

## Those who Live in Glass Houses ...

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Today, the Seventh Circuit issued a decision in *Gross v. Town of Cicero*, Case No. 06-4042. Our focus on the lessons to be learned from this case deal with well-worn proverbs and idioms, not from the substantive issues involved.

Federal Rule of Appellate Procedure 28(a)(7) requires appellants to include in their briefs "a statement of facts relevant to the issues submitted for review with appropriate references to the record." The appellant's statement of facts lacked a single citation to the record. The appellees asked the Court to dismiss the appeal because of this failure. However, the 7th Circuit declined, citing "the proverbial pot-and-kettle idiom" (because they too did not always cite to the record in support of their factual assertions) and the appellees' "downright disingenuous" arguments concerning the factual events in the trial court.

The lesson here is clear - if you are going to move to dismiss an appeal because of the failure to comply with the Rules, then you better make sure that your brief is fully compliant and accurate.

### Lessons:

1. Do not seek sanctions against your opponent for failing to follow the Rules while making that same mistake.