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Administrative Director Glenn A. Grant
Administrative Office of the Courts
Attn: Rules Comments
Sent via email to Comments.Mailbox@njcourts.gov

Dear Judge Grant and Civil Practice Committee Members,

I am writing to ask you to re-consider the proposed small typeface change to New Jersey Court Rule 2:6-10 and instead to engage in a more thorough revision of that rule. I make this ask based on research and scholarship I have written in this area; scholarship that I commenced specifically because of New Jersey's rule. A more holistic review of Rule 2:6-10 is warranted for three significant reasons: judicial readability, economics, and environmental sustainability. I have devoted years to studying New Jersey's R. 2:6-10 and have been recognized for this work. Changing this rule for the better has been a longtime goal. The wording of the current New Jersey court rule, R. 2:6-10 has essentially required attorneys to use the old typewriter fonts such as Courier or Courier New in appellate briefs. The proposed change to that rule would eliminate that typeface part of the requirement but would still leave in place problematic other parts of the rule.

By way of background and to explain my expertise, I have written about the science of document readability in my article, *Painting With Print*, 2 J. ALWD 108 (2004) (hyperlinked and also attached to the sending email). The current Seventh Circuit's website cites my work in its *Requirements and Suggestions for Typography*. It is one of the largest honor of my career that The Honorable Frank Easterbrook liked the article enough to invite it to appear on the 7th Circuit Court of Appeals' website and it remained linked on the home page for twelve years from 2004 to 2016. In actuality, that article was written in my hope to persuade New Jersey to modify its formatting rule and that I ended up persuading a federal appeals court was happenstance.

In a later article I also wrote about the environmental impact of document design, again using New Jersey as a model of what could and should be changed. *Conserving the Canvas*, 7 J. ALWD 193 (2010) (hyperlinked and attached to the sending email). Paper production is one of the top polluting industries in the nation and paper usage is also the largest source of municipal waste. Moreover, larger and wider does not equal easier. I once calculated for an inquiring Appellate Division judge that the average New Jersey Appellate Division judge is spending approximately two more hours each week reading, solely because of the existing Rule 2:6-10. That is, the typeface and line spacing combined to create extra and unnecessary work for our judges.

Beyond appearing on the website of the Seventh Circuit, my scholarship based on appellate document design has been reprinted, quoted, and cited multiple times in bar journal articles around the country, in other scholarly articles, in books and textbooks, and in blogs and op-eds. I was interviewed for a national podcast a few years ago. I am regularly tagged on social media by

appellate attorneys around the country conducting conversations about appellate brief writing and typography.

As I outlined earlier, the proposed changes to Rule 2:6-10 do not go far enough to change the rule in a meaningful way.[1] For example, the proposed changes still leave in place that part of the rule that requires line spacing far wider than what educational psychology studies have proved as most readable: something less than even 1.5 spacing. Double-spacing, as the current and proposed rule require, is less readable than other line spacing settings. Professional printers know this, and that is why books, magazines, and other printed materials never appear in double spacing. I cover the science of that in my *Painting with Print* article. Beyond a reduction in ease of readability, double-spacing also needlessly drives up costs and environmental impact. I cover that in the second article, *Conserving the Canvas*. Moving to even something like 1.5 spacing (which is still too wide for the sake of readability for our judges) would reduce paper usage by 15%.

Second, the proposed change leaves in place the same number of maximum pages without discounting the difference in page count that a proportional-width typeface creates. Briefs will be longer in word count because of the Times New Roman (or better) font selection, perhaps an unintended consequence. Rather, with a change in typeface the rule should necessarily should also include a parallel change to the maximum length of briefs. In this way too, New Jersey has an opportunity to reduce costs but only with a more holistic review of R. 2:6-10.

Here is a quick explanation of why the current New Jersey court rule costs the system more money than necessary. Fonts like Courier use more pages to express the same number of words because the characters all take up the same width rather than a proportional width based on the shape of the letter. Courier is a leftover from the mechanics of a typewriter: think about how the old non-electric typewriters worked. Pieces of metal with a single letter on them would strike the print ribbon and then the paper. The pieces of metal with the letters were all the same width. So an "l" used the same amount of width as a "w." With the advent of computers and word processing, we are now able to use better-designed and more readable choices such as Century Schoolbook (the typeface used in United States Supreme Court filings), whose letters are only as wide as the shape of the letter requires. So, an "l" is narrower than a "w." The end result is that Courier uses approximately 30% more paper than a font that uses proportional-width spacing. Thus, the proposed rule change should not just look at typeface but also at page count.

Repeated below is that same paragraph as above, set in the existing court rule's typeface, `Courier New`, so that you can see the difference. Notice how the same twelve-line paragraph

[1] I appreciate that Times New Roman is a more readable typeface choice than Courier but Times New Roman was not designed to be used with 8 ½ x 11 paper or at 12 or 14 points. Many typographers have written about the problems with Times New Roman as a default choice. There are much more readable and well-designed options. The United States Supreme Court uses Century Schoolbook. Other choices might involve the new typefaces designed for onscreen and print readability such as the "C" fonts included with basic Microsoft Word packages. By way of other example: I prohibit all of my first year and upper-level legal writing students from using Times New Roman; most use something like Garamond, Century Schoolbook, or one of the Centaur/Calisto/Cambria options.

in this font requires seventeen lines in Courier New. (The typeface used in this letter is called "Equity," developed for lawyers by a nationally known lawyer/typographer, Matthew Butterick who has written a nationally renowned book and website called Typography for Lawyers).

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Moreover, as my scholarship in this area discusses, moving from a 12-point size to a 14-point size of typeface does not increase the readability as much as you may speculate. While this may seem intuitive, the science of readability does not support it. Thus, the proposed court rule will contribute to longer briefs that without improving readability. And longer briefs mean more costs and a larger environmental impact.

Nor does the proposed change clarify the complex way the current rule is written. Both the current and proposed versions unnecessarily require practitioners or *pro se* parties to spend time looking up phrases to understand what the court is asking of people filing briefs. The rule was written in the days when attorneys sent briefs to professional typesetters. It is not a rule that an attorney or party unschooled in professional printing can understand. As someone who teaches law students how to read court rules, I must spend time translating to lawyers-in-training what the rule even means. The rule about line spacing, for example, is confusing because it includes both a requirement of double-spacing and a rule about maximum line counts per page that do not typically match double-spacing very easily. The net result is that someone filing a brief must count every line on every page. By way of another example, the rule about margins is included in the new subsection (b), which begins with a discussion of compressed transcripts. Subsection (a) never mentions it.

I hope that this letter helps outline why the New Jersey court system deserves a more careful consideration of Rule 2:6-10. As one more resource, I urge you to involve some of the national group of attorneys and law professors who have made this topic a key interest for exploration and

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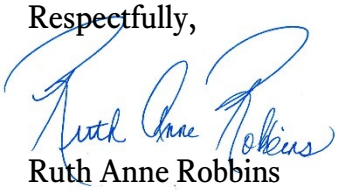
dialogue. Professor Ellie Margolis has created a *Visual Legal Writing Bibliography* of the work out there talking to attorneys about design principles, 18 Legal Communication & Rhetoric 195 (2021) (hyperlinked and included with this email) and in there you will find many of the people, myself included, who would be delighted to help you craft a rule that would accomplish the goals of readability and sustainability.

Respectfully,



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