

## RULE 28. BRIEFS

**(a) Appellant’s Brief.** Except as provided in Rule 28(k), the appellant’s brief ~~shall~~must be entitled “Appellant’s Opening Brief” and ~~shall~~must contain under appropriate headings and in the order indicated:

(1) a disclosure that complies with Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for ~~the Supreme Court’s or Court of Appeals’~~appellate jurisdiction;

(B) the filing dates establishing the timeliness of the appeal;  
and

(C) an assertion that the appeal is from a final order or judgment, or information establishing ~~the Supreme Court’s or Court of Appeals’~~appellate jurisdiction on some other basis.

(5) a routing statement, setting forth whether the matter is ~~presumptively always~~ retained by the Supreme Court, ~~ordinarily retained by the Supreme Court,~~ or ~~ordinarily~~ assigned to the Court of Appeals under Rule 17, and citing the subparagraph(s) ~~of the Rule~~ under which the matter falls. If the appellant believes that the Supreme Court should retain the case despite its ~~presumptive-ordinary~~ assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;

(6) a statement of the issues presented for review;

(7) a statement of the case briefly indicating the nature of the case, the course of the proceedings, and the disposition below;

(8) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));

(9) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief and which must not merely repeat the argument headings;

(10) the argument, which must contain:

**Commented [OJ1]:** To match the proposed changes to NRAP 17

**Commented [SA2R1]:** We would also need to change the language in Rule 21(a)(3)(A), which still says "retained by the Supreme Court pursuant to Rule 17(a) or presumptively assigned to the Court of Appeals pursuant to Rule 17(b)."

(A) appellant’s contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(11) a short conclusion stating the precise relief sought; and

(12) an attorney’s certificate that complies with Rule 28.2, if the appellant is represented by an attorney.

**(b) Respondent’s Brief.** The respondent’s brief ~~shall~~must be entitled “Respondent’s Answering Brief” and ~~shall~~must conform to the requirements of Rule 28(a)(1)-(10) and (12), except that none of the following need appear unless the respondent is dissatisfied with the appellant’s statement:

(1) the jurisdictional statement;

(2) ~~a~~the routing statement, ~~setting forth whether the matter is presumptively always retained by the Supreme Court, ordinarily retained by the Supreme Court, or ordinarily assigned to the Court of Appeals under NRAP 17, and citing the subparagraph(s) of the Rule~~

~~under which the matter falls. If the respondent believes that the Supreme Court should retain the case despite its presumptive ordinary assignment to the Court of Appeals, based on a principal issue raised in the matter, the routing statement must include a clear statement of the relevant issue, citations to the record where the issue was raised and resolved, and an explanation of the importance of the issue;~~

- (3) the statement of the issues;
- (4) the statement of the case;
- (5) the statement of the facts; and
- (6) the statement of the standard of review.

**(c) Reply Brief.** The appellant may file a brief in reply to the respondent's answering brief that ~~shall~~must be entitled "Appellant's Reply Brief." A reply brief ~~shall~~must comply with Rule 28(a)(1)-(2) and (10) and must be limited to answering any new matter set forth in the opposing brief. Unless the court permits, no further briefs may be filed. A party may waive the right to file a reply brief. Providing the clerk with immediate notice of that waiver will expedite submission of the case to the court.

**(d) References in Briefs to Parties.** In briefs and at oral argument, parties ~~will be expected to keep to a minimum~~should minimize references to parties by such designations as “appellant” and “respondent.” ~~It~~To make briefs clear, promotes clarity to use the ~~designations used in the lower court or the actual names of parties’~~actual names, the designations used in the lower court, or descriptive terms such as “the employee,” or “the injured person,” ~~etc.~~

**(e) References in Briefs to the Record.**

(1) Except as provided in Rule 28(e)(3), every assertion in briefs regarding matters in the record ~~shall~~must be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(2) Parties ~~shall~~must not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.

(3) A pro se party is not permitted to file an appendix under Rule 30(i), and therefore is not required to comply with Rule 28(e)(1). Pro se parties are encouraged to support assertions in briefs regarding matters in the record by providing citations to the appropriate pages and volume numbers of the ~~trial district~~ court record.

**(f) Reproductions of Constitutional Provisions, Statutes, Rules, Regulations, Etc.** If the court's determination of the issues presented requires the study of constitutional provisions, statutes, rules, regulations, etc., the relevant parts ~~shall~~ must be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

~~(g) Constitutional Claims. A party raising a claim under both the State and Federal constitutions must brief each claim separately and must address the State claim in the brief first.~~

**(g) Length of Briefs.** See Rule 32(a)(7) for provisions regarding the length of briefs.

**(h) ~~(i) Sanctions for Inadequate Briefs.~~** All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or

scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions.

**Reserved.** **(i) Briefs in a Case Involving Multiple Appellants or Respondents.** In a case involving more than one appellant or respondent, including consolidated cases, any number of appellants or respondents may join in a single brief, and any party may adopt by reference a part of another’s brief. Parties may similarly join in reply briefs.

~~**(j) Sanctions for Inadequate Briefs.** All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions.~~

**(k) Supplemental Authorities.** If pertinent and significant authorities come to a party’s attention after the party’s brief has been filed—or after oral argument but before a decision—a party may promptly advise the court by filing and serving a notice of supplemental

**Commented [OJ3]:** Added this here and took supplemental authorities out of Rule 31 per Justice Pickering’s suggestion on Rule 31.

authorities, setting forth the citations. The notice must refer either to the page of a brief or to a point argued orally. The notice must further state concisely and without argument the legal proposition for which each supplemental authority is cited. Any response must be made promptly and must be similarly limited.

**Commented [SA4]:** The subcommittee considered but rejected a proposal to insert a specific deadline for a response

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**(k) Briefs by Pro Se Appellants.** Appellants proceeding without assistance of counsel may file the form brief provided by the supreme court clerk in lieu of the brief described in Rule 28(a). If an appellant uses the informal brief form, the optional reply brief need not comply with the technical requirements of Rule 28(c) or Rule 32(a).