



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Appellate Procedure: Word Limits for
Petitions for Rehearing in Unlimited Civil
Cases

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.204 and
8.268

Date of Report

August 2, 2019

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends amending the rule that governs the length of briefs in civil cases in the Court of Appeal to reduce the maximum length of petitions for rehearing and answers to those petitions from 14,000 words to 7,000 words for briefs produced on a computer, and from 50 pages to 25 pages for briefs produced on a typewriter. This change, which is based on suggestions from appellate practitioners to consider reducing word limits for all types of briefs filed in the Court of Appeal, is intended to establish limits on briefing that reflect the limited scope of petitions for rehearing in unlimited civil cases.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 8.204, to add a new paragraph 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; and

2. Amend rule 8.268, the rule that governs rehearing in the Court of Appeal, to cross-reference the maximum length provisions in rule 8.204 for the petition and answer.

The text of the amended rules is attached at page 5.

Relevant Previous Council Action

In 2002, as part of a project to rewrite and reorganize the appellate rules, the Judicial Council added a word count as an alternative to a page count for measuring the length of a brief. The existing 50-page limit for a brief produced on a typewriter was retained, and the approximate equivalent of 14,000 words for a brief produced on a computer was added. The rule governing the contents and form of briefs in the Court of Appeal was renumbered in 2007. There is no other previous council action with respect to the length of briefs in the Court of Appeal that is relevant to this proposal.

Analysis/Rationale

The Appellate Advisory Committee recommends amending 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 to reduce by 50 percent the permissible length of petitions for rehearing and answers to those petitions in unlimited civil appeals.¹ The new provision 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 a material omission or misstatement of fact or a material misstatement of the law in the court's decision, or the court's decision is based on an issue that was not raised or briefed by the parties, or 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. The court already is familiar with the case, so the petition need not include a summary of the factual and procedural background of the case. For these reasons, the current limits seem to far exceed what is reasonably necessary.

The committee expects that reducing the permissible length of petitions for rehearing will assist courts by decreasing the time Court of Appeal justices must spend 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 recommends amending rule 8.268, which governs rehearing in civil appeals in the Court of Appeal. Currently, rule 8.268(b)(3) provides: “The petition and answer must comply with the

¹ The proposed new length limits for briefs would not apply to rehearing in criminal cases or juvenile cases. (See rules 8.360(b) and 8.412(a)(3).) The new limits also would not apply to rehearing in limited civil and misdemeanor appeals. (See rule 8.883(b).)

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).

Policy implications

The committee has identified no significant policy implications associated with the recommended rule amendments.

Comments

This proposal was circulated for public comment from April 11 to June 10, 2019, as part of the regular spring comment cycle. Five individuals and organizations submitted comments on this proposal. All five commenters agreed with the proposed changes. A chart with the full text of the comments received and the committee’s responses is attached at pages 6–9.

Alternatives considered

Under a broader original project description on the committee’s annual agenda, the committee considered whether to propose reduced length limits for other types of briefs in civil appeals.² However, the committee recognizes that the topic is complicated 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. Any downsides—a possible increase in applications to file an overlong brief—seem minimal.

In addition, the committee considered where 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 word limit for briefs, the committee recommends 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.

² The topic is timely because, effective July 1, 2019, the U.S. Supreme Court adopted rules reducing the length of merits briefs filed by the parties, excluding reply briefs, from 15,000 words to 13,000 words. The Court retained the existing 6,000-word limit for reply briefs. See U.S. Supreme Court Rule 33(g)(v)–(vii), at <https://www.supremecourt.gov/filingandrules/2019RulesoftheCourt.pdf>.

Attachments and Links

1. Cal. Rules of Court, rules 8.204 and 8.268, at page 5
2. Chart of comments, at pages 6–9

Rules 8.204 and 8.268 of the California Rules of Court are 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) * * ***

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by John A. Taylor, Jr. President Burbank	A	<p>As the current president of the California Academy of Appellate Lawyers, I'm writing on behalf of its membership to support SPR19-05 (Appellate Procedure: Word Limits for Petitions for Rehearing in Unlimited Civil Cases).</p> <p>The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level.</p> <p>The Academy supports the proposed rule change, which shortens the current word limit for petitions for rehearing and answers in unlimited civil appeals. Presently petitions for rehearing and answers can run to 14,000 words without leave of court, the same length as briefs on the merits. That may lead some practitioners and unrepresented parties to the erroneous conclusion that a rehearing arguments may typically be as detailed as the merits arguments or even to repeat merits arguments that the court has already considered.</p>	The committee notes the commenter's support for the proposal and appreciates the comment. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-05

Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)

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	Commenter	Position	Comment	Committee Response
			<p>Reducing the length limitation to 7,000 words confirms what is already known to experienced practitioners: that rehearing petitions should be focused and not mere repetition of the merits briefing. Even in a complex case, rarely would a rehearing petition need to be longer than 7,000 words but, in those unusual cases, permission may be sought to file a longer petition.</p> <p>We appreciate the opportunity to present these comments for consideration by the Judicial Council.</p>	
2.	Orange County Bar Association by Deirdre Kelly President Newport Beach	A	The Orange County Bar Association believes that the answer to both requests for specific comments is “yes.” Given the purpose of petitions for rehearing, it is unnecessary for these petitions to be as long as the underlying merits briefs.	The committee notes the commenter’s support for the proposal and appreciates the comment. No further response required.
3.	John Schreiber Certified Appellate Specialist Benicia, California	A	Petitions for rehearing are meant to address specific, focused issues rather than reargue the entire appeal. The provision to allow for petitions exceeding the word limits should address instances in which greater length is necessary.	The committee notes the commenter’s support for the proposal and appreciates the comment. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? <i>Yes.</i> • Are the proposed limits of 7,000 words and 25 pages appropriate for petitions for rehearing? <i>Unknown. The briefs are filed in the Court of Appeal.</i> • Would the proposal provide cost savings? If so, please quantify. <i>Unknown. The briefs are filed in the Court of Appeal.</i> • 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? <i>Unknown. The briefs are filed in the Court of Appeal.</i> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Unknown. The briefs are filed in the Court of Appeal.</i> <p>No additional comments.</p>	The committee notes the commenter’s support for the proposal. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR19-05**Appellate Procedure: Word Limits form Petitions for Rehearing in Unlimited Civil Cases (Amend Cal. Rules of Court, rules 8.204 and 8.268)**

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	Commenter	Position	Comment	Committee Response
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	A	No specific comment.	The committee notes the commenter's support for the proposal. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated