

To: Clerk of the Court
Attn: Rules Committee
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

From: The Committee on Appellate Courts of the California Lawyer's Association's Litigation Section

Date: November 29, 2018

Re: Invitation to Comment On Proposed Changes to United States Supreme Court Rules

In response to the Supreme Court's announcement that it will entertain comments on the four proposed changes to its Rules, the Committee on Appellate Courts of the California Lawyer's Association's Litigation Section respectfully submits its comments on those changes. Established when the State Bar of California was restructured in 2018, the California Lawyer's Association is a nonprofit, voluntary organization and the new home of the Sections of the State Bar of California and the California Young Lawyers Association. Our extensive membership represents the vast diversity of California's legal community and the various areas of law practiced throughout the state. In particular, the Committee on Appellate Courts consists of members who are primarily or exclusively appellate lawyers and routinely weighs in on proposed changes to appellate rules and practices in federal and state courts.

1. The Committee has no objection to the proposed changes to Rules 14 and 15, which would require: (1) counsel filing a petition for writ of certiorari to provide in that petition a "listing of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court;" and (2) a party opposing a petition for writ of certiorari to identify in its brief any "directly related cases" not identified in the petition. Both changes are designed to assist the Court in screening potential conflicts without imposing unreasonable burdens on counsel.

2. The Committee supports the proposed change to Rule 25, which would require a reply to be filed no later than 10 days before oral argument rather than the current "one week" requirement. Allowing the Court additional time to review reply briefs is not only helpful to the court, but also to the respondent, who will have additional time to consider the arguments in a reply brief and be prepared to address the Court's questions at oral argument.

3. The Committee also supports the proposed change to Rule 29, which simply clarifies that the Supreme Court remains an official “paper” filing court. That change simply makes “clear that paper remains the official form of filing, and that the timeliness of a filing turns upon when the paper version was submitted to the Clerk’s Office.” In an age where many courts are turning to e-filing either in conjunction with or in lieu of paper filing, this is an important clarification.

4. The Committee opposes the proposed changes to Rule 33, which would reduce the word limits for briefs on the merits by petitioners and respondents from 15,000 words to 13,000, for reply briefs on the merits from 6,000 words to 4,500, and amicus briefs on the merits from 9,000 to 8,000 words.

Given the importance of the issues presented to the Supreme Court, and the need to respond not simply to the opposing party’s brief, but sometimes also to points raised in amicus briefs (particularly those by the Solicitor General), the Committee would recommend leaving the current limits in place, particularly for reply briefs. While the Supreme Court’s current word limits are somewhat more generous for opening and answering briefs on the merits than the Supreme Courts of some states, as well as the general limits for federal appellate courts set forth in the Federal Rules of Appellate Procedure, *see infra*, its current limits for the reply briefs are already substantially less generous.

Jurisdiction	Opening Br.	Answering Br.	Reply	Amicus (Merits)
U.S. S. Ct. (Current)	15,000	15,000	6,000	9,000
U.S. S. Ct. (Proposed)	13,000	13,000	4,500	8,000
Cal. S. Ct.	14,000	14,000	8,400	14,000

Texas S. Ct.	15,000	15,000	7,500	15,000
N.Y. Ct. App.	14,000	14,000	7,000	7,000
Fed. R. App. P.	13,000	13,000	6,500	6,500
9th Cir.	14,000	14,000	7,000	7,000
5th Cir.	13,000	13,000	6,500	7,000
2d Cir.	14,000	14,000	7,000	7,000

If the Rules Committee disagrees, one potential middle ground would be for the Court to cap the opening and answering briefs at 14,000 words, and leave the reply at 6,000.

We appreciate the opportunity to provide our comments.

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