

## **Summary of the Argument New Requirement for Briefs Filed in the Supreme Court and Court of Appeals**

Members of the Nebraska Bar should be alert to the fact that effective January 1, 2009, a new item which summarizes the argument contained in the brief was added as a briefing requirement for briefs filed with the Nebraska Supreme Court and Nebraska Court of Appeals. The new rule, Nebraska Court Rule of Appellate Practice § 2-109(D)(1)(h), provides as follows:

**The appellant's brief must contain, under appropriate headings, a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief and which must not merely repeat the argument headings. The appellee's brief may contain such summary.**

This Summary of the Argument section of the brief is mandatory. A failure to include this section in the appellate brief subject the party filing the deficient brief to an order directing the filing of a replacement brief and to a corresponding delay in consideration of the appeal.

The new Nebraska Summary of the Argument rule is patterned after Federal Rule of Appellate Procedure 28(a)(8). Numerous state appellate court rules contain similar language. In considering whether to adopt § 2-109(D)(1)(h), the members of the Supreme Court and Court of Appeals considered competing rule language. Alternatives providing that a summary of the argument be optional and that the summary must contain case citations were rejected. Making § 2-109(D)(1)(h) mandatory is intended to encourage counsel to synthesize, in their own words, the argument presented in the body of the brief. The summary may be a few sentences and should seldom exceed one page.

An informal survey of state appellate staff attorneys as to whether a rule requiring the summary of the argument requirement had been successful in "focusing" the attorneys in writing their appellate briefs and whether it was useful to the court in its disposition of the case showed the utility of such a rule. It was reported that the rule helps eliminate rambling and encapsulates what the parties are urging in their briefs. It was also reported that the summary assisted judges in readily understanding the argument to follow in the body of the brief and was occasionally adopted as the statement of the issues in the opinion issued by the court. In complying with § 2-109(D)(1)(h), counsel should take advantage of this opportunity to garner the attention of the court and for effective advocacy.