

Motion practice principle No. 2: follow letter, spirit of page limits

By: Douglas H. Wilkins and Daniel I. Small ◉ March 21, 2019



The second of seven principles of motion practice.

Page limits. They seem so arbitrary and annoying. You have important things to say, so why should you have to cram them into someone else's silly number? Because life is short? Judges are busy? That's only part of it.

Cutting the fat out of your brief greatly improves your focus and promotes forceful expression. And if you can't make your point in

20 pages, that's a good hint that there's something wrong with your argument.

Both in briefing and oral argument, less is more. Follow both the letter and the spirit of the page limit. Let's look at a few ways to do that.

1) Take the time to do it right. Stream of consciousness may be fine for a conversation but not for a legal argument. Even before the era of 140 (or 280) characters, the French philosopher and mathematician Blaise Pascal explained: "I would have written a shorter letter, but I did not have the time."

What was true more than 350 years ago is still true today. Take the time to narrow, refine and edit your arguments. The goal is a clear, concise argument, not a ramble that just makes it under the page limit.

2) Stick to the essentials. You are probably either going to win your motion on your one or two strongest points or lose altogether. Stick to what goes directly to those points and get rid of the rest. Among the most common examples:

- Minimize boilerplate. Yes, you should cover the essential basic legal foundations, but do you really need a page and a half on it? Why not just one short, clear sentence?
- Long discussions of case law. Yes, that case from another jurisdiction 20 years ago is a fascinating one, but do you need a long discussion of it here? Save it for lunch with a friend or a law school class. Rarely do the details of another case line up with yours, and it's the facts of this case that will persuade the judge.
- String cites. Yes, there are lots of cases on that point, but do you need them all? If a point of law is clear, make it, cite it, and move on. Is your argument really more compelling with six cites instead of two? Occasionally yes, if there is a good reason, but not usually. Cut them.

3) Edit yourself. Remove unnecessary and repetitive verbiage. Take the court through the logic of your argument as clearly and simply as possible without distraction, repetitions, extreme rhetoric, personal attacks or other dilution of focus. You're a lawyer. The judge knows you went to law school. You don't have to prove it by writing long, convoluted sentences. Don't think that you have complied with the spirit of the page limit simply because you came in just under it.

4) Asking for more. Think twice before moving for more than the page limit. Only in rare cases do you really need more than the limit. Think of the downside. First, judges don't like it. They have a lot of cases, and they know that yours probably doesn't need to break the limit more than the next lawyer's case does. Second, it can have a bad influence. You may succeed and get permission to file a longer brief, but increasing the length too often just results in a lack of discipline for the writer and a lack of focus for the court. Resist the temptation.

5) Remember what's important. Support your papers and arguments with affidavits and admissible documents where facts are important. Give as much or more care to that support as to the legal arguments. Many motion

judges may read the affidavits first, because affidavits likely contain the key facts and filter out the lawyer's rhetoric. Don't disappoint; make sure your affidavits are strong, but also clear and factual, not just a lot of rhetoric.

When you think about it (and you should), page limits are not some arbitrary evil. They are your friend. Treat them that way.

Judge Douglas H. Wilkins sits on the Superior Court. Prior to taking the bench, he was a trial attorney in private practice and at the Attorney General's Office. Daniel I. Small is a litigation partner in the Boston and Miami offices of Holland & Knight. A former federal prosecutor, he is the author of "Preparing Witnesses" (ABA, 4th Edition, 2014), and teaches CLE programs around the country. He can be contacted at dan.small@hklaw.com.

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40 Court Street, 5th Floor,

Boston, MA 02108

(617) 451-7300