

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 the clerk 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, the clerk offers 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, 8th Cir. R. 28A, and the court's briefing checklist before preparing your brief. Pro se filers may obtain sample briefs by contacting the Clerk's Office.

Briefs and addenda are now generally submitted electronically and are reviewed by staff for compliance with the Federal and Eighth Circuit rules before they are filed. If the brief complies with the rules, the staff will file the brief and generate, through CM/ECF, a Notice of Docket Activity to the parties to the appeal. Counsel are required to submit paper versions of the brief and addendum after they receive the Notice of Docket Activity. Please review the provisions of 8th Cir. R. 28A before attempting to file a brief. Please note Fed. R. App. P. 28 was amended on December 1, 2013, to combine the Statement of the Case and the Statement of Facts into a single Statement of the Case.

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 fonts. While these examples were prepared 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.

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 the Case. 8th Cir. R. 28A(i)(1) requires that appellant's opening brief must contain a statement, not to exceed one page, summarizing the case and indicating whether appellant requests oral argument. This is the first item of the brief. Appellee may also include the summary of the case in the event appellee believes appellant's statement is incorrect or incomplete. The summary is the filing party's opportunity to provide the reader with a concise statement of the facts and issues. A summary of the argument is also required under Fed. R. App. P. 28(a)(7).

3. Standard of Review. Appellant must provide the applicable standard of review for every issue raised. *See* Fed. R. App. P. 28(a)(8)(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. 8th Cir. R. 28A(i)(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 appellate jurisdiction; (3) relevant dates demonstrating that the appeal is timely; and (4) a statement that 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, 2010, and sentence was imposed on May 12, 2010. Jones filed a timely appeal on May 15, 2010. 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.

6. Addendum. Every appellant's brief must have an addendum. *See* 8th Cir. R. 28A(g). 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 or Statement of Reasons in the addendum in a criminal case. Please note both an electronic and a paper addendum are required. Appellees may prepare a supplemental addendum.

7. Certifications. Fed. R. App. P. 32(g) requires a certification that the brief complies with the type-volume limitations. 8th Cir. R. 28A(h) requires the brief be in PDF format and that counsel certify the brief and addendum have been scanned for viruses and are virus-free.

8. Timeliness. A brief is timely if it is submitted for filing through CM/ECF or emailed on the date specified in the court's briefing schedule or subsequent orders. 8th Cir. R. 28A(a). For those parties not filing electronically, the paper brief is timely if it is served and filed in accordance with Fed. R. App. P. 25(a)(2).

9. 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. 8th Cir. R. 28A(l). 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 the Clerk's Office in St. Louis (314-244-2400) and ask to speak with a case manager.