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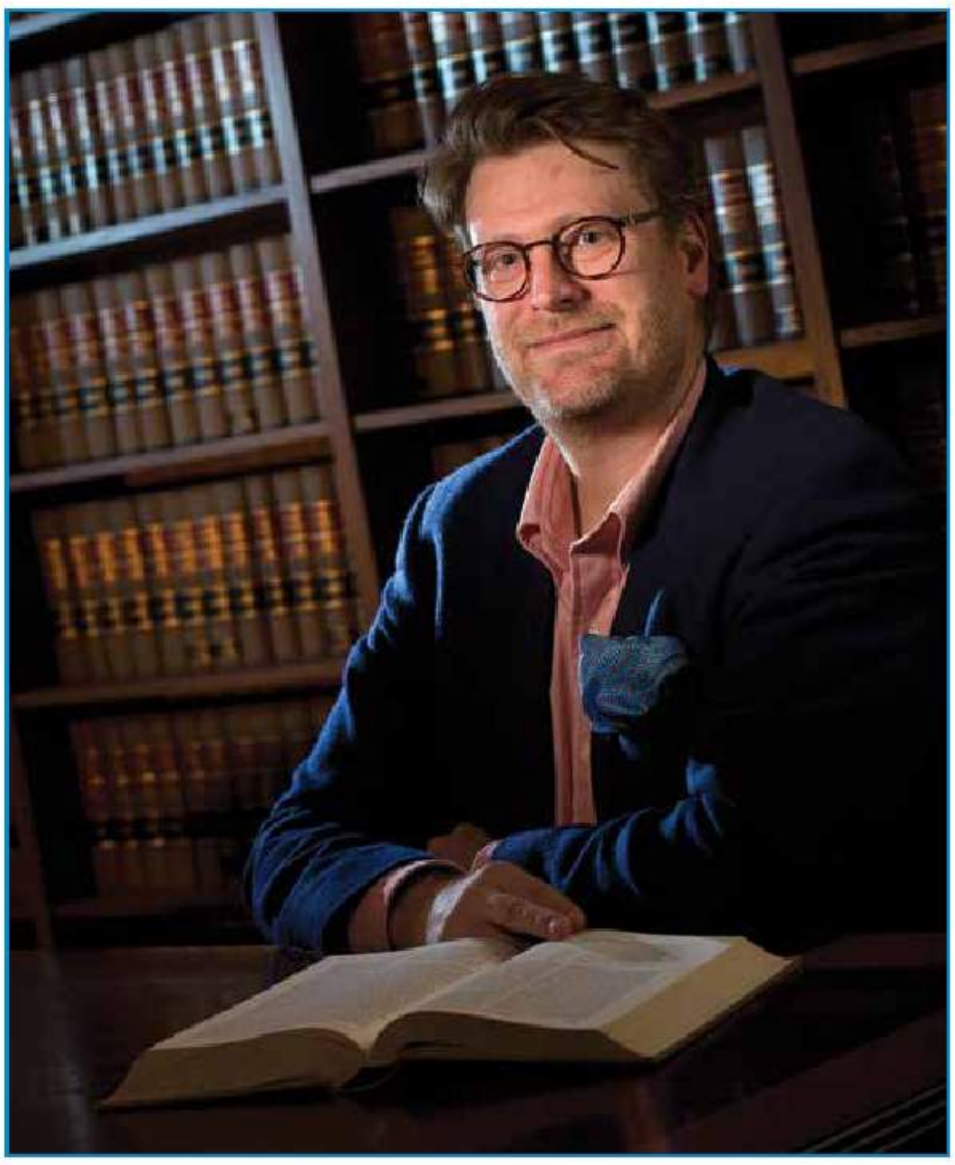

STAFF PHOTO BY KEVIN HARNACK

Kravit Hovel & Krawczyk attorney Brian Fahl sits in his firm's Milwaukee office on Oct. 26. Fahl says he has come close to hitting the 14,000-word appellate brief limit once. "In criminal appeals you never hit 14,000 words," he says. "But in civil cases with long, detailed fact patterns, I can see where that can be a problem."

LETTER OF THE LAW

FOR SOME, NEW RULES FOR APPELLATE BRIEFS TO TAKE EFFECT DEC. 1

By Erika Strebel
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Even though federal rules will set a shorter maximum length on briefs starting Dec. 1, the 7th Circuit is proposing to keep the old limits in place for certain types of filings.

Current federal rules set a maximum of 14,000 words for appellate briefs, 7,000 words for reply briefs and 7,000 words for amicus briefs. Officials with the 7th Circuit are seeking to keep those limits in place, even as coming changes to the Federal Rules of Appellate Procedure will limit appellate briefs to 13,000 words, reply briefs to 6,500 and amicus briefs to half the length of principal briefs.

And the 7th Circuit is not the only federal appeals court now considering keeping the limits. Two other federal appeals courts — the 2nd Circuit and Federal Circuit — are weighing the benefits of taking the same step.

If the longer limits are adopted in the 7th Circuit and other federal appellate courts, lawyers will simply be responsible after Dec. 1 for knowing whatever rules apply in the jurisdiction they are working in.

In proposing to keep the current rules in place, 7th Circuit officials are questioning what perceived deficiency the federal courts are trying to remedy.

The 7th Circuit is strict about the current word limit and grants very few motions to file a longer brief, said Chief Judge Diane Wood. She said court officials seldom now see the 14,000-word rule abused.

Practitioners generally agree. A 14,000-word brief is a rare bird, says Shelley Fite, who leads the board for the state bar's appellate-practice section.

"Briefs vary," said Fite, who is also a federal defense lawyer. "Most briefs will never get to the limit. One would hope that the ones that do are because they need to be because the issue is so complex."

Brian Fahl, a lawyer at Kravit Hovel & Krawczyk in Milwaukee, has probably only once come close to that 14,000 limit once.

"In criminal appeals you never hit 14,000 words," he said. "But in civil cases with long,

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(Not So) Briefs

11,000: The word limit for briefs filed in the Wisconsin Court of Appeals

15,000: The word limit for briefs filed in the U.S. Supreme Court

14,000: The word limit for principal briefs under the current Federal Rules of Appellate Procedure

13,000: The word limit for principal briefs under the new federal rules starting Dec. 1

DRUG COURT WORKS TO CURB ADDICTION

By Rod Stetzer
The Chippewa Herald

CHIPPEWA (AP) — It is an unusual scene for a courtroom.

The judge applauds the people appearing before him. Slips with names of those going before the judge are placed in a container and one is drawn out for a prize.

Judge Roderick Cameron started Chippewa County's drug court in 2007. Judge James Isaacson has been helping Cameron with it for seven years.

"If I didn't think it was worth my time, trust me, I wouldn't do it," Isaacson said after an Oct. 14 session of drug court, which took part in the county Department of Human Services' Day in the Life program.

"It's a different type of court because the judge gets to know them well," said Rose Baier, criminal justice collaborating council coordinator for Chippewa County, of the people appearing in drug court.

ROD STETZER/THE CHIPPEWA HERALD VIA AP

Chippewa County Judge James Isaacson speaks to spectators at a drug court session at the Chippewa County Courthouse in Chippewa Falls on Oct. 14.

The court, which will be funded from 2017-19 by a $300,00 Federal Drug Court Enforcement grant, serves up to 25 people, who are in various stages of recovery from alcohol or drug use, according to The Chippewa Herald. They show up for drug court either every week, every other week, once a month or two times in six months.

When they do, they can expect to receive encouragement for the things they are doing right in their lives, such as the length of their sobriety, and hear about where they have fallen short.

"We need to stress to (you) about your choices," Isaacson told a woman appearing before him in cautioning the woman about her friends. "You're doing so well on your own. Don't let someone else bring you down."

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Ready. Aim. Argue.
Supreme Court's calendar for November includes regulatory-takings case.

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Disciplinary action
Germantown lawyer's licenses suspended after demanding sex from client.

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Asked and Answered
Eric Hobbs helps people with their people issues.

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STAFF PHOTO BY KEVIN HARNACK

Kathryn Keppel, an attorney with Gimbel, Reilly, Guerin & Brown, Thursday in Milwaukee. To write a successful brief, Keppel says to leave ample time for editing and ask a colleague or paralegal with knowledge of a case to give it a read.

LETTER

CONTINUED FROM PAGE 1

detailed fact patterns, I can see where that can be a problem."

Likewise, Kathy Keppel, a member of State Bar's appellate practice section board and a lawyer at Gimbel Reilly Guerin & Brown, rarely hits the 14,000-word mark. Her work involves both civil and criminal appeals.

The only time Keppel risked writing too much was in the early 1990s, when the federal length limit had been set at 50 pages rather than 14,000 words. That changed in 1998 with the adoption of the current rules.

"Fourteen thousand words is a lot of space unless you have a complicated case with a lot of issues," she said. "It becomes a problem if you are in multi-party cases where you are trying to respond to multiple issues but, even then, I think a good appellate lawyer knows how to play Reader's Digest."

Wood is not the only 7th Circuit judge who is skeptical about the new word limits. Her colleague, Judge Frank Easterbrook, has also expressed opposition.

In taking those stances, both Wood and Easterbrook were breaking ranks with many other judges who generally supported the stricter limits even as appellate lawyers came out against them.

In doing her own research on the proposal, Wood tried to ascertain how often briefs filed with the court contained close to 12,500 words — the limit initially proposed before a compromise calling for a 13,000-word limit was reached.

Wood found that about 85 percent of the briefs filed with the court came in at fewer than 12,500 words. The remaining 15 percent generally consisted of cases that lent themselves to longer briefs. They included penalty cases and complex environmental case, as well as a smaller number of cases that could have been written about in a more concise way, she said.

Wood noted that one result of a lowered word limit might simply be an increase in the number of motions the court receives asking for permission to file longer briefs. Such motions tend to eat up a lot of time because they force judges to go back to briefs that were filed in a lower court to gain a sense of whether extra space for argument is warranted.

"We frankly thought it was a solution in search of a problem," said Wood. "It's unlikely that lawyers will suddenly write a good brief at 12,500 words. We don't see the direct link."

But just because lawyers are staying well below the limit, that doesn't mean more can't be done to encourage them to write concisely.

"Every word has to count," Fite said. "Every word needs to be necessary."

Wood agreed, saying there are many ways to cut fat from briefs. Lawyers, for instance, should take care to make sure they are not using a brief's argument section to repeat information that was already laid out in the statement of facts.

"Really force yourself to organize your thinking as well as possible," she said. "Put the issues in order of priority, with the most important issue first. Don't use long, complicated sentences. … Just make sure you're thinking clearly and communicating to the court."

Fahl, who also teaches at Marquette University Law School, suggested that practitioners consider using graphics rather than words.

"I tell my students to use more graphical representations … so that people can digest information quickly instead of reading pages of text," he said.

Keppel also advises leaving ample time for editing. Still another good practice is to ask a colleague or paralegal with knowledge of a case to give a brief a read-through.

"It really doesn't matter how or when it gets done," Keppel said. "The key is what you present to the court is succinct and cogent and makes the argument you want to make and you're not just repeating yourself," she said.

It's Not Too Late

The 7th Circuit is taking written comments on the proposed changes to its circuit rules until Monday.

Interested parties may weigh in by emailing USCA7_Clerk@ca7.uscourts.gov or sending their comments to the following address:

Advisory Committee
c/o Clerk of Court
United States Court of Appeals for the
Seventh Circuit
219 S. Dearborn St.
Chicago, IL 60604