

## MEMORANDUM

To: New Hampshire Supreme Court Advisory Committee on Rules  
From : Joshua L. Gordon, Esq.  
Date: September 6, 2018  
RE: Type-volume limitations for Supreme Court briefs

In May 2018, I brought to this committee's attention a perhaps-unintended shortening of supreme court briefs that were contained in the type-volume limitations in the e-filing rules.

At the June 8, 2018 meeting, when this was discussed, the committee asked me to show my work. The committee suggested counting the total words in a sample of filed briefs (exclusive of those portions which are exempted by the rule), and comparing that to the known number of pages in each brief.<sup>1</sup>

I found a significant difference in words-per-page between briefs that were well short of the 35-page limit, and those that were at or approached the 35-page limit, as shown on the attached chart. This matters because length limitations are *limitations on the maximum*. As the referenced examples show, filers of shorter briefs tend to expand margins and generally leave more blank space than filers of briefs that approach the page-limit.

In setting a maximum, the question is how many words have practitioners regularly been fitting into a 35-page brief.

For briefs well short of the previous 35-page limit, as the accompanying chart shows, the 270 words-per-page average used by the court is representative. Of the seven briefs between 15 and 25 pages long, my count showed an average of 274 words per page.

However, for briefs at or approaching the 35-page limit, as the accompanying spreadsheet shows, with one exception, the total number of words is significantly greater than 9,500 words. For these lengthy briefs, the average word-count was much higher – 320 words-per page.

Accordingly, the data shows that the 9,500 word limit does not accurately reflect what appears to be the common practice when briefs are at or near the 35-page limit. Thus, I continue to believe that the type-volume limits in the current rules are a significant departure from current practice, and that the resulting shortening of briefs should be more fully considered.

---

<sup>1</sup>For purposes of choosing what briefs to use in page counting, I thought it was important to use briefs that were filed before e-filing came into effect – before lawyers were contemplating compliance with e-filing formatting changes. Thus, I used briefs filed in 2016, 2017, and early 2018. Though not a scientific sample, I made an effort to not cherry-pick briefs to skew the results. URLs are provided for each. My method for counting was to OCR all briefs from their PDF versions in Abbyy, copy the countable text into WordPerfect, and rely on its automatic word-count.

Filer	Case	Date Filed	Pages	Word Count	Words-Per-Page
<b>BRIEFS THAT DO NOT APPROACH 35 PAGE LIMIT</b>					
Donald Smith (Devine Millimet)	Kurowski v. Town of Chester	December 23, 2016	20	<b>AVERAGE =</b> 6,498	<b>274</b>
Sean Locke (Attorney General)	State v. Anthony Barnaby & David Caplin, No. 2016-0535	March 1, 2017	25	7,512	300
Doreen Connor (Primmer Piper)	In re Simone Garczynski Irrevocable Trust, No. 2017-0487	January 23, 2018	25	7,196	288
Joshua Gordon (L/O)	In re Simone Garczynski Irrevocable Trust, No. 2017-0487	March 12, 2018	23	6,268	273
Mark Sixty (L/O)	State v. Anthony Barnaby & David Caplin, No. 2016-0535	May 15, 2017	22	5,580	254
David Rothstein (Appellate Defender)	State v. Anthony Barnaby & David Caplin, No. 2016-0535	May 17, 2017	24	5,956	248
Thomas Closson (Jackson Lewis)	Appeal of Nashua School District, No 1016-0558	March 20, 2017	15	3,501	233
<b>BRIEFS THAT ARE AT OR APPROACH 35 PAGE LIMIT</b>					
Roy Tilsley (Bernstein Shur)	Condos at Lilac Ln v. Monument	November 14, 2016	33.5	11,742	351
Joshua Gordon (L/O)	State of New Hampshire v. Keith Fitzgerald, No. 2017-0328	November 16, 2017	35	12,129	347
William Saturley (Preti Flaherty)	Mass.Bay Ins.Co. v. Am. Healthcare SVrs, No. 2016-0390	November 4, 2016	34	11,585	341
James Shirley (Sheehan Phinney)	Mass.Bay Ins.Co. v. Am. Healthcare SVrs, No. 2016-0390	December 20, 2016	34.5	11,320	328
Liz Woodcock (Attorney General)	State of New Hampshire v. Keith Fitzgerald, No. 2017-0328	March 9, 2018	32	10,236	320
Meg Nelson (Sulloway Hollis)	DirectTV v. Town of New Hampton, No. 2016-0151	September 28, 2016	33.5	10,600	316
Mark Mallory (Mallory Friedman)	Mass.Bay Ins.Co. v. Am. Healthcare SVrs, No. 2016-0390	December 20, 2016	35	10,398	297
Chris Johnson (Appellate Defender)	State of New Hampshire v. Gregory M. Bruno, No. 2017-0414	March 19, 2018	34	8,907	262

URL	Filer
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160406_defendantbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160406_defendantbrief.pdf</a>	Smith
<a href="http://appealslawyer.net/temporary/2017-03-01_AG_Brief_(Barnaby-Caplin).pdf">http://appealslawyer.net/temporary/2017-03-01_AG_Brief_(Barnaby-Caplin).pdf</a>	Locke
<a href="http://appealslawyer.net/temporary/2018-01-23_Doreen_Connor_Brief_(Garczynski).PDF">http://appealslawyer.net/temporary/2018-01-23_Doreen_Connor_Brief_(Garczynski).PDF</a>	Connor
<a href="http://appealslawyer.net/temporary/2018-03-12_JLG_Brief_(Garczynski).pdf">http://appealslawyer.net/temporary/2018-03-12_JLG_Brief_(Garczynski).pdf</a>	Gordon
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160535_anthonymbarnabybrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160535_anthonymbarnabybrief.pdf</a>	Sisty
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160535_caplinbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160535_caplinbrief.pdf</a>	Rothstein
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160558_petitionerbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160558_petitionerbrief.pdf</a>	Closson
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160357_defendantsbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160357_defendantsbrief.pdf</a>	Tilsley
<a href="http://appealslawyer.net/temporary/2017-11-16_JLG_Brief_(Fitzgerald).pdf">http://appealslawyer.net/temporary/2017-11-16_JLG_Brief_(Fitzgerald).pdf</a>	Gordon
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_archspecialtybrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_archspecialtybrief.pdf</a>	Saturley
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_exeterhospitalbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_exeterhospitalbrief.pdf</a>	Shirley
<a href="http://appealslawyer.net/temporary/2018-03-09_AG_Brief_(Fitzgerald).pdf">http://appealslawyer.net/temporary/2018-03-09_AG_Brief_(Fitzgerald).pdf</a>	Woodcock
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160151_plaintiffbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160151_plaintiffbrief.pdf</a>	Nelson
<a href="https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_triagestaffingbrief.pdf">https://www.courts.state.nh.us/supreme/ebriefs/2016/20160390_triagestaffingbrief.pdf</a>	Mallory
<a href="http://appealslawyer.net/temporary/2018-03-19_Appellate_Defender_Brief_(Bruno).pdf">http://appealslawyer.net/temporary/2018-03-19_Appellate_Defender_Brief_(Bruno).pdf</a>	Johnson