PRE-VOTE SUBCOMMITTEE REPORT FORM
GENERAL PRACTICE
15-AC-24, 14-AC-29, 14-AC-15, 14-AC-16 :
New Documents Rule and Font Size/Formatting of Documents

Date: December 20, 2016
Chair: Tracy Gunn
Meeting dates: August 26, September 8 and November 30, 2016
Members Attending:

August 26, 2016: Wendie Cooper; Lance Curry; Jeff Kuntz; Kristina Samuels; Stephanie Serafin; Stephanie Silver; Laura Triplett; Brandon Vesely; Tom Ward; Betty Wheeler; Stephanie Zimmerman; Heather Telfer, Bar Liaison.

September 8, 2016**:** Tracy Gunn, Chair; Nikole Hiciano, Vice Chair; Lance Curry; Diane DeWolf; Chrissy Graves; Jeff Kuntz; Kristina Samuels; Stephanie Serafin; Stephanie Silver; Laura Triplett; Tom Ward; Betty Wheeler; and Heather Telfer, Bar Liaison.

November 30, 2016: Tracy Gunn, Chair; Nikole Hiciano, Vice Chair; Kristina Samuels; Lance Curry; Tom Ward; Stephanie Serafin; Hon. Robert Luck; Betty Wheeler; Wendie Cooper; Diane DeWolf; Laura Triplett; Hon. Jeff Kuntz; and Heather Telfer, Bar Liaison.

I. History/Background:

This is series of referrals relating to document formatting, font size and word count, along with a referral to consider a new rule on "documents."

II. Summary of the Issues:

Currently there is no single rule governing the format of documents under the appellate rules, so the subcommittee considered whether a "documents" rule should be created.

The subcommittee also considered which font types and sizes are best suited to electronic filing and electronic reading, because the appellate rules were written for paper briefs and may need to be updated. The members of the subcommittee who worked on these referrals researched how other jurisdictions address the issue

and polled a number of appellate clerks and judges regarding their preferences. The subcommittee also researched ADA requirements for font type and size readability.

The subcommittee also considered how changing the selected font might impact page limits.

III. Factors Considered by the Subcommittee:

The subcommittee recommends creating a general documents rule for appeals so that all formatting information can be found in one place, and so that the appellate rules are consistent with other rule sets which contain an overall documents rule.

The subcommittee determined that two choices of font should be permitted, in order to allow some choice but maintain consistency. The two fonts proposed in the rule are: Arial 14-point font (a sans serif font) or Bookman Old Style 14-point font (a serif font).

The fonts currently allowed by the rules, Times New Roman and Courier, are among the least disability accessible, according to Disability Rights Florida. There is no font that meets all the ADA requirements, but Arial is one of the most accessible.

Likewise, certain fonts are more easily read by the electronic system used by the courts. Arial and Bookman are readable in and by the electronic systems in use by the courts and are acceptable to or preferred by most of the polled judges and clerks.

In terms of page limits, the subcommittee recognized that the new fonts will change the page equivalents but also noted that most judges do not want increased page limits. Some judges would actually prefer to reduce the allowed number of pages. The subcommittee noted that a word count system has been used in the 11th Circuit for some time, and that using a word count eliminates some of the formatting "creativity" that sometimes arises with a page limit. The subcommittee recommends changing to word count instead of page limits. The word counts proposed by the subcommittee are based on page limit equivalents to the current rules, using the new selected fonts.

The subcommittee determined that limitations on length for each type of document should remain in the rule pertaining to that document in order to make that information easy to locate.

The subcommittee noted that the court must rely on the filer to provide an accurate word count because word count cannot be checked by the court in PDF at this time, so the subcommittee determined that a certification would be appropriate.

IV. Majority Position:

The subcommittee approved the proposal 12-0.

Appellate Rules -- fonts and page limits

ewheeler to: Sanchez, Eduardo (USAFLS) 05/02/2014 05:34 PM

Cc: "Heather Telfer"

At a seminar this week Pam Masters, Clerk at the 5th DCA, said that court strongly prefers Verdana or Georgia fonts over Times New Roman. I used those fonts in typing their names, and I can see where they might be more readable on a computer screen.

Federal Rule 32(a)(5) does not specify a particular font but says only that "either a proportionally spaced or a monospaced face may be used." The rule also specifies the minimum size for both types of fonts.

Federal Rule 32(a)(7) imposes a page limitation for briefs but also has a type-volume limitation. A principal brief has a page limitation of 30 pages or a type-volume limitation of no more than 14,000 words or uses a monospaced face and contains no more than 1,300 lines of text. Reply briefs are limited to 15 pages or no more than half of the type volume specified in rule 32(a)(7)(B)(i).

Now that we are in the computer age with electronic filing, I would like to propose that ACRC consider amending rule 9.210(a)(2) and (5) to conform to the federal rule. Anything we can do to make electronic briefs more reader-friendly would benefit both readers and writers. By changing length limitations to words rather than pages, folks would be encouraged to use wider margins and perhaps even larger font sizes, thereby creating more "white space" for tired eyes.

Elizabeth C. Wheeler
Elizabeth C. Wheeler, P.A.
Post Office Box 2266
Orlando, FL 32802-2266
(407) 650-9008

Board Certified by
The Florida Bar:
Appellate Practice
Civil Trial

From: "Sanchez, Eduardo (USAFLS)" <Eduardo.I.Sanchez@usdoj.gov>
To: Heather Telfer <HTelfer@flabar.org>
Date: 05/14/2014 09:32 AM
Subject: Re: ACRC- Electronic Filing Subcommittee

Ok. Let's send it as a new referral from Electronic Filing to General Practice. Did they already address the binding issue? If not, can they send the referral with a recommendation regarding the binding and their recommendation for a more complete revision? Are most of then on General Practice? If not and they are interested, maybe they can participate on this issue on an ad hoc basis with General Practice. I just think that, given the scope of the issue, it should be considered by the greater numbers serving on General Practice, but I also think it would be good if those who originated the idea were involved in the drafting of a proposed rule.

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request.
Your e-mail communications may therefore be subject to public disclosure.
On May 14, 2014, at 8:15 AM, "Heather Telfer" <HTelfer@flabar.org<mailto:HTelfer@flabar.org>> wrote:

No, the original referrals were to remove the binding requirement from 9.210 and to add a numbering requirement to 9.210. This is definitely an expanded approach, which is why I thought we should consult you. The issue the subcommittee is concerned with is that 9.210 does not apply to motions, or anything other than briefs filed with the court. So, the question arose, do we need a consistent rule on documents. The subcommittee understands that this may not stay within the electronic filing subcommittee, and may be referred to the general practice subcommittee, since the scope is now so broad.

Thanks,

Heather

Heather S. Telfer
Attorney Liaison - Rules
The Florida Bar
850-561-5702
htelfer@flabar.org<mailto:htelfer@flabar.org>

From: "Sanchez, Eduardo (USAFLS)" <Eduardo.I.Sanchez@usdoj.gov<mailto:Eduardo.I.Sanchez@usdoj.gov>>

To: Heather Telfer
<HTelfer@flabar.org<mailto:HTelfer@flabar.org>>
Date: 05/13/2014 03:14 PM
Subject: RE: ACRC- Electronic Filing Subcommittee

Was it a referral that included all of that? I don't remember any referral with such a broad scope.

From: Heather Telfer [mailto:HTelfer@flabar.org]
Sent: Tuesday, May 13, 2014 10:32 AM
To: Sanchez, Eduardo (USAFLS)
Subject: ACRC- Electronic Filing Subcommittee

Good Morning,

The Electronic Filing subcommittee has been working on an amendment to get rid of the binding requirement in 9.210 and add a numbering requirement. Having looked at the rules, the subcommittee is leaning towards creating a new rule for Documents, which would apply to briefs, motions, etc. It would likely include requirements on font size, font choice, etc. Should this remain with Electronic Filing, or be sent to General Practice?

Thanks,

Heather

Heather S. Telfer
Attorney Liaison - Rules
The Florida Bar
850-561-5702
htelfer@flabar.org<mailto:htelfer@flabar.org>

Please note: Florida has very broad public records laws. Many written communications to or from The Florida Bar regarding Bar business may be considered public records, which must be made available to anyone upon request. Your e-mail communications may therefore be subject to public disclosure.[attachment "Rule 9.210 (proposed amendments).DOCX" deleted by Heather Telfer/The Florida Bar]

FW: Referral to rule committee

Dorothy DiFiore to: Wendy Loquasto, Heather Telfer 10/17/2014 08:12 PM

Following today's meeting, I think we need a referral to amend the rule on "briefs" to include an express statement that "preliminary statement" (like the table of contents and table of authorities) is excluded from the pagination limits.

In regard to whether the excluded pages have to be numbered, I note that it is difficult to prepare a table of contents if all pages are not numbered in some fashion, but I am not advocating for a further rule change. I wonder if the rules of style cover this?

Appellate Rule Change for Briefs

Dorothy DiFiore

To: Heather Telfer
Cc: Hon. T. Kent Wetherell, II

07/13/2015 09:40 AM

Heather and Judge Wetherell:
1.
Given that the courts are requiring direct correlation between page numbers and .pdf page numbers, I think it's time to modify the way we paginate briefs so that they have this correlation as well (i.e., no more lower case roman numerals). But to accomplish that, I think we also need to change the page limitation to a word number limitation, like the federal appellate rules do. The federal rules (Rule 32) limit the party to 14,000 words or 1300 lines of text, and the initial sections don't count toward that limit.

2.
Given the ability to enlarge .pdf documents, I question whether it is necessary to retain a type size requirement and also think that offering more sans-serif font types (such as Calibri, arial, verdana, and the like) would not cause legibility problems. If the limitation were based on words, then using different fonts would not provide any size advantage. I note that the federal rules do retain font size limits and limit the font to "plain, Roman style", but I think having other options such as those would be good.

Yes, some of us really do have preferred fonts – we are that level of geek.

Thank you.

Dorothy DiFiore
Partner

Phone 813.280.1380
Fax 813.254.8555
Cell 813.309.2414
4921 Memorial Hwy, Suite 200
Tampa, FL 33634

www.HDLawPartners.com

The following are the results of our surveys of the District Court of Appeal Judges. Below the survey results are some notations regarding font styles on eBooks supplied by West Publishing Co. and LexisNexis.

First As expected, we were not able to reach consensus on the font question. For what it is worth, of the eight judges who weighed in on the question, most of them listed #2, **Bookman Old Style**, as one of the favorites.

Second The Second District has agreed on **Bookman Old Style**. They found the reasoning of the Seventh Circuit's typography guide (attached) very persuasive. In particular: (1) given the nature of the brief-reading exercise, fonts designed for book-printing are preferable for both readability and keeping the reader's attention (both Bookman Old Style and Century qualify) and (2) that serif fonts are preferable to sans-serif fonts for readability (although they discussed that this might be a matter of individual preference). The judges also considered that a font like Arial does not command the same credibility and respect as a professional typeset like Bookman or Century – this was the most persuasive argument for several judges.

It may also be worth mentioning that while there was a consensus as to a preferred font, some judges questioned the need to specify one font over all others and expressed a preference for a word count with a certification over a page limit. I am still waiting to hear back from my portal contact, but I will update the group as soon as I hear something.

Third The 3D had a tie vote for **Times New Roman** and **Arial**.

Fourth I reached out to the judges at the Fourth District and the Fourth DCA Clerk, Lonn Weissblum. I haven't heard back from the judges but this is Lonn's response:

++++

Thanks for reaching out. Just speaking only from personal preference, if I had free reign to pick one font to do a brief in, I'd go with Palatino Linotype over the 6 fonts on the sheet. Failing that, though, I'd go with Century. Cambria and Verdana don't appear to be in wide use, but Verdana is used a lot on websites. Also, I imagine that your group has probably seen this document, which I think is very informative: http://www.ca7.uscourts.gov/ftips/type.pdf.

Fifth I have now heard back from Judge Lawson at the 5th DCA. At their judges' meeting today, with all judges participating, the consensus was that they prefer the **Arial** font (#4 on the sample list we sent).

Fonts in Lexis eBooks

The short answers seems that the appearance of the fonts is controlled by the eReader.

Here's what I found out about fonts in eBooks:

For eBooks produced from our xml workflows, we don't specify fonts either in the stylesheets or by embedding a font within the epub, though both are possible.

This typically leaves the fonts that are used for a given eBook on the fonts loaded into the eReader software and on the eReader device. Some eReaders support the user being able to set the fonts and background to one of their choice.

Not sure if the eBooks created from InDesign like our desktop products follow the same practice re fonts.

I assume that this would be true of documents that are filed as well as viewed.

Fonts in West eBooks

Arial was the default font. Other choices are Helvetica, Georgia, Times New Roman, and Verdana. One click on the font style changes the whole eBook.

Betty Wheeler
9/20/2016

From: Keith Casebonne [mailto:keithc@disabilityrightsflorida.org]
Sent: Wednesday, September 07, 2016 3:57 PM
To: Telfer, Heather <HTelfer@floridabar.org>; Amanda Heystek <amandah@disabilityrightsflorida.org>
Subject: RE: Question regarding ADA and documents

Hi Heather,

There is no "one" accessible font, unfortunately, but I certainly sometimes wish there was. And to make it more confusing, some fonts are better on screen, and some are better in print.

We chose to primarily use Verdana because the letters are designed in a very clear and open style that work well in both screen and print formats. Also, we prefer sans-serif fonts because, at smaller sizes, the tick marks in serif fonts can cause visual clutter and decrease readability.

But in all honesty, the accessibility crowd is split almost 50-50 as to whether serif or sans-serif is better. There's no easy answer.

Unfortunately, Courier and Times New Roman are two of the least accessible fonts.

Courier is an old-style monospaced "typewriter" style font. The monospacing can create odd gaps that are jarring to the eyes, plus some of the letterforms are unusual, like the lowercase i.

The size of the font is also important. Generally, you never want to go below 12pt in print for body text. However, Times New Roman has somewhat small letterforms, and so 13pt is really required to get text that is as readable as other 12pt serif fonts, such as Georgia.

I'm happy to help with any questions you might have.

Thanks,

Keith Casebonne • Technology and Communications Manager
850-488-9071 • 800-342-0823

Disability Rights Florida
Advocacy. Equality. Dignity.
Website • Facebook • Twitter • YouTube

From: Telfer, Heather [mailto:HTelfer@floridabar.org]
Sent: Wednesday, September 07, 2016 3:38 PM
To: Amanda Heystek <amandah@disabilityrightsflorida.org>
Cc: Keith Casebonne <keithc@disabilityrightsflorida.org>
Subject: RE: Question regarding ADA and documents

It does.

I'm beginning to gather that there is no one "ADA compliant" font. I was kind of hoping that there was one agreed-upon font and font size, which would make it easier for the Committees to make a decision. Currently the appellate rules require 14-point Times New Roman or 12-point Courier. I gather that it's better to have bigger font and the judges on the District Courts of Appeal tend to agree.

Have you all come across any fonts that e-readers have trouble with? We'd like to avoid using those.

There seems to be disagreement as to which type of font is easier to read serif or san serif. What are your thoughts on that question?

Thanks,

Heather

Heather Savage Telfer
Attorney Liaison - Rules
The Florida Bar
850-561-5702
htelfer@floridabar.org

From: Amanda Heystek [mailto:amandah@disabilityrightsflorida.org]
Sent: Wednesday, September 07, 2016 3:23 PM
To: Telfer, Heather <HTelfer@floridabar.org>
Cc: Keith Casebonne <keithc@disabilityrightsflorida.org>
Subject: RE: Question regarding ADA and documents

Good Afternoon Heather,

Disability Rights Florida is happy to help the Committees on document accessibility! I may not be the expert, so I am cc'ing Keith Casebonne in case you have further questions, but I'll give you some info he sent on to me. I am attaching our agency's Style Guide that Keith prepared which explains the different fonts, why some are better than others, and even how to best emphasize words in text (bold instead of italics). Another website that explains accessibility is found here:

http://webaim.org/techniques/fonts/

Hope this helps and feel free to contact myself or Keith with any further questions.

Amanda Heystek • Director of Litigation
850-488-9071 • 800-342-0823

Disability Rights Florida
Advocacy. Equality. Dignity.
Website • Facebook • Twitter • YouTube

From: Telfer, Heather [mailto:HTelfer@floridabar.org]
Sent: Wednesday, September 07, 2016 1:51 PM
To: Amanda Heystek <amandah@disabilityrightsflorida.org>
Subject: Question regarding ADA and documents

Good Afternoon,

The Appellate Court Rules Committee and the Rules of Judicial Administration Committee (and the Florida Courts Technology Commission) are all working on font size and type requirements for documents filed with the Court. Currently the Appellate Rules and Rules of Judicial Administration require 14-point Times New Roman. Now it seems as though that may not be the best bet as it is a serif font.

I have been searching the ADA.gov website for quite a while and the closest thing I have to an answer is on the VA's website:
http://www.section508.va.gov/support/tutorials/word/16other_1.asp

It says the following:

Font Size and Type

In general, for text in electronic or print documents, 14 point size is considered the minimum acceptable size for large and 11 for normal print. If your documents permit, 16 point text is recommended.
A non-serif font, such as Arial, is recommended because when magnified, the serifs in fonts do not smooth well and text looks blocky. Commonly used Serif fonts, such as Times New Roman, have small decorative lines added as embellishments, which can be difficult to interpret for users of screen magnification software.

Non-Serif Font Example:

This is sample text in Arial.

Serif Font Example:

This is sample text in Times New Roman.

Assistive technologies may not properly render characters, which are present in documents that do not have a Unicode equivalent. Most notably, fonts and characters that are not present in the Unicode character set may not be pronounced properly. Do not use fonts, such as "wingdings" or other ASCII fonts, which do not have Unicode characters. [*

Do you know of someone I can call or do you have a definitive answer as to font size and type? I would appreciate any guidance you can provide.

Thanks,

Heather

Heather Savage Telfer
Attorney Liaison - Rules
The Florida Bar
850-561-5702
htelfer@floridabar.org

RULE 9.045. FORM OF DOCUMENTS

(a) Generally. All documents, as defined in Florida Rule of Judicial Administration 2.520(a), filed with the court shall comply with Florida Rule of Judicial Administration 2.520 and with this rule. When filed in electronic format, parties shall file only the electronic version.

(b) Line Spacing, Type Size, and Typeface. The text in documents shall be black and in distinct type, double-spaced. Text in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text in the body of the document. Headings and subheadings shall be at least as large as the document's text and may be single spaced. Computer-generated documents shall be filed in either Arial 14-point font or Bookman Old Style 14-point font.

(c) Binding. Documents filed in paper format shall not be stapled or bound.

(d) Signature. All documents filed with the court must be signed as required by Florida Rule of Judicial Administration 2.515.

(e) Certificate of Compliance. Computer-generated documents subject to word count limits shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the document complies with the applicable font and word count limit requirements. The certificate shall be contained in the document immediately following the certificate of service. The word count shall exclude words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block. The word count shall include all other words, including words used in headings, footnotes, and quotations. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document.

RULE 9.100. ORIGINAL PROCEEDINGS

(g) Petition. The caption shall contain the name of the court and the name and designation of all parties on each side. The petition shall not exceed 13,000 words if computer-generated or 50 pages ~~in length~~if handwritten or typewritten and shall contain

(1) the basis for invoking the jurisdiction of the court;

(2) the facts on which the petitioner relies;

(3) the nature of the relief sought; and

(4) argument in support of the petition and appropriate citations of authority.

If the petition seeks an order directed to a lower tribunal, the petition shall be accompanied by an appendix as prescribed by rule 9.220, and the petition shall contain references to the appropriate pages of the supporting appendix.

(h) Order to Show Cause. If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

(i) Record. A record shall not be transmitted to the court unless ordered.

(j) Response. Within the time set by the court, the respondent may serve a response, which shall not exceed 13,000 words if computer-generated or 50 pages ~~in length~~if handwritten or typewritten and which shall include argument in support of the response, appropriate citations of authority, and references to the appropriate pages of the supporting appendices.

(k) Reply. Within 20 days thereafter or such other time set by the court, the petitioner may serve a reply, which shall not exceed 4,000 words if computer-

generated or 15 pages ~~in length~~if handwritten or typewritten, and supplemental appendix.

~~***(l)*** **General Requirements; Fonts.** The lettering in all petitions, responses, and replies filed under this rule shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Computer-generated petitions, responses, and replies shall be submitted in either Times New Roman 14-point font or Courier New 12-point font. All computer-generated petitions, responses, and replies shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the petition, response, or reply complies with the font requirements of this rule. The certificate of compliance shall be contained in the petition, response, or reply immediately following the certificate of service.~~

. . . .

Committee Notes

. . . .

1999 Amendment. Page limits were added to impose text limitations on petitions, responses and replies consistent with the text limitations applicable to briefs under Rule 9.210.

. . . .

201_ Amendment. Page limits for computer-generated petitions, responses, and replies were converted to word counts.

RULE 9.125 REVIEW OF TRIAL COURT ORDERS AND JUDGMENTS CERTIFIED BY THE DISTRICT COURTS OF APPEAL AS REQUIRING IMMEDIATE RESOLUTION BY THE SUPREME COURT

(e) Form. The suggestion shall ~~be limited to 5 pages~~not exceed 1,300 words if computer-generated or 5 pages if handwritten or typewritten and shall contain all of the following elements:

. . . .

Committee Notes

1980 Amendment. This rule is entirely new and governs all discretionary proceedings to review trial court orders or judgments that have been certified by the district court under rule 9.030(a)(2)(B) to require immediate

resolution by the supreme court and to be of great public importance or to have a great effect on the proper administration of justice throughout the state. Final and non-final orders are covered by this rule. Discretionary review of other district court decisions if supreme court jurisdiction exists under rule 9.030(a)(2)(A) is governed by rule 9.120.

Subdivision (b) makes clear that certification by the district court is self-executing.

Subdivision (c) sets forth the manner in which a party may file a suggestion that the order to be reviewed should be certified by the district court to the supreme court and requires the suggestion be filed within 10 days from the filing of the notice of appeal. It is contemplated that suggestions under this rule will be rare. A suggestion should be filed only if, under the peculiar circumstances of a case, all the elements contained in subdivision (e) of the rule are present.

Subdivision (d) provides that any other party may file a response to a suggestion within 5 days of the service of the suggestion.

Subdivision (e) provides for the form of the suggestion. All suggestions must be substantially in this form. The suggestion is limited to 5 pages and must contain (1) a statement of why the appeal requires immediate resolution by the supreme court, and (2) a statement of why the appeal either is of great public importance or will have a great effect on the proper administration of justice throughout the state. The suggestion must be accompanied by an appendix containing a copy of the order to be reviewed. The suggestion also must include a certificate signed by the attorney in the form appearing in the rule.

To ensure that no proceeding is delayed because of this rule, subdivisions (f) and (g) provide that the filing of a suggestion will not alter the applicable time limitations or the place of filing. The district court shall not be required to rule on a suggestion. The parties should follow the time limitations contained in the rule through which jurisdiction of the district court was invoked. See rules 9.100, 9.110, 9.130, and 9.140.

201 Amendment. The page limit for a computer-generated suggestion was converted to a word count.

RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POST-CONVICTION CRIMINAL CASES

(b) Appeals from Post-Conviction Proceedings Under Florida Rule of Criminal Procedure 3.800(a), 3.801, 3.850, or 3.853.

. . . .

(2) Summary Grant or Denial of All Claims Raised in a Motion Without Evidentiary Hearing.

. . . .

(C) Briefs or Responses.

(i) Briefs are not required, but the appellant may serve an initial brief within 30 days of filing the notice of appeal. The initial brief shall comply with the word count (if computer generated) or page limits (if handwritten

or typewritten) set forth in rule 9.210 for initial briefs. The appellee need not file an answer brief unless directed by the court. The appellant may serve a reply brief as prescribed by rule 9.210.

(ii) The court may request a response from the appellee before ruling, regardless of whether the appellant filed an initial brief. The appellant may serve a reply within 20 days after service of the response. The response and reply shall ~~not exceed~~comply with the word count (if computer generated) or page limits (if handwritten or typewritten) set forth in rule 9.210 for answer briefs and reply briefs.

. . . .

RULE 9.142. PROCEDURES FOR REVIEW IN DEATH PENALTY CASES

. . . .

(c) Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings.

. . . .

(8) Reply. Within 20 days after service of the response or such other time set by the court, the petitioner may serve a reply~~, which shall not exceed 15 pages in length,~~ and supplemental appendix.

. . . .

RULE 9.210. BRIEFS

(a) Generally. In addition to briefs on jurisdiction under rule 9.120(d), the only briefs permitted to be filed by the parties in any one proceeding are the initial brief, the answer brief, a reply brief, and a cross-reply brief. All briefs required by these rules shall be prepared as follows:

(1) ~~When not filed in electronic format, briefs shall be printed, typewritten, or duplicated on opaque, white, unglossed paper. The dimensions of each page of a brief, regardless of format, shall be 8½-by-11 inches. When filed in electronic format, parties shall file only the electronic version.~~

~~(2) The lettering in briefs shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text in the body of the brief. Headings and subheadings shall be at least as large as the brief's text and may be single spaced. Computer-generated documents shall be filed in either Times New Roman 14-point font or Courier New 12-point font. All computer-generated briefs shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the brief complies with the font requirements of this rule. The certificate of compliance shall be contained in the brief immediately following the certificate of service.~~

~~(3) Briefs filed in paper format shall not be stapled or bound.~~

~~(4)~~ The cover sheet of each brief shall state the name of the court, the style of the cause, including the case number if assigned, the lower tribunal, the party on whose behalf the brief is filed, the type of brief, and the name and address of the attorney filing the brief.

~~(5)~~(2) Computer-generated briefs shall not exceed the word count limits of this subdivision. Handwritten or typewritten briefs shall not exceed the page limits of this subdivision. The ~~page~~ limits for briefs ~~shall be~~are as follows:

(A) Briefs on jurisdiction shall not exceed 2,500 words or 10 pages.

(B) Except as provided in subdivisions (a)(~~5~~2)(C) and (a)(~~5~~2)(D) of this rule, the initial and answer briefs shall not exceed 13,000 words or 50 pages and the reply brief shall not exceed 4,000 words or 15 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 22,000 words or 85 pages, and the appellant's reply/cross answer brief shall not exceed 13,000 words or 50 pages, not more than 4,000 words or 15 pages of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross initial brief. Cross-reply briefs shall not exceed 4,000 words or 15 pages.

(C) In an appeal from a judgment of conviction imposing a sentence of death or from an order ruling, after an evidentiary hearing on an initial

postconviction motion filed under Florida Rule of Criminal Procedure 3.851, the initial and answer briefs shall not exceed 25,000 words or 100 pages and the reply brief shall not exceed 10,000 words or 35 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 40,000 words or 150 pages and the appellant's reply/cross-answer brief shall not exceed 25,000 words or 100 pages, not more than 10,000 words or 35 pages of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross-initial brief. Cross-reply briefs shall not exceed 10,000 words or 35 pages.

(D) In an appeal from an order summarily denying an initial postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a ruling on a successive postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a finding that a defendant is intellectually disabled as a bar to execution under Florida Rule of Criminal Procedure 3.203, or a ruling on a motion for postconviction DNA testing filed under Florida Rule of Criminal Procedure 3.853, the initial and answer briefs shall not exceed 20,000 words or 75 pages. Reply briefs shall not exceed 6,500 words or 25 pages.

(E) The cover sheet, the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief's author shall be excluded from the word count and page limits in subdivisions (a)(5)(A)–(a)(5)(D). All pages not excluded from the computation shall be consecutively numbered. The court may permit longer briefs.

(b) Contents of Initial Brief. The initial brief shall contain the following, in order:

. . . .

(4) A summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. ~~It should seldom exceed 2 and never 5 pages~~.

(5) Argument with regard to each issue, with citation to appropriate authorities, and including the applicable appellate standard of review.

(6) A short conclusion~~, of not more than 1 page,~~ setting forth the precise relief sought.

(7) A certificate of service.

(8) A certificate of compliance for computer-generated briefs.

. . . .

Committee Notes

1977 Amendment. This rule essentially retains the substance of former rule 3.7. Under subdivision (a) only 4 briefs on the merits are permitted to be filed in any 1 proceeding: an initial brief by the appellant or petitioner, an answer brief by the appellee or respondent, a reply brief by the appellant or petitioner, and a cross-reply brief by the appellee or respondent (if a cross-appeal or petition has been filed). A limit of 50 pages has been placed on the length of the initial and answer briefs, 15 pages for reply and cross-reply briefs (unless a cross-appeal or petition has been filed), and 20 pages for jurisdictional briefs, exclusive of the table of contents and citations of authorities. Although the court may by order permit briefs longer than allowed by this rule, the advisory committee contemplates that extensions in length will not be readily granted by the courts under these rules. General experience has been that even briefs within the limits of the rule are usually excessively long.

Subdivisions (b), (c), (d), and (e) set forth the format for briefs and retain the substance of former rules 3.7(f), (g), and (h). Particular note must be taken of the requirement that the statement of the case and facts include reference to the record. The abolition of assignments of error requires that counsel be vigilant in specifying for the court the errors committed; that greater attention be given the formulation of questions presented; and that counsel comply with subdivision (b)(5) by setting forth the precise relief sought. The table of contents will contain the statement of issues presented. The pages of the brief on which argument on each issue begins must be given. It is optional to have a second, separate listing of the issues. Subdivision (c) affirmatively requires that no statement of the facts of the case be made by an appellee or respondent unless there is disagreement with the initial brief, and then only to the extent of disagreement. It is unacceptable in an answer brief to make a general statement that the facts in the initial brief are accepted, except as rejected in the argument section of the answer brief. Parties are encouraged to place every fact utilized in the argument section of the brief in the statement of facts.

. . .

1980 Amendment. Jurisdictional briefs, now limited to 10 pages by subdivision (a), are to be filed only in the 4 situations presented in rules 9.030(a)(2)(A)(i), (ii), (iii), and (iv).

A district court decision without opinion is not reviewable on discretionary conflict jurisdiction. See *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *Dodi Publishing Co. v. Editorial Am., S.A.*, 385 So. 2d 1369 (Fla. 1980). The discussion of jurisdictional brief requirements in such cases that is contained in the 1977 revision of the committee notes to rule 9.120 should be disregarded.

. . . .

201_ Amendment. Page limits for computer-generated briefs were converted to word counts. Page limits are retained only for briefs that are handwritten or typewritten.

Court Commentary

. . . .

RULE 9.370. AMICUS CURIAE

(b) Contents and Form. An amicus brief must comply with Rule 9.210(b) but shall omit a statement of the case and facts and may not exceed 5,000 words if computer-generated or 20 pages if handwritten or typewritten. The cover

must identify the party or parties supported. An amicus brief must include a concise statement of the identity of the amicus curiae and its interest in the case.

. . . .

(d) Notice of Intent to File Amicus Brief in Supreme Court. When a party has invoked the discretionary jurisdiction of the supreme court, an amicus curiae may file a notice with the court indicating its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. The notice shall state briefly why the case is of interest to the amicus curiae, but shall not contain argument. The body of the notice shall not exceed ~~one page~~250 words if computer-generated or 1 page if handwritten or typewritten.

General Practice Subcommittee Meeting

Tracy Gunn, Chair
Nikole Hiciano, Vice Chair
Heather Telfer, Bar Liaison

Date: November 30, 2016 (Via phone conference)

Start Time: 3:30 p.m. **End Time: 4:03 p.m.**

Attendees: Tracy Gunn, Chair; Nikole Hiciano, Vice Chair; Kristina Samuels; Lance Curry; Tom Ward; Stephanie Serafin; Hon. Robert Luck; Betty Wheeler; Wendie Cooper; Diane DeWolf; Laura Triplett; Hon. Jeff Kuntz; and Heather Telfer, Bar Liaison.

Chair Gunn opened this phone meeting of the general practice subcommittee. The subcommittee meeting was to discuss the following outstanding referrals:

1. REFERRAL: 16-AC-21: Premature appeals/concurrent jurisdiction

This is a new proposal from Kristin Norse to examine the interplay between our new rule 9.020(i)(3), which permits a premature appeal to be held in abeyance until a new-trial motion is resolved, and Rule 9.600 regarding concurrent jurisdiction. If an appeal is premature and held in abeyance, what happens to our concurrent jurisdiction rule. Chair Gunn is looking for 1-2 volunteers to look at it initially.

2. REFERRAL: Documents Rule: Report and vote regarding documents rule.

Lance Curry reported that he worked with Kristina Samuels on revisions to the documents rule and to address the comments from the last subcommittee call. The current version of the appellate rules does not have a general rule that dealt with all filings. Proposed Rule 9.045 would apply across the board to all documents and incorporate by reference Florida Rule of Judicial Administration 2.520 that applies to documents.

The workgroup has also worked on two additional proposals: 1) amending the rules to switch to a word count, instead of page limits; and 2) changing the approved fonts from Times New Roman 14-point and Courier New 12-point to

Arial 14-point font (a sans serif font) or Bookman Old Style 14-point font (a serif font).

Mr. Curry recommends that the rule be limited to 1 or 2 fonts, but would be open to including a third option. This will prevent judges from faulting a person for choosing a font they do not like. The options in the proposed rule are the preferred fonts based on an informal survey of the DCA judges and having a choice between a serif/san serif font.

Ms. Gunn suggested that we may want to leave Times New Roman as an additional option as people are familiar with it and the font is preferred by some of the judges, but did not feel strongly about doing so.

Ms. Telfer explained that they spoke with Disability Rights Florida. Courier and Times New Roman are two of the least accessible fonts. Arial is one of the more accessible fonts, but there is no font that meets all the ADA requirements.

Ms. Wheeler suggested leaving things open (similar to federal court) and using language along the lines that computer generated documents shall be filed with a proportionally spaced font such as Arial or Bookman Old Style in 14-point font.

Mr. Curry is concerned about getting push back from judges if a person uses a font the judge does not like or looks terrible. He thinks the state court judges like the idea of reigning it in.

Ms. Triplett explained that one of the reasons for limiting font selection is that certain fonts come though the filing portal and go through OCR process better/recognizable, and are more readable by Adobe, than other fonts. Arial and Bookman Old Style are very OCR readable.

Ms. Gunn believes that if we present these font choices as being picked because they were more readable/ADA compliance, versus just judicial choice, those are valid reasons.

Ms. Gunn suggested a tweak to the second line of 9.045(e) of the proposed rule.

Ms. Wheeler also questioned the use of the word “shall” instead of “must” when many of the other rules are now using the word “must.

Ms. Telfer explained that at one time someone thought there may be a case that said that "shall" does not mean must. However, no one has been able to find a case that says this and the Court does not care. However, some committees have taken it upon themselves to make the change. There are still 680 "shall"s in the rules.
Mr. Curry suggested if we are going to make this change it should be a global rule change to all the rules.

Mr. Curry also advised that Stephanie Zimmerman had a couple of comments and suggestions. One idea was to put the word counts in a single location. Mr. Curry and Ms. Samuels considered this idea, but ultimately recommend that it would be too messy and difficult for practitioners to have to go find the information.

The attached language was approved by a vote of 12-0.

The proposal will be presented to the full committee for a vote at the January meeting.

3. REFERRAL: 15-AC-10 and 15-AC-11: Revised proposal for notice to appellate court of pending motions postponing rendition

This proposal was sent back to the subcommittee after the October meeting regarding advising the appellate court when there are pending motions postponing rendition. This was sent back because there was a concern about inconsistent messaging—a concern that it would encourage people to file premature appeals.

Ms. Serafin presented three different options for the subcommittee to consider tomorrow. All three options include a proposed committee stating that requirement to notify the court of a motion postponing rendition is not meant to encourage the filing of a notice of appeal before rendition.

Option 1 was version the subcommittee presented to the full committee at the October meeting—amending Rule 9.110 to have the notice of the pending motions within the notice of appeal.

The second and third options are for a separate notice of pending motions postponing rendition. Option 2 puts the notice requirement in rule 9.020. Option 3 puts the notice requirement in rule 9.110. Ms. Serafin also presented a potential form for the notice, but thinks it is probably not necessary.

Ms. Serafin prefers option 1, when figuring out the timing issue of a separate notice may lead to confusion and extra complications. Also, the notice of appeal will be the first thing that the appellate court gets.

Mr. Curry thinks that the rendition definition in our rules is one of our great embarrassments right now. He agrees that burying additional language will lead to more confusion and mistakes, especially among filers that are not appellate specialists. In fairness to everybody it should be in the initial notice of appeal.

Ms. Wheeler questioned whether we should cross-reference to the rendition rule. It may make people look and discourage them from filing premature appeals.

Ms. Gunn agreed and suggested that it could be put in the committee note, if cross-references are discouraged in the body of the rule itself. Ms. Gunn originally did not want it put in the notice of appeal, but is more comfortable with the idea now that there is a committee note. She agrees that there is no ideal place to put this, and sees it as a viable compromise.

Mr. Curry wants to tweak the language further "within ten days after rendition by the lower tribunal" is odd. The language was changed to "within ten days of rendition"

The following language was approved 12-0

Rule 9.110. Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Non-Jury Cases

(a)-(c) [No change]

(d) Notice of Appeal. The notice of appeal shall be substantially in the form prescribed by rule 9.900(a). The caption shall contain the name of the lower tribunal, the name and designation of at least 1 party on each side, and the case number in the lower tribunal. The notice shall contain the name of the court to which the appeal is taken, the date of rendition, and the nature of the order to be reviewed. Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders

appealed. If a motion postponing rendition pursuant to rule 9.020(h) is pending when the notice of appeal is filed, the notice of appeal shall indicate the pendency of such a motion and the date it was filed. Within 10 days of rendition, the appellant shall file in the court a conformed copy of the signed, written order disposing of the motion postponing rendition.

(e)-(m) [No change]

Committee Notes

20__ Amendment. The requirement to notify the court of a motion postponing rendition is not meant to encourage the filing of a notice of appeal before rendition.

Rule 9.900. Forms

(a) Notice of Appeal.

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

_____,)		Case No. _____
Defendant/Appellant,	)	
	)	
v.	)	NOTICE OF APPEAL
	)	
_____,)		
Plaintiff/Appellee.	)	
	)	

NOTICE IS GIVEN that ……, Defendant/Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d), and 9.160(c).] The nature of the order is a final order .....(state nature of the order).....

[If a motion postponing rendition is pending in the lower tribunal, state the nature of the motion and the date it was filed.]

Attorney for .....(name of party).....
.....(address, e-mail address, and phone number).....
Florida Bar No. .....

4. REFERRAL 16-AC-18 – Appellate Introduction

This proposal is being worked on by Tom Ward, Lance Curry, and Brandon Vesely

This referral was triggered by an article published in the September/October 2016 issue of the Florida Bar journal. The article was written by Chris Altenbernd, a former judge on the Second District Court of Appeal. The article suggested that the rules should be amended to replace the "summary of the argument" with an introduction that is a summary of the case that may be persuasive.

Mr. Ward explained that Mr. Curry also wrote an article on this topic for the Appellate Practice Section in 2011. At that time, Mr. Curry interviewed practitioners, law clerks, and the judiciary to determine what they thought about an appellate introduction, whether they thought it was effective, areas of consensus/differences, and to determine what they thought the section should include.

The workgroup also called Judge Altenbernd to get his opinion, find out what inspired him to write the article.

Based on this information, they are compiling a survey to send to the district court judges and law clerks to put together a report that suggests what they think should be done whether the rule should be amended to allow the introduction, any limits, and whether it should replace any other sections, i.e. the statement of the argument.

They do not anticipate getting responses back before the end of the year. They believe they will be able to wrap up their proposal in the first quarter of 2017 for the June meeting,

5. REFERRAL 16-AC-21: Publication of decisions from the circuit court acting in its appellate capacity

This referral was proposed by Craig Leen who believes it would be useful to have a rule requiring publication of every decision made by a Circuit Court acting in its appellate capacity.

Judge Luck reported that he shared the same frustrations as Mr. Leen about the lack of accessibility of circuit court appellate opinions. He explained that in Miami they are not available on a publicly searchable database or public docket. He has reached out to the Eleventh Circuit Chief Judge to gauge whether the other circuits have databases with searchable opinions and to ascertain whether this is a universal problem.

If it is universal, the thought is to propose a rule that all appellate court opinions have to be published in a publicly searchable database. The circuits would be able to do it any way they wish. The rule would make it clear that any appellate opinion in the state has to available to the public.

Judge Luck asked the subcommittee if this has been a problem where they practice and if there is any general objection to including this type of rule.

Ms. Wheeler has had a couple recent PIP appeals and believes that it would be very helpful to have this type of database. The problem is that you would need a central database for it to be workable.

Judge Luck pointed out that the district courts of appeals do not have a centralized database. Its only centralized because Westlaw and Lexis publish the opinions. While it would be ideal to have a central database, the first step would be to be able to see the opinions.

Chair Gunn asked how the publication would work, whether it would be as simple as asking the clerk to send opinions to Westlaw/Lexis.

Judge Luck stated that yes, but the problem would be to get them to do it. It would also have to be both published on the courts' website and sent to publishers.

Another bigger problem with not publishing these opinions has been that there is a lack of consistency between panels. The judges are going in blind, not knowing what other panels of the circuit (and sister circuits) have done. Judges do not know what the law is and it leads to inconsistent decision making.

Ms. Samuels explained that the Clerk of the Supreme worked out a deal with West publishing that they will automatically take the opinions published from the Court's website. That way they do not have to send it to West.

Chair Gunn advised that the first step is going to be to determine if people think this rule is necessary and that she can see that it's a good idea.

Ms. Hiciano asked if we have a sense about what the clerks offices think about this proposal, is it going to cost them money?

Judge Luck explained it would be the court that does it and would publish the opinions on its page. But, acknowledges that there will be some push back from some of the clerks.

Chair Gunn is concerned that if we mandate that the circuit court opinions be published in a searchable format, we are requiring more than the district courts have to do.

Judge Luck anticipates that the rule would apply to everyone, but at this point he would be happy if they are simply publically available. He would like to present the idea to the full committee at the January meeting, to get a sense as to whether they think it's a good idea. He also needs to hear back as to what the other circuits are doing and whether this is a problem elsewhere.

Ms. Wheeler went to the 9th Circuit website and discovered that the opinions are searchable. It can be used as a model.

Ms. Samuels opined that it would be very helpful to the DCAs to have as many circuit court opinions searchable so that they can get a sense of what is coming/related cases.

Chair Gunn advised that once he gets feedback, he will need more help with this project. She asked that anyone who is willing to volunteer contact Judge Luck and/or her.

6. "Hamilton List" Remaining Items

Ms. Serafin advised that there are only three remaining items from the Hamilton list from 2012.

F1. The definition of "petitioner" in rule 9.020(g)(3) is not broad enough and fails to include other instances where the person filing is a "petitioner." The workgroup is looking at a way to modify the definition to be broader and looking at other rules where this may be an issue.

H19. Enlargement of Time: Should there be a motion governing enlargements of time, as there is currently not a rule that expressly authorizes them. The work group does not believe that there should be any action on this proposal, but will open it to further discussion.

H21. Types of Consolidation: Should there be a rule governing the types of consolidation of cases that parties can ask for? The work group does not think that this rule is necessary and recommends that no action be taken.

Ms. Serafin advised that the workgroup can schedule one more call to get this proposal finished for the January meeting.

Ms. Telfer advised that if anyone on the subcommittee sees a need for the rules proposed in H19 and H21 to get in contact with the workgroup.

The meeting concluded at 4:33 p.m.