United States Court of Appeals
ELEVENTH CIRCUIT
1729 FIFTH AVENUE NORTH, SUITE 918
BIRMINGHAM, AL 35203

KEVIN C. NEWSOM
CIRCUIT JUDGE

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Professor Stephen Sachs
Reporter, Advisory Committee on Appellate Rules
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Dear Professor Sachs:

We write to urge the Committee to consider an amendment to Federal Rule of Appellate Procedure 28. In particular, we recommend that the Rule be amended to permit – and perhaps subtly encourage – lawyers to include brief "introduction" sections in their appellate briefs. (We were chagrined to read a recent *New York Times* article suggesting, we think ill-advisedly, that the Solicitor General's practice of including introductions in briefs filed at the Supreme Court has become a point of "contention." Ann E. Marimow & Abbie VanSickle, *Despite Supreme Court Wins, Elite D.O.J. Unit Has Seen Mass Turnover*, N.Y. TIMES (Dec. 1, 2025), https://www.nytimes.com/2025/12/01/us/trump-solicitor-general-supreme-court.html.)

As matters currently stand, Rule 28 says nothing about introductions one way or the other, but savvy lawyers often use them – we think, to great effect. A well-crafted introduction allows a lawyer to orient the court to what Seth Waxman once called "the kernel" of his or her case. It is, in effect, the lawyer's "elevator pitch": It briefly introduces the dispute, tees up the key issues, and explains why they should be resolved in a particular way. (Another way of thinking about it: It's how a lawyer might explain his or her case to a family member over Thanksgiving dinner.) An introduction can also refresh a busy appellate judge's recollection of a case – oftentimes right before he or she takes the bench. Good for the lawyer, good for the judge.

An amendment along the lines we're recommending should probably aim to communicate that an introduction is not just a warmed-over "statement of the issues," nor is it a slimmed-down "summary of the argument." To that end, the rule, if adopted, should provide at least some minimal guidance about a proper introduction's purpose and content.

Because we think that introductions should be permitted, but not required, we recommend adding a new subsection (d) to Rule 28, rather than inserting a new sub-subsection into Rule 28(a), which lists the required elements of an opening brief and uses mandatory "must" language. (Subsections (b), which addresses answering briefs, and (c), which addresses reply

briefs, likewise use mandatory language.) Ideally, we think the introduction should come immediately after the jurisdictional statement and before the statement of the issues. However, because Rule 28(b) envisions that an answering brief might not contain those sections, we think it may be best not to specify an introduction's particular placement – lawyers will instinctively understand that any introduction should appear early in the brief.

Although we aren't wedded to any particular phrasing, we offer the following language as a starting point:

> **(d) Although not required, counsel may include a short introduction that briefly frames the case, identifies the key legal issue(s), and recommends a resolution.**

Frankly, we think "elevator pitch" best captures – and best conveys – the essence of a good introduction, but we recognize that such phrasing is probably too colloquial for the rule's formal text. The committee might consider, though, including an "elevator pitch" reference in the notes.

One technical item: Because the decision to include an introduction is a strategic judgment best left to the lawyer, we believe that the words used in an introduction should count toward Rule 32(a)(7)'s length limitations. The committee should consider how best to make that clear.

Yours sincerely,

Judge Kevin C. Newsom

William H Pryor Jr /kcn

Chief Judge William H. Pryor Jr.