

TYPE REQUIREMENTS FOR BRIEFS AND OTHER PAPERS

Circuit Rule 32 provides detailed rules for the typography of briefs and all other papers that will be presented to the judges. Rule 32(d) also governs the length of briefs. This rule is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of an allowable brief. The following information may help you better understand Rule 32 and its digital cousin, Rule 31(e).

1. Rule 32(a)(1) requires text to be reproduced with "a clarity that equals or exceeds the output of a laser printer." The resolution of a laser printer is expressed in dots per inch. First generation laser printers broke each inch into 300 dots vertically and horizontally, creating characters from this 90,000-dot matrix. Second generation laser printers produce 600 to 1200 dots per inch in each direction; commercial printers typically use 2400 dots per inch. This memorandum was produced by a laser printer at 600 dots per inch. Any means of producing text that yields 300 dots per inch or more is acceptable under Circuit Rule 32(a)(1). Daisy-wheel, typewriter, commercial printing, and most ink-jet printers meet this standard, as do photocopies of originals produced by these methods. Dot matrix printers and fax machines use lower resolution, and their output is unacceptable. This exclusion covers an appendix as well as the principal text. Thus a faxed copy of the district court's opinion, or text from Lexis or Westlaw printed by a dot-matrix printer, may not be included in an appendix.

2. Rule 32(b) distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. Most of this memorandum is in proportionally spaced type. A monospaced font, by contrast, uses the same width for each character. Most typewriters produce monospaced type, and most computers also can do so using fonts with names such as "Courier." The court prefers proportionally spaced type, but the rule leaves the choice to the author.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of submissions to serif type, although sans-serif type may be used in headings and captions. This is the same approach magazines, newspapers, and commercial printers take. Look at a professionally printed brief; you will find sans-serif type confined to captions, if it is used at all.

This sentence is in New Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial and Univers are other common sans-serif faces.

The next line shows two characters enlarged for detail. The first has serifs, the second does not.

Y Y

Type must be large enough to read comfortably. For a monospaced face, this means type approximating the old “pica” standard used by typewriters, 10 characters per horizontal inch, rather than the old “elite” standard of 12 characters per inch. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, the court allows up to 10½ per inch, or 72 characters (including punctuation and spaces) per line of type.

Proportionally spaced characters vary substantially in width, so a limit of characters per line is not practical. Instead the court requires a minimum of 12-point type. “Point” is a printing term for the height of a character. There are 72 points to the inch, so capital letters of 12-point type are a sixth of an inch tall. This memorandum is in 12-point type. Your type may be larger than 12 points, but it cannot be smaller. All word processing packages can produce 12-point type. Many also can expand or condense the type using tracking controls, or you may have access to a condensed version of the face (such as Garamond Narrow). Do not use these. Condensed type is not permitted. It offers no benefit to counsel under an approach that measures the length of briefs in terms of words rather than pages, and it is to your advantage to make the brief as legible as possible. Please note that the 12-point minimum applies to footnotes as well as to the principal text.

This is 9-point type.

This is 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

3. Circuit Rule 32(c) provides that the principal type must be plain—in printing terminology, it must be “roman” rather than bold, italic, or underlined. This helps to keep the brief legible. Italics or underlining may be used only for case names or occasional emphasis. Boldface is permitted for emphasis but should be used sparingly. The court discourages use of all-capitals text for any purpose other than the caption on the cover and first page, and section names such as “ARGUMENT”. Although the rule does not forbid the use of all-capitals text elsewhere, please be judicious.

Stretches of all-caps text are very hard to read, and some judges therefore just skip them. If you want your argument headings to be *read* rather than dodged, avoid all-caps text or boldface, and do not underline the argument headings. Underlined, all-caps, boldface, single-spaced text in headings is almost illegible.

This form is encouraged:

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. Perkins had actual knowledge of the contamination more than six years before filing suit

This form is discouraged:

ARGUMENT

I. THE SUIT IS BARRED BY THE STATUTE OF LIMITATIONS

A. Perkins had actual knowledge of the contamination more than six years before filing suit

If you simply must use italics and underlining, try something like this:

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. *Perkins had actual knowledge of the contamination more than six years before filing suit*

4. Circuit Rule 32(d) provides new ways to measure the maximum length of a brief. It is designed to permit you to present as much argument as a 50-page printed brief contains. The great variability of proportionally spaced type makes it necessary to express this length in words rather than pages.

Lawyers who choose monospaced type may avoid word counts by counting lines of type. Unless the brief employs a lot of block quotes or footnotes it will be enough to count pages and multiply by the number of lines per page. (Fifty pages at 26 lines per page is 1,300 lines.) The line-count option is not available when the brief uses proportional type.

Principal briefs of 30 pages or less, and reply briefs of 15 pages or less, need not be accompanied by a word or line count. Think of Circuit Rule 32(d)(1) as a safe harbor. Lawyers who need more should use Rule 32(d)(2). A brief that meets the type volume limitations of Rule 32(d)(2) is acceptable without regard to the number of pages it contains. The court encourages counsel to choose legible type and wide margins even though that increases page length.

Because block quotes and footnotes count toward the type volume limit, these devices do not affect the length of the allowable presentation. A brief with 10% text and 90% footnotes complies with the rule, but it will not be as persuasive as a brief with the opposite ratio.

5. Briefs must comply with Fed. R. App. P. 32 in addition to Circuit Rule 32. National Rule 32 includes requirements such as the minimum width of margins.

6. Circuit Rule 31(e) requires parties to file with the court, and to serve on any other party separately represented by counsel, a disk containing a copy of the brief. This rule requires a disk only if the brief was prepared on a computer; parties who prepared the brief by typewriter should so inform the clerk's office. Only counsel need be served; it is not necessary to serve disks on litigants proceeding *pro se*, who likely lack the equipment needed to use the disks.

Rule 31(e) says that the disk must contain "nothing more than the text of the brief". This does not imply that you need to cut out the table of contents, formatting, and the like. The language is designed to convey the idea that the disk should not contain any extra materials, such as electronic versions of the trial transcript.

Feel free to file the digital copy of the brief using the format of whatever word processing software you prefer. If you prepared the brief with WordPerfect, file in that format. The difference among versions of a software package (5.1, 6.1, 7.0) does not matter; file what you have. If you used Microsoft Word, that's fine too. In fact, any file format is OK—as are disks using DOS, Windows, Macintosh, Unix, and OS/2 operating systems. If you think that your software is so exotic that the court will not be able to translate its format to the software the judges use, you can add a plain text version (ASCII or Unicode), but this is not obligatory.

If you want to ensure that the judges can see and print the brief with the fonts, format, appearance, and pagination of the original, you may add to the disk a copy of the brief in PDF (an acronym for "portable document format"). Adobe Acrobat Exchange software can produce PDF documents from any word processing file. In the future, federal courts throughout the nation may require filings in PDF. For now, however, it is just a suggestion. If you have Acrobat software, you may want to experiment with this possibility.

Please feel free to telephone the clerk's office with any questions you may have. Our telephone number is (312) 435-5850.

THANK YOU!