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Federal Rules of Appellate Procedure Rule 28 and Rule 32.

Rule 28. Briefs

(a) APPELLANT'S BRIEF. The appellant's brief must contain, under appropriate headings and in the order indicated:

- (1) a disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
 - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(g)(1).

(b) APPELLEE'S BRIEF. The appellee's brief must conform to the requirements of Rule 28(a)(1)–(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) REPLY BRIEF. The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the reply brief where they are cited.

(d) REFERENCES TO PARTIES. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the

lower court or agency proceeding, or such descriptive terms as “the employee,” “the injured person,” “the taxpayer,” “the ship,” “the stevedore.”

(e) REFERENCES TO THE RECORD. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC. If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [RESERVED]

(h) [Reserved]

(i) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) CITATION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) FORM OF A BRIEF.

(1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) *Binding.* The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) *Paper Size, Line Spacing, and Margins.* The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes

may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface*. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) *Type Styles*. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) *Length*.

(A) *Page Limitation*. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B).

(B) *Type-Volume Limitation*.

(i) A principal brief is acceptable if it:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(b) **FORM OF AN APPENDIX**. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) **FORM OF OTHER PAPERS**.

(1) *Motion*. The form of a motion is governed by Rule 27(d).

(2) *Other Papers*. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any

response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) SIGNATURE. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) LOCAL VARIATION. Every court of appeals must accept documents that comply with the form requirements of this rule and the length limits set by these rules. By local rule or order in a particular case, a court of appeals may accept documents that do not meet all the form requirements of this rule or the length limits set by these rules.

(f) ITEMS EXCLUDED FROM LENGTH. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- cover page;
- disclosure statement;
- table of contents;
- table of citations;
- statement regarding oral argument;
- addendum containing statutes, rules, or regulations;
- certificate of counsel;
- signature block;
- proof of service; and
- any item specifically excluded by these rules or by local rule.

(g) Certificate of Compliance.

(1) BRIEFS AND PAPERS THAT REQUIRE A CERTIFICATE. A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate

must state the number of words—or the number of lines of monospaced type—in the document.

(2) ACCEPTABLE FORM. Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

STANDARD OF REVIEW

In the United States, the term "standard of review" has several different meanings in different contexts and thus there are several standards of review on appeal used in federal courts depending on the nature of the question being appealed and the body that made the decision.

Arbitrary and capricious

In administrative law, a government agency's resolution of a question of fact, when decided pursuant to an informal rulemaking under the Administrative Procedure Act (APA), is reviewed on the arbitrary and capricious standard. Arbitrary and capricious is a legal ruling wherein an appellate court determines that a previous ruling is invalid because it was made on unreasonable grounds or without any proper consideration of circumstances. This is an extremely deferential standard.

Substantial evidence

Under the "substantial evidence" standard, a finding of fact from a jury, or a finding of fact made by an administrative agency decided pursuant to an APA adjudication or formal rulemaking, is upheld on appeal unless it is unsupported by substantial evidence. The appellate courts will generally not review such findings unless those findings have no reasonable basis. For example, if a jury finds that a defendant used force during the commission of a crime, the appeals courts will not reverse this finding unless it has no reasonable basis in the testimony or other facts. This is a highly deferential standard.

Clearly erroneous

Under the "clearly erroneous" standard, where a trial court (as opposed to a jury or administrative agency) makes a finding of fact, such as in a bench trial, that finding will not be disturbed unless the reviewing court is left with a "definite and firm conviction that a mistake has been committed" by that court. For example, if a

court finds that, based on the testimony of a single eyewitness, that a defendant broke a window by throwing a one pound rock over 20 feet, the appeals court might reverse that factual finding based on uncontradicted expert testimony (also presented to the lower court) stating that such a feat is impossible for most people. In such a case, the appeals court might find that, although there was evidence to support the lower court's finding, the evidence taken as a whole—including the eyewitness and the expert testimony—leaves the appellate court with a definite and firm conviction that a mistake was committed by the Court below.

Abuse of discretion

Where a lower court has made a discretionary ruling (such as whether to allow a party claiming a hardship to file a brief after the deadline), that decision will be reviewed for abuse of discretion. It will not be reversed unless the decision is "plain error". One consideration is whether "unpreserved" error exists—that is, mistakes made by the lower court that were not objected to as the law requires. In such a case, the appellate court may still choose to look at the lower court's mistake even though there was no objection, if the appellate court determines that the error was evident, obvious, and clear and materially prejudiced a substantial right, meaning that it was likely that the mistake affected the outcome of the case below in a significant way.

In federal court, if a party commits forfeiture of error, e.g. by failing to raise a timely objection, then on appeal, the burden of proof is on that party to show that plain error occurred. If the party did raise a timely objection that was overruled, then on appeal, the burden of proof is on the other party to show that the error was harmless error. This approach is dictated by Federal Rule of Criminal Procedure 52, which holds, "[a]ny error, defect, irregularity, or variance that does not affect substantial rights must be disregarded, [while a] plain error that affects substantial rights may be considered even though it was not brought to the court's attention." [3] The appellate court has discretion as to whether or not to correct plain error. Usually the court will not correct it unless it led to a brazen miscarriage of justice.