

rules. Such motions made to a commission may be heard and determined by the chair of the commission; or if to a commissioner, then by that commissioner.

- (2) *Motions for Extension of Time in the Appellate Division.* All motions for extensions of time other than those specifically enumerated in Rule 27(c)(1) may be made only to the appellate court to which appeal has been taken.

(d) *Motions for Extension of Time; How Determined.* Motions for extension of time made in any court may be determined *ex parte*, but the moving party shall promptly serve on all other parties to the appeal a copy of any order extending time; provided that motions made after the expiration of the time allowed in these rules for the action sought to be extended must be in writing and with notice to all other parties and may be allowed only after all other parties have had an opportunity to be heard.

ADMINISTRATIVE HISTORY

Adopted: 13 June 1975.
 Amended: 7 March 1978 -- 27(c);
 4 October 1978 -- 27(c) -- effective 1 January 1979;
 27 November 1984 -- 27(a), (c) -- effective 1 February 1985;
 8 December 1988 -- 27(c) -- effective for all judgments of the trial tribunal entered on or after 1 July 1989;
 26 July 1990 -- 27(c), (d) -- effective 1 October 1990;
 18 October 2001 -- 27(c) -- effective 31 October 2001.
 Reenacted and
 Amended: 2 July 2009 -- amended 27(b) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 28

BRIEFS: FUNCTION AND CONTENT

(a) *Function.* The function of all briefs required or permitted by these rules is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned. Similarly, issues properly presented for review in the Court of Appeals, but not then stated in the notice of appeal or the petition accepted by the Supreme Court for review and discussed in the new briefs required by Rules 14(d)(1) and 15(g)(2) to be filed in the Supreme Court for review by that Court, are deemed abandoned.

Parties shall protect the identity of juveniles covered by Rules 3(b)(1), 3.1(b), or 4(e) pursuant to said rules.

(b) *Content of Appellant's Brief.* An appellant's brief shall contain, under appropriate headings and in the form prescribed by Rule 26(g) and the appendixes to these rules, in the following order:

- (1) A cover page, followed by a subject index and table of authorities as required by Rule 26(g).
- (2) A statement of the issues presented for review. The proposed issues on appeal listed in the record on appeal shall not limit the scope of the issues that an appellant may argue in its brief.
- (3) A concise statement of the procedural history of the case. This shall indicate the nature of the case and summarize the course of proceedings up to the taking of the appeal before the court.

- (4) A statement of the grounds for appellate review. Such statement shall include citation of the statute or statutes permitting appellate review. When an appeal is based on Rule 54(b) of the Rules of Civil Procedure, the statement shall show that there has been a final judgment as to one or more but fewer than all of the claims or parties and that there has been a certification by the trial court that there is no just reason for delay. When an appeal is interlocutory, the statement must contain sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right.
- (5) A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.
- (6) An argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.

The argument shall contain a concise statement of the applicable standard(s) of review for each issue, which shall appear either at the beginning of the discussion of each issue or under a separate heading placed before the beginning of the discussion of all the issues.

The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

- (7) A short conclusion stating the precise relief sought.
- (8) Identification of counsel by signature, typed name, post office address, telephone number, State Bar number, and e-mail address.
- (9) The proof of service required by Rule 26(d).
- (10) Any appendix required or allowed by this Rule 28.

(c) *Content of Appellee's Brief; Presentation of Additional Issues.* An appellee's brief shall contain a subject index and table of authorities as required by Rule 26(g), an argument, a conclusion, identification of counsel, and proof of service in the form provided in Rule 28(b) for an appellant's brief, and any appendix required or allowed by this Rule 28. It need contain no statement of the issues presented, of the procedural history of the case, of the grounds for appellate review, of the facts, or of the standard(s) of review, unless the appellee disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present issues in addition to those stated by the appellant.

Without taking an appeal, an appellee may present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Without having taken appeal or listing proposed issues as permitted by Rule 10(c), an appellee may also argue on appeal whether a new trial should be granted to the appellee rather than a judgment notwithstanding the verdict awarded to the appellant when the latter relief is sought on appeal by the appellant. If the appellee presents issues in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new issues supported by references to pages in the record on appeal, the transcript of proceedings, or the appendixes, as appropriate, as well as a statement of the applicable standard(s) of review for those additional issues.

An appellee may supplement the record with any materials pertinent to the issues presented on appeal, as provided in Rule 9(b)(5).

(d) *Appendixes to Briefs.* Whenever the transcript of proceedings is filed pursuant to Rule 9(c)(2), the parties must file verbatim portions of the transcript as appendixes to their briefs, if required by this Rule 28(d). Parties must modify verbatim portions of the transcript filed pursuant to this rule in a manner consistent with Rules 3(b)(1), 3.1(b), or 4(e).

- (1) *When Appendixes to Appellant's Brief Are Required.* Except as provided in Rule 28(d)(2), the appellant must reproduce as appendixes to its brief:
 - a. those portions of the transcript of proceedings which must be reproduced verbatim in order to understand any issue presented in the brief;
 - b. those portions of the transcript showing the pertinent questions and answers when an issue presented in the brief involves the admission or exclusion of evidence;
 - c. relevant portions of statutes, rules, or regulations, the study of which is required to determine issues presented in the brief;
 - d. relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal, the study of which are required to determine issues presented in the brief.
- (2) *When Appendixes to Appellant's Brief Are Not Required.* Notwithstanding the requirements of Rule 28(d)(1), the appellant is not required to reproduce an appendix to its brief with respect to an issue presented:
 - a. whenever the portion of the transcript necessary to understand an issue presented in the brief is reproduced verbatim in the body of the brief;
 - b. to show the absence or insufficiency of evidence unless there are discrete portions of the transcript where the subject matter of the alleged insufficiency of the evidence is located; or
 - c. to show the general nature of the evidence necessary to understand an issue presented in the brief if such evidence has been fully summarized as required by Rule 28(b)(4) and (5).
- (3) *When Appendixes to Appellee's Brief Are Required.* An appellee must reproduce appendixes to its brief in the following circumstances:
 - a. Whenever the appellee believes that appellant's appendixes do not include portions of the transcript or items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal that are required by Rule 28(d)(1), the appellee shall reproduce those portions of the transcript or supplement it believes to be necessary to understand the issue.
 - b. Whenever the appellee presents a new or additional issue in its brief as permitted by Rule 28(c), the appellee shall reproduce portions of the transcript or relevant items from the Rule 11(c) or Rule 18(d)(3) supplement to the printed record on appeal as if it were the appellant with respect to each such new or additional issue.

- (4) *Format of Appendixes.* The appendixes to the briefs of any party shall be in the format prescribed by Rule 26(g) and shall consist of clear photocopies of transcript pages that have been deemed necessary for inclusion in the appendix under this Rule 28(d). The pages of the appendix shall be consecutively numbered, and an index to the appendix shall be placed at its beginning.
- (c) *References in Briefs to the Record.* References in the briefs to parts of the printed record on appeal and to parts of the verbatim transcript or parts of documentary exhibits shall be to the pages where those portions appear.
- (f) *Joinder of Multiple Parties in Briefs.* Any number of appellants or appellees in a single cause or in causes consolidated for appeal may join in a single brief even though they are not formally joined on the appeal. Any party to any appeal may adopt by reference portions of the briefs of others.
- (g) *Additional Authorities.* Additional authorities discovered by a party after filing its brief may be brought to the attention of the court by filing a memorandum thereof with the clerk of the court and serving copies upon all other parties. The memorandum may not be used as a reply brief or for additional argument, but shall simply state the issue to which the additional authority applies and provide a full citation of the authority. Authorities not cited in the briefs or in such a memorandum may not be cited and discussed in oral argument.
- Before the Court of Appeals, the party shall file an original and three copies of the memorandum; in the Supreme Court, the party shall file an original and fourteen copies of the memorandum.
- (h) *Reply Briefs.* No reply brief will be received or considered by the court, except in the following circumstances:
- (1) The court, upon its own initiative, may order a reply brief to be filed and served.
 - (2) If the appellee has presented in its brief new or additional issues as permitted by Rule 28(c), an appellant may, within fourteen days after service of such brief, file and serve a reply brief limited to those new or additional issues.
 - (3) If the parties are notified under Rule 30(f) that the case will be submitted without oral argument on the record and briefs, an appellant may, within fourteen days after service of such notification, file and serve a reply brief limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief or in a reply brief filed pursuant to Rule 28(h)(1).
 - (4) If the parties are notified that the case has been scheduled for oral argument, an appellant may, within fourteen days after service of such notification, file and serve a motion for leave to file a reply brief. The motion shall state concisely the reasons why a reply brief is believed to be desirable or necessary and the issues to be addressed in the reply brief. The proposed reply brief may be submitted with the motion for leave and shall be limited to a concise rebuttal to arguments set out in the brief of the appellee which were not addressed in the appellant's principal brief. Unless otherwise ordered by the court, the motion for leave will be determined solely upon the motion and without responses thereto or oral argument. The clerk of the appellate court will notify the parties of the court's action upon the motion, and, if the motion is granted, the appellant shall file and serve the reply brief within ten days of such notice.
 - (5) Motions for extensions of time in relation to reply briefs are disfavored.
- (i) *Amicus Curiae Briefs.* A brief of an amicus curiae may be filed only by leave of the appellate court wherein the appeal is docketed or in response to a request made by that court on its own initiative.

A person desiring to file an amicus curiae brief shall present to the court a motion for leave to file, served upon all parties. The motion shall state concisely the nature of the applicant's interest, the reasons why an amicus curiae brief is believed desirable, the issues of law to be addressed in the amicus curiae brief, and the applicant's position on those issues. The proposed amicus curiae brief may be conditionally filed with the motion for leave. Unless otherwise ordered by the court, the application for leave will be determined solely upon the motion and without responses thereto or oral argument.

The clerk of the appellate court will forthwith notify the applicant and all parties of the court's action upon the application. Unless other time limits are set out in the order of the court permitting the brief, the amicus curiae shall file the brief within the time allowed for the filing of the brief of the party supported or, if in support of neither party, within the time allowed for filing appellant's brief. Motions for leave to file an amicus curiae brief submitted to the court after the time within which the amicus curiae brief normally would be due are disfavored in the absence of good cause. Reply briefs of the parties to an amicus curiae brief will be limited to points or authorities presented in the amicus curiae brief which are not presented in the main briefs of the parties. No reply brief of an amicus curiae will be received.

A motion of an amicus curiae to participate in oral argument will be allowed only for extraordinary reasons.

(j) *Length Limitations Applicable to Briefs Filed in the Court of Appeals.* Each brief filed in the Court of Appeals, whether filed by an appellant, appellee, or amicus curiae, formatted according to Rule 26 and the appendixes to these rules, shall have either a page limit or a word-count limit, depending on the type style used in the brief:

(1) *Type.*

(A) *Type style.* Documents must be set in a plain roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. Documents may be set in either proportionally spaced or nonproportionally spaced (monospaced) type.

(B) *Type size.*

1. Nonproportionally spaced type (e.g., Courier or Courier New) may not contain more than ten characters per inch (12-point).
2. Proportionally spaced type (e.g., Times New Roman) must be 14-point or larger.
3. Documents set in Courier New 12-point type or Times New Roman 14-point type will be deemed in compliance with these type size requirements.

(2) *Document.*

(A) *Page limits for briefs using nonproportional type.* The page limit for a principal brief that uses nonproportional type is thirty-five pages. The page limit for a reply brief permitted by Rule 28(h)(1), (2), or (3) is fifteen pages, and the page limit for a reply brief permitted by Rule 28(h)(4) is twelve pages. Unless otherwise ordered by the court, the page limit for an amicus curiae brief is fifteen pages. A page shall contain no more than twenty-seven lines of double-spaced text of no more than sixty-five characters per line. Covers, indexes, tables of authorities, certificates of service, and appendixes do not count toward these page limits. The court may strike or require resubmission of briefs with

excessive single-spaced passages or footnotes that are used to circumvent these page limits.

- (B) *Word-count limits for briefs using proportional type.* A principal brief that uses proportional type may contain no more than 8,750 words. A reply brief permitted by Rule 28(h)(1), (2), or (3) may contain no more than 3,750 words, and a reply brief permitted by Rule 28(h)(4) may contain no more than 3,000 words. Unless otherwise ordered by the court, an amicus curiae brief may contain no more than 3,750 words. Covers, indexes, tables of authorities, certificates of service, certificates of compliance with this rule, and appendixes do not count against these word-count limits. Footnotes and citations in the text, however, do count against these word-count limits. Parties who file briefs in proportional type shall submit with the brief, immediately before the certificate of service, a certification, signed by counsel of record, or in the case of parties filing briefs *pro se*, by the party, that the brief contains no more than the number of words allowed by this rule. For purposes of this certification, counsel and parties may rely on word counts reported by word-processing software, as long as footnotes and citations are included in those word counts.

ADMINISTRATIVE HISTORY

- Adopted: 13 June 1975.
 Amended: 27 January 1981 -- repeal 28(d) -- effective 1 July 1981;
 10 June 1981 -- 28(b), (c) -- effective 1 October 1981;
 12 January 1982 -- 28(b)(4) -- effective 15 March 1982;
 7 December 1982 -- 28(i) -- effective 1 January 1983;
 27 November 1984 -- 28(b), (c), (d), (e), (g), (h) -- effective 1 February 1985;
 30 June 1988 -- 28(a), (b), (c), (d), (e), (h), (i) -- effective 1 September 1988;
 8 June 1989 -- 28(h), (j) -- effective 1 September 1989;
 26 July 1990 -- 28(h)(2) -- effective 1 October 1990;
 18 October 2001 -- 28(b)(4)-(10), (c), (j) -- effective 31 October 2001;
 3 October 2002 -- 28(j) -- effective 7 October 2002;
 6 May 2004 -- 28(d), (h), (j)(2), (k) -- effective 12 May 2004;
 23 August 2005 -- 28(b)(6), (c), (h)(4) -- effective 1 September 2005;
 25 January 2007 -- 28(b)(6), para. 1; 28(c), para. 1; 28(d)(3)(a), (b); 28(i), paras. 2, 3; 28(j)(2)(A)(1) & (2); added 28(d)(1)(d) -- effective 1 March 2007 and applies to all cases appealed on or after that date.
- Reenacted and Amended: 2 July 2009 -- amended 28(a), (b), (c), (d), (e), (h), (i), (j); deleted former 28(k) and replaced with new language in 28(a) -- effective 1 October 2009 and applies to all cases appealed on or after that date.

RULE 29

SESSIONS OF COURTS; CALENDAR OF HEARINGS

- (a) *Sessions of Court.*
- (1) *Supreme Court.* The Supreme Court shall be in continuous session for the transaction of business. Unless otherwise scheduled by the Court, hearings in appeals will be held during the months of February through May and September through December. Additional settings may be authorized by the Chief Justice.