

SOUTHERN DISTRICT'S
ABCs OF APPELLATE PRACTICE

Table of Contents

Introduction & The Appellate Process	2
I. Initiating an Appeal	2
A. Filing the Notice of Appeal	3
B. Late Notice of Appeal	3
II. The Record on Appeal	3
A. General Procedure	3
B. Legal File	4
C. Transcript	4
D. Exhibits	5
III. Briefs	5
A. General Procedure	5
B. General Format of Computer Software Briefs	6
C. General Format of Typewritten Briefs	7
D. Contents of Brief	7
E. Appendix to Briefs	8
IV. Docketing	9
V. Oral Argument	9
VI. Opinion	10
VII. Post-Opinion Process	10
A. Post-Opinion Motions	10
B. Mandates	10
VIII. Additional Appellate Procedure	10
A. Motions	10
B. Telefacsimile Filings	11
IX. Forms	11
A. Notice of Appeal – 8A	12
B. Notice of Appeal – 8B (Unemployment Compensation)	14
C. Notice of Appeal – 8C (Worker's Compensation)	15
D. Civil Case Information Supplement	16

INTRODUCTION

This manual is a summary of basic procedural requirements for processing and perfecting direct appeals from the lower courts and administrative agencies in the Missouri Court of Appeals, Southern District. It is designed for use merely as a reference tool and a general, simple information guide for attorneys and litigants practicing before this Court. **It is not to be used as a substitute for the Missouri Rules of Court or the judicial decisions interpreting them. Nothing in the ABCs of Appellate Practice shall be reported, cited or otherwise used in any case before any court. Attorneys and litigants are urged to examine the Rules and judicial decisions for a thorough understanding of appellate procedures and potential issues in their case.**

Appellate practice before the Southern District of the Missouri Court of Appeals is governed by Supreme Court Rules that are applicable to all three appellate districts in Missouri. Generally those rules are found in Rule 30 for criminal appeals and Rules 81 and 84 for civil appeals. Special Rules have been promulgated by the Southern District applicable to those counties within this Court's jurisdiction.

The Southern District is composed of 7 judges and has general appellate and original remedial writ jurisdiction over cases arising in the 44 counties in the southern half of Missouri. The Court is located at 300 Hammons Parkway, Springfield, Missouri, 65806. Telephone No.: (417) 895-6811 and Telefacsimile No.: (417) 895-6817. The Court holds oral argument in Springfield in January, March, June and September. Oral Argument is held in Poplar Bluff in April and October. The Court may sit in other locations in the Southern District during the year.

THE APPELLATE PROCESS: STEP BY STEP

Generally, a party initiates an appeal by filing a notice of appeal with the clerk of the trial court that issued the judgment. Once the notice of appeal is filed, the party appealing, or Appellant, has responsibility for ordering and filing a record on appeal and then filing an "Appellant's Brief." Strict time lines govern these filings and the process can be complicated. While the staff at the Court can explain the appellate process and court procedure to litigants, they cannot give legal advice about their cases.

I. INITIATING AN APPEAL

- **General Rule: In general civil and criminal appeals, the notice of appeal is due ten (10) days after the judgment becomes final.**

A. FILING THE NOTICE OF APPEAL

Generally, in civil and criminal appeals, the notice of appeal is filed with the clerk of the trial court no later than ten (10) days after the judgment becomes final. Rules 30.01(d) and 81.04(a).

The form and contents of a notice of appeal are contained in Form 8-A for both criminal and civil cases. Rules 30.01(e) and 81.08(a). At the time of the filing the notice of appeal with the clerk of the trial court, a docket fee of \$70.00 or an in forma pauperis finding by the trial court must be filed. Rules 30.01(d) and 81.04(d). The appellant shall also serve a copy of the notice of appeal on all other parties to the judgment. Rule 81.08(d).

The notice of appeal must specify the parties taking the appeal, the judgment or order appealed from, the court to which the appeal is taken and must be signed. Rules 30.01(e) and 81.08(a). The clerk of the trial court shall give notification of the filing of the notice of appeal by mailing copies to all parties to the judgment other than the party or parties taking the appeal. Rules 30.01(h) and 81.08(d).

In accordance with this Court's Special Rule 12, in addition to filing the notice of appeal, the appellant in a civil case must file a Civil Case Information Form using the form noted in the Rule.

B. LATE NOTICE OF APPEAL

A party may seek leave from the Court of Appeals to file a late notice of appeal. Leave to file a late notice of appeal is sought by filing with the Clerk of the Court of Appeals a written motion for special order permitting a late notice of appeal.

In accordance with Supreme Court Rule 81.07, the party in a civil case who requests a special order must make a showing by affidavit or otherwise that the delay was not due to the appellant's culpable negligence and attach a copy of the final judgment to the motion. This must be done within six (6) months of the final judgment. In accordance with Supreme Court Rule 30.03, the party in a criminal case must request a special order within twelve (12) months of the final judgment and "for good cause shown" the Court of Appeals, in its discretion, may issue a special order.

II. THE RECORD ON APPEAL

- **General Rule: In most cases, the Record on Appeal is due 90 days after the notice of appeal is filed with the circuit court, if a legal file and transcript are to be filed. If the case is a legal file only, then the legal file is due within 30 days.**

A. GENERAL PROCEDURE

It is the appellant's burden to provide this Court with the record on appeal that contains all of the proceedings and evidence necessary to the determination of all questions to be presented to the Court for decision. Rules 30.04(a) and 81.12(a).

The record on appeal is divided into two components - the "legal file" and the "transcript." The record on appeal must be filed with the appellate court within ninety

(90) days from the date of the filing of the notice of appeal in the trial court, if both a legal file and a transcript are to be filed. Rules 30.04(f) and 81.19. If the record on appeal consists of the legal file only, the legal file must be filed within thirty (30) days after the notice of appeal is filed in the trial court. Rule 81.19(a).

In appeals of the termination of parental rights, the record on appeal will be due thirty (30) days after the notice of appeal is filed. RSMo. §453.011

The original record on appeal is to be filed with the Clerk of the Court of Appeals. Proof of service on the respondent shall be filed with the record on appeal. Rules 84.07(a) and 30.04(f).

B. LEGAL FILE

The legal file shall contain clearly reproduced, exact copies of the pleadings and other portions of the trial record previously reduced to written form. Rules 30.04(a) and 81.12(a).

In most cases, the legal file should contain in chronological order at least the following documents:

- (1) circuit court docket sheets;
- (2) pleadings upon which the action was tried;
- (3) the verdict;
- (4) findings of the court or jury;
- (5) judgment or order appealed from;
- (6) motions and orders after judgment;
- (7) notice of appeal.

The legal file shall be securely bound and labeled with a tan cover page that shall contain the style of the case and the Southern District Appeal Number. The legal file shall be paginated, contain an index referring to the documents by page number and shall not contain more than 200 pages in a volume. The documents shall be arranged with docket sheets on top numbered as page one. The oldest document shall follow the docket sheets with the remaining documents arranged in chronological order ending with the notice of appeal at the bottom. Special Rule 2(b). The legal file must be certified by the clerk of the trial court to consist of true copies of the portions of the record filed in the trial court. Rules 81.15(a) and 30.04(g). Certification by the Circuit Clerk is not necessary if the parties agree in writing that the legal file is true and accurate. Rules 30.04(g) and 81.15(c). Service of the legal file on the respondent(s) shall be made as provided by Rules 84.07 or 81.14(d).

C. TRANSCRIPT

The transcript must contain the portions of the proceedings and evidence not previously reduced to written form. Rules 30.04(a) and 81.12(a).

The transcript pages shall be numbered consecutively and must be preceded by a complete index. Rules 30.04(d) and 81.14(b). A volume of transcript shall not exceed 200 pages. Rule 81.18(b). The transcript must be certified by the court reporter as a true and accurate reproduction of the proceedings transcribed or by a transcriber as a true and accurate reproduction of the sound recording. Rules 30.04(g) and 81.15(b).

Certification is not necessary if the parties agree in writing that the transcript is true and accurate. Rules 30.04(g) and 81.15(c).

The transcript may be prepared in page reduction format. Rule 81.18(c). If the transcript is in page reduction format, it shall be accompanied by a floppy disk or disks containing the transcript.

D. EXHIBITS

Appellant is responsible for depositing all exhibits that are necessary for the determination of any point relied on with the appellate court.

Exhibits shall be deposited on or before the day the reply brief is due or when the court so directs, whichever is earlier. Rule 81.16. Special Rule 4 requires that each exhibit be labeled with the case number and contained collectively in an envelope labeled with the case number and style, name and address of the party depositing the exhibits and an index of all exhibits enclosed. In a civil appeal, except post-conviction proceedings, exhibits deposited with the clerk must be removed within thirty (30) days after final judgment or they will be destroyed. Rule 81.16 and Special Rule 4.

III. BRIEFS

- **General Rule: Appellant’s brief is due 60 days after the record on appeal is filed. Respondent’s brief is due 30 days after Appellant’s brief is filed. The reply brief is due 15 days after Respondent’s brief is filed.**
- **Notice: An appellant has the right to represent himself/herself on appeal. However, “we must hold him to the same standards of practice and procedure that we would expect of an attorney in order to ensure fairness and impartiality.” *State v. Douglas*, 132 S.W.3d 251,256 (Mo.App. 2004) and *Hicks v. Div. of Employment Security*, 41 S.W.3d 638, 640 (Mo.App. 2001).**

A. GENERAL PROCEDURE

Within sixty (60) days after the record on appeal is filed, an original and nine (9) copies of appellant's brief must be filed with the Clerk of the Appellate Court. Within thirty (30) days after filing of the appellant's brief, an original and nine (9) copies of respondent's brief may be filed with the appellate court. Within fifteen (15) days after the filing of the respondent's brief, an original and nine (9) copies of appellant's reply brief may be filed. Briefs filed in this Court must have color coded covers pursuant to Rules 30.06(g) and 84.06(f):

Appellant's brief on the merits	white
Respondent's brief on the merits	gray
Appellant’s second briefs in cross appeals	light brown
Reply brief	light orange
Amicus curiae or intervenors.	light red

B. GENERAL FORMAT OF COMPUTER SOFTWARE BRIEFS

1. Page Size, Type Style, and Spacing

All briefs shall be prepared using computer software unless an exception applies. Rule 84.06(a). The briefs must be on 8 ½ by 11 inch paper and typed only on one side of the page. The type must be double-spaced, except for the cover, certificates of service, 84.06(c) certificate and signature block, which may be single-spaced. All pages must be numbered after the cover page and the brief must be securely bound on the left. The character font size throughout the brief, including footnotes, cannot be smaller than 13 point Times New Roman, unless an exception applies. Rule 84.06.

Microsoft Word format should be used if available. However, WordPerfect 5.x or higher is accepted. Page limitations are calculated based on word or line counts, which can be ascertained from the computer software program.

2. Length of Briefs

Appellant's brief and all briefs in a cross appeal except the reply brief shall not exceed 31,000 words or 2,200 lines of text if a monospaced font is used. Respondent's brief shall not exceed 27,900 words or 1,980 lines. The reply brief shall not exceed 7,750 words or 550 lines. Rule 84.06(b).

3. Certificate of Compliance

The brief shall also contain a certificate that states the brief complies with the limitation of Rule 84.06(b), the number of words or lines in the brief, and the information that is required by Rule 55.03. Rule 84.06(c).

4. Floppy Disk

A 3 ½-inch, IBM-PC compatible floppy disk containing a copy of the brief shall be filed along with the written brief. Rule 84.06(g). An adhesive label shall be affixed to each disk legibly identifying the caption of the case, the party filing the disk, the disk number (e.g., "Disk 1 of 2"), and the word processing format (e.g., Microsoft Word). The filing party must file a certification that the disk has been scanned for viruses and is virus-free. Rule 84.06(g).

5. Certificate of Service

Proof of service on opposing counsel shall be filed with the brief and may be shown by acknowledgement of receipt, by affidavit or by written certificate of counsel making such service. Rules 20.04, 30.07 and 84.07. Service of the brief shall consist of serving one copy of the brief in printed form and one copy of the disk. Rule 84.06(g).

6. CD-ROM Briefs

Special Rule 16 provides that a party may file a CD-ROM brief in addition to filing paper briefs as required by Rule 84.05(a). If a CD-ROM brief is filed, it will satisfy the requirement of Special Rule 13 for filing briefs on a floppy disk. The paper brief shall contain a notice that a CD-ROM will be filed in lieu of a floppy disk. A CD-ROM brief

shall comply with the requirements of Rule 84.05 and 84.06(g) governing service and filing, labeling, format, and virus scanning.

The CD-ROM brief shall contain a copy of the brief and may contain the appendix to the brief, the record on appeal, exhibits, and authorities cited in the brief.

The parties should consult with the specific requirements for CD-ROM briefs outlined in Special Rule 16.

C. GENERAL FORMAT OF TYPEWRITTEN BRIEFS

A person who is unable to produce a brief by computer software AND has been allowed to appeal as a poor person may file a typewritten brief. Rule 84.06(e). Any other person unable to produce a brief as provided by Rule 84.06(a) or Rule 84.06(d) may file, with leave of court, a typewritten brief. The briefs must be on 8 ½ by 11 inch paper, typed on only one side of the page with margins not less than one inch on each side. The type must be double-spaced, except for the cover, certificates of service, and signature block, which may be single-spaced. All pages must be numbered after the cover page and the brief must be securely bound on the left. Rule 84.06(e). The type size must be not less than ten pitch and ten characters to the inch. Appellant's brief shall not exceed 100 pages; Respondent's brief shall not exceed 90 pages and the reply brief shall not exceed 25 pages.

D. CONTENTS OF BRIEF

The contents of the brief must conform to the requirements set forth in Rules 30.06 and 84.04. Briefs not in compliance with the rules may be stricken, the party may be ordered to file a new or amended brief, or the appeal may be dismissed. In addition, Rules 30.20 and 84.13 require that the Court not consider any allegations of error that are not properly briefed. In recent years, the appellate courts have required strict adherence to the rules relating to the contents of a brief.

1. Appellant's Brief

The appellant's brief shall contain:

(1) Table of Contents - A detailed table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Rule 84.04(a)(1).

(2) Jurisdictional Statement - A concise statement of the grounds upon which the jurisdiction of the reviewing court is based. Rules 30.06(b) and 84.04(b).

General Example: "The action is one involving the question of whether the respondent's machinery and equipment used in its operations in removing rock from the ground are exempt from the state sales tax law as being machinery and equipment falling within the exemption provided by Section 144.030.3(4), and hence involves the construction of a revenue law of this state."

(3) Statement of Facts - A fair and concise statement of the facts, without argument, relevant to the issues presented for review. Page references to the record on appeal must be included. Rules 30.06(c) & (e) and 84.04(c).

(4) Points Relied On - A brief statement of what actions or rulings of the trial court are sought to be reviewed and wherein and why they are claimed to be erroneous. Immediately following each point relied on, the party must list the cases and other legal authority, not to exceed four, upon which the party principally relies. Rules 30.06(d) and 84.04(d). Each point relied on shall: (A) identify the trial court or administrative ruling 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. See Rule 84.04(d) for specific examples of the form.

General Example: "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]."

(5) Argument - The argument must substantially follow the order of the "Points Relied On." The point relied on shall be restated at the beginning of the section of the argument discussing that point. If a point relates to the giving, refusal, or modification of an instruction, the instruction must be set out in full in the argument portion of the brief. The argument shall also include a concise statement of the applicable standard of review. Page references to the transcript must be included. Rules 30.06(e) and 84.04(e).

(6) Conclusion - At the end of the brief, the party should provide a short conclusion stating the precise relief sought. Rule 84.04(a)(6).

(7) Appendix - A party's brief shall contain or be accompanied by an appendix. Rule 84.04(h).

2. Respondent's Brief

The respondent's brief shall include a detailed table of contents and table of authorities and an argument in conformity with Rule 84.04(e). The respondent may adopt the jurisdictional statement and statement of facts of the appellant or, if not satisfied, respondent may include a jurisdictional statement or statement of facts. Rule 84.04(f) and 30.06(d).

The argument portion shall contain headings identifying the points relied on contained in the appellant's brief to which each argument responds. The respondent's brief may also contain additional arguments in support of the judgment that are not raised by the points relied on in the appellant's brief. Rule 84.04(f) and 30.06(d).

3. Reply Brief

The appellant may file a reply brief but shall not reargue points covered in the main brief. Rules 30.06(g) and 84.04(g).

E. APPENDIX TO BRIEFS

A party's brief shall contain or be accompanied by an appendix. Rule 84.04(h). The appendix must contain the following materials unless they have already been filed

in another appendix: (1) the judgment, order, or decision in question, including the relevant findings of fact and conclusions of law; (2) the complete text of all statutes, ordinances, rules of court, or agency rules; and (3) the complete text of any instruction to which a point relied on relates.

An appendix must have a separate table of contents. If it contains less than 30 pages, then it must be attached to the back of the party's brief. If it contains 30 pages or more, then the appendix must be separately bound. The pages in the appendix shall be numbered consecutively beginning with page A1 and shall not be counted as part of the brief. Rule 84.04(h).

IV. DOCKETING

In accordance with Special Rule 1, an appellant desiring to orally argue may serve notice thereof no later than 10 days after the brief of respondent is due to be filed. Appellant may endorse his "Request for Oral Argument" upon the front cover of the brief of appellant or by separate pleading. Failure of appellant to request oral argument within the time and manner required shall constitute a waiver on behalf of all parties to appear and orally argue. The case will then be submitted to a three-judge panel for decision without argument.

If oral argument is requested, the case is set on a docket for oral argument before one of the Court's divisions and counsel or the pro se parties are notified. The docket should be examined carefully to avoid going to the wrong courtroom. This Court sits in Springfield, 300 Hammons Parkway, Third Floor and in Poplar Bluff, Butler County Courthouse, 100 N. Main Street, Second Floor and other locations throughout the Southern District.

V. ORAL ARGUMENT

Court normally convenes at 9:00 a.m. and 1:30 p.m. to hear oral arguments. Oral argument is optional. Cases may be submitted on the briefs without oral argument. If counsel or a pro se appellant are not present when court convenes, the case may be submitted on the briefs. A respondent who fails to file a brief will not be permitted to participate in oral argument. Special Rule 1.

In cases that are set on the oral argument docket, the appellant is allowed a maximum of twenty (20) minutes for argument and may reserve up to five (5) minutes for rebuttal. Respondent is allowed a maximum of fifteen (15) minutes. Special Rule 1.

If there are multiple parties on a side they shall divide the allotted time. In cross-appeals, the plaintiff in the trial court shall be entitled to open and close the argument, unless the Court directs otherwise.

VI. OPINION

In each case determined by the Court, the opinion or judicial decision is reduced to writing and filed in the cause. The Court is also authorized to issue memorandum decisions or opinions by a simple order. Rules 30.25(b) and 84.16(b). One copy of the opinion is mailed to each responsible attorney of record or pro se party on the day it is filed.

VII. POST-OPINION PROCESS

A. POST-OPINION MOTIONS

A party may file in the Court of Appeals a motion for rehearing and/or application to transfer to the Supreme Court of Missouri after an opinion of the Court of Appeals has been filed. Rules 30.26, 30.27, 83.02, and 84.17. A party may also file a motion to publish the opinion or motion to modify it. Rule 84.17; Rule 30.26. The post-opinion motion or application may be accompanied by suggestions in support and must be filed in the clerk's office of the Court of Appeals within fifteen (15) days after the opinion is filed. An original and four (4) copies must be filed.

No suggestions in opposition may be filed unless requested by the court. If the court requests such suggestions, any other party may file suggestions in opposition within ten (10) days of the request. Rules 84.17 and 83.06.

An application for transfer must be filed in the Court of Appeals and denied before an application for transfer may be filed in the Missouri Supreme Court. If the Court of Appeals denies the motion for rehearing and denies the application for transfer, a party may make an application for transfer directly to the Supreme Court of Missouri. Application for transfer directly with the Supreme Court must be filed in the Office of the Clerk of the Supreme Court within fifteen (15) days after the date on which transfer was denied by the Court of Appeals. Rule 83.04.

B. MANDATES

Judgments of the court take effect when the mandate issues. Generally, a mandate is not issued until the time for filing a post-opinion motion has expired. If a post-opinion motion is filed, the mandate will not issue until this court and the Missouri Supreme Court resolve all such motions.

VIII. ADDITIONAL APPELLATE PROCEDURE

A. MOTIONS

All motions must be in writing and must be filed with the Clerk's office. Motions should not be in letter form and should not be addressed to a judge, but to the Clerk. All

motions must be signed and must include proof of service upon opposing counsel or pro se party. Rules 20.04, 84.01, 84.07 and 84.11. The original and four (4) copies are required of all post-disposition motions and applications, suggestions, replies and any other motion more than five pages long. All other motions require only an original or facsimile. Special Rule 2. Unless otherwise ordered, suggestions in opposition may be filed within five (5) business days after the date of service. Motions are decided on the pleadings without oral argument. Rules 30.10 and 84.01(a). Rulings are mailed or faxed to the responsible attorneys or pro se parties.

B. TELEFACSIMILE FILINGS

This Court accepts some filings by fax at 417-895-6817. Routine motions, pleadings, or correspondence that require only one copy and that do not exceed five (5) pages will be accepted for filing. Special Rule 8. A paper filed by fax shall have the same effect as an original filing. Rule 84.01(b). The original document should not be mailed or filed with the Court, but rather should be kept for production if requested by the Court.

Records on appeal, briefs, writ petitions, transcripts, legal files, motions for rehearing, applications for transfer, and suggestions in opposition to motions for rehearing, applications for transfer or petitions for writs shall not be filed by fax. Special Rule 8. Fax filings received at the Court after 4:00 p.m. will be deemed filed the next business day.

IX. FORMS

A. NOTICE OF APPEAL FORM – 8A

B. NOTICE OF APPEAL FORM – 8B (UNEMPLOYMENT COMPENSATION)

C. NOTICE OF APPEAL FORM – 8C (WORKER’S COMPENSATION)

D. CIVIL CASE INFORMATION SUPPLEMENT