

**Rule 128. Briefs****128.01 Informal Briefs and Letter Briefs**

**Subdivision 1. Informal Briefs.** Informal briefs may be authorized by the appellate court and shall contain a concise statement of the party's arguments on appeal, together with the addendum required by Rule 130.01. The informal brief shall have a cover and any paper copy may be bound by stapling.

**Subd. 2. Reliance Upon Trial Court Memoranda.** If counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument, the submission shall be covered and any paper copy may be bound by stapling. The trial court submissions and decision shall be included in the addendum.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective July 1, 2014.)

***Advisory Committee Comment - 2014 Amendments***

*Rule 128.01 is amended to make it clear that documents that are served and filed electronically are not stapled - only paper versions of these documents are to be stapled.*

**128.02 Formal Brief**

**Subdivision 1. Brief of Appellant.** The formal brief of the appellant shall contain under appropriate headings and in the order here indicated:

(a) A table of contents, with page references, and an alphabetical table of cases, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(b) A concise statement of the legal issue or issues involved, omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by:

(1) a description of how the issue was raised in the trial court, including citations to the record;

(2) a concise statement of the trial court's ruling;

(3) a description of how the issue was subsequently preserved for appeal, including citations to the record; and

(4) a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

(c) A statement of the case and the facts. A statement of the case shall first be presented identifying the trial court and the trial judge and indicating briefly the nature of the case and its disposition. There shall follow a statement of facts relevant to the grounds urged for reversal, modification or other relief. The facts must be stated fairly, with complete candor, and as concisely as possible. Where it is claimed that a verdict, finding of fact or other determination is not sustained by the evidence, the evidence, if any, tending directly or by reasonable inference to sustain the verdict, findings or determination shall be summarized. Each statement of a material fact shall be accompanied by a reference to the record, as provided in Rule 128.03.

(d) An argument. The argument may be preceded by a summary introduction and shall include the contentions of the party with respect to the issues presented, the applicable standard of

appellate review for each issue, the analyses, and the citations to the authorities. Each issue shall be separately presented. Needless repetition shall be avoided.

(e) A short conclusion stating the precise relief sought.

(f) In briefs filed with the court of appeals, a party may include an optional statement as to whether the court's opinion should be precedential, nonprecedential, or an order opinion, and the party's reasons, with reference to Rule 136.01, subdivision 1, paragraph (b).

(g) The addendum required by Rule 130.02.

**Subd. 2. Brief of Respondent.** The formal brief of the respondent shall conform to the requirements of Rule 128.02, subdivision 1, except that a statement of the issues or of the case or facts need not be made unless the respondent is dissatisfied with the statement of the appellant. If a notice of related appeal is filed pursuant to Rule 103.02, subdivision 2, the respondent's brief shall present the issues specified in the notice of related appeal. A respondent who fails to file a brief either when originally due or upon expiration of an extension of time shall not be entitled to oral argument without leave of the appellate court.

**Subd. 3. Reply Brief.** The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent.

**Subd. 4. Additional Briefs.** No further briefs may be filed except with leave of the appellate court.

(Amended effective January 1, 1999; amended effective January 1, 2009; amended effective January 1, 2010; amended effective July 1, 2014; amended effective August 1, 2020.)

#### ***Advisory Committee Comment - 1998 Amendments***

*Rule 128.02 is amended in 1998 to add a requirement for listing the most apposite cases for each issue in the statement of issues. This rule is part of the briefing requirements for the United States Court of Appeals for the Eighth Circuit, and provides useful guidance on the issues. See 8th Cir. R. 28A(I)(4). Minn. R. Civ. App. P. 128.02, subd 2, does not expressly require a statement of issues in a responding brief, but if one is included, it should conform to this rule. In addition, the provisions concerning letter briefs formerly found in Rule 132.01, subd. 5, have been moved to Rule 128.01, subd. 2.*

#### ***Advisory Committee Comment - 2008 Amendments***

*Rule 128.02, subdivision 3, as amended, is a new rule, containing a new requirement for submission of an addendum. The rule requires the key trial court rulings, and permits up to 15 additional pages that would be helpful to reading the brief, to be bound with the brief. Presumably, the materials in the addendum would otherwise be contained in the appendix, so this rule really just reorganizes the location of the materials for the benefit of the parties and the appellate judges. The rule explicitly provides for inclusion of the relevant trial court orders or judgment in the addendum; it does not contemplate attachment of briefs of the parties. In the rare cases where memoranda of the parties are relevant to the appeal, they should be included in the appendix. The current subdivisions 3 and 4 of Rule 128.02 are renumbered as subdivisions 4 and 5.*

#### ***Advisory Committee Comment - 2009 Amendments***

*Rule 128.02, subdivision 1(b), is amended to require specification of how each issue was raised in the record and preserved for appeal in the trial court, including citations to the record. These are matters that are important to many appeals and adding this requirement is intended to make*

*it easier for the court to determine that each issue was properly raised, decided, and preserved for appeal. This requirement has been implemented by other courts, see e.g., Iowa R. App. P. 6.14, and the committee believes this requirement will improve the quality of briefing in Minnesota appeals. For example, subparagraph 1 requires specification of where an evidentiary objection or offer of evidence was made, including a transcript citation, and subparagraph 3 where it was raised in a motion for new trial to preserve it for appeal. The rule does not expand what is required to raise or preserve an issue for appeal; it only requires that specific information be provided in the statement of issues in the appellant's brief about how these steps were taken.*

*Rule 128.02, subdivision 1(d), is amended to require that a brief address the applicable standard of appellate review. The standard of review is crucial to the analysis of every issue by the appellate court. A useful compendium of the standards of review for particular issues is Minnesota Court of Appeals, Standards of Review (Aug. 2008), available for review or download at <http://www.lawlibrary.state.mn.us/casofrev.html>. The rule does not dictate how the standard of review be set forth - whether in a separate section or at the beginning of the argument for an issue - although in most cases it is best handled at the beginning of the argument for each issue. The applicable standard of review must be addressed for each issue in an argument.*

*Subdivision 2 is amended to reflect the amendment of Rule 106 to abolish the notice of review and adoption of Rule 103.02, subdivision 2, to adopt the notice of related appeal.*

#### **Advisory Committee Comment - 2014 Amendments**

*Rule 128.02 is modified primarily to delete references to the appendix, which is no longer permitted or required in any appellate proceeding. See Rule 130.01, subdivision 1. The appendix is replaced by an expanded addendum, as provided in Rule 130.*

#### **128.03 References in Briefs to Record**

**(a) Portions of Record Contained in Any Party's Addendum.** Whenever a reference is made in the briefs to any part of the record that is reproduced in the addendum of any party, the reference shall be made to the specific pages of the addendum where the particular part of the record is reproduced.

**(b) Portions of Record Not Contained in Any Party's Addendum.** Whenever a reference is made to a part of the record that is not reproduced in the addendum of any party, the reference shall be made to the particular part of the record, suitably designated, and to the specific pages of it.

**(c) Document Index Number.** Whenever a reference is made to a part of the record, either in a brief or in the table of contents of an addendum, the reference should be made to the particular part of the record using the Document Index Number from the trial court Register of Actions, if available, and to the specific pages of it. Abbreviations that clearly direct the court to particular portions of the record, whether or not designated by a Document Index Number, are acceptable.

(Amended effective January 1, 2009; amended effective July 1, 2014; amended effective July 1, 2016.)

#### **Advisory Committee Comment - 2016 Amendments**

*Several developments in appellate practice in Minnesota militate in favor of modification of Rule 128 both to clarify it and make it more useful to litigants. The adoption of system-wide electronic filing makes the use of a uniform means of referencing electronically filed documents both more desirable and more readily accomplished. The abolition of the appendix in the 2014 amendments to these rules has resulted in increased need to refer to specific parts of the record without the convenience of citing to an appendix page, and word-count size limits for briefs may encourage*

*opaque record citations. The establishment of a more uniform form of Register of Actions within the court system has made this index a useful way to identify documents filed with the district courts, and it is appropriate for the appellate courts to require its use.*

*The Register of Actions is maintained in all actions to identify documents filed with the court. An example of a Register of Actions entry, including the document index number, is:*

***1/14/2014 Motion for Summary Judgment Index #50***

*Citation to page 3 of the motion might be simply "Doc. 50 at 3." If the motion were included in any party's addendum, citation to "Add.38" would suffice.*

*The rule is intended to provide guidance on how parties may concisely, but unambiguously, cite to the record. Where the transcript is consecutively paginated, no more than "Tr.x" is need to refer to page x of that transcript, and more is only distracting. Where it is necessary to cite to portions of the record not contained in any party's addendum, a similarly concise citation of "Doc. 11 at 21" would steer the reader to page 21 of document 11 in the Register of Actions. Examples of acceptable abbreviations include:*

*Doc. 11 at 21 (should be used if available)*

*Transcript at 135, or Tr. 135*

*Motion for Summary Judgment, filed 10/3/12, at 1*

*Exhibit 21 at 3, or Ex. 21 at 3*

*Add.41 or Add. 41*

*Resp. Add. 22 or R.Add.22*

*Oct. 1, 2013 Order at 17*

*Resp. Br. at 34*

*Similar abbreviations that clearly direct the court to particular portions of the record may be used.*

**128.04 Reproduction of Statutes, Ordinances, Rules, Regulations, Etc.**

If determination of the issues presented requires the study of statutes, ordinances, rules, regulations, etc., or relevant parts of them, that are not readily available in a publicly available electronic database or Minnesota law libraries, they shall be reproduced in the brief or addendum.

(Amended effective July 1, 2014.)

***Comment - 1983***

*See Appendix for form of formal brief (Form 128).*

**Rule 128.05 Citation of Supplemental Authorities**

If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument but before decision, a party may promptly file a letter with the clerk of the appellate courts setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to the point argued orally.

Proof of service shall be made as defined by Rule 125.04. Any response must be made promptly and must be similarly limited.

(Added effective March 1, 2001; amended effective July 1, 2014.)

***Advisory Committee Comment - 2000 Amendments***

*Rule 128.05 is a new provision in the Minnesota Rules. It is patterned after Fed. R. App. P. 28(j), and is intended to allow a party to submit additional authorities to the court without requiring a motion and without providing an opportunity for argument. The rule contemplates a very short submission, simply providing the citation of the new authority and enough information so the court can determine what previously made argument it relates to. The submission itself is not to contain argument, and a response, if any, is similarly constrained. Because a response is limited to the citation of authority and cannot provide argument, a response most frequently will not be necessary or proper. A submission or reply that does not conform to the rule is subject to being stricken. See, e.g., Esicorp, Inc. v. Liberty Mut. Ins. Co., 193 F.3d 966, 972 (8th Cir. 1999) (granting motion to strike argumentative submission); Anderson v. General Motors Corp., 176 F.3d 488 (10th Cir. 1999) (unpublished) (same).*