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November 10, 2016

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals
40 Foley Square
New York, New York 10007

Re: Comments in Support of Proposed Changes to
Local Rules 28.1.1 and 32.1 Concerning Word Limitations

Dear Ms. Wolfe:

This responds to the Court's Order of October 19, 2016 inviting comments on proposed changes to the Court's Local Rule 28.1.1 and Local Rule 32.1 concerning word limitations in appellate briefs. The New York City Bar Association, through its Committee on Federal Courts, supports the proposed changes to Local Rules 28.1.1 and 32.1, and recommends a clarifying amendment to Local Rule 29.1.

The effect of this Court's proposed changes will be to maintain the current word limitations in Federal Rules of Appellate Procedure ("FRAP") Rule 28.1(e) for cross-appeals and in Rule 32(a)(7) (effective December 1, 2015) for individual appeals.¹

¹ On April 28, 2016, the Supreme Court of the United States adopted proposed amendments to FRAP Rules 28.1(e) and 32(a)(7) which will reduce the word limitations for appellate briefs effective December 1, 2016, unless Congress acts to modify these rules. However, proposed FRAP Rule 32(e) expressly authorizes courts of appeals to adopt a local rule under which they "may accept documents that do not meet all of the ... length limits set by these rules."

The City Bar opposed the proposed reduction of the permitted word length of appellate briefs when the FRAP rules were under review by the Committee on Rules of Practice and Procedure of the Administrative Office of the United States Courts. *Report of the Association of the Bar of the City of New York on Proposed Amendments*

The Association believes that the current word limitations remain appropriate for appeals in this Court, which often has a wide variety of complex and difficult cases, many of which require the current word limits in order to address adequately the relevant facts, case history, and legal issues. If the word count limits are reduced as contemplated by the FRAP amendments, it may lead to an increase in motions seeking to file an oversized brief, which are expressly disfavored in this Circuit (*see* Local Rule 27.1(e)), rather than an actual reduction in the length of briefs filed in this Court.

Accordingly, assuming that the proposed FRAP rules adopted by the Supreme Court become effective on December 1, 2016, the Association fully supports and welcomes this Court's proposed amendments to Local Rules 28.1.1 and 32.1.

In addition, in light of the reduction in the length of amicus briefs which will be effective with the adoption of the proposed FRAP rules, we recommend that the Court amend Local Rule 29.1 to include: "(c) Word Limitation: An amicus curiae brief is acceptable if it contains no more than 6,500 words." This amendment may clarify the rule for practitioners, who otherwise may assume that the length of amicus briefs remains unchanged in this Circuit.

A copy of this letter is being submitted electronically to rulescomments@ca2.uscourts.gov.

Respectfully yours,



Laura Grossfield Birger, Chair
Committee on Federal Courts