

## **Writing an Appeal Brief and Preparing an Excerpt of Record**

### **Introduction**

In an appeal, both parties present their positions to the Supreme Court by preparing written arguments called appeal briefs. The appellant's appeal briefs try to convince the Supreme Court to reverse the Superior Court decision. The appellant will argue each issue stated in the Statement of Points on Appeal. The appellee's brief responds to the appellant's arguments and tries to convince the Supreme Court to affirm the Superior Court decision. Both parties need to do legal research to support their arguments. Appellate Rule 212 requires that appeal briefs contain specific sections and use specific formatting.

Both parties also need to file an "excerpt of record" with their appeal brief. The excerpt of record should contain copies of all important documents from the Superior Court record that you cite to in the appeal briefs. The reason why the excerpt of record is required is to make it easy for the Supreme Court to find the relevant documents for the appeal. The Appellate Rules require that the excerpts of record follow specific formatting.

# Writing an Appeal Brief and Preparing an Excerpt of Record

## Table of Contents

<b>1. Writing an Appeal Brief</b>	<b>5-21</b>
a) General information about appeal briefs and due dates	5-8
What is an appeal brief? .....	5
How are the three appeal briefs different? .....	5
What is the order that the briefs are written and filed? .....	5
When is the appellant's opening brief due? .....	6
When is the appellee's brief due .....	6
When is the appellant's reply brief due? .....	6
How should you refer to the other side in the briefs and at oral argument? .....	6
Do you need to provide support for information in the briefs? .....	6-7
How do you cite to the record? .....	7
How do you cite to the excerpt of record? .....	7
How do you cite to the transcript? .....	7
What does an appeal brief include? .....	7-8
Do appeal briefs have special formatting? .....	8
b) Required sections in Appellant's Opening Brief	8-16
What is the appellant's opening brief? .....	8
What does the appellant include in the opening brief? .....	8-9
What does the cover need to include? .....	9
What does the Table of Contents include? .....	9-10
What does the Table of Authorities include? .....	10
What does the Authorities Principally Relied Upon include? .....	10
What is the Jurisdictional Statement? .....	11
What is the List of Parties? .....	11
What is the Statement of Issues Presented for Review? .....	11
What is the Statement of the Case? .....	11
What does the Statement of the Facts include? .....	12
What does the Description of the Superior Court proceedings include? .....	12
What is the Standard of Review? .....	13
What does abuse of discretion mean? .....	13-14
What does clearly erroneous mean? .....	14
What does de novo review mean? .....	14
What is the Argument? .....	14-15
What is the Conclusion? .....	15
What goes into the Appendix? .....	15
What formatting is required? .....	15
Is there a form brief I can file? .....	15-16
c) Required sections in Appellee's Brief	16-19
What is the appellee's brief? .....	16
Does the appellee's brief have the same sections as the opening brief? .....	16
What is the first thing that you should do after receiving the opening brief? .....	17

How do you write the appellee's brief? .....	17
How is the Statement of Facts different?.....	17-18
How is the Arguments section different? .....	18
How is the Conclusion section different?.....	18
Is there a form brief I can file? .....	18
What formatting is required? .....	18
Do you have to file an appellee's brief?.....	18-19
<b>d) Required sections in Appellant's Reply Brief</b>	<b>19-21</b>
What is the reply brief?.....	19
How do you write the reply brief? .....	19
What sections should be in the reply brief? .....	19
How long is the reply brief? .....	20
When is the reply brief due?.....	20
Do you have to file a reply brief? .....	20
Is there a form brief I can file? .....	20
What formatting is required? .....	20
Does the appellee get to file a brief after appellant's reply brief? .....	20
<b>e) Required formatting of an appeal brief</b>	<b>21-23</b>
Is there a special format for what the briefs look like? .....	21
What is the format for the initial filing before the brief is accepted? .....	21-22
What does the court do when it gets your brief? .....	22
What do you do when the court accepts your brief? .....	22
Is there a special way to cite to the documents in the record in the appeal brief?.....	22
Do the brief covers need to be a special color? .....	22
How big should the typeface be if you type the appeal brief on the computer or a typewriter?.....	23
Do you have to prove that you used the right size type?.....	23
How do you number the pages in the brief? .....	23
Is there a page limit for the appeal briefs? .....	23
When do you start the page count to make sure your brief is the right length?.....	24
What do you do after finishing the brief? .....	24
<b>2. Preparing the excerpt of record</b>	<b>24-26</b>
What is an excerpt of record? .....	24
Do you file an excerpt of record with each appeal brief?.....	24
What documents should be in the appellant's excerpt of record? .....	24-25
Does the appellee need to file an excerpt of record? .....	25
Does the appellant file another excerpt of record with the reply brief? .....	25
Can you include documents that are not in the Superior Court record? .....	25
What should the copies look like? .....	25
Are there specific formatting requirements for the excerpt of record? .....	25
When is the excerpt of record due? .....	26
What do you do after preparing the excerpt of record? .....	26

<b>3. Filing the appeal brief and excerpt of record</b>	<b>26-28</b>
What do you do after you finish writing the appeal brief and preparing the excerpt of record? .....	26
Are there special requirements when you file the brief and excerpt of record? .....	27
What happens if your appeal brief and excerpt of record are accepted? .....	27
What happens if your appeal brief or excerpt of record are rejected? .....	28
When do you serve the other side?.....	28
How do you serve the other side? .....	28

## **1. Writing an Appeal Brief**

Writing the appeal brief is a very important part of the process. This is the stage where you need to do legal research to figure out how to support your arguments. You need to organize your information and present your arguments clearly and concisely. The appeal briefs must contain all of the sections and formatting required by the Appellate Rule 212. Finally, make sure you file the appeal briefs within the deadlines and serve the other side with copies as required by Appellate Rule 212.

### **a) General information about appeal briefs and due dates**

#### **What is an appeal brief?**

An appeal brief is a written document where the parties explain to the Supreme Court why the Superior Court made a mistake or decided the case correctly. There are 3 briefs filed during the appeals process:

1. the appellant's opening brief
2. the appellee's brief
3. the appellant's reply brief.

#### **How are the three appeal briefs different?**

The appellant's opening brief tells the Supreme Court:

- what judgments or orders the appellant is appealing
- why the appellant thinks the Superior Court made a mistake in those judgments or orders
- how the Superior Court's mistake hurt the appellant, and
- what the appellant wants the Supreme Court to do about it if it finds the Superior Court made a mistake

The appellee's brief responds to each issue raised in the appellant's opening brief. It shows why the appellant's arguments are wrong and shows support for the Superior Court's decision.

The appellant's reply brief discusses the arguments raised in the appellee's brief. It shows how the appellee does not overcome the arguments made in the appellant's opening brief. The appellant cannot raise any new issues in the reply brief.

#### **What is the order that the briefs are written and filed?**

The appellant's opening brief is filed first.

The appellee's brief is filed second.

The appellant's reply brief is filed third.

**When is the appellant's opening brief due?**

After the Superior Court record is ready and the parties file any transcripts, the case manager will send the appellant a notice to file the opening brief. The appellant usually has 30 days from the date of the notice to file the opening brief with the Supreme Court and serve the appellee (or their attorney). If your case is expedited under Appellate Rule 218 or another rule, there may be a different timeline.

**When is the appellee's brief due?**

Usually the appellee's brief is due:

- 30 days after the appellant's opening brief was filed if you were served by personal delivery or
- 33 days if appellant's opening brief was mailed.

If there is a different schedule for the appellee's brief because the appellant's brief was rejected, the case manager will send a notice. If your case is expedited under Appellate Rule 218 or another rule, there may be a different timeline. Remember to serve the other side (or their attorney) by the same date that you are required to file the brief.

**When is the appellant's reply brief due?**

Once the appellee's brief is accepted, the case manager will send a notice to the parties that the appellant has 20 days to file a reply brief in the Supreme Court and serve the appellee (or their attorney). If your case is expedited under Appellate Rule 218 or another rule, there may be a different timeline.

**How should you refer to the other side in the briefs and at oral argument?**

You can use the actual names of the parties, unless it is a confidential proceeding like a Child In Need of Aid (CINA) case. You can also use a descriptive term such as "the employee" or the "injured person." You should minimize calling the parties "appellant" or "appellee." You can use the same designation that was used in the Superior Court or agency proceeding.

**Do you need to provide support for information in the briefs?**

Yes. You must follow *every* factual statement that you make in your brief with a citation to the Superior Court record, excerpt of record, or the transcript from a Superior Court hearing or trial. This is required by Appellate Rule 212(c)(8) so that the justices can understand whether a factual assertion is accurate. If you do not provide supporting cites for every factual statement, it is harder for the Supreme Court to fairly consider the issues you raise. Most important, failure to provide citations can result in the Supreme Court not considering your legal argument.

So for example, if you say in your brief, “The parties were married in 1999,” you must provide a citation to either the record, the excerpt of record, or the transcript to support that statement.

### **How do you cite to the record?**

You can cite to the Superior Court record to support a factual statement in a brief. The record is the actual file of all documents from the Superior Court. The pages of the record are numbered and the record is usually located in the appellate clerk’s office in Anchorage where you can review it (call your case manager to make sure where it is before going to look at it). You may cite to the record’s page numbers to support your factual assertions.

For example, your brief would state: “The parties were married in 1999.” (R. 23). (R. 23) means that on page 23 of the Superior Court record, there is a document that supports the statement the parties were married in 1999. Page 23 may be a copy of the marriage license or an affidavit filed in the Superior Court where one of the parties stated they were married in 1999.

### **How do you cite to the excerpt of record?**

You may also cite to the excerpt of record filed by either party to support a factual statement in a brief. Remember, the excerpt may contain only copies of documents that are found in the Superior Court record. You cannot add documents that the Superior Court did not have in making its decision that is now being appealed.

For example, your brief would state: “The parties were married in 1999.” (Exc. 41). (Exc. 41) means that on page 41 of the excerpt of record, there is a document that supports the statement the parties were married in 1999. Page 41 may be a copy of the marriage license or an affidavit filed in the Superior Court where one of the parties stated they were married in 1999.

### **How do you cite to the transcript?**

You may cite to the transcript filed by either party to support a factual statement in a brief. For example, your brief would state: “The parties were married in 1999.” (Tr. 12). (Tr. 12) means that page 12 of the transcript contains the testimony that supports the statement the parties were married in 1999. Page 12 may be testimony from the divorce trial where the wife stated she married the husband in 1999.

### **What does an appeal brief include?**

Each appeal brief must include specific sections. Please read closely the information found in required sections in appeals briefs (<http://www.courts.alaska.gov/shc/appeals/briefrequiredsections.htm>).

If you are representing yourself and having trouble formatting a brief, you may use:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))  
Be sure to check the box on the cover page showing which brief you are filing.

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler.

### **Do appeal briefs have special formatting?**

Yes. There are very specific requirements for what a brief looks like. Please read closely the information found in the required formatting section (<http://www.courts.alaska.gov/shc/appeals/briefformatting.htm>) so that your brief is accepted. If your brief does not include all of the required formatting, the court may reject it. Please read the *Top Ten Reasons Why Briefs and Excerpts of Record are Rejected* ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_1020.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_1020.pdf)).

### **b) Required sections in Appellant's Opening Brief**

#### **What is the appellant's opening brief?**

The opening brief is the appellant's written argument that tries to convince the Supreme Court that the Superior Court made a mistake in its decision that should be reversed. It is the first appeal brief in a three part series.

#### **What does the appellant include in the opening brief?**

The appellant's opening brief is a single bound document that contains specific sections. The following sections are required by the Appellate Rule 212:

- Cover
- Table of Contents
- Table of Authorities
- Authorities principally relied upon
- Jurisdictional statement
- List of parties
- Statement of issues presented for review
- Statement of the case
- Standard of review
- Argument
- Conclusion
- Appendix
- Certificate of typeface and point size if not Courier



- Proof of service

This website includes a sample appeal brief (<http://www.courts.alaska.gov/shc/sampleappealbrief.doc>) to show you what the different sections of a brief look like.

If you are representing yourself and having trouble formatting a brief, you may use:

- Brief, [SHS-AP 270](#)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))  
Be sure to check the box on the cover page showing you are filing the "Appellant's Opening Brief."

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler.

### **What does the cover need to include?**

The front cover of the brief must contain:

- The name "Supreme Court"
- The Supreme Court case number
- The title of the case which is called "the caption" (for example, "John Smith, appellant vs. Mary Brown, appellee")
- The type of proceeding in the Supreme Court (for example "appeal" or "petition for review")
- The name of the Superior Court or agency that made the decision you are appealing
- The name of the judge who made the decision you are appealing
- The case number in the Superior Court
- The title of the brief (for example, "Appellant's Opening Brief" "Appellee's Brief" or "Appellant's Reply Brief")
- Contact information for the party filing the brief if you are representing yourself: name, address and phone number. If an attorney prepares the brief, the attorney needs to provide their name, address, telephone number, bar number, and their law firm or organization.

See the sample brief cover (<http://www.courts.alaska.gov/shc/cover.doc>) for an example.

### **What does the Table of Contents include?**

You will prepare the Table of Contents after you have written the appeal brief. Only then will you know which sections are on what pages. In the Table of Contents, list the heading for each section of the brief and note which page it is found on. The Table of Contents should include these sections:

- Table of Authorities
- Authorities Principally Relied Upon
- Jurisdictional statement
- List of parties
- Statement of issues presented for review
- Statement of the case
- Standard of review
- Arguments. Also list the titles and subtitles of all arguments you make in the Arguments section of the brief.
- Conclusion
- Appendix if you have one.

Someone reading the brief should be able to get a good overview of the case by skimming the Table of Contents. See the sample brief Table of Contents (<http://www.courts.alaska.gov/shc/tableofcontents.doc>) for an example.

### **What does the Table of Authorities include?**

List all of the statutes, case law and other authorities that you rely on in your brief. Group separately the different authorities. For example, put all the statutes in one list and then put all the cases in another list. List the statutes in numeric order and list the cases alphabetically and include their citations. Note on which pages of the brief you cite each authority.

You will prepare the Table of Authorities after you have written the brief. That way you know on which page you cited what authority.

See the sample brief Table of Authorities (<http://www.courts.alaska.gov/shc/tableofauthorities.doc>) for an example.

### **What does the Authorities Principally Relied Upon include?**

Type in the exact language from the authorities that you rely on in your brief. This includes the important statutes, regulations, constitutional provisions, court rules, or ordinances. You may attach photocopied language from these authorities so long as it is easily readable. If you rely on a particular section or subsection of a long statute or other authority, you do not need to include the whole statute. Just include the section that you rely on. Do not include language from cases in this section.

See the sample brief Authorities Principally Relied Upon (<http://www.courts.alaska.gov/shc/authoritiesprincipallyreliedupon.doc>) for an example.

## **What is the Jurisdictional Statement?**

This section of the brief shows the court there is a final judgment from the trial court which is being appealed. It states:

- the name of the trial court
- the name of the trial court judge
- the date of the final judgment which is listed on the certificate of distribution of the trial court judgment or decision that you are appealing. This is usually found at the bottom of the judgment and signed or initialed by a clerk.

See the sample brief Jurisdictional Statement (<http://www.courts.alaska.gov/shc/jurisdictionalstatement.doc>) for an example.

You can skip this section if you are representing yourself and filing the

- Brief, [SHS-AP 270](#)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))

but you must include on the cover sheet the requested information about the final judgment that you are appealing.

## **What is the List of Parties?**

List all parties to the appeal. You do not need to include this section if all parties to the appeal are included in the caption on the cover.

## **What is the Statement of Issues Presented for Review?**

List all of the issues that the Supreme Court needs to decide. State the issues in terms of how the Superior Court made a mistake. For example, "The Superior Court made a mistake when it decided that . . ." Only include issues that the Supreme Court can resolve.

See the sample brief Statement of Issues Presented for Review (<http://www.courts.alaska.gov/shc/statementofissues.doc>) for an example.

## **What is the Statement of the Case?**

The Statement of the Case contains two main subjects:

1. a statement of the important facts
2. a description of the important proceedings that happened in the Superior Court

See the sample brief Statement of the Case (<http://www.courts.alaska.gov/shc/statementofthecase.doc>) for an example.

### **What does the Statement of the Facts include?**

State only the important facts that the Supreme Court should know to decide the appeal. State the facts in chronological order, starting from the beginning of the Superior Court case.

You must follow *every* factual statement that you make in your brief with a citation to the Superior Court record, excerpt of record, or the transcript from a Superior Court hearing or trial. This is required by Appellate Rule 212(c)(8) so that the justices can understand whether a factual assertion is accurate. If you do not provide supporting cites for every factual statement, it is harder for the Supreme Court to fairly consider the issues you raise. Most important, failure to provide citations can result in the Supreme Court not considering your legal argument. ***Failure to provide the Court with this information is the most common reason that briefs are rejected.***

Make sure you cite to the record, excerpt of record or transcript after every factual statement you make. So for example, if you say in your brief, “The parties were married in 1999,” you must provide a citation to either the record (R. 34), the excerpt of record (Exc. 12), or the transcript (Tr. 4) to support that statement. It would look like this, depending on whether the information is found in the record, excerpt or transcript:

- The parties were married in 1999. (R. 34) *This means on page 34 of the record, information such as a marriage license or affidavit shows the parties married in 1999.*
- The parties were married in 1999. (Exc. 12) *This means on page 12 of the excerpt of record, information such as a marriage license or affidavit shows the parties married in 1999.*
- The parties were married in 1999. (Tr. 4) *This means on page 4 of the transcript, somebody testified at a hearing or trial that the parties married in 1999.*

### **What does the Description of the Superior Court proceedings include?**

After the Statement of Facts section, summarize what happened procedurally in the Superior Court and what the Superior Court decided. This means you describe

- the important documents that the parties filed
- relevant hearings and trial
- decisions - orders, judgment and decree

Do not describe every motion and hearing, only the important proceedings and those relevant to the issues on appeal. For example, state when the complaint was filed in the Superior Court. Discuss any motions that were important. If a trial or hearing was held,

state the date and the date the court entered the final judgment. You need to decide which events are important enough for the Supreme Court to consider.

### **What is the Standard of Review?**

When the Supreme Court reviews an issue on appeal, it needs some kind of rules or guidelines to determine whether the Superior Court made an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called standards of review.

When the appellant argues that the Superior Court made a mistake in its ruling, the Supreme Court looks first at what the standard of review is for that particular issue. The three most common standards of review are:

1. Abuse of discretion
2. Substantial evidence
3. De novo review

These different standards are discussed below. Also, there are other standards of review that may apply to the issues in your appeal.

You need to figure out which standard of review applies to the different issues you are appealing to the Supreme Court.

See the sample brief Standard of Review (<http://www.courts.alaska.gov/shc/standardofreview.doc>) for an example.

It is difficult for people representing themselves to determine the appropriate standard of review. If you are not able to figure this out, you can skip this requirement.

### **What does abuse of discretion mean?**

If the Superior Court judge used discretion in making the final decision, then the Supreme Court uses the abuse of discretion standard to review the decision on appeal. Abuse of discretion happens when the Superior Court ruling is arbitrary, unreasonable or absurd because it makes absolutely no sense.

For example, a decision where a judge uses discretion is:

- in deciding whether a witness can testify
- in making rulings on whether evidence is admitted
- in deciding which parent should be awarded primary custody in a custody or divorce case
- in deciding how the property should be split between the husband and the wife

It is difficult to convince the Supreme Court that the Superior Court judge abused his or her discretion in making a decision. Abuse of discretion does not mean a trial or the judge had to be perfect, but it does mean that the judge's actions were so far out of bounds that someone truly did not get a fair trial. Sometimes on appeal, the Supreme Court finds that the Superior Court judge was wrong, but not wrong enough to have influenced the outcome of the trial. In that situation, the trial court decision may be affirmed.

### **What does clearly erroneous mean?**

The clearly erroneous standard of review is used if you are appealing the factual findings of a judge or jury after trial. Review under the clearly erroneous standard is very deferential to what the Superior Court judge did. This means that the Supreme Court will accept the Superior Court's findings of fact unless it has a definite and firm belief that the Superior Court made a mistake. If the Superior Court's account of the evidence is possible considering the entire record, the Supreme Court will not reverse it even if it would have weighed the evidence differently if it was hearing the case in the first place. Because the judge or jury at the trial saw the witnesses and heard what they had to say, they are in a better position to decide what actually happened and who is telling the truth.

For example, the Supreme Court would use the clearly erroneous standard to review the Superior Court's decision to value a home to be \$150,000 when the parties did not agree about the home's value.

### **What does de novo review mean?**

De novo is a Latin phrase which means "from the beginning." When the Supreme Court uses de novo review, it will independently review the issue as if the Superior Court had never ruled on it. If this standard applies, the Supreme Court will not defer at all to the Superior Court's decision and does not assume that the Superior Court's decision is correct.

This type of review is generally limited to issues that involve questions of law. How the Superior Court interpreted a statute or the Alaska Constitution is a question of law. For example, whether a new law regarding custody should be applied to custody cases filed before the law went into effect is a question of law. So the Supreme Court would review this issue using the de novo standard of review.

### **What is the Argument?**

This is where you explain how the Superior Court made a mistake in deciding your case. Remember that when you filed your Notice of Appeal, you stated the points on appeal. The argument section should address each point on appeal. For each issue, state why you think the Superior Court made the wrong decision and why the Supreme Court should reverse the decision on appeal according to the standard of review.

Explain why the incorrect Superior Court decision harmed your case so much that the error should cause the Supreme Court to reverse the Superior Court's judgment or order. Do not try to phrase your arguments in legal jargon. Instead use plain language to explain your arguments.

Use headings to help the court understand what you are discussing. Think of the argument section of your brief as a book where each issue is a separate chapter. Set off each issue with a heading similar to a chapter title that describes the arguments that will follow.

For every statement of law you make in the brief, you need to cite to a case, statute, rule or legal treatise that supports your statement. For every statement of fact, cite to the record just as you did in the Statement of the Case. Citations usually appear at the end of the sentence.

See the sample brief Argument (<http://www.courts.alaska.gov/shc/argument.doc>) for an example.

### **What is the Conclusion?**

Briefly restate your position and tell the Supreme Court what you want it to do. For example, you may ask the court to reverse the Superior Court's decision.

See the sample brief Conclusion (<http://www.courts.alaska.gov/shc/conclusion.doc>) for an example.

### **What goes into the Appendix?**

Most briefs do not include an appendix. You must attach an appendix if the case involves property division issues in a divorce. List the parties' assets and debts as shown in the Superior Court record. This includes the Superior Court's findings as to the type of property (marital or individual), value of the property, and who got each item or property or debt.

### **What formatting is required?**

There are very specific requirements for what a brief looks like. Please follow very carefully what the formatting section (<http://www.courts.alaska.gov/shc/appeals/briefformatting.htm>) says so that your brief will be accepted. If your brief does not include all of the required formatting, the court may reject it. Please read the *Top Ten Reasons Why Briefs and Excerpts of Record are Rejected* ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_1020.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_1020.pdf)).

### **Is there a form brief I can file?**

You can file:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))  
Be sure to check the box on the cover page showing you are filing the  
“Appellant’s Opening Brief.”

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler.

### **c) Required sections in Appellee's Brief**

#### **What is the appellee's brief?**

The appellee's brief is the appellee's written response to the appellant's opening brief. The appellee's brief responds to the arguments raised in the opening brief and tries to convince the Supreme Court that the Superior Court decision was correct.

#### **Does the appellee's brief have the same sections as the opening brief?**

The appellee's brief should have the same sections as the appellant's opening brief. Appellate Rule 212 requires the following sections:

- Cover
- Table of Contents
- Table of Authorities
- Authorities principally relied upon
- Jurisdictional statement\*
- List of parties\*
- Statement of issues presented for review\*
- Statement of the case\*
- Standard of review
- Argument
- Conclusion
- Appendix
- Certificate of typeface and point size if not Courier
- Proof of service

The appellee does not need to include the \* sections above if you agree with the appellant's opening brief version of the following sections:

- Jurisdictional Statement
- List of parties
- Statement of issues presented for review, or
- Statement of the case.



For a detailed description and examples of each section in the briefs, please read the opening brief page (<http://www.courts.alaska.gov/shc/appeals/appellantsopeningbrief.htm>).

### **What is the first thing that you should do after receiving the opening brief?**

Figure out the date your appellee's brief will be due. It is due 30 days after the appellant served the opening brief (or 33 days if it was mailed to you).

Read closely the appellant's opening brief to understand the appellant's version of the facts and the arguments. You should also read all the statutes, cases and Superior Court documents that the appellant cites to in support of their arguments. Try to determine if these citations really stand for what the appellant says they do.

### **How do you write the appellee's brief?**

Writing the appellee's brief is very similar to how the appellant writes the opening brief, with a few exceptions. The main differences are in writing the Statement of the Case, the Argument and Conclusion sections.

### **How is the Statement of Facts different?**

In the Statement of Facts section, you will present your version of the facts if different than those in the opening brief. State only the important facts that the Supreme Court should know to decide the appeal. State the facts in chronological order, starting from the beginning of the Superior Court case.

You must follow *every* factual statement that you make in your brief with a citation to the Superior Court record, excerpt of record, or the transcript from a Superior Court hearing or trial. This is required by Appellate Rule 212(c)(8) so that the justices can understand whether a factual assertion is accurate. If you do not provide supporting cites for every factual statement, it is harder for the Supreme Court to fairly consider the issues you raise. Most important, failure to provide citations can result in the Supreme Court not considering your legal argument. ***Failure to provide the Court with this information is the most common reason that briefs are rejected.***

Make sure you cite to the record, excerpt of record or transcript after every factual statement you make. So for example, if you say in your brief, "The parties were married in 1999," you must provide a citation to either the record (R. 34), the excerpt of record (Exc. 12), or the transcript (Tr. 4) to support that statement. It would look like this, depending on whether the information is found in the record, excerpt or transcript:

- The parties were married in 1999. (R. 34) *This means on page 34 of the record, information such as a marriage license or affidavit shows the parties married in 1999.*

- The parties were married in 1999. (Exc. 12) *This means on page 12 of the excerpt of record, information such as a marriage license or affidavit shows the parties married in 1999.*
- The parties were married in 1999. (Tr. 4) *This means on page 4 of the transcript, somebody testified at a hearing or trial that the parties married in 1999.*

If you agree with the opening brief's Statement of the Facts section, you do **not** need to include this section in your appellee's brief.

### **How is the Arguments section different?**

In the Argument section, you should respond to every issue in the opening brief the appellant raised and show that the Superior Court decision was correct. Deal with each issue separately. Organize your arguments using headings and subheadings that match the ones the appellant used, but rewrite them to support your arguments.

You should not rely on the legal references that the appellant made in the opening brief. You likely need to do some reading on the subject and your own research. Read the statutes and cases that relate to the issues on appeal. Review the Superior Court's final judgment or orders.

### **How is the Conclusion section different?**

Briefly restate your position and tell the Supreme Court what you want it to do. Usually, you will ask the court to affirm the Superior Court's decision.

### **Is there a form brief I can file?**

You can file:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))  
Be sure to check the box on the cover page showing you are filing the "Appellee's Brief."

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler.

### **What formatting is required?**

There are very specific requirements for what a brief looks like. Please follow very carefully what the formatting section (<http://www.courts.alaska.gov/shc/appeals/briefformatting.htm>) says so that your brief will be accepted. If your brief does not include all of the required formatting, the court

may reject it. *Please read the Top Ten Reasons Why Briefs and Excerpts of Record are Rejected* ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_1020.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_1020.pdf)).

### **Do you have to file an appellee's brief?**

It is not required, but if you do not file an appellee's brief, you will not be allowed to participate in the appeal and the court will consider only what the appellant's brief argues. You will not be given another opportunity to provide a written argument and you will not be allowed to present an oral argument. So think carefully about whether you want to file an appellee's brief. If you choose not to file one, you must let the court know and can file:

- Notice of Decision Not to File Appellee Brief, SHS-AP 260 ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_260.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_260.pdf))

### **d) Required sections in Appellant's Reply Brief**

#### **What is the reply brief?**

The reply brief is the third brief in the series and is filed by the appellant. The reply brief addresses issues that were raised previously in either the appellant's opening brief or the appellee's brief, but should not raise any new issues.

#### **How do you write the reply brief?**

The appellant may file an appeal brief that replies to the issues raised in the appellee's brief. The reply brief can only address issues that were raised previously in either the appellant's or appellee's brief. The reply brief should not raise any new issues. The appellant's reply brief should:

- show how the appellee's brief has not countered the appellant's claims stated in the opening brief,
- address the cases and arguments raised in the appellee's brief, and
- respond to new issues raised by the appellee's brief.

#### **What sections should be in the reply brief?**

The appellant's reply brief should include:

- Cover
- Table of Contents
- Table of Authorities
- Authorities principally relied upon
- Standard of review
- Argument

- Conclusion
- Certificate of typeface and point size if not Courier
- Proof of service

For a detailed description and examples of each section in the briefs, please read the opening brief page

(<http://www.courts.alaska.gov/shc/appeals/appellantsopeningbrief.htm>).

### **How long is the reply brief?**

The appellant's reply brief can be no longer than 20 pages.

### **When is the reply brief due?**

The appellant's reply brief is due within 20 days after the appellee serves the appellee's brief.

### **Do you have to file a reply brief?**

No, it is not required. The appellant should only file a reply brief if you think it is necessary to address something the appellee said in the appellee's brief that you didn't discuss in the opening brief.

If you think the Court can decide the issues based on the appellant's opening brief and the appellee's brief, you do not have to file a reply brief. If you do not plan to file a reply brief, file

Notice of Decision Not to File Reply Brief, SHS - AP 250

([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_250.doc](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_250.doc))

### **Is there a form brief I can file?**

You can file:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))  
Be sure to check the box on the cover page showing you are filing the "Appellant's Reply Brief."

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler.

### **What formatting is required?**

There are very specific requirements for what a brief looks like. Please follow very carefully what the formatting section

(<http://www.courts.alaska.gov/shc/appeals/briefformatting.htm>) says so that your brief

will be accepted. If your brief does not include all of the required formatting, the court may reject it. Please read the *Top Ten Reasons Why Briefs and Excerpts of Record are Rejected* ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_1020.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_1020.pdf)).

### **Does the appellee get to file a brief after appellant's reply brief?**

No. The only appeal brief that the appellee files is the appellee's brief.

### **e) Required formatting of an appeal brief**

#### **Is there a special format for what the briefs look like?**

Yes. Be aware that there are slightly different requirements between when you first file the appeal brief and when you file the final version after the Appellate Court Clerk's Office has accepted it.

If you are representing yourself and having trouble with the formatting, you may initially file:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler. Read the formatting requirements below for what to do after the court accepts the brief because you will have to make some changes, including filing a cover with a special color, printing on both sides and binding along the left margin.

#### **What is the format for the initial filing before the brief is accepted?**

When you first file the appeal brief, it must:

- have a cover that includes specific information
- be on 8 ½ x 11 inch white paper of good quality
- be printed with black typeface or neatly handwritten in black ink. Do not use all capital letters or excessively emphasize words with bolding or underlining.
- have all text and footnotes in the right sized typeface if using a computer or typewriter (13-point serifed font such as Times New Roman; at least 12.5-point non-serifed font such as Arial; or 12-point mono-spaced font such as Courier)
- be double-spaced, except that the headings and footnotes must be single-spaced and quotations of more than two lines must be single-spaced and indented at least ½ inch on both sides
- have 1 inch margins on the left and right sides
- have not more than 6 ½ x 9 ½ inches of printed or written words on a page
- have page numbers at the bottom center of each page

- be printed or written on 1 side of the page
- be 50 pages or less for appellant's opening brief and appellee's brief; the appellant's reply brief must be 20 pages or less
- be stapled or clipped but not bound down the left side

If you are representing yourself and having trouble with the formatting, you may initially file:

- Brief, [SHS-AP 270](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx)  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_270.docx](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_270.docx))

Please note that this brief is designed for people representing themselves when appealing a civil decision to the Alaska Supreme Court. It is designed to make the process of writing about the issues on appeal to the Supreme Court simpler. Read the formatting requirements below for what to do after the court accepts the brief because you will have to make some changes, including filing a cover with a special color, printing on both sides and binding along the left margin.

### **What does the court do when it gets your brief?**

The requirements set out above are for the **initial filing** before it has been accepted by the Appellate Court Clerk's Office. The court will review the brief to make sure you have followed all the requirements of Appellate Rule 212. You will get a notice telling you if the court accepted or rejected your brief. If the brief is rejected, the notice will tell you what changes must be made. You will need to submit your brief to the court to be reviewed again. Do not finalize the brief until you receive notice that the brief has been accepted. This notice will tell you important information for the final printing such as what color cover you need, and how many copies to provide.

### **What do you do when the court accepts your brief?**

For the **final filing** after the Appellate Court Clerk's Office has accepted the appeal brief, do everything required above except make sure

- The cover paper is the correct color depending on the type of appeal brief and is a heavier quality than the rest of the pages.
- The paper is printed on both sides.
- The papers are firmly bound in at least 2 places along the left margin.

### **Is there a special way to cite to the documents in the record in the appeal brief?**

Yes. If you refer to documents in the excerpts of record, cite to them as (Exc.\_\_\_\_) and put the page number in the blank. If they are in the Superior Court record, but not in the excerpt, cite to them as (R.\_\_\_\_). If you are citing to the transcript, use (T.\_\_\_\_).

### **Do the brief covers need to be a special color?**

Yes. Special colors must be used in the final printing of the briefs depending on which brief is filed. The case manager will send you a printing notice that tells you what color cover you need.

- The appellant's opening brief cover must be ivory colored heavy paper.
- The appellee's brief cover must be blue heavy paper.
- The appellant's reply brief cover must be green heavy paper.

### **How big should the typeface be if you type the appeal brief on the computer or a typewriter?**

For all text and footnotes, the typeface must be at least:

- 12 points (10 characters per inch) - if using Courier font or a very similar font,
- 13 point - if using Times New Roman, Garamond, CG Times, New Century Schoolbook, or a very similar font,
- 12.5 point - if using Arial, Helvetica, Univers, or similar style font

### **Do you have to prove that you used the right size type?**

If you use 12 point Courier, you do not need to prove that you are using the right size. But if you use any other typeface, you need to state what typeface and font size you used by filing:

- Certificate of Typeface and Size, SHS-AP 200  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_200.doc](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_200.doc))

### **How do you number the pages in the brief?**

The first three sections of the brief should be numbered using small Roman numbers (i, ii, iii, iv, v, vi, vii, ix, x etc.):

- Table of Contents
- Table of Authorities, and
- Authorities principally relied upon.

Starting with the Jurisdictional Statement, the pages for the rest of the brief should be numbered using regular numbers (1, 2, 3, 4, 5, etc). The page number should be listed on the bottom of the page in the center.

### **Is there a page limit for the appeal briefs?**

Yes.

<b>Type of appeal brief</b>	<b>Length</b>
Appellant's opening brief	50 pages max
Appellee's brief	50 pages max
Appellant's reply brief	20 pages max

The court does not usually allow briefs that are over the page limit.

### **When do you start the page count to make sure your brief is the right length?**

With the appellant's brief, the first numbered page starts with the Jurisdictional Statement. The Cover, Table of Contents, Table of Authorities and Authorities Principally Relied Upon do not count toward the 50 page limit for the appellant's opening brief and the appellee's brief.

### **What do you do after finishing the brief?**

After you write the brief and get it formatted correctly, you need to prepare the excerpt of record (<http://www.courts.alaska.gov/shc/appeals/preparingtheexcerptofrecord.htm>).

## **2. Preparing the Excerpt of Record**

### **What is an excerpt of record?**

The appellant and appellee each prepare an "excerpt of record." Each party selects the most important documents in a case and puts them together in one booklet called the excerpt of record. The excerpt is supposed to highlight the most important documents in a form that is easy for the Supreme Court to use. Do not put all of the documents in the case into your excerpt because the Supreme Court already has the entire record from the Superior Court.

### **Do you file an excerpt of record with each appeal brief?**

The appellant must file an excerpt of record with the opening brief. The appellee may file a different excerpt of record with the response brief if the appellant's excerpt didn't include all the required documents. The appellant may file a "supplemental" excerpt of record with the reply brief only to include relevant documents that the other excerpts didn't include.

### **What documents should be in the appellant's excerpt of record?**



The appellant's excerpt of record must include both required documents and any others from the Superior Court case that you cite in your appeal brief and that are relevant to the issues on appeal. You must include:

- complaint and answer or petition
- final judgment or order that you are appealing
- other relevant orders
- findings of fact and conclusions of law or other statements showing the Superior Court's reasoning
- relevant parts of motions, affidavits or oppositions
- parts of the transcript that contains oral rulings or relevant discussions by the Superior Court
- specific portions of other documents in the record that the appeal briefs refer to and which are important to the issues on appeal

### **Does the appellee need to file an excerpt of record?**

If the appellant's excerpt of record contains all the documents required in Appellate Rule 210(c)(2)(A), then the appellee should not provide them again. The appellee should include any different documents that the response brief refers to and which are important to the appellee's arguments on appeal.

### **Does the appellant file another excerpt of record with the reply brief?**

The appellant may file an excerpt of record with the reply brief called a "supplemental excerpt." This is only necessary if the previous excerpts do not contain all the relevant documents from the Superior Court case to support your arguments. Do not include parts of the record that appear in another excerpt filed in the appeal.

### **Can you include documents that are not in the Superior Court record?**

If you want the Supreme Court to review documents that are not in the Superior Court record, file a motion to supplement the record. You must explain why it is appropriate for the Court to consider those documents. For information about filing a motion, see our motions page (<http://www.courts.alaska.gov/shc/appeals/appealsmotions.htm>).

### **What should the copies look like?**

The copies should look exactly like the ones that the Superior Court considered. This means there should not be any notes or markings on the pages. Make sure the copies in the excerpt are clear and are numbered consecutively (1, 2, 3, 4 etc.) so you can refer to them in your brief.

### **Are there specific formatting requirements for the excerpt of record?**

Yes. To understand what documents must be included in your excerpt of record and how to organize it, read

- Appellate Rule 210(c)
- Clerk's Instructions for Preparation of Excerpts (<https://public.courts.alaska.gov/web/appellate/docs/Dockins.pdf>)

Make sure to follow all requirements for excerpt of record formatting. If you don't format the excerpt of record correctly, the court may reject it. Please read the *Top Ten Reasons Why Briefs and Excerpts of Record are Rejected* ([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_1020.pdf](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_1020.pdf)).

### **When is the excerpt of record due?**

It is due at the same time when you file your appeal brief.

- appellant's opening brief and excerpt of record are due within 30 days from when the case manager sends the Notice of briefing.
- appellee's response brief and excerpt of record are due 30 days after the appellant's opening brief was filed if you were served by personal delivery or 33 days if it was mailed
- appellant's reply brief and excerpt of record are due 20 days after you are served with the response brief if served by personal delivery or 23 days if it was mailed

If there is a different schedule because the Appellate Court Clerk's Office rejected one of the appeal briefs, the case manager will send a notice. If your case is expedited under Appellate Rule 218 or another rule, there may be a different timeline. Remember to serve the other side (or their attorney) within the same timeline that you are required to file the brief.

### **What do you do after preparing the excerpt of record?**

After you finish:

- writing and formatting the brief, and
- preparing the excerpt of record

get ready to file the brief and excerpt of record (<http://www.courts.alaska.gov/shc/appeals/filingabrief.htm>) and serve the opposing party.

## **3. Filing the appeal brief and excerpt of record**

## **What do you do after you finish writing the appeal brief and preparing the excerpt of record?**

First make sure you have complied with Appellate Rule 212(b) and (c) for the appeal brief and Appellate Rule 210(c) for the excerpt of record.

On or before the date your brief is due, file in the Appellate Clerk's Office

- the original and one copy of the appeal brief
- 1 copy of the excerpt of record

AND

- proof of service on the other party (or attorney)

## **Are there any special requirements when you file the brief and excerpt of record?**

Yes. There are different requirements for when you initially file the appeal brief and excerpt of record and when you file the versions that are accepted by the Appellate Court Clerk's Office.

When you initially file, make sure that the appeal brief and copy, and the excerpt of record are printed on one side of the page and are not bound on the side. The Appellate Court Clerk's Office will review your brief and excerpt of record to make sure they comply with Appellate Rule 212(b) and (c) and Appellate Rule 210(c). Then the case manager will return your brief and excerpt of record and let you know that it is accepted or rejected because it didn't follow Rule 212's requirements.

Make sure to follow all requirements for brief formatting (<http://www.courts.alaska.gov/shc/appeals/briefformatting.htm>) and excerpt of record formatting

(<http://www.courts.alaska.gov/shc/appeals/preparingtheexcerptofrecord.htm#8>). If you don't format them correctly, the court may reject them. Please read the *Top Ten Reasons Why Briefs and Excerpts of Record are Rejected*

(<http://www.courts.alaska.gov/shc/appeals/preparingtheexcerptofrecord.htm>).

## **What happens if your appeal brief and excerpt of record are accepted?**

If your appeal brief is accepted, the case manager will send a "Notice- Printing of Briefs" and you need to prepare your appeal brief and excerpt of record for final filing. The Notice will tell you:

- what color cover your appeal brief should have. Use a heavy paper for the cover.
- to print your appeal brief on both sides of the page (double-sided).
- to deliver 8 copies of the appeal brief and 6 copies of the excerpt of record to the Appellate Clerk's Office by a specific date. If you are outside of Anchorage, mail the briefs and excerpts of record by First Class U.S. Mail.

- to mail 2 copies of the brief and 1 copy of the excerpt of record to the other side (or their attorney) in the case.
- to bind the appeal briefs and excerpt of record firmly in at least 2 places on the left side.
- keep a copy of the appeal brief and excerpt of record for your own files.
- If the Supreme Court has entered an order stating you do not have to pay for the printing of the appeal briefs, follow the instructions in the order or ask the case manager.
- decide whether you want to file a written request for oral argument. Oral arguments are discussed in detail below.

### **What happens if your appeal brief or excerpt of record are rejected?**

If your appeal brief or excerpt of record do not follow Appellate Rule 212, the case manager will return them with an Order Rejecting Brief. There will be an attachment that contains the comments of the law clerk that reviewed the brief and excerpt of record and instructions on how to fix them. The Order will state your new deadline to re-file the corrected brief or excerpt of record. You are not allowed to add new information or arguments to the brief. You should only fix the problems with formatting that the law clerk pointed out.

### **When do you serve the other side?**

You need to serve the other side every time you file anything in the Supreme Court. So you must serve the other side with a copy of the appeal brief and excerpt of record when you initially file them. You must also serve the other side with a copy when the court accepts the final version of the appeal brief and excerpt of record.

### **How do you serve the other side?**

Use First Class U.S. mail or hand-deliver to the other side (or their attorney)

- 2 copies of the brief, and
- 1 copy of the excerpt of record

When you file the appeal brief and excerpt of record, indicate how and when you served the other side by filing:

- Certificate of Service, SHS-AP 210  
([http://www.courts.alaska.gov/shc/appeals/docs/SHS\\_AP\\_210.doc](http://www.courts.alaska.gov/shc/appeals/docs/SHS_AP_210.doc))