

United States Court of Appeals

For the Eighth Circuit

Pointers on Preparing Briefs

Many briefs submitted to the clerk's office for filing fail to comply with the applicable Federal Rules of Appellate Procedure and Eighth Circuit Rules. The Court requires my office to screen all briefs for compliance with the rules and to work with counsel in obtaining the necessary corrections. In an attempt to help you avoid common mistakes, I offer the following list of tips for brief preparation. Since the list is not inclusive of all of the technical requirements of a brief, please review Fed. R. App. P. 28 and 32, Eighth Circuit R. 28A, and the court's briefing checklist before preparing your brief. You can also review any of the thousands of sample briefs available on the court's web site at www.ca8.uscourts.gov.

1. Type size and proportional spacing. The Federal Rules of Appellate Procedure require all briefs to contain no more than 10½ characters per inch when using monospaced typeface and to use 14-point or larger type when using proportionally spaced typeface. See Fed. R. App. P. 32(a)(5). When using proportionally spaced typeface, the font must contain Serifs. Headings and captions need not use a font with Serifs. The following samples are acceptable types. While I have provided samples with WordPerfect, Microsoft Word and other word processing programs have similar fonts and font sizes.

Monospaced Typeface:

This line is prepared using WordPerfect for Windows 8.0 Courier New Font Face in Font Size 12.

This line is prepared using WordPerfect for Windows 8.0 Courier Font Face in Font Size 12.

Proportional Spaced Typeface:

This line is prepared using WordPerfect for Windows 8.0 Times New Roman Font Face in Font Size 14. This font contains Serifs.

This line is prepared using WordPerfect for Windows 8.0 Arial Font Face in Font Size 14. This font may be used only in headings and captions as it does not contain serifs.

2. Summary of Argument. Appellant's opening brief and appellee's brief must contain a summary of argument, regardless of the length of the brief. See Fed. R. App. P. 28(a)(8). Reply briefs are not required to have a summary of argument.

3. Standard of Review. Appellant must provide the applicable standard of review for every issue raised. See Fed. R. App. P. 28(9)(B). As examples, a ruling may be reviewed for "abuse of discretion," or as "against the weight of the evidence." The standard may be placed either as a separate heading before the discussion of each issue or at the beginning of the discussion of the issue.

4. Statement of Issues - Apposite Cases. Eighth Cir. R. 28A(f)(2) requires counsel to list the most apposite cases, not to exceed four, for each issue. The cases should appear in the statement of issues, below each issue. If no cases are apposite, include a statement so indicating.

5. Jurisdictional Statement. Fed. R. App. P. 28(a)(4) requires the jurisdictional statement to include the following information: (1) the basis for the agency or lower court jurisdiction; (2) the basis for our jurisdiction; (3) the dates to establish the appeal is timely; and (4) a statement the appeal is from a final order or judgment which disposes of all claims or information establishing the basis for the court's jurisdiction. Here is a sample of an acceptable jurisdictional statement:

“Jones was charged with one count of possession of cocaine with intent to distribute in violation of 21 U.S.C. § 841. Jurisdiction in the trial court was based on 18 U.S.C. § 3231, as Jones was charged with an offense against the laws of the United States. He was convicted on March 1, 1995, and sentence was imposed on May 12, 1995. Jones filed a timely appeal on May 15, 1995. This court's jurisdiction is based on 28 U.S.C. § 1291, which provides for jurisdiction over a final judgment from a U.S. District Court.”

Other bases for District Court jurisdiction may be found in Title 28, Chapter 85 of the U.S. Code Annotated. Other bases of appellate court jurisdiction can be found in Title 28, Chapter 83 of the U.S. Code.

6. Addendum. Every appellant's brief must have an addendum. See Eighth Cir. R. 28A(b). Please be sure that your addendum contains the order(s) appealed from, including, in a criminal case, the judgment and commitment order. Do not include the Presentence Investigation Report in the addendum in a criminal case.

7. Certifications. Fed. R. App. P. 32(a)(7)(C) requires a certification that the brief complies with the type-volume limitations. Eighth Cir. R. 28A(c) requires a certification of the name and version of the word processing software used.

8. Digital Version of the Brief. You must provide a diskette or CD-ROM of the text of the brief. See 8th Cir.R.28A(d). The digital version of the brief is used to verify compliance with the word and line limits and is uploaded to the court's CM/ECF system. All unsealed briefs are posted on the court's docket. The digital version of the brief must be in Portable Document Format(PDF) and must be generated by printing to PDF from the original word processing file so that text of the digital version of the brief can be searched and copied. Counsel should also file a diskette or CD-Rom containing the full text of any corrected brief.

9. Timeliness. A brief is timely if it is mailed by First-Class mail, hand-delivered to the clerk, or given to a commercial carrier for three day delivery on the due date set in the schedule or order. See Fed. R. App. P. 25(a)(2)(B)(i). My office will require a motion to file out of time if the brief is not filed on a timely basis.

10. Overlength Briefs. A motion for leave to file an overlength brief must be filed at least seven calendar days in advance of the brief's due date. Motions which do not comply with this requirement will be denied. Overlength briefs are strongly discouraged.

If you have any questions about any of these points, or other issues relating to the preparation of your brief, please call my office in St. Louis (314-244-2400) and ask to speak with me or to a case manager. We will be happy to answer any questions you might have; we can also send you samples of briefs.