quality, opaque and unglazed. Coated paper may be used. Where the method of reproduction permits, color of paper shall be India eggshell. Copy may be printed on both sides provided legibility is not impaired. Papers] must be in the following format: Each page shall be [approximately] 8.5 inches by 11 inches, **double-spaced**, and[, unless a compressed transcript format is used, shall contain no more than 26 double-spaced lines of no more than 65 characters including spaces, each of no less than 10-pitch or 12-point type] **may use either a proportionally**

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spaced or a monospaced face. Proportionally spaced faces must include serifs, but sans-serif type may be used in headings and captions, and must be 14-point or larger. Monospaced faces may not contain more than 10 ½ characters per inch. Footnotes and indented quotations may[, however,] be single-spaced.

While the Committee's proposal only addresses appellate practice, I also believe that a corresponding rule change should be made to *Rule* 1:6-5 (Briefs) as well, with the limits of 40 pages, 65 pages, and 15 pages corresponding to type-volume limits of 10,000 words/1,000 lines, 17,000 words/1,700 lines, and 4,000 words/400 lines. The same modifications should also be made to rules pertaining to letter briefs.

I thank you for your consideration of these comments.

Respectfully submitted,

FOGARTY & HARA

BY: Vittorio S. LaPira

VITTORIO S. LAPIRA

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