

THE APPELLATE RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

2. Appellate Rule 212(c)—Requiring a “preservation of error” section identifying where the asserted error was raised below.

Appellate Rule 212(c) addresses the substantive requirements of appellate briefs. The rule proposal would require a party to specify in its brief the exact location in the record where the asserted error was raised in the trial court, or if the error was not asserted, for the party to make a “plain error” argument. The goal is to save the appellate court and opposing parties from searching the record to determine if an issue was preserved. An ancillary effect may be better briefing and developments of arguments.

The committee recommended proposal has six noteworthy changes. First, paragraph (c)(1) now allows the statement of the case to be divided so the description of the lower court proceedings relevant to a particular issue is paired with the arguments pertaining to the case. Second, the last sentence in subparagraph (c)(1)(F) is deleted; this sentence says a cross appeal is waived if the court affirms the lower court’s decision. A cross appeal may be mooted if the appellate court affirms the decision, but it is not “waived.” Third, subparagraph (c)(1)(G) is re-written. A party’s statement of the case must include the facts and trial court proceedings pertinent to the issues raised on appeal. Except for sufficiency of the evidence issues, the statement of the case must also explain whether the issue was raised and argued in the trial court, and the trial court’s ruling. All assertions must be supported by the references to the record. Fourth, the standard of review is moved to the argument section. Also, for any issue not raised or ruled on, the appropriate argument section must address the applicability of the plain error doctrine. Current subparagraph (c)(1)(H)(standard of review) is deleted (because the standard is moved), and subsequent subparagraphs are re-lettered. Fifth, a party may include a summary before the argument section. Sixth, subparagraph (c)(8)(B) is deleted. The current provisions in this subparagraph are either incorporated into the above changes or are unnecessary. Last, the committee made other stylistic and clarifying edits.

The Appellate Rules Committee recommends the following proposal:

Rule 212. Briefs.

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(c) Substantive Requirements.

(1) *Brief of Appellant.* The ~~brief of the~~ appellant’s brief shall contain the following items under appropriate headings. The items shall be presented and in the order here indicated, except the statement of the case may be divided so that the description of the lower court proceedings relevant to a particular issue is paired with the arguments pertaining to that issue:

(A) A table of contents, including the titles and subtitles of all arguments, with page references.

(B) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(C) The constitutional provisions, statutes, court rules, ordinances, and regulations principally relied upon, set out ~~in full verbatim~~ or ~~in their~~ pertinent part provisions appropriately summarized.

(D) A jurisdictional statement of the date ~~on which~~ judgment was entered, whether the judgment is final and disposes of all claims by all parties or whether it is a partial final judgment entered under Civil Rule 54(b), and of legal authority of the appellate court to consider the appeal.

(E) A list of all parties to the case, without using “et al.,” or any similar indication, unless the caption of the case on the cover of the brief contains the names of all parties. This list may be contained in a footnote.

(F) A statement of the issues presented for review. In cases ~~of involving a~~ cross-appeal, the cross-appellant may present a statement of the issues presented for review ~~that which~~ would require determination if the case is to be reversed and remanded for further proceedings in the trial court. ~~In the event that the decision is affirmed on the appeal, such issues on the cross-appeal may be deemed waived by the appellate court.~~

~~_____~~(G) A statement of the case, which shall provide a brief description of the ~~facts of the~~ case and ~~the trial court proceedings pertinent to the issues raised on appeal, a concise statement of the course of proceedings in, and the decision of, the trial court.~~ Appellant shall state the facts relevant to each issue, with references to the record as required by paragraph (c)(8), in this section or in the appropriate argument sections. ~~For each appellate issue, other than those concerning the sufficiency of the evidence, the statement of the case must explain whether that issue was raised and argued in the lower court. For each appellate issue, the statement of the case must identify whether, and if so, when and how, the lower court ruled on that issue. All assertions in the statement of the case must be supported by references to the record as required by paragraph (c)(8).~~

~~_____~~(H) ~~A discussion of the applicable standard of review. (If the brief concerns several issues with different standards of review, the discussion of each issue should be preceded by a discussion of the standard of review applicable to that issue).~~

(~~H~~) An argument section, which shall ~~contain explain~~ the contentions of the appellant with respect to the issues presented ~~on appeal~~, and the ~~reasons therefor legal and factual support for those contentions~~, with citations to the authorities, statutes, and parts of the record relied on. ~~References to the record shall conform to the requirements of paragraph (c)(8).~~

~~_____~~ ~~For each issue raised, the party must identify the standard of review that governs the appellate court's consideration of that issue. For any issue not raised or ruled on, the appropriate argument section must address the applicability of the plain error doctrine. The section may be preceded by a summary.~~

Each major contention shall be preceded by a heading indicating the subject matter. ~~References to the record shall conform to the requirements of paragraph (c)(8). The argument section may be preceded by a summary.~~

(~~I~~) A short conclusion stating the precise relief sought.

(~~J~~) If the appeal concerns a property division in a divorce case, an appendix consisting of a table listing all assets and liabilities of the parties as reflected in the record, including the trial court's findings as to the nature (marital or individual), value, and disposition of each asset or liability.

(2) *Brief of Appellee.* The ~~brief of the~~ appellee's brief shall conform to the requirements of subdivisions (1)(A) through (1)(~~I~~) except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant, and a list of all parties need not be included.

(3) *Reply Brief.* The appellant may file a brief in reply to the appellee's ~~brief of the appellee~~. The reply brief shall conform to the requirements of subdivisions (1)(A), (1)(B), (1)(C), (1)(~~H~~), and (1)(~~I~~). This brief may raise no contentions not previously raised in either the appellant's or appellee's brief. If the appellee has cross-appealed and has not filed a single brief under (c)(6) of this rule, the appellee may file a brief in reply to the response of the appellant to the issues

presented by the cross-appeal. No further briefs may be filed except with leave of the court.

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(8) *References in Briefs to the Record or Excerpt.*

(A) ~~*References in Cases in Which Excerpts are Prepared.*~~

References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. _____]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. _____] and to pages of the trial court file is [R._____]. The form for references to untranscribed portions of the electronic record is [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00 or Date at Time 00:00:00].

~~(B) *References to be Included.* If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.~~

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