

MEMORANDUM

To: New Hampshire Supreme Court Advisory Committee on Rules  
From: Joshua L. Gordon, Esq.  
Date: May 30, 2018  
RE: Type-volume limitations for Supreme Court briefs

On March 29, 2018, the New Hampshire Supreme Court released a set of draft rules for electronic filing of briefs, which will spring into effect when the court commences e-filing. The rules are generally well thought-out and I look forward to e-filing. Not included in early draft rules were "type-volume limitations," which are the e-filing analogue to page limitations. There were recommendations that the court replace page limits with type-volume limits, which the final draft does.

The type-volume limits in the draft rule specifies 9,500 words for most briefs, repealing the current 35-page limit. It also specifies 3,000 words for reply briefs, repealing the current 10-page limit.

Equating 9,500 words with 35 pages is, I believe, an arithmetic error that the court may not have intended. If it is intended, it is a significant policy change by the court that I think should probably be debated.

9,500 words, instead of 35 pages, divides to about 270 words per page. In traditional typewriter type, the conventional measure was 250 to 280 words per page. But computer type is much more dense, and the 250/280 holdover is no longer a useful measure. The density of computer type was already dealt with when the New Hampshire Supreme Court shortened briefs from 50 pages to 35 pages many years ago (in the 1990s I believe).

I did some empirical research, with a smattering of briefs I happened to have on my desk from frequent filers in the Supreme Court. I used my word processor to count words. I tried to measure representative pages from each brief, using some pages that had no single-spaced quotations, and some that did. My results were:

Attorney general:	355 to 360 words/page
Doreen Connor:	300 to 315 words/page
Appellate Defender:	280 to 330 words/page
Me:	320 to 350 words/page

It is apparent from these numbers that the court's use of 270 word per page is far less type-dense than the briefs that are currently being submitted to this court.

Using a rough average of 325 words per page from my empirical measures, the current 35-page limitation is equivalent to about 11,375 words. The proposed rule is about 2,000 words shorter, which, in pages, is about 6 pages shorter. That represents more than a 15 percent shortening of briefs in some cases, which is a significant change.

Federal courts have used type-volume limitations for many years. Until recently they were 14,000, but were reduced to 13,000 last year. I have not done research on other states' type-volume limitations.

Accordingly, I propose that this matter be placed on the agenda for this committee. Whether shortening briefs to this degree is welcome or unwelcome may be a matter of opinion, but because it is a significant policy change, it should be debated.