

University of Ottawa Faculty of Law (Civil Law Section)

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Document Design: Pretty in Print—Part II

Gerald Lebovits



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Look Who's Talking

*Legal Implications of Twitter
Social Networking Technology*

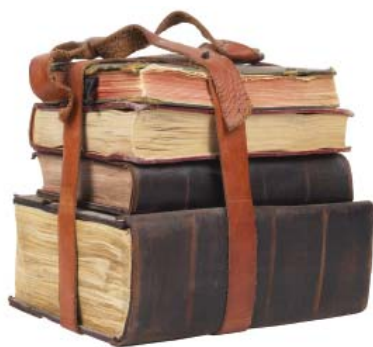
by Steven C. Bennett

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Due to an editing error, Judge Lebovits's biography in the March-April issue of the *Journal* was incorrect. We also note that Judge Lebovits did not adapt that column from any previously published material. His bio for Part I of this column, as well as Part II, should read:

GERALD LEBOVITS is a judge at the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at St. John's University School of Law. For their research help on Parts I and II of this column, he thanks Alexandra Standish, his court attorney, and law students Jamie Bunyan (St. John's University) and Suzy-Anne Bouveret (University of Ottawa, Civil Law Section). Judge Lebovits's e-mail address is GLebovits@aol.com.

Document Design: Pretty in Print — Part II

In the last column, the Legal Writer discussed seven issues in document design. We continue with seven more.

8. Footnotes and Endnotes. Footnotes and endnotes are resources and steppingstones.¹ No set ratio of footnotes or endnotes to text exists, but factors include audience, content, purpose, and subject matter. Formatting footnotes and endnotes is nearly as important as the substance they contain.

Judges and attorneys should use footnotes, not endnotes. Readers need to find information. Searching for endnotes at the end of a legal document frustrates readers. Editors and publishers of legal newspapers, newsletters, and magazines mostly use endnotes. Law reviews and law journals mostly use footnotes.

Don't include textually relevant discussion or intensive or substantive analysis in footnotes or endnotes. Too few footnotes or endnotes might emphasize the information in ways the author did not intend. Too many footnotes or endnotes will have the opposite effect: They'll go unread.²

Never use footnotes to circumvent page limits.

Consult court rules, journal guidelines, and legal-writing resources for prescriptions on footnotes and endnotes. Rules for footnotes and endnotes may also be different for published materials, depending on the publisher.

Many advise that footnotes and endnotes in a document, as opposed

to a published journal, should appear in the same typeface and typesize as the text. Several authorities, however, recommend using a smaller typesize for the endnotes or footnotes than the text,³ and most court rules allow smaller footnotes.

Single-space footnotes and endnotes even when you've double-spaced the text. Publishers might not adhere to this rule. Most readers prefer double-spacing between footnotes and endnotes in non-published (typed) documents. If you fully justify the text, fully justify the footnotes and endnotes.

Footnote and endnote numbers appear in the text as superscripts (raised above text in smaller type). Sequentially number footnotes or endnotes with Arabic numerals (1, 2, 3, 4, 5). Footnote and endnote numbers immediately follow, without a space, the word, phrase, clause, or quotation to which they refer.

When footnote and endnote numbers follow punctuation, place the numbers immediately (without a space) after quotation marks, periods, commas, question marks, exclamation points, colons, and semicolons. *Incorrect: "X v. Y, 99 F.3d 99 (13th Cir. 2009).¹"* *Correct: "X v. Y, 99 F.3d 99 (13th Cir. 2009).¹"* Place the superscripted number or letter outside a parenthesis if the number or letter refers to what precedes the parenthesis. Otherwise, place it inside the parenthesis.

9. Superscript. Legal citation requires mentioning circuits and depart-

ments in parentheticals following a case name and volume. Don't superscript 1st, 4th, 5th, and the like. *Incorrect: A v. B, 100 F.4th 100 (7th Cir. 2011).* *Correct: A v. B, 100 F.4th 100 (7th Cir. 2011).* A similar rule applies to dates. *Incorrect: "File the papers on April 3rd, 2009."* *Correct: "File the papers on April 3, 2009."* The solution is to turn off the automatic superscript-format feature on Word and WordPerfect.

10. Straight Quotes and Curly Quotes. Once again we go to a leading authority on typography: the Seventh Circuit. The Seventh Circuit recommends curly quotation marks: "Use real typographic quotes (\" and \" [also ' and ']) and real apostrophes ('), not foot and inch marks."⁴ As one expert notes, "[W]hen you paste . . . text with straight quotes in it . . . those characters are not always converted properly. . . . Use the search and replace function to search for . . . straight single quote (') and replace them with . . . a straight single quote ('). Use the search and replace function to search for . . . straight double quote (") and replace it with . . . a straight double quote (")."⁵

11. Boldface Type. Writers boldface, italicize, or underline words and other parts of a document to emphasize text. The rule is that less is more. Overusing these devices will dilute their impact and irritate readers.⁶ Except to emphasize a quoted word or phrase (a technique best used sparingly), don't

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bold, italicize, underline, or use quotation marks or exclamation points for emphasis or sarcasm.

Boldface separates: It breaks up text and causes a vertical break between sections. Use boldface only in headings, titles, subtitles, or topics at the beginning of a letter, paragraph, or chapter. If you use boldface and italics in the text, you'll confuse readers about what's important.

you must use 14-point type. Footnotes must be at least 12 points or greater. If you use a monospaced typeface, you must use 12-point type containing no more than 10½ characters per inch. Footnotes in monospaced type must be 10 points or larger.

Court of Appeals briefs must have one-inch margins on all sides of the page.⁸ Double-space the text. You may indent and single-space quotations having more than two lines of text. You may single-space headings and foot-

face must be no less than 12 points. Exception: Footnotes must be no smaller than 10 points, and headings may not be greater than 14 points. Briefs must have at least one-inch margins on each page; the text may not exceed 9 by 6½ inches.¹¹ You must consecutively number the pages.¹²

Briefs must be double-spaced; indented quotations, footnotes, and point headings may be single-spaced. Briefs must also be securely bound on the left-hand side of the page.¹³ Briefs

Never use footnotes to circumvent page limits.

12. Italics and Underlining. Prefer italicizing to underlining. Italicizing makes the text clean and legible. Underlining makes the text obtrusive; it obliterates the lower parts of the letters "g," "j," "p," "q," and "y." To emphasize, however, you may underline a word or phrase in an italicized paragraph or on a page with abundant italicized type.

Use italics for foreign words and phrases not commonly used in English, such as Latin expressions. Use italics for case names. Italicize citational signals. Italicize internal cross-references. Different rules exist about when to italicize titles of books, treatises, articles, legislative materials, reports, other non-periodic materials, periodicals, and punctuation marks.

13. State Court Rules. Consult the court's rules before filing a court document. Below are the typography rules for New York's state courts.

New York Court of Appeals. Briefs filed in the New York Court of Appeals must comply with Rule 500.1.⁷ Briefs prepared on a computer must be printed in either a serified, proportionally spaced typeface like Century, Garamond, or Times New Roman or in a serified monospaced typeface like Courier. Don't condense typefaces; don't condense the spacing. Except in headings, don't use bold type or type consisting of all-capital letters. If you use a proportionally spaced typeface,

notes. You must consecutively number the pages at the center of the bottom margin of each page. Use opaque, unglazed white paper measuring 11 by 8½ inches.⁹ To secure the pages, briefs must be bound on the left-hand side. Don't use plastic covers or any metal fasteners or similar hard material that protrudes or presents a bulky surface or sharp edge. The court encourages reproducing text on both sides of a page.

The New York Court of Appeals has no page or word limit.

New York Appellate Division. Briefs filed in the Appellate Division must comply with Civil Practice Law and Rules (CPLR) 5529. Briefs and appendices must be on permanent, legible, black-image-on-white 11 by 8½-inch paper. CPLR 5529 requires compliance with court rules specific to each department on the size of margins, line spacing, and length of briefs.

First Department. Briefs filed in the Appellate Division, First Department, must comply with Rule 600.10.¹⁰ Briefs must be in a serified, proportionally spaced typeface or in a serified monospaced typeface. If you use a proportionally spaced typeface, the typeface must be no less than 14 points. The rule is different for footnotes and headings: Footnotes must be no less than 12 points; headings must be in type no greater than 15 points. If you use a monospaced typeface, the type-

with a metal fastener or other hard material that protrudes or presents sharp edges must be covered with linen, plastic masking tape, or similar material. The court discourages "Acco, spiral, or other bulky binding edge binders."¹⁴ You must use recycled paper.¹⁵ Except with the court's permission, briefs may not exceed 70 pages or 14,000 words.¹⁶ The court provides two ways to calculate these limits: page limit or word limit. If you use the page-limit method, include all pages in the calculation except for the table of contents, tables of citations, and any authorized addendum containing statutes, rules, and regulations. If you use the word-count method, include all printed text on each page of the brief. A certificate of compliance must be submitted with the brief.¹⁷

Second Department. Briefs filed in the Appellate Division, Second Department, must comply with Rules 670.10.1, 670.10.2, and 670.10.3.¹⁸ Briefs prepared on a computer must be printed in either a serified, proportionally spaced typeface or in a serified, monospaced typeface. Briefs may not have narrow or condensed typefaces or condensed spacing. Except in point headings, words may not be in bold type or type consisting of all-capital letters. If you use a proportionally spaced typeface, use 14-point type. You may use a 12-point type or greater for footnotes.

If you use a monospaced typeface, use 12-point type containing no more than 10½ characters per inch. You must use type of 10 points or larger for footnotes. Briefs must have one-inch margins on each page.¹⁹ Text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Pages must be consecutively numbered, with the numbers appearing in the center of the bottom margin of each page. Briefs may not exceed 14,000 words.²⁰ A certificate of compliance with the rules must be appended to the brief.

Third Department. Briefs filed in the Appellate Division, Third Department, must comply with Rule 800.8.²¹ Rule 800.8 doesn't require any particular typesize. The Third Department requires "good quality, white, unglazed paper." Briefs must comply with CPLR 5528 and 5529. CPLR 5528 provides that briefs contain a table of contents, question(s) presented, statement of facts, argument, and appendix. CPLR 5529 requires compliance with specific court rules — like the Third Department's, for example — for margins, line spacing, and length of briefs. Briefs for the appellant may not exceed 50 printed or 70 typewritten pages, Briefs for the respondent must not exceed 25 printed or 35 typewritten pages.²²

Fourth Department. Briefs filed in the Appellate Division, Fourth Department, must comply with Rule 1000.4(f)(2).²³ Write briefs in 11-point size or larger. Briefs may not contain footnotes. Double-space. Briefs must be reproduced by standard typographical printing or other duplicating process that produces a clear black image on white paper, with one-inch margins.²⁴ Briefs must be reproduced on opaque, unglazed white paper measuring 11 by 8½ inches. Consecutively number each page. Bind papers on the left-hand side of the page in a manner that properly secures all the pages and keeps them firmly together. Don't bind the brief with a metal fastener or similarly hard material that protrudes or presents a

bulky surface or sharp edge.²⁵ Briefs for the appellant and the respondent may not exceed 70 pages (either printed or typewritten).

Appellate Term. Briefs filed in the Appellate Term, First Department, must comply with Rule 640.5.²⁶ Briefs filed in the Appellate Term, Second Department, Second and Eleventh Judicial Districts, must comply with CPLR 5528 and 5529 and with Rule 731.2.²⁷ No specific rules exist about typeface and typesize. No specific rules exist about page or word limit. The rules for briefs filed in the Appellate Term, Second Department, Ninth and Tenth Judicial Districts, are identical to those in the Second and Eleventh Judicial Districts.²⁸

New York Trial Courts. Documents served and filed in New York trial courts must comply with CPLR 2101. CPLR 2101 provides, with some exceptions, that documents served or filed must be on 11 by 8½-inch paper. Writing must be legible and in black ink. Use at least 12-point type for summonses. For all other documents, except exhibits, use at least 10-point type.

For civil actions and proceedings in Supreme Court and County Court, use the Uniform Rules for New York State Trial Courts (Uniform Rules). For guidance, look at Uniform Rules 202.5 and 200.3. Rule 202.5²⁹ provides that "every paper, other than an exhibit or printed form, shall contain writing on one side only, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins." Rule 202.5 further provides that "[p]apers that are stapled or bound securely shall not be rejected for filing simply because they are not bound with a backer of any kind."³⁰ Rule 200.3 refers to papers filed in Criminal Court. It's almost identical to Rule 202.5. Rule 200.3 provides that "every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, and if typewritten, shall have at least double space between each line, except for quotations

and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins."³¹

The CPLR governs issues not covered by the Uniform Rules.

Prefer italicizing to underlining. Italicizing makes the text clean and legible.

14. Federal Court Rules. Below are the rules for the federal courts.

United States Supreme Court.

The Supreme Court has specific rules for submitting briefs. You must comply with Supreme Court Rules 24, 33, and 34. You must use typeface from the Century family like Century Expanded, New Century Schoolbook, or Century Schoolbook. Use 12-point type with 2 points or more leading between lines.³² For briefs filed under Rule 33.1, you must submit a signed certificate indicating the number of words in the document, including the words in the footnotes.³³ See Supreme Court Rules 33(h) for a chart of the documents you submit to the Court and their corresponding word count.³⁴ Rule 33 requires 10-point type for footnotes.³⁵

United States Court of Appeals.

Briefs filed in the United States Court of Appeals for the Second Circuit must comply with Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6).³⁶ You may use either a proportionally spaced or a monospaced typeface. If you use a proportionally spaced typeface, it must include serifs, but you may use sans-serif type in headings and captions. The typesize must be 14 points or larger. If you use a monospaced typeface, it may not contain more than 10½ characters per inch. The brief must be set in a plain, roman style, but you may use italics or boldface for emphasis. You must italicize or underline case names. Briefs may be reproduced by

any process that yields a clear black image on light paper.³⁷ The paper must be opaque and unglazed. Use only one side of the paper. Bind the brief in any manner that's secure, doesn't obscure the text, and permits the brief to lie reasonably flat when open. You must use 11 by 8½-inch paper. Double-space the text. You may indent and single-space quotations longer than two lines. You may single-space headings and footnotes. Margins must be at least one inch on all four sides. You may place page numbers in the margins, but no text may appear in the margins.

The Second Circuit has page and type-volume limitations. Rule 32(a)(7)(A)³⁸ provides that a brief may not exceed 30 pages unless it complies with Rules 32(a)(7)(B) and (C).³⁹ Rule 32(a)(7)(B) provides that a brief is acceptable if (1) it contains no more than 14,000 words or (2) it uses a monospaced typeface and contains no more than 1300 lines of text. Rule 32(a)(7)(C) provides that a brief must include a certificate that you've complied with the type-volume rules. The certificate must state either (1) the number of words in the brief or (2) the number of lines of monospaced type in the brief.

United States District Court. The United States District Court for the Southern (SDNY), Eastern (EDNY), Western (WDNY), and Northern Districts (NDNY) of New York requires compliance with the Federal Rules of Practice and the Federal Rules of Procedure. Each district has local civil and criminal rules; some of these courts also have rules relating to specific cases like admiralty and maritime matters. Important to note, though, is that many judges have their own rules about document design. Consult them before filing a document with the court. Many courts have intricate rules about the contents of briefs, reply briefs, surreply briefs, memorandums of law, motions, and cross-motions. The courts will allow you to submit a request to the clerk of the court, the judge, or both to deviate from the rules.

The SDNY and EDNY rely on the same Local Civil Rules and Local

Criminal Rules.⁴⁰ In civil matters, pleadings, motions, and other papers must comply with Rule 11.1(a). The papers must be plainly written, typed, printed, or copied without erasures or interlineations (corrections or alterations made by writing between the lines) that materially deface them.⁴¹ The SDNY and EDNY have no requirements about margins, indentations, spacing, typeface, or typesize. The SDNY and EDNY have no word or page limit. In criminal matters, the Local Criminal Rules don't provide any restrictions on document design.

In the NDNY, you must comply with Local Rules 10.1(a) and 10.1(b).⁴² All text, whether in the body of the document or in footnotes, must be in 12-point type or larger. You may not use "compacted or other compressed printing features."⁴³ All documents must be on 11 by 8½-inch white paper of good quality.⁴⁴ All text must be plainly and legibly written, typewritten, printed, or reproduced without erasures or interlineations materially defacing them. Documents must be in black or blue ink. Pages must be stapled (or otherwise fastened) together. All documents must be single-sided and have one-inch margins on all four sides of the page. All text in the body of the document must be double-spaced except for block quotations and footnotes, which may be single-spaced. Extensive footnotes may not be used to circumvent page limits. Pages must be consecutively numbered. The NDNY's page-limit rules are intricate. Memorandums of law must not exceed 25 pages;⁴⁵ motions must not exceed 10 pages;⁴⁶ and cross-motions must not exceed 25 pages.⁴⁷

In the WDNY, you must comply with Local Civil Rule 10(a)⁴⁸ and Local Criminal Rule 49.2.⁴⁹ Local Civil Rule 10(a) and Local Criminal Rule 49.2 are identical: All text and footnotes for all documents must be in at least 12-point type and double-spaced. All text must be plainly and legibly written, typewritten, printed, or reproduced without erasures or interlineations materially defacing them. Text must be

printed in ink on durable white 11 by 8½ inch paper of good quality and fastened. All text must be double-spaced. Briefs may not exceed 10 pages.⁵⁰

In the next two columns, the Legal Writer will discuss legal-writing mechanics. ■

1. For more on this topic, see Gerald Lebovits, *The Legal Writer, The Bottom Line on Footnotes[1] and Endnotes[2]*, 75 N.Y. St. B.J. 64 (Jan. 2003).
2. For more on this topic, see Gerald Lebovits, *The Legal Writer, Do's, Don'ts, and Maybes: Usage Controversies — Part II*, 80 N.Y. St. B.J. 64, 64 (July/Aug. 2008).
3. See, e.g., Bryan A. Garner et al., *The Redbook: A Manual on Legal Style*, Rule 9.3(b), at 135 (2d ed. 2006).
4. Seventh Circuit, *Requirements and Suggestions for Typography in Briefs and Other Papers 5*, <http://www.ca7.uscourts.gov/rules/type.pdf> (last visited Jan. 29, 2009).
5. Matthew Butterick, *Typography for Lawyers*, <http://www.typographyforlawyers.com/?p=54> (last visited Jan. 29, 2009). Pasting, or importing, text, whether from an e-mail, Westlaw or LEXIS, the Web, or anywhere else, is a fast, accurate way to copy information into a document. But you don't want to copy the source's formatting: You must maintain your formatting. To do that in Word, go to "home," then "paste," then "paste special," and then "unformatted text." In WordPerfect, go to "edit," then "paste special," and then "unformatted text."
6. Benjamin R. Opiari, *Writing Tips, To Go Boldly Without the Bold (and Italics and Underlining and All Caps)*, 16 Perspectives: Teaching Legal Research and Writing 131 (Winter 2008), available at http://west.thomson.com/pdf/perspec/Winter_2008/Winter08_9.pdf (last visited Jan. 29, 2009).
7. 22 N.Y.C.R.R. 500.1, available at http://www.nycourts.gov/ctapps/500rules08.htm#500_1 (last visited Jan. 29, 2009).
8. *Id.*
9. *Id.*
10. 22 N.Y.C.R.R. 600.10, available at <http://www.courts.state.ny.us/courts/ad1/rules.shtml#600.10> (last visited Jan. 29, 2009).
11. *Id.* 600.10(a)(4).
12. *Id.* 600.10(a)(6).
13. *Id.* 600.10(a)(2).
14. *Id.*
15. *Id.* 600.10(e).
16. *Id.* 600.10(d)(1)(i).
17. *Id.* 600.10(b)(1)(viii).
18. Rules 670.10.1, 670.10.2, and 670.10.3 are available on the Appellate Division, Second Department, Web site, available at <http://www.nycourts.gov/courts/ad2/pdf/rulesofprocedure.pdf> (last visited Jan. 29, 2009). Westlaw has renumbered the rules: 22 N.Y.C.R.R. 670.10-a; 22 N.Y.C.R.R. 670.10-b; and 22 N.Y.C.R.R. 670.10-c. The rules are identical except for the numbering scheme.

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19. 22 N.Y.C.R.R. 670.10-c; *see also* R. 670.10.3, *available at* <http://www.nycourts.gov/courts/ad2/pdf/rulesofprocedure.pdf> (last visited Jan. 29, 2009).
 20. *Id.*
 21. 22 N.Y.C.R.R. 800.8, *available at* <http://www.courts.state.ny.us/ad3/Rulesofthecourt.html#800.8> (last visited Jan. 29, 2009).
 22. *Id.*
 23. 22 N.Y.C.R.R. 1000.4(f)(2), *available at* http://www.courts.state.ny.us/ad4/perfecting_appeals.htm (last visited Jan. 29, 2009).
 24. *Id.*
 25. *Id.* 1000.4(a)(3)(i).
 26. 22 N.Y.C.R.R. 640.5.
 27. 22 N.Y.C.R.R. 731.2.
 28. 22 N.Y.C.R.R. 732.2.
 29. Uniform R. 202.5, *available at* <http://www.courts.state.ny.us/rules/trialcourts/202.shtml#05> (last visited Jan. 29, 2009).
 30. *Id.*
 31. Uniform R. 200.3, *available at* <http://www.courts.state.ny.us/rules/trialcourts/200.shtml#03> (last visited Jan. 29, 2009).
 32. Sup. Ct. R. 33.1(b), *available at* <http://www.supremecourtus.gov/ctrules/2007rulesofthecourt.pdf> (last visited Jan. 29, 2009).
 33. Sup. Ct. R. 33(g).
 34. *Id.* 33(h).
 35. *Id.* 33(1)(b).
 36. Fed. R. App. P. 32, *available at* <http://www.ca2.uscourts.gov/Docs/Rules/Rule32.pdf> (last visited Jan. 29, 2009).
 37. *Id.* 32(a).
 38. *Id.* 32(a)(7)(A).
 39. *Id.* 32(a)(7)(B); 32(a)(7)(B).
 40. E.D.N.Y. and S.D.N.Y. Local R. 11.1(a), *available at* <http://www1.nysd.uscourts.gov/rules/rules.pdf> (last visited Jan. 29, 2009).
 41. *Id.*
 42. N.D.N.Y. Local R. 10.1(a) and 10.1(b), *available at* http://www.nynd.uscourts.gov/documents/FinalVersion2009_001.pdf (last visited Jan. 29, 2009).
 43. *Id.* 10.1(a).
 44. *Id.* 10.1(b).
 45. *Id.* 7.1(a)(1).
 46. *Id.* 7.1(b)(1).
 47. *Id.* 7.1(c).
 48. W.D.N.Y. Local Civ. R. 10(a), *available at* <http://www.nywd.uscourts.gov/document/civilamendments2004.pdf> (last visited Jan. 29, 2009).
 49. W.D.N.Y. Local Crim. R. 49.2, *available at* <http://www.nywd.uscourts.gov/document/criminalamendments2003.pdf> (last visited Jan. 29, 2009).
 50. W.D.N.Y. Local Civ. R. 7.1(f), *available at* <http://www.nywd.uscourts.gov/document/civilamendments2004.pdf> (last visited Jan. 29, 2009).