

# Chicago Daily Law Bulletin®

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## Writing your statement of facts

After a short summer hiatus, we continue our journey through the appellate brief writing process.

In prior columns, we discussed the impact of the different standards of review and examined some general “do’s and don’ts” of brief writing. We then turned to a review of the specific parts of the brief required under Illinois Supreme Court Rule 341 and discussed the preliminary sections of the document.

We now move to an examination of the substantive sections of the brief, beginning with the statement of facts.

Illinois Supreme Court Rule 341(h)(6) sets forth the requirements for the statement of facts, which “shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment and with appropriate reference to the pages of the record on appeal.”

A statement of facts must be included in all briefs filed by the appellant. If you are the appellee, Rule 341(i) provides that you “need not” include a statement of facts in your brief, but allows you to do so “to the extent that the presentation by the appellant is deemed unsatisfactory.”

The importance of the statement of facts in providing the context for the appeal cannot be minimized. The factual statement must be complete, and the court has the power to strike an appellant’s brief and dismiss the appeal if the party has failed to provide facts which, as specifically required under Rule 341(h)(6), are “necessary to an understanding of the case.”

In other words, the appellant may not include only those facts favorable to his or her position and omit the rest.

This does not mean, however, that the factual background must include facts which have no

bearing upon the issues presented. To the contrary, only those facts that are material to the disposition of the case should be included. However, as stated, they must afford the court a full picture of what transpired below, as required by both our rules of practice and of professional conduct.

A well-drafted statement of facts arranges the facts into a sequence, usually chronological, which provides the “story” of what happened in the case. As an advocate, your job is to make your client’s story compelling to the reader — justices on the appellate court — and help the reader visualize the case from your client’s perspective.

During an interview conducted by writing guru Bryan Garner, U.S. Supreme Court Chief Justice John G. Roberts Jr. shared his view from the bench regarding the importance of persuasively communicating the factual background of a case:

“It’s got to be a good story. Every lawsuit is a story. I don’t care if it’s about a dry contract interpretation, you’ve got two people who want to accomplish something, and they’re coming together — that’s a story. And you’ve got to tell a good story. Believe it or not, no matter how dry it is, something’s going on that got you to this point, and you want it to be a little bit of a page-turner, to have some sense of drama, some building up to the legal arguments.”

That being said, Rule 341(h)(6) requires that you must always state the facts “accurately and fairly without argument or comment” and provide citation to the record on appeal for all facts included. The tension between the accuracy and fairness of a brief’s factual statement and an advocate’s quest to present those same facts persuasively was discussed

### ON APPEAL



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by U.S. Supreme Court Justice Anthony M. Kennedy in an interview with Garner:

“But the most important thing in a brief when you state the facts is you must be fair. Now, we know that the plaintiff’s brief is going to be slanted for what the plaintiff wants to emphasize, and the defendant’s too. We expect that. But I think the reader has to have confidence you’re being fair.”

Indeed, our appellate court has not hesitated to strike portions of appellate briefs — or even dismiss an appeal — where a party has failed to support the facts stated in a brief with references to the record, or where the statement of facts contains argument.

Remember that the statement of facts is intended to fairly summarize the facts relating to the relevant issues on appeal. Accordingly, leave the argument to the “argument” section of your brief.

In drafting the statement of facts, you may wish to generally

begin with the background facts necessary to show the original relationship of the parties, and then progress to the details of the occurrence giving rise to the controversy.

In a complicated case, the facts section may be long and convoluted, and you run the risk of losing the reader in this maze without some additional help. Accordingly, an initial summary sentence or paragraph may be needed as an overall introduction to the facts section before actually beginning the chronological presentation. In addition, subheadings may be employed to break the statement of facts into manageable segments.

The initial draft of the statement of facts, however, will almost always contain too many extraneous details of no consequence to the resolution of the case and which are unnecessary to the court’s understanding of the matter. The inclusion of unnecessary and irrelevant details distracts the reader from the material issues in the case.

For example, if a specific date, event, detail or description is mentioned, the reader will generally give some significance to it and expect it to become important somewhere in the body of the document. If it is not mentioned again, it remains a lingering — and distracting — question in the reader’s mind.

Therefore, it is best to edit the facts section late in the writing process, after you have completed drafting the argument section of the brief. Make sure that all facts which you rely upon in the analysis are adequately set forth in the factual statement, and that facts not relevant to the disposition of the case are deleted.

Now that we have examined the statement of facts, the next stop in our journey takes us to the heart of an appellate brief: the argument section.