

ARIZONA SUPREME COURT

PETITION TO AMEND RULES
31.19 and 31.25, ARIZONA RULES
OF CRIMINAL PROCEDURE, and
RULES 16 and 23, ARIZONA
RULES OF CIVIL APPELLATE
PROCEDURE

Supreme Court No. R-

Pursuant to Rule 28, Rules of the Arizona Supreme Court, the State Bar of Arizona respectfully petitions this Court to amend Rules 31.19 and 31.25 of the Arizona Rules of Criminal Procedure and Rules 16 and 23 of the Arizona Rules of Civil Appellate Procedure to establish a word limitation on the length of petitions for review and responses to petitions for review and to make those limitations applicable to amicus briefs filed in the this Court. The attached Memorandum of Points and Authorities supports this petition.

DATED this ____ day of _____, 2007.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Summary of Amendments.

Rule 31.19 of the Arizona Rules of Criminal Procedure and Rule 23 Arizona Rules of Civil Appellate Procedure govern the form, length, content, and filing time requirements for petitions for review and responses to petitions for review. The proposed amendments to Rule 31.19 of the Arizona Rules of Criminal Procedure and to Rule 23 of the Arizona Rules of Civil Appellate Procedure (1) establish a length limitation of 4,200 words for petitions for review and responses prepared in a proportionately spaced typeface—those typefaces typically used in a word-processing system and (2) require parties to file with the petition or response a certificate of compliance with the word limitation. The proposed amendments also establish—in keeping with the current rule—a twelve-page length limitation for petitions and responses prepared in a monospaced typeface. Because adding these provisions to the existing organization of the rules makes the text of the rules unwieldy, the proposed amendments also reorganize the rules to separate the form and length requirements from the content requirements, but make no other substantive changes.¹ The proposed amendments to Rule 31.25 of the Arizona Rules of Criminal Procedure and Rule 16 of the Arizona Rules of Civil Appellate Procedure make the word limitations that Rules 31.19 and 23 establish applicable to amicus briefs.

¹ The proposed amendments also make incidental grammatical corrections.

II. Reasons for Amendments.

The State Bar of Arizona proposes these amendments to maintain uniformity in calculating the length of documents filed in this Court and to prevent abuse of the page limitation currently in effect for petitions for review and responses. Currently, the lengths of opening, answering, and reply briefs and of petitions for special actions, responses, and replies prepared in proportionally spaced typeface are measured and limited by the number of words in the document. *See, e.g.*, Ariz. R. Crim. P. 31.13(b)(2) (principal briefs must contain no more than 14,000 words, and reply briefs no more than 7,000 words); Ariz. R. Civ. App. P. 14(b) (same requirements); Ariz. R. P. Spec. Act. 7(e) (petitions for special action and responses must contain no more than 10,500 words, and replies no more than 5,250 words). No reason exists to except petitions for review, their responses, or amicus briefs in support of petitions for review or their responses from this length-limitation scheme.

A limitation on the number of words that a petition or response may contain also prevents manipulation of a proportional typeface's pitch to meet the page limitation. While Rule 31.12, Arizona Rules of Criminal Procedure—which Rule 31.19(c) refers to—and Rule 6(c) of the Arizona Rules of Civil Appellate Procedure explicitly require use of a fourteen-point typeface, neither Rule 31.19 nor 23 establishes a character pitch requirement—a requirement for the width of the individual characters or the space between the characters. Thus, a party facing the page limits of Rules 31.19 and 23 can reduce the pitch of the characters and spaces in a proportional typeface to squeeze in additional words. A word limitation

prevents this type of abuse because it eliminates any incentive to narrow the character pitch² in that it makes the number of pages becomes irrelevant.

In addition, establishing a word limitation eliminates any danger that changes to the petition or response will alter the formatting of the text in a way that results in exceeding a page limitation. Attorneys often make necessary changes to petitions or responses that do not affect the word count but that inadvertently alter the formatting of the text and cause the page limitations to be exceeded. A word limitation allows attorneys greater flexibility to make formatting and paragraph changes.

A 4,200-word limit for petitions for review and responses is adequate for presenting the necessary arguments and is in line with the word limitations for briefs. The current rules for briefs prepared in a proportional typeface limit the principal briefs to no more than 14,000 words and reply briefs to no more than 7,000 words. Ariz. R. Crim. P. 31.13(b)(2); Ariz. R. Civ. App. P. 14(b). If the briefs are prepared in a monospaced typeface, the rules permit the principal briefs to have no more than forty pages and reply briefs to have no more than twenty pages. Rule 31.13(b)(2); Rule 14(b). If the word limits and the page limits are meant to be equivalent, dividing the word limits by the page limits results in a brief containing 350 words per page. Using that measurement, the current twelve-page limit for a petition for review or a response equates to a 4,200-word limit.

² No possibility of abuse exists when a party uses a 10½ inch monospaced typeface because the character pitch is not adjustable.

III. Conclusion.

The State Bar of Arizona respectfully requests that this Court accept the proposed amendments to Rules 31.19 and 31.25 of the Arizona Rules of Criminal Procedure and Rules 16 and 23 of the Arizona Rules of Civil Appellate Procedure as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ____ day of October, 2007.

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Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 30th day of October, 2007.

by: _____