A road map to successful appellate briefs

We embarked on our journey through the process of drafting an effective appellate brief in my earlier columns, first discussing the different standards of review and then examining some general considerations. Our trek continues with the specific parts of the brief, as required under Illinois Supreme Court Rule 341. Rule 341 provides a road map for what must be included in every appellate brief. Subsection (h) sets forth the laundry list of required elements: A summary statement titled “Points and Authorities”; an “introductory paragraph”; a statement of the issues presented and applicable standard of review for each; a statement of jurisdiction; a presentation of the “statutes involved,” if applicable; a statement of facts; the argument; involved,” if applicable; a statement of the authorities “relied upon or cited in the argument.”

These pages are, in effect, an outline of the argument contained in your brief, with the rule requiring inclusion of the headings of the points and subpoints that constitute the argument, with citations under each heading or subheading to the authorities “relied upon or distinguished” in each specific section.

Further, the rule requires reference to the page of the brief on which each heading, subheading and authority appear. Because the cited authority is listed in relation to the points on which it is relevant, this assists the justices in understanding the citation references and finding that referenced authority.

Importantly, although these are the opening pages of your brief, these pages are usually the last to be prepared before filing, as they summarize your argument and thus can be read only once everything else in the brief is complete.

The next required item is an introductory paragraph. Rule 341(h)(2) explains that this paragraph must state two things:

- “[T]he nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury.”
- “[W]hether any question is raised on the pleadings, and, if so, the nature of the question.”

Thus, the introductory paragraph contains a brief statement of the case, which should succinctly identify the type of case and the claims presented as well as the procedural history.

The purpose of this paragraph is to state what the case is about in simple, declaratory style, with emphasis on the general area of law, whether a jury trial took place, and whether there are any pleading questions. This paragraph orients the justices to your case and is the prelude to the more detailed sections of the brief that will follow.

It is important, however, to keep this paragraph short and general, as the rule makes it clear that the court does not want specifics at this juncture. Indeed, in a recent decision, Collins v. Bartlett Park District, 2013 IL App (2d) 130006, the Illinois Appellate Court found a violation of this rule where the parties provided too much detail.

Next, your brief must set forth the issues presented for review. Note that Rule 341(h)(3) mandates that these be stated “without detail or citation of authorities.” Remember that the issues presented in a case define and limit the controversy. In sum, issues are questions or problems the court must resolve to dispose of the matter.

Typically, issue statements are phrased as “whether” statements or as direct questions. Pursuant to the requirements of the rule, the issue statement should be concise; the issues will be more fully discussed in the argument section of the document.

Requiring a statement at the outset of the brief of the broad nature of the issues presented provides the justices with a framework within which to consider the factual background and legal import of the case.

The rule, however, does not speak to the number of issues a party may present for review. Realize, however, that more does not mean better. In fact, raising too many weak issues may decide work against your client.

This phenomenon was discussed by U.S. Supreme Court Justice Stephen G. Breyer during an interview by Garner: “[I]f [counsel] throws in … issues … that [counsel] knows are no good, well, the judge might read those … first and draw the conclusion that [counsel] is just hot air, and so [the judge] might not pay as much attention.”

These comments underscore that careful issue selection is a key element in drafting an effective appellate brief. The best practice is to select the strongest issues with the most favorable standards of review. You can then focus your analysis on these stronger points, and not waste ink and energy on weak claims that may dilute the solid ones and lessen your credibility.

Stay tuned for our continued examination of other specific parts of the appellate brief in future articles.