

Chicago Daily Law Bulletin®

Volume 161, No. 112

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; the "short conclusion"; and an appendix, as required by Illinois Supreme Court Rule 342.

The required parts of the brief as set forth in Rule 341 work together to guide the reader — the court — through an initial introduction to the case, the issues presented, the facts that are material to the dispute, the relevant legal points and counterpoints raised by the parties and the controlling statutes and case law.

The reader's journey concludes with the author's suggested disposition of the matter. The goal of the brief is to guide your reader through the maze of facts and law to arrive at the result you are seeking.

During an interview conducted by writing guru Bryan Garner, U.S. Supreme Court Justice Samuel A. Alito Jr. underscored the importance of all parts of the brief working together to achieve this desired result:

"[I]t's easier for a reader to understand what you're saying if the reader is not on a sort of

mystery trip. So if you start out by saying where you are going to go at the end, and then you make it clear as you go along just how you are progressing through the argument, the reader can understand more easily what you're trying to say and how you're getting there and how the points relate to each other."

The starting line for this journey is found in Rule 341(h)(1), which requires that the brief's opening pages contain a "summary statement, titled 'Points and Authorities,' of the points argued and the authorities 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 ready 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,

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.

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 decidedly 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's] 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.