

Second Study Commission

Civil Law and Procedure

66th Annual Meeting of the IAJ – Cape Town (South Africa)

Questionnaire 2024

Written submissions – when do they turn from a help to a hindrance?

In Taipei, Taiwan, we decided that in 2024, our Second Study Commission will focus on how written submissions in civil litigations can turn from a help to a hindrance and whether there are limits on written submissions in our various jurisdictions. If so, what these limits include.

We have limited the questionnaire to six questions and expect to receive short but concise answers. The questions are as follows:

1. Are there limits for written submissions in civil litigations in your jurisdiction in terms of the maximum length?

The Federal Rules of Civil Procedure (“FRCvP”), which govern civil proceedings in federal district courts, do not contain maximum page or word limitations on written submissions. However, individual district courts may have local rules or standing orders that address this issue. Further, individual judges, based on their inherent authority to manage their own cases, may impose limitations pursuant to individual chambers’ guidelines or by order in an individual case.

The Federal Rules of Appellate Procedure do contain specific page or word limitations:

R.27(d)(2), Motions – Length Limits. Except by the court’s permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

- (A) a motion or response to a motion produced using a computer must not exceed 5,200 words;
- (B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;
- (C) a reply produced using a computer must not exceed 2,600 words; and
- (D) a handwritten or typewritten reply to a response must not exceed 10 pages.

R.28(j), Briefs – Citation of Supplemental Authorities. If pertinent and significant authorities come to a party’s attention after the party’s brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

R.28.1(e), Cross Appeals – Length

(1) *Page Limitation.* Unless it complies with Rule 28.1(e)(2), the appellant’s principal brief must not exceed 30 pages; the appellee’s principal and response brief, 35 pages; the appellant’s response and reply brief, 30 pages; and the appellee’s reply brief, 15 pages.

(2) *Type-Volume Limitation.*

(A) The appellant’s principal brief or the appellant’s response and reply brief is acceptable if it:

- (i) contains no more than 13,000 words; or
- (ii) uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee’s principal and response brief is acceptable if it:

- (i) contains no more than 15,300 words; or
- (ii) uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee’s reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

R.32(a)(7), Form of Briefs, Appendices, and Other Papers – Length

(A) *Page Limitation.* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(B) *Type-Volume Limitation.*

- (i) A principal brief is acceptable if it:
 - contains no more than 13,000 words; or
 - uses a monospaced face and contains no more than 1,300 lines of text.
- (ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

R.29(a)(5), Amicus Curiae – Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

2. Are there time limits for filing written submissions?

FRCvP sets forth time limits for filing a variety of submissions.

Individual District Courts may have local rules or standing orders that address this issue. Further, individual judges may set forth time limits or adjust time limits in the rules by order, either upon request of a party, or sua sponte.

3. Are there limits in terms of a maximum number of additional submissions in a case?

The FRCvP provides that in a situation involving a non-dispositive motion, there may be two submissions – the papers filed by the movant and a response by the opposing party. These submissions may include attachments or exhibits that go to support the arguments made by the respective party.

In the circumstances of a dispositive motion, i.e., summary judgment or a motion to dismiss, three submissions are permitted under the FRCvP – i.e., the motion and memorandum in support filed by the movant, a response by the opposing party, and a reply by the movant.

If the opposing party cross-moves, then there are four submissions – i.e., the opening motion and memorandum, the response and cross-motion, a combined reply to the original motion and response to the cross-motion, and a reply by the cross-movant.

4. Are there rules, including penalties or cost implications, for breaches of these requirements?

Yes, there are rules for breaches of these requirements. The judge has the authority to reject any submission not in conformity with the FRCvP, a court's local rules, or a judge's scheduling order governing filings.

Pursuant to the FRCvP, local rule or statute, the court may assess costs and/or attorney's fees against the offending party or counsel depending on the facts or circumstances surrounding the offending behavior.

5. Are these limits or requirements effective in terms of reducing the number and length of written submission and the time spent preparing for and determining a case?

Yes, these limits help control the volume of submissions thereby assisting the court in (1) resolving the underlying dispute, (2) in preparing for oral argument on a motion or for trial, and (3) in preparing the ultimate written disposition.

6. What is the effect of written submissions on any hearing which subsequently takes place?

Written submissions frame the issues to be considered by the court and provide the law, case precedents, and reasoning in support of a party's arguments on the matter under consideration.

7. Comments or suggestions as to what could otherwise prove to be effective

Providing page/word limits and time limits are useful in imposing discipline on parties in putting forth their arguments on matters under consideration by the court. These types of limitations aid the court and the parties in managing expectations and the flow of work in any individual litigation and a judge's overall docket.