

NUTS AND BOLTS OF APPELLATE PRACTICE 2011

Nuts and Bolts of a Civil Appeal

Legal Research by

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Program & Presentation Materials

- The Program Materials and this Presentation are available as PDF files at www.RRollings.com.



Topic of this program:

Topic of this program:

- Font Size

Topic of this program:

- Font Size
- Line Spacing

Topic of this program:

- Compliance with Supreme Court Rules 81, 83, and 84.



Tips and Tricks:

- Easier for you.

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- Easier for the Court.

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- Compliance with Supreme Court Rules 81, 83, and 84
 - Failure to comply with Rule 84 can result in dismissal.
 - Improper formatting is a distraction.
 - You want the Court focused on your arguments, not formatting issues.
 - Read the Rules, including the Local Rules for the District of the Court of Appeals.

Judgment

- Generally, appeals are only allowed from judgments as defined in Rule 74.01.
- A “judgment” must be signed by a judge and denominated “judgment” or “decree.”
- A “judgment” must either resolve all issues with respect to all parties *or* dispose of a distinct “judicial unit” of the action and the court must expressly determine that there is no just reason for delay.

After-Trial Motions

- Motion for New Trial required to preserve most issues for appellate review in jury tried cases. Rule 78.07(a).

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After-Trial Motions

- Motion for New Trial required to preserve most issues for appellate review in jury tried cases. Rule 78.07(a).
- Motion for New Trial is only required to preserve issues related to the form or language of the judgment in cases tried without a jury. Rule 78.07(b) & (c).
- A motion to reconsider is not an authorized after-trial motion. Title the motion as a Motion for New Trial.

Final Judgments

- “A judgment becomes final at the expiration of thirty days after its entry if no timely authorized after-trial motion is filed.” Rule 81.05(a)(1).

Final Judgments

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- Rule 81.05(a)(2) provides that if an authorized after-trial motion is filed, the judgment becomes final at the earlier of “Ninety days from the date the last timely motion was filed, on which date all motions not ruled shall be deemed overruled; or . . . If all motions have been ruled, then the date of ruling of the last motion to be ruled or thirty days after entry of judgment, whichever is later.” Rule 81.05(a)(2).

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- Rule 81.05(a)(2) provides that if an authorized after-trial motion is filed, the judgment becomes final at the earlier of “Ninety days from the date the last timely motion was filed, on which date all motions not ruled shall be deemed overruled; or . . . If all motions have been ruled, then the date of ruling of the last motion to be ruled or thirty days after entry of judgment, whichever is later.” Rule 81.05(a)(2).
- Special rules may apply to certain types of cases, e.g., probate. Mo. Rev. Stat. § 472.160.

Initiating an Appeal

- Generally, an appeal may only be taken from a final judgment or a judgment the trial court has certified is final for purposes of appeal under Rule 74.01(b).

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- **Deadline:** A notice of appeal must be filed with the circuit clerk within 10 days after the judgment becomes final.

Initiating an Appeal

- Generally, an appeal may only be taken from a final judgment or a judgment the trial court has certified is final for purposes of appeal under Rule 74.01(b).
- **Deadline:** A notice of appeal must be filed with the circuit clerk 10 days after the judgment becomes final.
- A “late” notice of appeal is permitted in the discretion of the Court of Appeals. Rule 81.07. But the provision applies only to judgments entered by *trial courts*.

Initiating an Appeal

- Call the Circuit Clerk's office to confirm:
 - The amount of the filing fee.

Initiating an Appeal

- Call the Circuit Clerk's office to confirm:
 - The amount of the filing fee.
 - The number of copies of the Notice of Appeal needed.
 - Normally 1 for the Circuit Court, 1 for the Court of Appeals, and 1 for each of the other parties involved in the trial court.

Initiating an Appeal

- Call the Circuit Clerk's office to confirm:
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 - The number of copies of the Notice of Appeal needed.
 - The procedure for ordering documents for the Legal File.

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 - The amount of the filing fee.
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 - The procedure for ordering documents for the Legal File.
 - The procedure for ordering the Transcript if the proceedings were recorded and no court reporter was involved.

Initiating an Appeal

- Attach:
 - Civil Case Information Form
 - Copy of Judgment

Initiating an Appeal

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- Forms for the Notice of Appeal and Civil Case Information Form are available at www.courts.mo.gov.

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- The appellant is responsible for preparing the record on appeal.
- It is due 30 days after the filing of the notice of appeal if there is no transcript or 90 days after the filing of the notice of appeal if there is a transcript.

The 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.” Rule 81.12(a).

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- Secure the legal file on the top or left side and include a cover page labeled “Legal File”

The Legal File

- **Include:** The docket sheet or case record, which contains a complete summary of all events in the case; the pleadings upon which the action was tried, the verdict, the findings of the court or jury, the judgment or order appealed from, motions and orders after judgment, and the notice of appeal, together with their respective dates of filing or entry of record

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- **Exclude (unless relevant to an issue raised in the appeal):** Voir dire, opening statements, closing arguments, MAI 2.01, evidence regarding damages, briefs and memoranda, notices of filing, subpoenas, summonses, motions to extend time, affidavits and admissions of service and mailing, notices of settings, depositions and notices, and jury lists

The Legal File

- Include a “complete index at the front thereof designating the specific volumes and pages where the particular records, pleadings, motions, verdicts, judgment, orders, instructions, evidence, exhibits, and documentary evidence may be found.” Rule 81.14(b).

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- Include exhibits attached to pleadings in the Index.

Appeal No. SD30611

In The

MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

CITY OF KIMBERLING CITY

Plaintiff/Appellant

vs.

LEO JOURNAGAN CONSTRUCTION
COMPANY, INC.

Defendant/Respondent

Appeal from the Circuit Court of
Stone County, Missouri
Case No. 06SN-CC00015

LEGAL FILE
VOLUME I

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Attorneys for Appellant City of Kimberling City

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

CITY OF KIMBERLING CITY)
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 vs.) Appeal No. SD30611
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LEO JOURNAGAN) Circuit Crt Case No. 06SN-CC00015
CONSTRUCTION COMPANY, INC.,)
)
 Defendant/Respondent)

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Working with the Record

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 - Electronic copy of the transcript is required by Local Rules for each District of the Court of Appeals.
 - Scan documents as you are preparing the legal file.
 - Acrobat can OCR documents but retain “image”. Best of both worlds. Exact “photocopy” of documents but also text searchable.

Appellate Briefs

Appellate Briefs: Mandatory Sections

Appellant's Brief

- Table of Contents
- Table of Authorities
- Jurisdictional Statement
- Statement of Facts
- Point(s) Relied On
- Argument
- Conclusion
- Certificates of Service and Compliance
- Appendix

Respondent's Brief

- Table of Contents
- Table of Authorities
- Argument
- Certificates of Service and Compliance

Appellate Briefs: Requirements

- All text, including footnotes, must be in a font not smaller than 13-point type, Times New Roman format, on Microsoft Word.

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- Length. Rule 84.06(b) or Local Rules in Eastern and Western District.

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- Electronic copy of brief.

Important Deadlines



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APPELLANT'S BRIEF
Oral Argument Requested

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JURISDICTIONAL STATEMENT

This case involves claims for breach of contract and breach of warranty by Plaintiff/Appellant City of Kimberling City against Defendant/Respondent Leo Journagan Construction Company, Inc. (LF, Vol. I, p. 8-10). The trial court entered its Final Judgment granting Defendant's Motion for Summary Judgment on May 3, 2010, with respect to all of Plaintiff's claims. (LF, Vol. I, p. 7; LF, Vol. II, p. 343). Plaintiff filed its Notice of Appeal to this Court on June 10, 2010. (LF, Vol. I, p. 7; LF, Vol. II, p. 344).

This case is not within the exclusive jurisdiction of the Supreme Court under Article V, Section 3 of the Missouri Constitution and this Court has jurisdiction.

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STATEMENT OF JURISDICTION

This is an appeal from a judgment entered on a jury verdict in a civil case tried in the Circuit Court of the City of St. Louis. The judgment was entered on January 13, 2006. L.F. 49. Appellants filed a motion for new trial on February 7, 2006. L.F. 52. The trial court overruled the motion for new trial on April 17, 2006. L.F. 61. Appellants filed a notice of appeal on April 27, 2006. L.F. 62.

This appeal does not involve the validity of a treaty or statute of the United States, a statute or provision of the Constitution of this state, or title to any state office, nor is it a case in which the punishment of death has been ordered. As provided in Article 5, Section 3, of the Missouri Constitution, the Missouri Court of Appeals, Eastern District, has jurisdiction of this appeal.

Table of Contents & Table of Authorities

- Word and WordPerfect will both create these tables.
- Word and WordPerfect will also create hyperlinks and bookmarks when creating the tables.
- Hyperlinks and bookmarks are preserved when you export to PDF.

Statement of Facts

- “The statement of facts shall be a fair and concise statement of the facts relevant to the questions presented for determination without argument.”
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 - The purpose “is to afford an immediate, accurate, complete and unbiased understanding of the facts of the case.” *Kent v. Charlie Chicken, II, Inc.*, 972 S.W.2d 513, 515 (Mo.App. E.D.1998).
- Include specific page reference to the record that support factual assertions. Rule 84.04(i).

Points Relied On

- Each point relied on shall: (1) identify the trial court ruling or action challenged; (2) state concisely the legal reasons for the appellant's claim of reversible error; and (3) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error. Rule 84.04(d).

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- Each point relied on shall: (1) identify the trial court ruling or action challenged; (2) state concisely the legal reasons for the appellant's claim of reversible error; and (3) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error. Rule 84.04(d)(1).
- The recommended format is: “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*].” Rule 84.04(d)(1).

Points Relied On

- “Immediately following each ‘Point Relied On,’ the appellant, relator, or petitioner shall include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies.” Rule 84.04(d)(5).

Argument

- Restate the point relied on at the beginning of the argument concerning that point relied on.

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- State the applicable standard of review.

Understanding the Standard of Review

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Understanding the Standard of Review

- It is critical to know the standard of review applicable to the issue raised in a point relied on.
 - If the standard of review is unfavorable (e.g., abuse of discretion or plain error), ask yourself whether you should include the issue in the brief.
 - The standard of review drives the statement of facts. Whether the statement of facts is “fair” is determined from the applicable standard of review.

Common Standards of Review

Court-trying cases. The court of appeals will affirm the judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30 (Mo. 1976).

De novo. A favorable standard, generally applicable to review of questions of law. No deference is given to trial court's ruling.

Abuse of discretion. The appellate court determines whether the ruling is clearly against the logic of the circumstances and so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration.

Plain error. Applies when an issue has not been preserved. Appellate review is discretionary and examines whether the error resulted in manifest injustice or a miscarriage of justice.

Respondent's Brief

- Although the respondent is not required to file a brief, the respondent should strongly consider doing so for the following reasons:
 - To address misstatements of fact
 - To correct misstatements of law
 - To dispute or expound upon the standard of review set forth by the appellant
 - To present arguments supporting the judgment that are not raised in the appellant's brief (e.g., plaintiff failed to make a submissible case)
 - To present an oral argument

Reply Brief

- A reply brief is optional
- The primary purpose of a reply brief is to respond to factual or legal assertions made in the respondent's brief
- Do not file a reply brief simply to reargue the points made in the initial brief
- Remember, most effective reply briefs are short and focused

Appendix to Brief

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 - The complete text of any instruction to which a point relied on relates

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 - The complete text of any controlling statutes, ordinances, court rules, or agency rules
 - The complete text of any instruction to which a point relied on relates
- In addition, consider including copies of other materials that may assist the court to decide the case (e.g., exhibits, transcript pages)

Exhibits

- The appellant “is responsible for depositing all exhibits that are necessary for the determination of any point relied on.” Rule 81.12(e).

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- Exhibits are often misplaced after trial. Therefore, counsel for the appellant should request copies of all exhibits from trial counsel as soon as possible.

Exhibits

- In civil cases, the appellant must deposit exhibits with the appellate court on or before the day the reply brief is due or when the court so directs, whichever is earlier. Rule 81.16(c).
- Review the Local Rules regarding labeling and indexing the exhibits.

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- **Motion to publish.** Argue that the disposition of the appeal has precedential value. Rule 84.17(a)(3).

NUTS AND BOLTS OF APPELLATE PRACTICE 2011

Nuts and Bolts of a Civil Appeal

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