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Brief Writing on Appeal to the Supreme Court of Florida

Lucille Snowden

BRIEF WRITING ON APPEAL TO THE SUPREME COURT OF FLORIDA*

LUCILLE SNOWDEN **

This article is concerned with appeals to the Supreme Court of Florida, and is limited as far as possible in its scope to Rule 20 of the Supreme Court Rules of Practice [1] and the actual writing of an appeal brief.

The purpose of an appeal brief is to convince the supreme court that there was harmful error in some action or ruling of a lower court which requires a reversal. An appeal brief must clearly inform the appellate court of the nature of the controversy, the facts out of which it arose, the decision of the lower court, the grounds upon which a review is asked and the reasons why the decision of the lower court should be reversed.

CONSIDERATIONS IN STUDYING THE RECORD

Survey of the Transcript of Record

Unless the brief is a criminal appeal involving a life sentence, all questions involved will be based on the "assignment of errors" [2] or "grounds of appeal" [3] which have been reviewed by the lower court from which the appeal has been taken. If the case has been handled from the beginning by the same counsel, he will be familiar with the aspects presented by the record, but if counsel is writing an appeal brief from a "cold" transcript where he has been retained by a client after an adverse decision in the lower courts or if the case has been referred to him by the attorney who handled the case in the lower court, he will not be familiar with the content of the transcript of record. From the assignment of errors must be decided what grounds stated in the case present

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* The writer's purpose in writing this article was to give beginning attorneys some idea of the rules and the problems which they face when they are actually writing an appeal brief. Very simple directions have been included for that reason. The processes of legal thinking necessary in writing a competent brief are not meant to be part of this article.

** Member of the Florida Bar; served as assistant to the Attorney General of Florida, 1947-49. Credit for any content of substance in this article must go to Justice Paul D. Barns of the Supreme Court of Florida. The Florida State Legal Institute, on March 5, 1949, had as its principal speaker Justice Barns, speaking on the subject "Practice and Procedure Before the Supreme Court of Florida." Justice Barns supplied the research notes which he used in preparing his most able speech and many thoughts incorporated into this article were taken from the transcript of his actual speech.

1. See FLA. STAT. § 59.44 (Cum. Supp. 1947).
2. See FLA. STAT. § 81.28 (1941); FLA. STAT. § 61.06 (1941); FLA. STAT. § 67.07 (1941); FLA. STAT. § 59.06 (1941); FLA. STAT. § 732.16 (1941).
3. See FLA. STAT. § 924.11 (1941); 3 AM. JUR. 287. The assignment of error as used in this article is a general term and is inclusive of such pleading, whether it be specifications of error, grounds for appeal, or other language used in the rule or statutes.

at least an arguable question. Counsel should consider the record whether or not he handled the case in the lower court. The innuendo and color of a courtroom may create an entirely different picture from that presented when the transcript of record is read; and it is from the record that the factual material for the appeal brief must be taken. It is the printed transcript which will be read by the justices of the supreme court; thus an attempt must be made as far as possible to see the record with their viewpoint in mind.

Because of the short time allowed to file a notice of appeal and assignment of errors, counsel must have clearly in mind the principles of law involved in the errors and from which he will be stating the questions and argument. One method for keeping the changing law in mind is to read the Florida cases in the advance sheets of the Southern Reporter as they arrive.

A quick consideration of the record prior to accepting a case for appeal is by no means preparation for actual briefing, but it does give some idea about the material with which there is to work. A great many questions arising have to do with the testimony of one witness or another; some transcripts are well indexed and some are not. Where the index is not complete enough to be of value, what is called a "paper clip method" saves time later. On one side of the page clip together the testimony of each witness, direct and cross examination. On the opposite side of an individual page place a paper clip when there is a statement or ruling which may prove beneficial in posing the questions or stating the facts in argument. This step is not necessary, but it does prove to be an aid at the beginning of the careful study which must be made of the record before the actual brief can be written.

Some few attorneys have rote or photographic memories which enable them to read a record and know its contents, but the majority are not so fortunate. Sometimes a slow reading of a record after it has been scanned and clipped so that pertinent material is marked is sufficient preparation for legal research. Some attorneys prepare an outline or abstract of the important evidence and errors noted in order to fix the contents of the transcript firmly in their minds. To brief a case for appeal counsel must be familiar with the record; the method followed will depend on his individual requirements.

Counsel should bear in mind in reading the record the assignment of errors as grounds for appeal. If an outline or abstract of the transcript is being used, he can place a star beside the points that appear to be strongest. Every effort should be made to keep his thinking in line with the attitude of the justices of the supreme court.

Reading and re-reading will familiarize one with the record, but if there is too much concentration on the facts and the questions which have arisen in the mind, a "cooling period" may be necessary.

Research before Briefing

With the facts well in mind research can be commenced. This research process should include both the statutes and the decisions of this state relating to the assignment of errors as grounds for reversal. If the law is settled and adverse to the point, but the justice of the case, or the change of times requires that the supreme court reverse its previous decisions, a search should be made of the authorities of other states, the federal cases and the United States Supreme Court decisions. It may be helpful to go further, to the forward-looking texts and legal articles in the law reviews on the subject, and to the re-statements of the law. Though compared to the number of decisions handed down each year the number of cases where the Supreme Court has changed its rule of law is few, yet if it has the facts and circumstances which show that the law previously followed fails, the court will by decision change its settled rule.

Recent cases, on point, require less checking, less Shepardizing, and are closer to the court which will be considering the case. It may be that the law is well settled and that there are numerous decisions to support the point. Then it has always seemed a good idea, after reading the opinions, to make use of those cases which have facts which are as nearly as possible in line with the facts in the case being briefed. This simply appears more in keeping with the argument in the written brief because it goes along with the practice of writing a short synopsis of the case being cited before quoting the favorable law taken from the opinions.

Sometimes it may not be actually possible to find the rule of law desired written in words in an opinion; but from other attorneys it may be known that such a rule has been followed. It may have been in a *per curiam* decision where no opinion was written, or in some matter ruled on on motion day where no opinion was written. In that situation if the point is important to the case, a little detective work may be done by tracing the shop talk and studying the actual file of the cases in the supreme court where its action has followed the law for which the search is being made. It is more convincing to the court to be persuaded that it is merely being presented with a rule it has been following than it is to have to use law of another jurisdiction to uphold the contentions for reversal. Most attorneys in Florida are not in a position to check and use the actual records of the cases in the supreme court. Counsel on either side of any appeal will probably have the transcript of the case as well as the appellant, appellee and reply brief and the motion for rehearing if one was entered, so it is probable that from any attorney named in any particular case, a complete file may be secured.

Headnotes of cases, a synopsis in a digest or a reference made in another

case to a citation is not finding the law on point. The complete written opinion of every case to be cited in the brief should be read.

One cannot be content with reading the cases which are favorable to the points to be used in the brief. Sometimes it is wise to anticipate the use of a strong well-known case by the adversary by distinguishing it in the appellant brief. Whether or not this is done, it is still necessary that counsel be acquainted with the law for and against him. The problem of research is finished only when such a thorough search has been completed that the law on the particular point has been exhausted.

THE BRIEF

History of the Case

As this point the discussion is limited to the actual writing of the "History of the Case" which is Part I of the brief proper. This means just exactly what the title implies and no more. The court must be informed just what procedure has been followed.

Rule 20 of the Supreme Court Rules of Practice states the rules to be used in writing this section in clear language:

> The history of the case should be limited to a concise recital of the essential facts without argument or undue elaboration. It should state the purpose of the litigation, should contain a chronological enumeration of the pleadings (and if necessary, a summary thereof), the issues made, and the judgment of the trial court with appropriate reference to applicable pages of the transcript. The appellee in his brief may point out any error in the brief of appellant and make such additions to the history of the case as recited in the brief of appellant as he may deem essential to the disposition of the questions raised, with references to the pages of the transcript which he claims support his position.

When considering a brief the court assumes that the argument has been placed under the "argument." Brief writers should not expect the justices to look at matters in the "history" or "questions involved" for their discussion of the merits of the assignment of errors. Argument and discussion of the controversy should be under the "argument" lest it be concealed from the eyes of the court.[4]

Attorneys have submitted briefs where they included the body of their argument in their "History of the Case." When they finally arrived at their argument section, they stated their question and then added a sentence saying "This question has been sufficiently argued in other parts of this brief." A history of the case is supposed to serve a purpose to the court in that it is quickly to acquaint the court with the actual procedure of the lower court.

4. Pawley v. Pawley, 37 So.2d 247 (Fla. 1948).

Any argument or elaboration on such procedure should be posed in the form of a question and argued. If it does not have that importance, it should not be discussed, for only the procedural steps with limited amplifications to make them clear are proper.

The history begins with the reason for the case going into court originally, followed by the type of action, the bases of the case, the important pleadings filed and what happened to them, whether it was a jury case or heard by a judge, the verdict or judge's ruling, the sentence or damages, whether motion for new trial was denied and whether notice of appeal was filed and whether assignment of errors or grounds of appeal were filed. After every recitation of a particular pleading the page of the transcript where it is found should be stated in parentheses. No pleading should be allowed to dangle, but must be followed by reciting the order of the lower court in relation to the pleading so that the court quickly sees why the case progressed to its next step or stopped where it did. *In other words, the history of the case should resemble the progress sheet of the case done in narrative form.*

Statement of Questions Involved

This section relates to Part II of the brief proper. There will probably be more trouble stating the questions satisfactorily than in preparing any other part of the brief. Questions are for the purpose of presenting the assignment of errors to the court. The assignment of error is the "case" or "cause of action" in the appellate court. The purpose and function of the "questions involved" presented by a brief are to clarify the argument addressed to error *vel non* presented by the assignment directed against a specific act of the trial judge.[5]

If the errors assigned were so general that they did not clearly inform the court of the error complained of, then it ought to be clarified by a statement in the brief of the appellant, so as to fully advise the court. The question should be stated so as to cover the assignment, and enough facts added so that by a reading of the question the justice is immediately informed that a glaring injustice has been done and that the error of the lower court is such that the lower court's ruling should be reversed.

Rule 20 of the Supreme Court Rules of Practice states the following rules in relation to the Statement of the Questions Involved:

> The prime or controlling questions to be answered shall be stated as concisely as possible without duplication or argument. The question or questions of law should be made to appear clearly, and should not be stated in the alternative. Each question should be stated and numbered in a separate paragraph and should be followed by a statement of whether it

5. Town of Howey-in-the-Hills v. Graessle, 36 So.2d 619 (Fla. 1948); Coral Gables v. State *ex rel.* Hassenteufel, 38 So.2d 467 (Fla. 1949).

was answered in the negative or the affirmative by the trial court, or if not answered, it should so state.

The framing of the particular questions or points may be done so that the questions themselves carry the answer of the lower court. The questions should not be so long and involved that the thought is lost. Briefs of appellants have been filed where a single question filled a page and a half of legal size paper. Needless to say, the attorney presenting such a question incorporated most of what he thought was argument into the question; in addition, he gave facts which tended to confuse rather than clarify the question. Such a question is useless. This evidenced a lack of careful preparation. A short concise statement of an actual question with only enough facts to tie it to the act of the lower court is the most forceful way of presenting a question to the court. Not only is the appearance better but the thought is easily carried in the mind and the argument and facts are saved for the proper place in the brief. The test as to the quality of a question submitted is whether it can be replied to as it is stated in the appellant brief. If the question is concisely worded, if it presents a question and uses facts which are upheld by the transcript, then there will be no reason for the appellee to rephrase it.

Some doubt may arise as to what the "facts" used in a question should consist of. Only facts create questions and they should take a question being presented to the court out of the abstract and tie it to the record on appeal. Facts are merely a setting for the actual point of law in the question so that it will impress the mind of the court. Facts used should be fair and truthful, and ultimate and conclusive when compared with the record. The writing of the "Statement of the Questions Involved" is really the initial presentation to the court of the main points which are to be used later with the argument. When they are later copied in the "argument" they are part of the argument.

Argument

A. *Facts*

At one time in Florida all cases had a "Statement of Facts." This is no longer true. Thus throughout the argument to the questions there must be clear presentation of facts under each question argued so that the court will have a clearer and more helpful picture of the case *than if it studied the record itself.*

Rule 20 of the Supreme Court Rules of Practice, relating to the third section of the brief termed Argument, reads as follows:

> The section of the brief called "argument" shall contain a division for each of the questions involved, to be headed by the question in distinctive type and followed by such distinctive type and followed by such discussion and citation of authority as the writer deems pertinent. Specific assignments

> of error from which the questions argued arise should be stated, and if any reference to the transcript is made, the page should be given. When opinions of this court are cited, the page and number of both the Florida Reports and the Southern Reporter should be given. . . .

Each question should be followed by the actual assignment of error giving rise to the question. Assignments of error are short and they should always be copied into the brief. To omit an assignment of error is to belittle its importance and also the importance of the related question. The briefer should supply the page on which such assignment of error appears in the transcript and pages where any reference is made to the acts or facts the error is based on.[6]

The actual argument should begin with the factual setting of the error complained of; this keeps the point of law close to the record. The appellant must remember that it is unlikely that the justice on first reading of the appellant brief will have as yet read the transcript. Enough facts must be included in the brief so that the justice will know the exact foundation for the error assigned. Facts should be presented in an interesting style but with as much brevity as possible and with transcript page references.

At times the question argued may reveal many different reasons why the court should reverse on that point. Where there are more than three equally strong propositions, it is well to present them in outline form, giving a complete summary of the propositions along with the leading authority to support them. The remainder of the argument can be broken down by using the summarized propositions as point headings. Where points in argument are not so strong as to require titles, they may be broken by division lines in the spacing. Where there is more than one proposition, but these propositions are not so conclusive that they stand alone in the outline, it is still a wise practice to use some sort of heading when they are arrived at in the argument. Consideration should be given as to where to place the strongest point in the body of an argument under a particular question. The strongest may be used first and the weakest last or vice versa. A better practice would seem to be to pick out the two strongest points and to present one at the beginning and one at the end of the argument so that the mind of the court will not view the question as weak when it begins to consider it or leave it with a feeling that it is not well argued. Anything that can be done in a brief at any time to keep it clear and uninvolved is an aid to the court and, in return, favorable to the attorney.

The simplest manner of stating facts is in chronological order. The method in which this is done depends on the type of case being appealed. In narrative form one can go from witness to witness in the order of their appearance in the transcript; or if the gist of the question is one particular event or happening, as an accident, the facts may be clearer to the court if the

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6. Town of Howey-in-the-Hills v. Graessle, 36 So.2d 619 (Fla. 1948).

evidence is sorted in the transcript so that the time is in sequence—the before, the accident itself, and the after. No matter what method is chosen, it should be selected and followed for the benefit of the court so that the court has the picture presented clearly before it without any confusing or unnecessary material and undue detail. The more effort counsel makes to present a clear picture to the court, the surer he will be that the court sees what he has in mind as the basis for reversible error.

The equities of the position should be emphasized. Human interest and sympathy should not be overlooked. By the very fact that a client is having his case appealed, he is crying for justice.

The mechanics of the English language are not part of the subject of this article, but a few rudiments to be met in brief writing may prove helpful if pointed out. Choice of words is important. The legal terminology should be correct in usage and meaning. The words used should be clear and unambiguous. The writing should be close to the record and "close to earth." When the first rough draft of a brief is complete, other counsel or an associate should read it. Intense concentration on writing a brief may make that which is perfectly clear to the writer a maze to someone else. One method of checking the work in this regard is to have a standing agreement with the secretary that whenever she sees something in the rough draft, as she copies the brief, that is not clear to her, she put a question mark on the page beside it. This will prove an invaluable aid in trying to see the work through the eyes of the court, which will be just as unfamiliar with the case as the secretary is when she types the first draft.

The construction used, or the punctuation, may change the meaning of an entire sentence or point to something foreign. The sentences must say what the writer means them to say. If there is ever any danger that a sentence or a paragraph is too involved, two shorter sentences or a paragraph break should be used so that in point of space the sentence does not go on and on.

The ability to use prose which is interesting to another to read will depend on the individual writer. The value of descriptive words and colorful language cannot be underestimated. If thoughts can be expressed better by using slang expressions, it is permissible. Used sparingly they carry a "punch." A little humor will also serve as "fresh air" in an involved brief.

To avoid quotations of any length, a synopsis of the material may be used. When quoting or summarizing, the pages of the transcript from which the material is taken must be given. This is done by writing at the end of the sentence in parentheses the page the quotes appear in the transcript.

It takes just as long to write a short argument or brief as a long one, but every page not included in a brief will be that much more assurance that a very busy supreme court will find time to read it all.

B. *Substantiating the Facts and Argument*

The position the discussion of law will take in the argument of a question in relation to the facts necessary to clarify the problem to the court will depend on the type question being discussed. A majority of the questions posed, however, follow a set pattern of argument. First, the assignment of error from which the question came; next, the facts necessary to form a setting for the actual argument; then, the argument with statutes, cases, texts, or other authorities used to support it. It is better psychology to cite the cases favorable to the argument before anticipating and attempting to distinguish any cases the adversary will surely use.

If it becomes necessary to use a lengthy quotation which is outstanding or to use visual stimuli to a key sentence which has been written, underscoring may be used. At the end of a quotation which has been underscored, after the last quotation mark, "emphasis supplied" must be added in parentheses.

A so-called trick used by some attorneys is to break their quotations from the record or cases and omit a sentence or phrase which is not favorable to them by inserting a line of asterisks or periods to show the omission. If this is done in good faith, it may be helpful to eliminate surplusage for an opinion. But in a good many cases it is done to change the meaning of the law of the case; then it hurts no one except the client and the attorney. Such practice will surely be pointed out by the adversary; and if he maintains his dignity while so doing it is as valuable as a point of law in his favor. The respect of the court is necessary to attorneys for the rest of their lives. Nothing is won in a single case by trick omissions and certainly nothing is won over a long period of time by such actions.

Point headings may be used in a discussion of the law, in the same manner as suggested by the writer under the sub-heading "Facts." The method used will depend on the importance of the point to be emphasized. Some points are not as strong, therefore, less important than others; it will be up to the attorney to decide the mechanics necessary to present his points of argument to the court to the best advantage. While discussing points of law, the facts cannot be ignored even though they have already been described to the court in what is believed to be a clear setting. Law citations and summaries of cases in briefs are made an integral part of the case appealed by drawing analogies or distinguishing the facts from the facts of the appeal.

Sometimes the entire appeal will rest on one leading case. When this is so and it is necessary to refer to that case over and over throughout the argument of all the questions, counsel may speak of the case, after he formally cited it a few times, almost as he would a leading witness in the record. For example, the case may be *Smith v. State*, 103 Fla. 432, 138 So. 384. For a few times counsel can refer to the formal citation, but when the argument

smoothes down so that it goes into pages of distinguishing the facts of the case being appealed and the *Smith* case or drawing an analogy to it, then he can refer to it as the *Smith* case, or the controlling *Smith* case. This use will be at his discretion. Formal citations of the same case used too often are monotonous. For example, the overuse of "supra" becomes boring; thus if an entire brief centers around the same opinion of law, it may be made an integral part of the brief by using the informal title it has to attorneys and to the justices.

In citing cases which are not close to the court now sitting, that is, if these cases have not been part of its work, and have not been leading or popular cases, it will not harm the brief to give a little of the history of the particular decision and the year it was decided. This should be done only when the case is indeed old, obscure or represents a point little before the court. How important or well-known the case being cited is can be judged by the number of other cases found referring to it. The list of cases in *Shepard's Citations* under the case's citation will usually give a good indication of how much the case has been followed.

In citing a recent case where the opinion was written by a justice now on the bench, it can be mentioned in the summary of the case "In the recent able opinion rendered by Justice ———— it was said." It is preferable to draw the law close to the record, the case and the court.

The writer believes little need be said with regard to the formal style of citations. The official source must be listed before the unofficial. Correct abbreviations to be used in citations may be found in any of the primary or secondary source books.

The arguments of law and facts, to have continuity, should begin and end with a short statement or summary. A discussion of more than one page should not be left dangling so that the entire argument must be re-read in order to find the point being discussed. The same processes discussed above apply to each question of the brief. Some system of point heading with mechanical heads can be used so the questions do not have to be searched for in a maze of monotonously written prose. Summarize; anything worth arguing and discussing should be worthy of a one or two sentence addition to what has been previously said.

Conclusion

Though Rule 20 of the Supreme Court Rules of Practice does not discuss a "Conclusion" for briefs submitted, it is a customary practice to have one; this is Part IV of the brief proper. It is seldom necessary that a conclusion of a brief be more than one paragraph long. It may be one, two or three sentences long. It is the last opportunity in the written brief to appeal to the court for

the error that has been committed in the lower court. A conclusion should not be written as a formal abstract prayer to the court. The reasons for a reversal should be stated along with enough of the key facts used to draw them close to the record, the brief and the court.

Appellee's Brief

The appellee has perhaps a little easier chore than the appellant. Yet the appellee must be equally as thorough as the appellant in his study of the record and the law. Any rules as to form for briefing which apply to the appellant apply to the appellee. The problem of study and approach is a little different than when writing the appellant brief. The way counsel for the appellee receives the case will have much to do with his knowledge of the record. If the attorney for the appellee has no previous familiarity with the case being appealed, he will in sequence of time receive the record before the brief and should scan the record carefully upon its arrival and note the assignment of errors. When the brief of the appellant arrives, it should be studied by any method which suits the individual. The slant of the facts in the brief of the appellant should be compared with those found in the record. All the cases the appellant cites as law must be read and his quotations and summaries checked. If he uses omissions which change the meaning of the case, the appellee calls the court's attention to this and draws a fair and clear analogy. After the law for the appellee's side of the question has been studied, the usual form followed in argument is first the facts, next, law and authority supporting the argument, then a breakdown and distinction of the law cited by the appellant.

Counsel for the appellee is not merely writing a rebuttal. He is presenting the case of his client and his attitude should be as much on the side of the positive as is the appellant in his brief. The appellee has one more tool to work with than the appellant. The appellant could use the facts evidenced by the record and the assignment of errors to get the bases for argument. The appellee also has the appellant's brief. He should reply to the appellant's arguments but not make those arguments the foundation of the brief. Often the appellant's reasoning and law citations are far from the actual law of the case; in that case the appellee must write a brief so that the court will understand just what the facts and law should be governing the particular appeal.

One important factor to remember is that the appellee has the privilege of restating any question used by the appellant which does not have the quality it should have as a question; *e.g.* uses misstated facts; is not a question; is in the alternative. No two persons pose a single question in the same way and this is even truer where two attorneys are adversaries in an appeal. But appellee counsel should never restate a question just to put it in his own words.

It must be done for a reason. The restatement of a question is done in the *Statement of Questions Involved.* If the appellee is using the question as stated by the appellant, he says, "We will argue this question as stated by the appellant, to-wit:." But if he is restating the question, he says, "The appellant has stated Question One as follows:" then he copies the question as stated by the appellant, and follows it with a statement of his own, as "We will restate and argue Question One as follows:," and, following in the same style, states his own question. After the complete question one as restated has been written, a line is added to tell the court how the question as restated was answered by the lower court. The above are examples of the form of restating a question. Any words of like meaning may be used. If the reason a question is restated is because of a gross misstatement of the facts or the facts are not evidenced by the record, a restatement should always be made. The number of questions the appellee will have to restate will depend on the caliber of his adversary. In argument to some briefs all the questions must be restated in order to bring the case back to the record; in other cases the appellee need restate none of the questions.

Another reason for restating questions may be to straighten out the argument of the appellant so that it has some semblance of form. Should the appellant state two questions in his argument and discuss both questions under question one, it may be necessary for the appellee to restate questions one and two as question one in his brief to answer everything the appellant has argued, but the court must be premised. Some appellant briefs still present their facts and argument under the "History of the Case" or may state more than one distinct question and the only argument will be under one of the questions. In any such case, if the appellee does not wish to file a motion to dismiss, he should be certain that his brief explains just where the argument to which he is replying can be found. The purpose of the *statement of the questions involved* for the appellee is, when necessary, to arrange the brief of the appellant into a logical form for reply.

The questions listed under the "Argument" of the appellee are the questions as they are restated. It may aid the effectiveness of the brief to point out in the discussion the reasons for changing a question though this is seldom necessary. Previous remarks at the time of restatement in the *statement of the questions involved* are sufficient on that subject. If the question was so misstated as to call for a remark, then the argument will probably contain abundant new ammunition to use in the appellee argument and there is no need to stay with initial errors.

When the appellee encounters in the appellant brief an argument which contains unethical material, the cardinal rule is that counsel remain respectful and unimpeachable when pointing out such misquotes and discrepancies. From the content of the record it is known why appellant counsel did what

he did; therefore no name calling or smear statements are necessary. Beyond the points mentioned above the appellee brief follows the pattern of the appellant's brief.

Reply Briefs and Memorandum Briefs

Reply briefs are exclusively the right of the appellant.[7] The content is limited to points not answered by the appellee and to argument to the content of the appellee's brief. New matter or new argument may not be introduced, but the appellant has this opportunity to point out variances in the appellee brief. The general thought on reply briefs is that if the first brief was well written it will stand on its own.

A memorandum brief usually supports some motion or pleading to the court where there is no time allowed for formal lengthy argument. With the permission of the court either side of an appeal may also submit a memorandum brief to cover a case or cases decided after the original briefs were written. Memorandum briefs follow the same general form in writing and substance as other briefs.

In relation to both reply and memorandum briefs some attorneys use a last minute "slip in" method. Just before they begin their oral argument they ask the permission of the court to file with the clerk of the supreme court their reply brief or memorandum brief. When the argument is over they hand a copy to their adversary. This may be done in good faith, but more often it is another trick used which both opposing counsel and the court will see through and which has the contrary value to that for which it was intended.

Secretarial Duties

Indexing and Arrangement

Briefs of more than twelve pages in length must be indexed and prefaced by an alphabetical list of authorities cited.[8]

The page following the cover sheet and as many as are necessary of the brief, if it contains more than twelve pages, will be the index. To be complete this index should show first the "History of the Case" and the pages where it is to be found. This is followed by the "Statement of the Questions Involved" and the pages on which it appears. Next comes the title "Argument," and under the argument by a subhead each question is listed separately and designated as Question One, 8-14, Question Two, 15-21 and so on. "Conclusion" follows with the page number on which it appears.

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7. Rule 20, Supreme Court Rules of Practice.
8. Rule 20, Supreme Court Rules of Practice.

As a main heading in the middle of the page in capital letters or large print next comes the "List of Authorities Cited." This is where the actual indexing problem begins. It is customary to list the statutes cited as the first subheading. Statutes are designated by numbers; thus the smallest number is listed first and the listing continues numerically. Each and every page in the brief on which a statute or a case is cited must be listed in the index after the particular statute or case. Following the indexing of statutes used, under the subhead of Cases Cited (in capital letters or large print) all the cases cited in the brief are listed in alphabetical order with the brief page numbers. Any other authorities used are indexed under proper headings according to their importance in the same manner as the statutes and cases. If photographic exhibits or other exhibits have an important bearing on the case and are referred to throughout the argument, they may be indexed. This may save some justice a few moments of his valuable time and he will at least mentally thank counsel for his thoughtfulness. Index pages are numbered with Roman numbers.

Paper and Print

Briefs may be printed or typewritten on opaque, white unglossed paper. If printed, the folio shall be 6 x 9 inches, or within one-half inch; if typewritten, no larger than legal cap size, and the paper used may be either standard letter size, 8½ x 11 inches, or legal size, 8½ x 14 inches.[9]

Verification

All facts, quotations and citations should be verified and rechecked against the original source so that the transcript pages as given are correct, the citations of cases are correct and there is no omission or changes in the quotations.[10]

Margins, Line Spacing and Underscoring

Any uniform system of margins and line spacing may be used, but through usage a customary form has developed for typewritten briefs.[11] Margins should not be less than ten spaces from the edges of the paper. The questions are written in capital letters and indented at least five spaces from the regular margins being followed. All direct quotations of any length whether from the record, cases, or texts, are single spaced and indented at

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9. Rule 20, Supreme Court Rules of Practice; Fields v. Fields, 138 Fla. 258, 189 So. 251 (1939).
10. Tampa Elec. Co. v. Gibson, 119 Fla. 112, 161 So. 727 (1935).
11. Poyntz v. Reynolds, 37 Fla. 533, 19 So. 649 (1896).

least five spaces from the margin proper. For visual effect, breaks between paragraphs should follow a uniform system of at least three, or even four line spaces. All headings and breaks for different points should have a line spacing of at least three line spaces. To impress on the court that a particular space is a break, a line may be typed in the middle of the space.

Underscoring is used for emphasis. In the "Argument" it will stress a particular sentence to be brought to the attention of the court. Where underscoring is used within direct quotations, the words "emphasis supplied" should be added in parentheses.

Title Page or Front

The first and front page of the brief, whether of the appellant or the appellee, should have in the upper right hand corner the words, IN THE SUPREME COURT OF THE STATE OF FLORIDA. Below the designation of the court to which the brief is addressed comes the style of the case. In Florida the name of the party bringing the appeal comes first, and the name of the party answering second, regardless of the position of the parties while in the lower court. Thus, the party bringing the appeal is always the appellant. Following the style centered in the page should be the words "Brief of the Appellant" or "Brief of Appellee"; and if the brief is typewritten, in capital letters, if printed, in larger point. Toward the bottom of the front cover page appears the name of the counsel writing the brief and any other attorneys associated, with the designation "Counsel for Appellant" or "Counsel for Appellee" appearing below these names.

Following the index, before Part I of a brief (History of the Case) a second style sheet is used. Except for the names of counsel this style sheet resembles the cover sheet. It contains the court to which the brief is addressed, the style of the case and the title of the brief.

Closing of Brief

The last page of the brief, following the "Conclusion" is the end of the address to the court. In letter style the complimentary closing is "Respectfully submitted" and underneath are placed lines for the written signature of attorneys preparing the brief and any other attorneys associated with them. Under this is placed in capital letters the designation "Counsel for Appellant" or "Counsel for Appellee" as the appeal brief requires.