

Briefing An Appellate Decision

1. **The “Brief.”** Briefing a written legal decision of an appellate court is an art. The “brief” is a standardized, succinct statement of the result of a decision by the court on the legal questions (issues) of the case. In shorthand fashion the brief articulates the essential facts of the case, the legal questions presented, the applicable law bearing on the issues, and the legal explanations underlying the court’s final decision.

2. **Content of the Brief: Seven-Paragraph Format.** Your brief should consist of seven paragraphs or sections that summarize the court decision. The content for each section will vary, but each is intended to build on the one before. If your brief is carefully constructed, it will tell the reader what the court’s written opinion is all about in a logical, concise, and straightforward manner. **Use the following format:**

Case Name.

A. State the name of the case, the name of the appellate court that issued the formal written opinion, and the year of the decision.

B. Underline or italicize the name of the case.

C. Example: US v. Smith (USSC, 1999).

Case History.

A. State the crimes of which the defendant was convicted in the trial court, and, if relevant, the sentence.

B. Summarize the appellate actions taken at lower levels of the appellate system.

C. In Case History your aim is to help the reader of the brief understand how the case made its way to this particular appellate court by summarizing the actions taken in the trial court and other lower appellate courts.

Facts.

A. Summarize the essential factual and background information that the reader of your brief needs to know in order to understand clearly what the case is all about. Your basic aim is to include information that is crucial to framing the issues set forth in the next paragraph so that the reader can intelligibly understand the legal questions presented by the case.

B. Include essential factual information used by the appellate court to resolve the issues in the case. Your statement of facts must anticipate the key legal questions presented by the case that you will set forth in paragraph 3.

C. Your statement of facts may include the following information when relevant:

(1) a summary of the defendant's conduct in committing the crimes;

(2) a description of particular circumstances surrounding the government's investigation, for example, a search for and seizure of important evidence, the arrest and/or detention of a key suspect, the pretrial interrogation of the defendant, or a lineup held for identification purposes;

(3) a description of pertinent circumstances surrounding the processing of the case for trial, for example, the nature of the charges, a request for appointment of defense counsel, a lengthy delay, or the selection of jurors;

(4) the facts underlying a decision of the judge at trial, for example, a ruling concerning the admissibility of certain crucial evidence;

(5) the details of a trial judge's jury instructions concerning the law applicable to the charges against the defendant.

D. Anticipate the legal questions you will set forth in the next paragraph. Summarize the basic facts underlying these questions. You can also describe the legal positions of the prosecution, the defense, and the trial judge on these issues when necessary to improve the understanding of the reader of the brief.

E. No single brief needs to contain all the above information. Instead, your inclusion of facts must be selective. It is your job as brief writer carefully to select the essential facts that make your explanation of the case intelligible to the reader. After reading your own summation, if you cannot intelligibly describe what the case is about and also predict the key legal questions presented by the case, then your brief needs a re-write.

F. Remember that appellate judges often provide more factual information in their opinions than is strictly necessary to resolve the issues. In selecting the relevant information for inclusion in your statement of facts, you must strive to be as succinct as possible. A good brief omits unnecessary material.

Issues.

A. The issue presents the legal question that the appellate court must answer. The court must decide this question and then state the reasons for its decision in

an Opinion (summarized in the Result and Rationale paragraphs of the brief). The issue centers around a claim by the defendant that a legal error occurred during some stage of the proceedings, and a demand for legal relief from the appellate court.

B. The issue is a question about law and how a rule of law should be applied to the particular concrete facts of the case.

C. Sometimes a case decision presents more than one issue. If so, state all pertinent issues.

D. Always phrase the issue as a question. For example, “Did the trial court have jurisdiction over the crime allegedly committed by the defendant?”.

Applicable Law.

A. The applicable law is the pertinent law that the appellate court must consider in resolving the issues in the case. Necessarily, the court’s decision involves law on both sides of the question, including law that the court ultimately decided to reject.

B. Applicable law may include:

- (1) federal and state constitutional provisions;
- (2) federal and state statutes;
- (3) case law from previous decisions of the court (known as case precedents);
- (4) government regulations;
- (5) policy concerns

C. Cite and briefly describe the provisions of applicable law that were considered by the appellate court to make its final decision.

Result.

A. State the result for each issue. Indicate which side (prosecution or defense) “won” each legal question the court had to decide. Do not summarize the court’s legal explanation (its “legal reasoning”) here. Save that explanation for paragraph 7 (Rationale).

B. Describe what happened to the defendant's conviction, that is, whether it was approved or overturned, and what the appellate court making the decision ordered done with the case.

C. Example: "The court decided that the trial judge should have excluded the murder weapon from evidence because it was seized without a warrant in violation of the Fourth Amendment. Based on its decision, the court reversed the defendant's conviction and remanded (sent back) the case for a new trial."

Rationale.

A. This paragraph should describe the appellate court's rationale or explanation for its legal decision. In other words, what reason did the court give for answering the issue as it did?

B. Summarize the appellate court's answer to each legal question presented in paragraph 3.

C. In your summary, indicate what particular facts the court emphasized as the most important in reaching its final decision. Indicate how the court interpreted the applicable law in reaching its decision.

D. If there were judges who wrote a concurring or a dissenting opinion, indicate the main points those opinions made.

3. Composition/Writing Suggestions.

A. Use complete sentences at all times in your brief.

B. Verb Tense. Use the past tense of verbs when you write, for example, "The defendant robbed the victim," "The trial judge admitted the handgun into evidence," "The appellate court decided the case in favor of the State." Avoid using the present tense of verbs.

C. Active Voice Verbs. Use active voice rather than passive voice verbs. For example, "The jury found the defendant guilty of murder" is preferable to "The defendant was found guilty of murder by the jury."

D. Abbreviations. When citing States or appellate court titles, use abbreviations. Examples: MS (for Mississippi); USSC (for US Supreme Court), USCA 5 (for US Court of Appeals, 5th Circuit), USDC (for US District Court).