



# Ethics in Appeals and Legal Writing

### Hypothetical

You are a solo practitioner focusing on appointed criminal appellate work. You recently filed a brief in the North Carolina Court of Appeals on behalf of an indigent criminal defendant. The North Carolina Rules of Appellate Procedure limit your brief to 8,750 words.

You struggled to comply with the word limit in this complex case and came in just under 8,750 words. When you provided an early draft to your client, the client insisted that the facts section be expanded to include additional facts portraying the client in a favorable light. These additional facts were, in your view, not needed to address the legal issues raised, but they added a sense of “atmospheric” sympathy for your client, so you included them.

Your brief also included two arguments. The first argument took the majority of the brief to address, and you considered it a likely “winner” in the sense that it had greater than a 50% chance of success. The brief also included a second argument that you considered a “loser” in the sense that it had less than a 10% chance of success.

After you filed the brief, but before the opposing brief is filed, you discover that you forgot to check the “include footnotes” box in the word count and that, when you check the box, the brief is over the word limit by a few hundred words.

You begin preparing a revised brief to submit to the Court. While doing so, you discover a newly decided case that could negatively impact both your arguments. You review the case carefully and come up with a very weak argument to distinguish it, although you think it is quite possible the court will consider this case to be controlling authority. You also learn that some of the favorable facts discussed in the original brief have changed—those favorable facts were true at the time you wrote your brief, and were supported by evidence in the record on appeal, but since the appeal began things changed and those facts are not true anymore.

Finally, you realize that you can change some formatting and spacing in the citations and save yourself several hundred words.

**What ethical considerations arise when deciding what to remove, and what to add, in your efforts to comply with the word limit?**

