

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1540

Amending Appellate Rule 212(c) to require a concise case summary in the statement of the case in lieu of a statement of facts; and to permit statements of fact in the appropriate argument sections.

IT IS ORDERED:

Appellate Rule 212(c) is amended to read as follows:

(c) **Substantive Requirements.**

(1) *Brief of Appellant.* The brief of the appellant shall contain the following items under appropriate headings and in the order here indicated:

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

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

~~[d]~~(D) A jurisdictional statement of the date on which judgment was entered and of the legal authority of the appellate court to consider the appeal.

~~[e]~~(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]~~(F) A statement of the issues presented for review. In cases of cross-appeal the cross-appellant may present a statement of the issues presented for review 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]~~(G) A statement of the case, which shall provide a brief description of the case and a concise statement of the course of proceedings in, and the decision of, the trial court. The statement shall first contain a statement of the facts relevant to the issues presented for review with appropriate references to the record (see paragraph (8)). Appellant shall state the facts relevant to each issue, with references to the record as required by subparagraph (c)(8), in this section or in the appropriate argument sections.

~~[h]~~ (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).

~~[i]~~ (I) Argument. The An argument section, may be preceded by a summary. The argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The section may be preceded by a summary. Each major contention shall be preceded by a heading indicating the subject

matter. (~~See paragraph (8) of this subsection concerning rReferences to the record shall conform to the requirements of subparagraph (c)(8).~~)

~~[(J)]~~ (J) A short conclusion stating the precise relief sought.

~~[(K)]~~ (K) 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 shall conform to the requirements of subdivisions (1)~~[(A)]~~ through (1)~~[(J)]~~ 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 brief of the appellee. This brief may raise no contentions not previously raised in either the appellant's or appellee's briefs. 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.

(4) *Length.* Exclusive of appendices, the appellant's and appellee's briefs may not exceed 50 numbered pages each. Numbered pages for purposes of this paragraph begin with the jurisdictional statement required by (c)(1)~~[(D)]~~ of this rule. The appellant's reply brief may not exceed 20 pages. A motion for leave to file a brief longer than permitted by this paragraph must be accompanied by a copy of the over-length brief proposed to be filed.

(5) *Brief in Cases of Multiple Parties.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another.

(6) *Briefs in Cases Involving Cross-Appeals.*

~~[a]~~(A) Cross-Appellant. An appellee who is also a cross-appellant may elect to file a single brief that both discusses the appellee's claims of error and answers the original appellant. Such a single brief shall be filed on the date the appellee's brief is due. It shall be divided into two sections: the first section shall contain the issues and arguments involved in the cross-appeal and shall be prepared in accordance with (c)(1) of this rule; the second section shall contain the answer to the brief of the appellant and shall be prepared in accordance with (c)(2) of this rule. The single brief may not exceed 50 numbered pages. If the cross-appellant elects to file a single brief, the right to file a reply brief to the answer to the cross-appeal is waived. If the cross-appellant does not elect to file a single brief, the schedule and form for filing briefs in the cross-appeal shall be in accordance with the procedures for an original appeal.

~~[b]~~(B) Cross-Appellee. If the cross-appellant files a single brief, the appellant, as cross-appellee, may reply thereto in a separate section of the appellant's reply brief. The combined brief may not exceed 50 numbered pages and must be filed within 30 days of the cross-appellant's single brief.

(7) *References in Briefs and in Oral Arguments to Parties.* In briefs and oral arguments, counsel are expected to minimize

references to parties by such designations as “appellant” and “appellee.” It promotes clarity to use the designations used in the trial court or in the agency proceedings, or the actual names of parties, or descriptive terms such as “the employee,” the “injured person,” “the taxpayer,” and so forth.

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

[a](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. ____].

~~[b]—*References in Cases in Which Excerpts are Waived.* If the preparation of excerpts has been waived, the briefs shall refer to specific pages of the transcript or the trial court file. The form for references to pages to the transcript is [Tr. ____] and to pages of the trial court file is [R. ____].~~

[c](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.

(9) *Brief of an Amicus Curiae.* A brief of an amicus curiae maybe filed only if accompanied by written consent of all the parties, or by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed to the party whose position as to affirmance or reversal the amicus brief will support, unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. The brief shall be in the form prescribed by this rule and shall be duplicated and served pursuant to the requirements of Rule 212(a)(2). A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

(10) *Failure to File Brief.* When the appellant's opening brief is not filed as required, Rule 511.5 shall apply. When the appellee's brief is not filed as required, appellee will not be heard at oral argument except on consent of the appellant, or by request of the court.

(11) *Defective Briefs.* When a brief fails to comply with the requirements of these rules, the appellate court, on application of any party or on its own motion, and with or without notice as it may determine appropriate, may:

[a](A) Order the brief to be returned to counsel for correction by interlineation, cancellation, revisions or replacement in whole or in part, and to be refiled with the clerk within a time specified in the order; or

~~b~~(B) Order the brief stricken from the files, with leave to file a new brief within a specified time; or

~~c~~(C) Disregard defects and consider the brief as if it were properly prepared.

The authority to return briefs under this section may be exercised by the clerk of court pursuant to Rule 102 (f).

(12) *Citation of Supplemental Authorities.* When pertinent authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, the party may promptly advise the clerk of the court, by letter, with a copy to adversary counsel, setting forth the citations.

There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall contain no argument or explanations. Any response shall be made promptly and shall be similarly limited.

DATED: December 4, 2003
EFFECTIVE DATE: October 15, 2004

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Carpeneti