

## **RULE 28. BRIEFS**

**(a) Appellant’s Brief.** Except as provided in Rule 28(k), the appellant’s brief must be entitled “Appellant’s Opening Brief” and 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 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 appellate jurisdiction on some other basis.

(5) a routing statement, setting forth whether the matter is 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) under which the matter falls. If the appellant believes that the Supreme Court should retain the case despite its 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 concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and

identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

(8) 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;

(9) the argument, which must contain:

(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);

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

(11) a certificate that complies with Rule 32(a)(9).

**(b) Respondent's Brief.** The respondent's brief must be entitled "Respondent's Answering Brief" and must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the respondent is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the routing statement;

(3) the statement of the issues;

(4) the statement of the case; and

(5) 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 must be entitled "Appellant's Reply Brief." A reply brief must comply with Rule 28(a)(1)-(2) and (9) 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 should minimize references to parties by such designations as “appellant” and “respondent.” To make briefs clear, use the parties’ actual names, the designations used in the lower court, or descriptive terms such as “the employee” or “the injured person.”

**(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 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 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 district court record.

**(f) Reproductions of Constitutional Provisions, Statutes, Rules, Regulations.** If the court’s determination of the issues presented requires the study of constitutional provisions, statutes, rules, regulations, etc., the relevant parts 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) Length of Briefs.** See Rule 32(a)(7) for provisions regarding the length of briefs.

**(h) 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.

**(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) 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 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.

**(k) Briefs by Pro Se Appellants.** Appellants proceeding without assistance of counsel may file the form brief provided by the clerk of the Supreme Court 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).

## **REVIEWING NOTE**

Rule 28 is amended to conform to amendments in Rule 17 (routing statement) and Rule 32(a)(9) (certificate of compliance, replacing former Rule 28.2). Instead of a separate statement of the case and statement of the facts, subdivision (b)(7) combines the two into a single section under the heading “statement of the case,” as is the practice in federal court under FRAP 28(a)(6). The provision for sanctions has been moved to subdivision (h). Supplemental authorities, formerly addressed in Rule 31(e), now appear in Rule 28(j), in parallel with FRAP 28(j).