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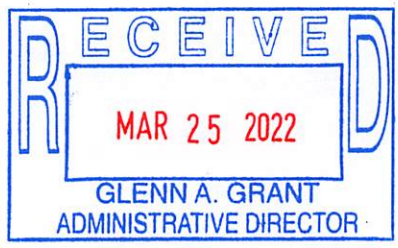


March 23, 2022

Administrative Director Glenn A. Grant
Administrative Office of the Courts
Attn: Rules Comments
PO Box 037
Trenton, NJ 08625-0037

Re: Proposed changes to R. 2:6-1 and R. 2:6-7

Dear Administrative Director Grant:

Please accept this letter as comment to the proposed changes to R. 2:6-1 and R. 2:6-7.

I have practiced nearly exclusively appellate law in New Jersey since 1987. I worked on appeals in private practice for two years in the late 1980s, but then I was a staff attorney in the Appellate Section of the Office of the Public Defender (OPD) for over 29 years. I retired from that position in 2018 and have been doing appellate work as a "pool" attorney for the OPD since mid-2019. I would estimate how many appeals I've worked on in my career, but I'm sure I'd be wrong. Let's just say that it's a lot. I was almost always the highest brief producer in the office when I was an OPD staff attorney, and I know there are something more than 100 published opinions, and many hundreds more unpublished ones, in cases that I've worked on.

I tell you all of that just because I want you to understand that appellate practice in New Jersey is not just a passing interest to me. Appeals are what I do, and, for the first time in my career, I'm writing to object about proposed rule changes -- not all of them,

by any means, but two in particular that I believe will be a disaster as currently written, particularly in cases involving OPD clients.

I also hold our state's appellate courts in very high regard. Both the Appellate Division and the Supreme Court give more "process" to indigent criminal defendants than is given in any other state that I am aware of. That's a very good thing, and I don't want to see rules adopted that will lessen that level of review and hamper the representation of those clients.

Two of these proposals should be reconsidered. First, R. 2:6-1(a)(2) regarding designation of the contents of a "joint appendix" within 14 days of the receipt of transcripts is utterly unworkable in Public Defender cases, and, I suspect, in any case. When I am assigned an appeal, it has been in the Intake Unit of the Public Defender for far more than 14 days after the receipt of transcripts. The Intake Unit does not know what issues I am going to raise; neither do I until I read the transcripts. I can't know what documents I believe should be in the appendix until I've decided what the legal issues are. Unless the Public Defender is simply going to file a meaningless "Designation of Joint Appendix" document that says the same thing <u>in every single case</u> -- "Indictment, Verdict Sheet, Judgment of Conviction, Notice of Appeal, and any other document that may be become relevant" -- it is impossible to accurately "designate" what the appendix contents will be before the transcripts are read and the legal issues spotted.

Moreover, I see that apparently the rules committee was "closely divided" on requiring a joint appendix at all. There is likely a good reason for that, at least in criminal appeals: there has <u>never</u> been a problem with competing appendices in criminal appeals. Most of the time, the appendix that the defendant-appellant files is the only appendix in the case. And in the rare circumstance that the State ends up deciding that there is another document from the record that

the appellate court needs to see, the State just adds it to their brief as an appendix, and it's not a big deal at all. I would suggest scrapping the "joint appendix" requirement in criminal appeals, because we just don't need it, but if it somehow remains, the 14-day rule is completely unworkable.

But there is a more alarming proposal: the proposed change to R. 2:6-7 reducing the allowable number of pages in a brief from 65 to 50. This proposal is of particular concern to me in my role as a Public Defender pool attorney who has a caseload consisting almost entirely of very large files -- transcripts of 2000 pages and up. When I was a staff attorney, I was assigned a wide variety of appeals from trials that ranged from two-witness burglaries to multi-week homicides, but the number of files with 2000+ pages of transcripts that I, or any staff attorney, was assigned was relatively small. Those very large files are spread among the staff and the pool. As a result, when I was a staff attorney, my briefs averaged between 15 and 45 pages in most cases. The exceptions were usually the briefs I filed for the large files, for a simple reason: more transcripts almost invariably mean a longer Statement of Facts. I pride myself on "playing straight" with the Court in factual recitations. I don't "bury" or "hide" adverse facts. A 3000-, or 4000-, or 5000-page transcript is going to have a lot of testimony and so the Statement of Facts is going to take up some considerable space in the brief. Large files of 2000+ pages also often have more legal issues in them, again requiring more pages.

Contrary to my experience as a staff attorney with a wide variety of files of varying lengths, as a pool attorney since 2019 I have been assigned almost exclusively very large direct-appeal files. I currently have 14 open Appellate Division appeals and every one of them has transcripts of over 2000 pages, and quite a few range from 3500 to 6500 pages of transcripts. Almost every single one of my

briefs in those cases has been pushing the 65-page limit but I take care not to exceed that limit. I've only done so in the Appellate Division three times that I can recall in 35 years. I take that limit seriously. 65 pages is a fair limitation and the committee is correct that the Court will grant an overlength-brief motion in the rare case when it is necessary.

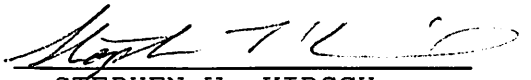
But this new rule is going to make an overlength-brief motion necessary in almost all my cases. My "niche" -- so to speak -- in Public Defender pool work has become these very large files. It's all I am handling. Most pool lawyers don't want them. They are long, sometimes tedious, hard work and involve very serious charges with complicated facts and legal issues. They are also often the files from the indigent clients that most need my help.

Additionally, the new proposal that an overlength-brief motion must be filed 20 days before the due date for the brief is extremely impractical. Attorneys try hard not to exceed the page limit, but often we won't know until the final edit what the page count is likely to be. That is often far closer to the due date than 20 days. The 20-day rule will result in filing "protective" overlength-brief motions whenever we are not sure what the final page count will be. I'm sure the Appellate Division has no interest in being flooded with those motions.

I'm not clear what is driving the new proposed lower page restriction. If there really is a problem with absurdly long briefs in small-transcript cases, I am not aware of it. But I can assure you as someone who currently handles only very large files for the OPD that there is not a problem with the 65-page limit in long-transcript cases. I adhere to it and the few other practitioners that I know who handle these cases do too. We need those 65 pages to adequately do the hard work of representing indigent clients in complex, long-transcript cases.

Beyond simply keeping the 65-page limit as it stands and eliminating the 20-day rule, my only other suggestion -- if a lower page limit in smaller cases is really necessary -- would be to develop some sort of tiered system that sets a 50-page limit for cases with fewer than 2000 pages of transcript, and keeps the current 65-page limit for larger files. At least in that circumstance, the appellate courts will not suddenly be flooded with an absurd number of overlength-brief motions in all longer cases. But a 50-page limit for a case with a 3500-page (or, worse, a 6500-page) transcript is going to result in an overlength-brief motion every single time. More importantly, if that motion were not granted, it would adversely affect the quality of my representation of people who need that quality not to diminish. I urge you to reconsider the proposed 50-page restriction. Thank you for your consideration of the points I've raised in this letter.

Respectfully submitted,



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