

Class 2 – Introduction to Appellate Practice in Missouri

Assignment

- Read the material below
- Go to the Points Relied On Information link on the Advocates page and review the material there.
- Because next week's reading assignment is lengthy but very important, you may wish to begin reading that assignment.

Points Relied On

In Introduction to Appellate Advocacy, students are required to submit "Points Relied On" (including authorities) and a Summary of Argument. "Points Relied On" are required in all briefs filed in Missouri appellate courts. The "Points" define and limit the questions presented for review. Any point not sufficiently stated in the "Points Relied On" may not be considered by the appellate court.

Note that, in actual Missouri procedure, only Appellants are required to file PRO's, but in Moot Court, both sides file Points. Many Respondents in fact do provide Points in real cases.

The requirements for Points Relied On are set out in Missouri Supreme Court Rule 84.04(d) (emphasis added).

MISSOURI SUPREME COURT RULE 84.04

84.04 BRIEFS - CONTENTS

(a) Contents. The brief for appellant shall contain:

. . .

(4) The points relied on;

(5) An argument, which shall substantially follow the order of the points relied on . . .

* * *

(d) Points Relied On.

(1) Where the appellate court reviews the decision of a trial court, each point shall:

- (A) identify the trial court ruling or action that the appellant challenges;
- (B) state concisely the legal reasons for the appellant's claim of reversible error; and
- (C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: "The trial court erred in [identify the challenged ruling or action], because [state the legal reasons for the claim of reversible error], in that [explain why the legal reasons, in the context of the case, support the claim of reversible error]."

* * *

(4) Abstract statements of law, standing alone, do not comply with this rule. Any reference to the record shall be limited to the ultimate facts necessary to inform the appellate court and the other parties of the issues. Detailed evidentiary facts shall not be included.

(5) Immediately following each "Point Relied On," the appellant . . . shall include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies.

(e) Argument. The argument shall substantially follow the order of "Points Relied On." The point relied on shall be restated at the beginning of the section of the argument discussing that point. The argument shall be limited to those errors included in the "Points Relied On." The argument shall also include a concise statement of the applicable standard of review for each claim of error. If a point relates to the giving, refusal or modification of an instruction, such instruction shall be set forth in full in the argument portion of the brief. Long quotations from cases and long lists of citations should not be included.

The following abstract, written by a former Chief Justice of the Missouri Supreme Court, gives you some insight into how the rule works in practice (although written before the Rule itself was clarified).

THE BRIEFING OF AN APPEAL

Charles B. Blackmar

(Note: this was written under a less strictly worded Rule, but judicial interpretation was the same)

1. Points Relied On

Almost all court rules call for some sort of statement of "points," or "propositions," or "questions presented."

The Rules of the Supreme Court of the United States call for "questions presented," as follows:

(a) The questions presented for review, expressed in terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Court.

The Missouri rules call for the following:

The points relied on shall state briefly and concisely what actions or rulings of the court are sought to be reviewed and wherein and why they are claimed to be erroneous, with citations of authorities thereunder. If more than three authorities are cited in support of a point made, the three authorities principally relied on shall be cited first. All authorities discussed in the argument shall be cited under the "Points Relied On." Long lists of citations should not be included.

Setting out only abstract statements of law without showing how they are related to any action or ruling of the court is not a compliance with this Rule.

So the two sets of rules have differing requirements to serve the same basic purpose. What is suitable in one forum will not be appropriate for another. The difference might be illustrated by examples. The following would be appropriate under the Supreme Court rule:

Whether the defendant physician, served under a "longarm" statute (citation), waived the right to challenge jurisdiction over the person and entered a general appearance by obtaining an unconditional extension of time for responding to the plaintiff's complaint.

The same issue might be presented in the Missouri form, as follows:

The trial court erred in sustaining the defendant physician's motion to quash service, for the reason that the defendant, prior to filing this motion, obtained an unconditional extension for time to respond to the plaintiff's petition, and thereby consented to the court's jurisdiction over the person and effected a general appearance.

The "points" section of the brief is extremely important. This is the first thing I read in a brief, because, if the points are properly phrased, they give me an overall view of the issues. There has been a certain amount of tension between courts and lawyers over the framing of points. The judges have felt that some lawyers simply did not comply with the rules. Several years ago courts began dismissing appeals, or refusing to consider some claims of error, because the points were faulty. Then for a time the courts' legal assistants would scrutinize briefs, and the court would order counsel to reframe points which did not comply with the governing rules. I would hesitate to take drastic action against a lawyer simply because the points were not well phrased, but you will make it easier for the judges if you adhere to the rules.

Some lawyers, perhaps in an attempt to avoid any claim of violation of the rules, will file briefs in which a single point covers half a page. A point written in this manner is not helpful to the court. The well phrased point may be succinct, but nevertheless in full compliance with the rules. The points give you the opportunity to summarize your argument. Be sure to take advantage of this opportunity.

Take full advantage also of the opportunity to list your best authorities, not more than three [this part of the Rule has changed], at the beginning of the list of authorities which comes after each point. The rule is very clear, but some counsel overlook it. One danger is that a judge reading the brief may look at the authorities first cited before argument, and, if they are really of secondary importance, may conclude that nothing of substance has been cited.