



**Editor’s Note:** This Order was received after the publication deadline for the print version of the September *Texas Bar Journal* but was posted on the *Texas Bar Journal* website on Sept. 1, 2012.

■ Misc. Docket No. 12-9129

## ORDER ADOPTING AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71

### ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71 as follows, effective December 1, 2012.
2. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of the Order for publication in the *Texas Register*.
3. These amendments may be changed in response to public comments received on or before November 1, 2012. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

Dated: August 10, 2012.

Wallace B. Jefferson, Chief Justice  
 Nathan L. Hecht, Justice  
 Dale Wainwright, Justice  
 David M. Medina, Justice  
 Paul W. Green, Justice  
 Phil Johnson, Justice  
 Don R. Willett, Justice  
 Eva M. Guzman, Justice  
 Debra H. Lehrmann, Justice

### Rule 9. Papers Generally

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#### 9.4. Form

Except for the record, a document filed with an appellate court must — unless the court accepts another form in the interest of justice — be in the following form:

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- (e) Typeface. ~~A document must be printed in standard 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or in 13-point or larger proportionally spaced typeface. But if the document is printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point. A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.~~

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#### (i) Length.

- (1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.
- (2) Maximum Length. The documents listed below must not exceed the following limits:
  - (A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.
  - (B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not. In a civil case in the courts of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.
  - (C) A reply brief in an appellate court: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(ij) *Nonconforming Documents.* Unless every copy of a document conforms to these rules, the court may strike the document and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind. ~~The use of footnotes, smaller or condensed typeface, or compacted or compressed printing features to avoid the limits of these rules are grounds for the court to strike a document.~~

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents

produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

## Rule 38. Requisites of Briefs

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### ~~38.4. Length of Briefs~~

~~An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.~~

## Rule 49. Motion and Further Motion for Rehearing

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### ~~49.10. Length of Motion and Response~~

~~A motion or response must be no longer than 15 pages.~~

## Rule 52. Original Proceedings

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### ~~52.6. Length of Petition, Response, and Reply~~

~~Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each~~

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if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

### Rule 53. Petition for Review

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#### ~~53.6. Length of Petition, Response, and Reply~~

The petition and any response must be no longer than 15 pages each, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition, response, or reply.

### Rule 55. Brief on the Merits

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#### ~~55.6. Length of Briefs~~

A brief on the merits or brief in response must not exceed 50 pages, exclusive of pages containing the identity of parties

and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, and the proof of service. A brief in reply may be no longer than 25 pages, exclusive of the items stated above. The Court may, on motion, permit a longer brief.

### Rule 64. Motion for Rehearing

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#### ~~64.6. Length of Motion and Response~~

A motion or response must be no longer than 15 pages.

### Rule 68. Discretionary Review With Petition

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#### ~~68.5. Length of Petition and Reply~~

The petition must be no longer than 15 pages, exclusive of pages containing the table of contents, the index of authorities, the statement regarding oral argument, the statement of the case, the statement of procedural history, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition or reply.

### Rule 70. Brief on the Merits

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#### ~~70.3. Brief Contents and Form~~

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

### Rule 71. Direct Appeals

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#### ~~71.3. Briefs~~

Briefs in a direct appeal should be prepared and filed in accordance with Rules 9 and 38, except that the brief need not contain an appendix (Rule 38.1(k)), ~~and the brief in a case in which the death penalty has been assessed may not exceed 125 pages~~. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived. ✪

