

IN THE SUPREME COURT OF FLORIDA

IN RE: EMERGENCY AMENDMENT TO THE FLORIDA  
RULES OF APPELLATE PROCEDURE - Case No.:  
Rule 9.100(g), (j) and (k) (Page Limits)

The Florida Bar Appellate Court Rules Committee ("Committee"), through Susan W. Fox, Chair, and John F. Harkness, Jr., Executive Director of The Florida Bar, respectfully petitions the Court to amend Rule 9.100(g), (j) and (k) on an emergency basis.

**BACKGROUND FACTS**

In Basse v. State, 24 Fla. L. Weekly S 273 (Fla. June 10, 1999), this court issued an opinion that directed the Appellate Court Rules Committee (the "Committee") to consider formulating a rule to address the issue of page limitations on original writ petitions. On June 21, 1999, Justice Barbara Pariente, as liaison to the Committee, submitted a letter to the Committee requesting expedited consideration of the amendment.

At the June 25, 1999 meeting of the Committee, the Committee considered the proposed amendment on an emergency basis. In addition to the specific petition addressed in the Basse case, the Committee heard anecdotal reports about petitions in excess of 100 pages having been filed in a number of other instances. In general, length in excess of 50 pages was felt to be unnecessary in all but the most extraordinary cases.

The Committee heard from Assistant Public Defenders that this Court has adopted Internal Operating Procedures that automatically allow additional pages

in, for example, death penalty cases. The Committee voted (23 for, 13 opposed) in favor of a simple amendment that merely stated the page limit. The text of the amendment proposed by the Committee reads:

**"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 50 pages in length and shall contain

\* \* \*

**(j) Response.** Within the time set by the court, the respondent may serve a response, which shall not exceed 50 pages in length and which shall include argument in support of the response,

\* \* \*

**(k) Reply.** Within 20 days thereafter 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."

Among the persons who voted against the proposal, the prevailing viewpoint was not opposition to the spirit of the amendment, but a preference for referral of this issue to a subcommittee to propose wording that would specifically allow the Court to increase the page limit by motion. However, since this Court determined in Basse that "Petitioners must be afforded the opportunity to show good cause for filing a longer petition", the majority of the Committee felt such authority was inherent and need not be specifically expressed in the rule.

## ARGUMENT

Brevity of argument is a quality that aids both the courts and the litigants. "Succinctness of argument is a beneficial trait in the art of appellate advocacy." State v. Bonnell, 61 Ohio St. 3d 179 (1991). A page limitation "induces the advocate to write tight prose, which helps his client's cause." Morgan v. Southbend Community School Corp., 797 F.2d 471, 480 (7th Cir. 1986). "Choosing the most effective arguments for presentation . . . is the hallmark of good appellate litigation." State v. Cruz, 175 Ariz. 395, 857 P.2d 1249 (1993) (en banc), quoting State v. Atwood, 171 Ariz. 576, 832 P.2d 593 (1992).

As a result, virtually every court in the nation has found it necessary to impose page limits. Stern, "Appellate Practice In The United States", 227 (1981). The average number of pages allowed for most principal briefs or petitions is 50 pages. See id. at 229. The average number of pages for reply briefs is 15 to 20 pages. See id. at 230.

The workload of the overburdened appellate courts of this state is well known. In 1987, a Commission charged with studying the need for additional appellate courts looked at alternate ways to reduce the case load and found the 50 page limit allowed in Florida to be overly generous and recommended reducing it to 30; the Court rejected this change, but published a comment stating that the 50 page maximum was designed for the extraordinary case and should not be approached in ordinary cases. See In Re Amendments to Florida Rules of Appellate Procedure, 509 So.2d 276 (Fla. 1987). In Basse v. State, this Court

recognized the potential for abuse of court procedure by filing of unnecessary and repetitive argument or irrelevant information in extraordinary writ petitions. Basse v. State, 24 Fla. L. Weekly at S273. The district courts have also recognized the potential for abuse. See, e.g., Rooney v. State, 699 So.2d 1027 (Fla. 5th DCA 1997) (88-page petition); Smith v. Singletary, 666 So.2d 986 (Fla. 4th DCA 1996) (171-page petition).

Under Rule 9.210, Florida Rules of Appellate Procedure, 50 pages are allowed for principal briefs and 15 pages for reply briefs. Comparable limits should be set for petitions, responses and replies in original proceedings under Rule 9.100. Extraordinary writ petitions should never need to be longer than briefs because petitions are not plenary in nature, but are generally directed to a specific order or act to be reviewed or corrected.

For these reasons, the Appellate Court Rules Committee has responded to the Court's request by formulating a proposed rule that merely adds a page limitation to the existing subsections of Rule 9.100 concerning the petition, response, and reply.

#### **CONCLUSION AND SPECIFIC RELIEF SOUGHT**

The Florida Bar, Appellate Court Rules Committee, hereby petitions the Court to adopt the foregoing amendment to Rule 9.100(g), (j) and (k), Florida Rules of Appellate Procedure, on an expedited basis.

Respectfully submitted by:

---

John F. Harkness, Jr.  
Executive Director  
The Florida Bar  
650 Apalachee Parkway  
Tallahassee, FL 32399-2300  
(904) 561-5600  
Florida Bar No. 123394

---

Susan W. Fox  
Chair, Appellate Court  
Rules Committee  
Macfarlane Ferguson & McMullen  
Post Office Box 1531  
Tampa, FL 33601  
(813) 273-4212  
Florida Bar No. 241547