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Appealing from the Illinois Appellate Court to the Illinois Supreme Court: Which of the Three Available Methods is Appropriate for Your Case?

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There are several ways to initiate an appeal from the Illinois Appellate Court to the Illinois Supreme Court. You can petition the Illinois Supreme Court for leave to appeal under Illinois Supreme Court Rule 315; you can appeal to the Illinois Supreme Court on certificate under Illinois Supreme Court Rule 316 or you can appeal to the Illinois Supreme Court as of right under Illinois Supreme Court Rule 317. Following is a brief explanation of each Rule:

Petitioning Under Rule 315

Once a petition for leave to appeal is filed under Rule 315, it is up to the court's discretion as to whether it will be granted. A petition can be filed in any case not appealable from the Appellate Court as a matter of right. A petition for leave to appeal must be filed within 35 days of the entry of judgment in the Appellate Court or within 35 days after the entry of an order denying a petition for rehearing.

Rule 316: Appealing on Certificate

To appeal to the Illinois Supreme Court on certificate, you must file an application for a certificate of importance with the Appellate Court. This can be accomplished either by filing the application or including the application in a

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petition for rehearing. In order to be successful, the Appellate Court must certify that the case involves a question of such importance that the Illinois Supreme Court should decide it. The timing of filing the application is within 35 days after the judgment is entered if a petition for rehearing is not filed and within 14 days after the petition for rehearing is denied or the judgment on rehearing is entered.

Rule 317: Appealing as of Right

The final method of appeal to the Illinois Supreme Court from the Illinois Appellate Court falls under Rule 317. This type of appeal is known as an appeal as a matter of right because the case involves a United States or Illinois statute that has been held to be invalid or a question of either the United States or the Illinois State Constitution has been raised as a result of action of the Appellate Court. The procedure for filing this type of appeal is to generally follow the form set forth under Rule 315. Therefore, a petition for leave to appeal should be filed which matches the form set forth under Rule 315 with the following exceptions: item 1 should state the appeal is taken as a matter of right instead of setting forth a prayer for leave to appeal and item 5 should contain argument as to why appeal lies as a matter of right to the Illinois Supreme Court.

To appeal from the Illinois Appellate Court to the Illinois Supreme Court, you must determine which rule applies to the specifics of your case. Once you have done that, you must simply navigate the requirements under the applicable rule to ensure a rule-compliant filing.

Appellate Tips: 15 Critical Steps to Effective Brief Writing

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The appellate brief is unquestionably the most important element in an appeal – presuming the record has been properly preserved and prepared. In fact, at a symposium on appellate business, one of the judges from the New York Court of Appeals stated: "I think briefs are 95-percent of all cases. The brief is the deal." Judges read the briefs. But, they may not grant you oral argument or give you much time to speak even if you do argue. Thus, your written advocacy skills are of paramount importance to victory.

Through its award-winning CP Legal Research Group, Counsel Press, the largest and most experienced appellate services company in the United States, has assisted thousands of attorneys with their briefs, including brief review, brief re-crafting and brief writing. The purpose of this article is to share our extensive knowledge in this field and to provide appellate practitioners with

guidelines for effective brief writing.

Step #1 – Prepare to Write.

Before you even start to write, you must do a few things to prepare. Master the facts and know your record, both your client's version of the events and your adversary's. Identify the strengths and weaknesses of each. Answer these questions to know that you are prepared to write: (1) Why did the litigation arise in the first place? (2) Upon what facts was the judgment or order appealed from apparently based? (3) If stated, what was the reason for the lower court's decision? and, if you are the appellant, (4) What are the errors that warrant reversal? Know the standard of review applicable to each issue to strategically present the facts in the best light possible.

Step #2 – Keep it Simple.

This doesn't mean that your writing should be unsophisticated, nor that the issues and facts presented cannot be complex. Rather, it means that the brief should read like it was *not* written by a lawyer. Be concise and avoid repetition whenever possible. Focus on the points that need to be addressed and don't add "fluff." Appellate judges dislike unnecessarily long briefs!

Step #3 – Use Short Descriptive Sentences.

The optimum length of a sentence is 20 words or less. It is not always practical in legal writing, but the goal is: short words, sentences and paragraphs. Short sentences aid in comprehension, increase clarity and give your words weight. Streamlined, efficient sentences allow a clear picture of what is being conveyed. Sharp, bright sentences decrease confusion and possible misinterpretation. Think of famous quotations throughout history. How many are long-winded, lengthy sentences? (Note – not one sentence you've read in these steps so far exceeds 20 words.)

Step #4 – Use Proper or Descriptive Names, Not Designations.

Using legal designations to identify parties is the surest way to stop readers in their tracks. The most abused example of this principle is the use of appellant/appellee or respondent. Despite the fact that most courts specifically request descriptive references or names, authors often insist on using these designations. Worse yet, they frequently mix designations throughout their briefs. For example, referring to the same party as "plaintiff" in some places and "appellant" in others. The reader must then figure out who exactly is being talked about. The last thing you want is a confused, frustrated reader determining your appeal. So, use specific terms or names, such as "the contractor," "the driver," "the passenger," "the doctor," "Smith," "Jones," "the Port Authority," *etc*. Real people or entities are involved in the appeal, so treat them as such in your brief.

Step #5 – Avoid Writing in a Passive Voice.

Many writers use it unconsciously and incorrectly. Not only will using a passive

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voice increase document length, overuse may detract from your desired perception. To many readers, a non-judicious use of a passive voice signals a less-than-proficient author. If you are up against a word count, you can often save several hundred words by eliminating the passive voice. An active voice is easier to read and more forceful, authoritative and persuasive. (Note - this paragraph was written in an active voice.) Consider these two examples: "The car the plaintiff was driving in, which was red, was traveling at a rate of 45 miles per hour when it was struck by the defendant." (Passive). "Mr. Jones was driving his red car 45 miles per hour when Mr. Smith hit it." (Active).

Step #6 – Avoid "Lawyerisms."

Choose concrete or familiar words over legal terms of art or "lawyerisms." Among familiar words, choose the simpler term, such as "explain" over "elucidate," "show" over "evince" or "guess" over "hypothesize." Among Latin words, consider choosing a more accessible English phrase unless the term of art is important. A good example is choosing "among other things" over "*inter alia*." There is no real difference between the meanings other than one is in Latin. Your brief is not the place to show off your extensive vocabulary. Your reader won't be happy if he/she has to stop reading to look up definitions.

Step #7 – Write Your Questions/Issues Presented Persuasively and in a Way That Leads the Reader to Draw Your Desired Conclusion.

Framing the issue is likely the most critical part of the brief. The party that convinces the court to frame the issue the way it wants the issue framed is more likely to prevail. Framing the issue can also have significant impact on the applicable standard of review. Present the question in a way that makes the answer obvious ***and*** is the answer you want. Compare the following issues presented from an appeal granting summary judgment: A) "Whether the lower court erred in granting summary judgment where material issues of fact exist" and B) "Whether the lower court erred in granting summary judgment where there was no definitive determination as to: (i) how long a food spill was present in the aisle at ACME's supermarket, (ii) whether any ACME employee had actual notice of the spill and (iii) if the spill actually caused Ms. Smith's injury."

Step #8 – Present the Facts Accurately, But Persuasively, and Don't Hide From Negative Facts.

The statement of facts section of your brief must be accurate and should not contain argument. That does not mean, however, you cannot legitimately shade the facts to favor your client through word choice. Your client and your client's witnesses and experts "testify," "state," "confirm," "demonstrate," "establish," "conclude," "corroborate," "opine" or "estimate." The opposing party and its witnesses and experts "claim," "speculate," "guess," "contend," "purport" or "allege." Similarly, the words used to identify the persons involved are important. Examples: "victim" vs. "complainant"; "infant" vs. "toddler," *etc*. This holds true with using designations in lieu of names, as well. Because accuracy is important, you should not hide from negative facts or omit them from your recitation. You can, however,

minimize bad facts by bracketing or coupling them with favorable facts, using transitions like "although" or "while."

Step #9 – Avoid Dates Unless They Are Critical.

Courts review thousands of documents a year. There are few things more mind-numbing than reading a list of dates and what occurred on those dates. Also, depending on your desired presentation, a chronology may not present the facts in the best light for your client. Unless dates or particular times of actions are significant (*i.e.*, statute of limitations or default) or are integral to your theory of liability or defense, consider simply using words or phrases that orient the reader to the chronology. Examples: "after," "afterward," "after that," "at first," "at this time," "before," "beginning with," "beyond," "during," "earlier," "ending with," "eventually," "finally," "following," "from then on," "in the meantime," "last," "later," "meanwhile," "next," "now," "prior to," "since," "soon," "subsequently," "then," "until" or "while." If the dates are significant, consider creating a table, list, bullet points or timeline, if permitted by the court, of the milestone dates. Include a concise statement of the relevant occurrences on each significant date.

Step #10 – Avoid Emotional Appeals, But Humanize Your Story.

Emotional appeals are improper, disfavored and should be avoided. Reason is paramount, and appellate courts generally resent overt emotional appeals. However, you should humanize your facts and tell a story. This is another reason why names or descriptive adjectives are preferred over designations, when identifying the parties. You can legitimately and properly generate sympathy for your client or outrage against the opposing party's conduct without resorting to emotional appeals.

Step #11 – Your Argument Should Be in Outline Form.

You should have a point heading for each individual issue which stands alone, meaning that if you prevail on that issue, then you should win the appeal, regardless of the results on the remaining issues. Your situation may not always be this neat and clean, but you should strive for it in your argument. If it does not stand alone, then it should probably be a subheading under one of your main headings.

Less is more on the main issues. Try to keep the number down, if possible. But, remember the rules of outlining – if you have a "Point I," you must also have at least a "Point II." If your sub-points have an "A," they must also at least have a "B." If you are a bit rusty on the "formal rules of outlining," plug the preceding quote into your favorite Internet search engine and you are sure to get results that will help you.

Step #12 – Your Point Headings Should Be Mini-Summaries of the Argument That Is About to Follow.

The point headings and subheadings should be succinct, argumentative statements applying a specific legal principle to the facts of the case. Uninformative headings, while brief, are

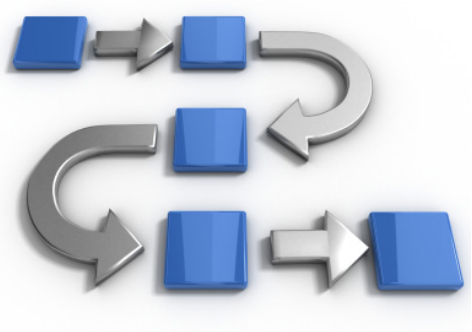
generally disfavored. Each heading and subheading should have a "because" in it. "THE SEARCH WAS UNLAWFUL." This tells the court nothing. Compare it to "THE SEARCH WAS UNLAWFUL BECAUSE THE POLICE OFFICERS RANSACKED THE HOUSE AND RUMMAGED THROUGH THE DEFENDANT'S PERSONAL BELONGINGS WITHOUT A WARRANT."

Step #13 – Avoid Repetition, Platitudes, Clichés, Long Quotes and Personal Attacks.

Avoid repetition, although you should frequently restate the desired conclusion without browbeating the court. Avoid platitudes and clichés – think of what you really want to say and say it. Don't rely on trite or overused expressions. Avoid lengthy quotations, unless they're particularly relevant. Quotations cannot replace explanation of the law or application of the law to the facts. Avoid personal attacks on the opposing party, opposing counsel and the lower court judge. There is no quicker way to antagonize the appellate court than to personally attack or disparage the lower court judge. Remember, these judges often sat in lower courts. If you impugn the integrity of their brethren, they may subconsciously (or consciously) become defensive. Even where the appeal raises bias, conflicts of interest or improper conduct, make your point without attacking a judge personally.

Step #14 – Write Conclusions That Ask for Something Specific.

The conclusion of a document is often overlooked or given little attention. Make a concise statement of the relief sought from the appellate court. Tell the court exactly what you want it to do. The most common oversight is to ask the court to



reverse the judgment or order appealed from, but not specify what you want done with the case after reversal. Consider seeking relief in the alternative, where appropriate. Example: Reverse the order granting the motion to dismiss and reinstate complaint. In the alternative, grant leave to amend any perceived defects.

Step # 15 – Edit, Edit, Edit.

The importance of editing cannot be overstated! You need to edit your brief before submitting it. If you edit your own work soon after completion, however, inevitably you will "read" what is in your mind, not what is on the paper. You need to set aside your work for a sufficient amount of time or have a second set of eyes review it. Some suggestions for effective editing include: setting the document aside, at least overnight, before editing, having an editing service review the brief, having a colleague, who is unfamiliar with the case, read it, reading it out loud or reading it backward.

Conclusion

Brief writing is a combination of art and science. There are rules of grammar and outlines that need to be followed. The above guidelines provide room for the artist in all attorneys to produce a written masterpiece, and we hope you find these useful. Should you require assistance with the editing stage, proofreading or writing of your brief, Counsel Press' Legal Research Group is here to help.

"Web Links to Nowhere" in SCOTUS Decisions: How to Ensure that Cited Material Remains Available for Years to Come

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According to a recent article in *The New York Times*[1], half of the hyperlinks in Supreme Court opinions no longer link to the information originally cited. Even at this level, creating a link directly to a website can be risky business. Websites expire or change owners, while web pages are relocated or archived. The question arises, how do you take control of slippery online material when citing to a web source directly?

In an ideal world, it would be easiest to copy a web path directly into your link command, but what happens five years from now? What happens in ten years when that website is no longer valid or even in existence? It's important to understand that you have no control over that pinpoint material. Therefore, you are at the website's mercy and the one at risk when referencing online material.

Counsel Press' eBrief team has extensive experience and deep expertise in hyperlink technology. We have assisted thousands of attorneys with enhancing their briefs, from basic hyperlinking to conversion of video and audio exhibits. Over the years, we have developed a number of techniques for combating website link rot, and we wanted to share a few of these in this article.

The easiest and most reliable way to prevent link rot is to do a simple conversion: create an image file of the website you are viewing. By converting a web page to a PDF, you have locked that web page material down as an image, permanently. You can then link directly to that image file. Whether you choose to link externally, internally or as an attachment file, it is up to you and a subject best left for another article.

...creating a link directly to a website can be risky business... how do you take control of slippery online material when citing to a web source directly?

Video files are especially tricky. *The New York Times* article notes one hyperlink in

1. The article titled "In Supreme Court Opinions, Web Links to Nowhere", written by Adam Liptak, published September 23, 2013.

opinion about violent video games by Justice Samuel A. Alito, Jr. The hyperlink takes users to an error page that reads: "Aren't you glad you didn't cite to this Web page?" So, how do you avoid the video link rot in your legal document?

It's always best to try to utilize the exhibit material that you have available directly to you, *e.g.*, deposition, surveillance, animations, etc. If you have to use an online video, I would ask for permission to use it directly from the source. Once you have the video files in place, you will need to check the size. If the size is large, the best solution is converting video files into a standard file format, *e.g.*, mpeg, mp4, etc. This will ensure that all operating systems are able to (dis)play the video file. If the file size is more manageable, *embedding* video files directly into PDF can be another nice option. For example, at Counsel Press, we have uploaded many appellate filings into the PACER/ECF database that contain video material embedded directly into the brief and/or record.

When linking to citation material online, like statutes and case law in LexisNexis and Westlaw, you also have the capacity to create links that search for the relevant material rather than simply directing the command to that web page. In other words, the link will find the specified document rather than look for a web page directly.

Sometimes, the answer can be a combination of things. What about two links? One link might lead directly to the web page and the other to an *image* of the web page. However you decide to proceed, if you do have to reference something directly online, make sure that it's from a reputable source. Avoid URL shorteners as they are prone to rot. One last thing: check your links often!

There is no easy answer for linking directly to web sources, but, with a few techniques, you can ensure that your cited material will remain available and relevant for years to come.