

The Appellate Brief in Texas Practice: An Overview



Professor Lauren Simpson

Class 6

Spring 2016



Contents of a Texas Appellate Brief

As required by Texas Rules of Appellate Procedure 38.1, 38.2

1. **Cover Page (including request for oral argument)**
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6. **Statement of the Case**
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10. **Argument**
11. Conclusion and **Prayer** (TRAP speaks only of the prayer)
12. Signature Block
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14. Appendix (required in civil cases only)

Cover Page—Contents

- Appellate case number
- Court name
- Case style
- Trial court ID and case #
- Title of the document (showing which party files)
- Information regarding lead counsel for the filing party:
 - *For your LSS graded brief, use your spring exam number, professor, and section number (not your name!)*
- Request for oral argument (TRAP 39.7)

See next slide for example. →

No. 13-06-00111-CV

IN THE COURT OF APPEALS
THIRTEENTH JUDICIAL DISTRICT

Mary Smith,
Appellant,

v.

First Regional Bank, N.A.,
Appellee.

Appeal from Cause Number 04-CV-123
In the 214th Judicial District Court
Nueces County, Texas

APPELLANT'S INITIAL BRIEF

ORAL ARGUMENT REQUESTED

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Citing to the Record

- *Greenbook* Rule 7.3 (pp. 43-45)
- Examples:
 - Reporter's Record example: (XXIX R.R. at 12)
 - Clerk's Record example: (C.R. at 9, 12-13)
- May use *Id.* in parentheses. Exs: (*Id.*) (*Id.* at 7)
- Cite to record in **Statement of Case, Statement of Facts, Argument**

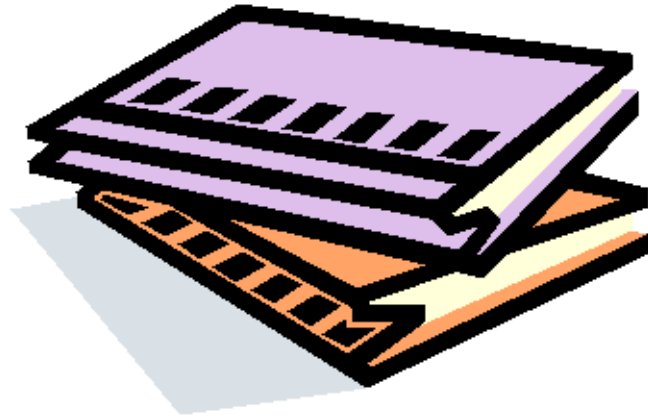
See next slide for example. →



Citing to the Record

Example:

After Calichem removed the case (I C.R. at 164), Honeycutt filed a Motion to Remand (I C.R. at 161), and Calichem filed a response (I C.R. at 160). The trial court denied the remand on February 18, 2005 (II R.R. at 157).



The Statement of Facts & Statement of the Case in the Appellate Brief

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In a Nutshell . . .



Today You Will Learn, Regarding the **Statement of Facts** in an Appellate Brief,

- I. How to Select Facts,
- II. What Its Purpose Is,
- III. What Not to Do,
- IV. How to Emphasize Good Facts and to Minimize Bad Ones, and
- V. How to Deal with One Special Situation.

Addendum: **Statement of the Case**

I. How to Select Facts



Statement of Facts (SOF): Overview

- TRAP 38.1(f): “The brief must state **concisely** and **without argument** the facts pertinent to the issues or points presented. . . . The statement must be supported by record references.”



Statement of Facts (SOF): Overview

- Facts to include:
 - **Legally relevant** facts: All
 - **Background** facts: Enough for context, etc.
 - **Emotionally significant** facts: Enough to create favorable context
 - Other:
 - All facts mentioned in **Argument section**
 - Anything else fitting **theory of the case**



SOF: Overview

- Gaps: You may identify the absence of facts from the record if it's relevant to your issues.
- Record citations:
 - For *every* factual statement
 - Necessarily at least one per sentence

II. What Its Purpose Is





SOF: Purpose*

- Primary goal: **tell the story from your client's perspective.**
- Storytelling goals:
 - Communicate who your client is (subtly favorable)
 - Communicate who opponent is (subtly unfavorable)
 - Emphasize good facts.
 - Neutralize bad facts.

* Adapted from Richard K. Neumann, Jr. & Sheila Simon, *Legal Writing* (2d ed. 2011) ["Neumann"].

III. What Not to Do



SOF: What Not to Do

- Do *not* include **legal conclusions** or **argument** in SOF.
 - Note 1: Argument includes **inferences** and **characterizations of facts**.
 - Note 2: I disagree with Coughlin when she says it's o.k. to make inferences in SOF (p. 345).



SOF: What Not to Do

So, how's it done without argument?

- “Persuade by telling the story in a way that emphasizes facts that support your theory while saying nothing that the adversary could reasonably claim to be inaccurate.” Neumann, p. 218.
- Key: Reader draws the favorable inferences, and reaches favorable decision, *himself or herself*: Neumann, pp. 222.

IV. How to Emphasize Good Facts and to Minimize Bad Ones



Use the persuasive
“Trix of the Trade”!™

SOF: Persuasion Techniques

- See the **checklist** for persuasive SOF in TWEN, Class Materials, Class 5:
 - "Class 5-6--RESOURCE--SOF checklist (Edwards) S2016"

SOF: Ways to **Minimize Bad Facts** (Edwards & Coughlin)

- **“Bad” facts**

- Bad things done by client
- Good things done by opponent

- **Minimize**

- Subordinate clause
- Middle of writing unit
- Passive voice
- Bland or mild language
- Devote less space



SOF: Ways to **Emphasize Good Facts** (Edwards & Coughlin)

- **“Good” facts**

- Good things done by client
- Bad things done by opponent

- **Emphasize**

- Shorter sentences
- Beginning or end of writing unit
- Active voice
- Detailed and vivid language
- Devote more space

VI. How to Deal with One Special Situation





SOF: When There Are Only Allegations, But No Evidence*

- Sometimes, a judgment is rendered on the **petition's allegations**, w/o evidence.
- If so,
 - SOF's "facts" = petition's allegations;
 - Indicate that these are allegations from the petition + why you're referring to allegations; and
 - Still use persuasive tools in your SOF as much as possible.

Addendum: Statement of the Case



Statement of the Case: Overview

- TRAP 38.1(d):

“The brief must state concisely **the nature of the case . . . , the course of proceedings**, and **the trial court’s disposition of the case**. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.”

See next slide for meaning of terms→

Statement of the Case: Overview

- **The nature of the case**

- “e.g., whether it is a suit for damages, a suit on a note, or involving a murder prosecution”
(from rule 38.1(d))

- **The course of proceedings**

- relevant motions and disposition
- who fact-finder was, if trial (e.g., judge or jury)
- indication of who filed notice(s) of appeal

- **The trial court’s disposition of the case**

- Ruling
- Date

Statement of the Case: Overview

- **Record citations**

- Must include for all statements

- **Length**

- Usually no more than ½ page

- **What not to do**

- Do not discuss case facts.

- Do not include argument.

- Do not try to be persuasive: just state the required facts.*

* The SOC is the *only* portion of the brief that should not be a "moment of persuasion."

Statement of the Case: Example

This is a premises-liability case arising out of injuries sustained by Ryan Esquivel in July 2005 while he was an invitee at Cityview apartments in Fort Worth, Texas (II C.R. at 55). JPM Realty Investments, Inc. (JPM), moved for no-evidence summary judgment on the sole claim alleged, premises liability (*Id.* at 55-58, 67). Upon consideration, the Honorable Jeff Walker of the 96th District Court of Tarrant County, Texas, stated in a letter to the parties that he found Esquivel had no evidence to raise a material fact issue on at least two elements of the premises liability claim and would grant JPM's motion (*Id.* at 282). On July 2, 2009, the trial court signed an order granting summary judgment to JPM (*Id.* at 283). Esquivel timely appealed on July 31, 2009 (*Id.* at 288).