

# Chicago Daily Law Bulletin®

Volume 161, No. 119

## Getting to the meat of appellate briefs

**W**e continue our journey through the appellate brief-writing process started in my prior columns with a focus on the specific parts of the brief required under Illinois Supreme Court Rule 341. Today, we will discuss these requirements: The standard of review for each issue presented, a statement of the jurisdiction of the reviewing court and the statutes involved.

Rule 341(h)(3) requires that a brief set forth “a concise statement of the applicable standard of review for each issue with citation to authority.” The rule further requires that the statement of the standard of review be placed either in the discussion of the issue in the argument section of the brief or under a separate heading placed directly before the discussion in the argument.

If you raise more than one issue on appeal, it is likely that you also may have more than one standard of review to discuss in your brief. Different issues often have varying review standards.

Make sure to clearly state which standard applies to which issue. In addition, ensure that you provide citation to authority for each proposition.

Although Rule 341(h)(3) allows some flexibility as to where in your brief you may include the standard of review discussion, you must also be aware that each district of the Illinois Appellate Court has its own specific rules and that with respect to the requirement of the inclusion of the standard of review, the treatment differs.

Administrative Order 48 of the 3rd District Appellate Court strictly requires that the applicable standard of review be set forth at “the beginning of the arguments on each issue raised.” Further, this same rule provides that if the appellee disagrees with the standard of review set

forth by the appellant, the appellee “shall so indicate and shall likewise set forth its version of the applicable standards of review in a separate section at the beginning of each issue’s argument section.”

As detailed in my first article in this series, the standard of review is pivotal, as it can be extremely helpful or hurtful to your case. The best-case scenario for the appellant is a de novo standard with no deference accorded to the trial court, whereas an appellee does best with a deferential standard, such as review for an abuse of the trial court’s discretion. Accordingly, if you disagree with your opponent as to the appropriate standard of review, this is the place to stand your ground and discuss in detail the authority which supports your position.

The next section of the brief is dictated by Rule 341(h)(4), which requires the inclusion of a statement of jurisdiction. The rule provides that different points are to be addressed, depending upon whether you are appealing to the Supreme or Appellate Court. If you are taking an appeal to the Supreme Court directly from the trial court or as a matter of right from the appellate court,

*The importance of the jurisdictional statement cannot be underestimated, as the Appellate Court has the duty in every case to sua sponte review its own jurisdiction, and it will dismiss an appeal if it finds that jurisdiction is absent.*

all that the rule requires is a “brief statement under the heading ‘Jurisdiction’ of the jurisdictional grounds for the appeal to the Supreme Court.”

However, if you are appealing to the appellate court, the rule requires that you provide additional support to claim jurisdiction, in the form of a “brief, but

### ON APPEAL



**MICHELE M. JOCHNER**

*Michele M. Jochner is a partner at Schiller, DuCanto & Fleck LLP, after previously serving as a judicial law clerk to Illinois Supreme Court Justices Charles E. Freeman and the late Mary Ann G. McMorrow. She serves in leadership positions with a number of bar associations and community organizations, is a frequent lecturer and author on a variety of legal issues, and has been an adjunct professor at DePaul University College of Law and The John Marshall Law School. She can be reached at [mjochner@sdflaw.com](mailto:mjochner@sdflaw.com).*

precise statement or explanation under the heading of ‘Jurisdiction’ of the basis for appeal.” The rule specifies that this is to include the following: (1) the Supreme Court rule or other law which confers jurisdiction upon the reviewing court; (2) the facts of the case which bring the appeal within this rule or other law; (3) and the date that the order being appealed was

entered and any other facts which are necessary to show that the appeal is timely.

Thus, your “jurisdiction” statement should include the dates of the entry of the trial court judgment, of the decisions on any post-trial motions and of the filing of the notice of appeal. This is the opportunity to deal

with any concerns regarding jurisdiction for the appeal: present your argument, supported by facts and authority. The importance of the jurisdictional statement cannot be underestimated as the appellate court has the duty in every case to sua sponte review its own jurisdiction, and it will dismiss an appeal if it finds that jurisdiction is absent.

Also, note that Rule 341(h)(4)(ii) provides that if your appeal to the appellate court is from a judgment as to all claims and all parties, the jurisdiction statement shall additionally demonstrate this disposition. Finally, this rule also requires that all facts cited in the statement of jurisdiction “shall be supported by page references to the record on appeal.”

The final stop on today’s journey is Rule 341(h)(5), which provides that where a case involves the construction or validity of a statute, constitutional provision, treaty, ordinance or regulation, the appellate brief shall contain “verbatim” the “pertinent parts of the provision” under the heading of “Statutes Involved.”

In addition, you must include citation to where the provision can be found. The rule further provides that if the provision is lengthy, only the citation need be included in the body of the brief, and the pertinent text may be included in full as part of the appendix. It should be remembered that the “Statutes Involved” section is to reference only those specific provisions that the court is being asked to analyze on appeal. Accordingly, this section is not meant to include every statute, rule or other provision referenced in the brief.

Now that we have examined these preliminary parts of the brief, next time we will move to the more substantive sections.

*Next up: Statement of Facts*