

No Lax Facts: Effective Presentation of Facts in Appellate Briefs

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When writing an appeal brief, the rules say to have a statement of facts, and a separate section of legal argument. In this article, I suggest that those required sections should not be treated as straitjackets that interfere with effective, readable presentation of the material facts about the case.

Specifically, I suggest that for many appeal briefs, it may be most useful to present facts in two places:

1. In the “statement of facts” at the start of the brief, provide a high-level summary of the parties and their relationships, followed by the procedural history of the dispute. Offer the court a guide to the main events, people and companies involved, what happened at trial, and the judgment or order being appealed.
2. Then, in the “argument section, the brief presents the key facts about specific legal matters in those parts of the argument section. I suggest this as an alternative to either “blocking and copying” part of a long, initial fact statement into that argument section, or using a “see supra” signal to refer back to and incorporate part of such a fact statement.

This approach should make it easier for the court to see the link between facts and argument. It cuts down on flipping back to the initial statement of facts, which can disrupt reading and thus weaken the overall presentation of the argument. It also makes sure that vital facts are linked directly with the argument they support. This way, they are less likely to be overlooked or forgotten in a bigger fact summary. It also avoids inadvertent error caused by discrepancies creeping into fact discussions that are supposed to be identical.

Consider a medical-malpractice case. In a “traditional” or “strict” approach to the rules, the statement of facts might detail a complex medical procedure, the treatment chronology, and the alleged acts of negligence. The argument section then frequently refers back to these details.

In my alternative, the statement of facts would provides a brief overview: the plaintiff underwent a medical procedure, experienced adverse effects, and claims malpractice. Then, in the argument section, each key fact is introduced at the pertinent point in the legal analysis. For instance, while arguing about the doctor's failure to meet the standard of care, specific facts about the doctor's actions during the procedure are presented, simultaneous with the brief's presentation of the legal authority about those actions. This immediate link between facts and argument makes it easier for the reader to follow the logic.

As another example, consider an intellectual property dispute about widget-making. judge to follow the logic.

The “traditional” approach might include a detailed history of both sides’ widget-product development, launch dates, and alleged similarities. These details are then repeated or referred to in the argument section.

In my approach, the statement of facts would briefly outline the dispute: identify who the companies are, how they launched similar products, and the nature of the claims made. Then in the argument section, when arguing about the defendant's access to the plaintiff's design, specific facts about prior partnerships or shared employees would be introduced then. Similarly, when arguing about the products' similarities, detailed comparisons, perhaps including charts or diagrams, are presented along with the controlling law. Here again, relevant facts tie directly to each argument in succession, making the narrative more persuasive and avoiding boring—and confusing—redundancy.

In both of these examples, my proposed approach helps establish a clear and persuasive narrative that aligns the key facts with the corresponding arguments, thereby making the overall brief more readable—and thus, effective.

To do this effectively, the author needs a keen sense of the relevant—the difference between details that are critical to specific arguments, on the one hand, and general facts about the parties and the dispute. In other words, the author has to know the arguments and the case to be able to effectively pick out key information based on how directly it relates to the argument. (This avoids the occasionally seen problem of a fact section written by one lawyer, and an argument by another, where the two parts of the brief just don’t line up even though each is, individually, of high quality.

Effective presentation of the key facts can make a brief easier to understand and more focused on the key issues—and thus more effective. By considering how to give a succinct overview in the initial fact statement and then bringing in further, detailed facts as part of the argument section, a stronger overall presentation may be possible in many cases.