Workflow for Simple E-Briefs

by Don Cruse*

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These instructions are tailored to briefs in the Texas Supreme Court. Some of the tips may help with other courts that accept PDF briefs for e-filing. Please feel free to let me know of any deviations or tweaks needed to satisfy another court.

This guide is available at http://www.scotxblog.com/ebrief-workflow/.

Under the Texas Supreme Court's new rules for electronic briefing, virtually all substantive briefs must also be accompanied by a PDF version sent to the clerk's office by email at the time of filing.

If you know how to "print to PDF," you're only partway home. The new Texas rules demand something more --- what I think of as an e-Brief Lite.

Specifically, the new rules require that a single, combined PDF <u>also include</u> the brief's appendix, including the items required to be attached to petitions, to merits briefs, and to petitions for mandamus relief (such as the opinions below, the jury charge or trial judge's factual findings, the judgments below). If you attach other items for the Court's convenience --- such as a key piece of evidence or a key case --- they must also be folded into your PDF. Each part of the PDF must be made fully word-searchable, and it must be redacted to remove certain personal information protected by court rules.

This puts a premium on the ability to make simple, fast e-briefs. If you can handle this task in your office, you can save your client the expense and delay of an outside vendor. With some experience, the basics can take little more time than making the Table of Contents and the Index of Authorities.

And once you have mastered those basics, you can take just a few more minutes and make the brief much easier for the Court to use. It won't be as comprehensive as a traditional CD-ROM e-brief. But it will have its own strengths. Most obviously, it will satisfy the Court rules. (A CD-ROM submission does not itself satisfy the Texas Supreme Court rule that requires an electronic copy suitable for posting on the Court's public-facing website.) And this simpler e-brief can easily be sent by email, posted to the Court's website, and used by the Justices on whichever laptop or other reading device they choose.

Much as lower-fidelity MP3 files took over the music industry by offering convenience and portability, I would expect lighter weight PDF e-briefs to become the norm. As more judges and staff have devices that can read PDFs but not CD-ROMs --- whether iPads, Kindles, or slate tablets --- the convenience of using a lighter weight PDF e-brief will win out over its CD-ROM predecessor.

Tools You Need

For most people, the toolbox is very simple: Buy the latest copy of Adobe Acrobat and get a simple office scanner. (You can get both together with a ScanSnap bundle. I have a ScanSnap in my office. It's lightweight and fast for simple documents. It's not, however, appropriate for scanning bound documents. The bundle that ScanSnap sells for Windows machines comes with Acrobat 9.0 Standard, which does everything but redaction. The Mac bundle comes with Acrobat 8.0 Professional, which loses a few refinements but does have simple redaction tools.)

"Aren't there free tools? Can't I just use the PDF conversion built into my Mac? Or the 'convert to PDF' functions in Wordperfect or the lastest Microsoft Word?"

In a word, no. You need two PDF functions that just aren't included in your word processor: (1) the ability to do optical-character recognition (or OCR) on any paper documents that you have to scan, with your results folded into the same PDF file to make it word-searchable, and (2) tools to redact sensitive information.

It's possible to do redaction without the Adobe packages, if you are particularly careful. But if you need to do OCR of scanned documents, you're pretty much out of luck with free software options. I have downloaded and tried a series of free and open-source packages that claim to do OCR, but I haven't been satisfied with the results. They're not (yet) accurate enough to rely on for legal work.

If you do any significant volume of redaction, then you will probably want Adobe Acrobat Professional. If not, then most of the computers in your office can make do with Adobe Acrobat Standard. You might still want access somewhere in your office to at least one copy of Acrobat Professional for that rare brief that demands its more sophisticated redaction tools.

The big workflow question: Do you need to redact anything?

Early on, you should determine whether or not your particular brief will require the redaction of sensitive information.

To be clear, I don't mean information that you would rather the world not know. Unless your briefs are being filed under seal, your PDF cannot just arbitrarily hide information that is contained in the paper briefs. (And if your case *does* involve a pending motion to seal, the rules exempt you from electronic filing entirely until that is resolved.) The paper and electronic versions are required to contain the same

information, with just a few exceptions.

Those exceptions, under the Texas Supreme Court rules (see the order), are:

- social security numbers,
- the name of a minor child,
- a date of birth,
- a financial account number, or
- a home address.

If the text of your brief --- or any of your attachments --- contains those items, you need to think about how to properly redact it from the PDF. You need to skip ahead to the section below titled **"Redaction: How It Changes the Workflow."** Do that first, before you work through the other steps. The earlier in the process you redact sensitive information, the safer you are.

If you don't need redaction for this brief, you're in luck. The task is much easier.

Recommended Workflow (no redaction needed)

This workflow will create an e-Brief Lite, with internal citations and bookmarks. This assumes that you don't need to do any redaction at all.

0. Think ahead while you're writing your brief.

For example, if you're writing your brief in Microsoft Word, you should be using "styles" to format your argument headings and table of contents. Not only does it save time in Word, but it lets Acrobat read which items are headings and build its own table of bookmarks without you having to do so manually. It's a big time-saver near the end.

The other big thing to consider is whether you will eventually want to have hyperlinks to outside sources -- things beyond the record and basic case authorities. The best practice is to type out those URLs in the citation in the brief text. That's good citation form, and it has two other benefits: First, it lets Acrobat (or Word) automatically generate the hyperlink for you. Second, it means that a reader who just has access to a paper version of your brief can still type in that URL manually to reach the same destination. That preserves the spirit that the electronic brief is the same as the paper brief, which is important to transparency (and to not violating the briefing rules).

1. Gather together all your appendix materials.

Under the Texas briefing rules, there are required and optional appendix items. Be sure that you have collected together all of the required materials, including the judgments of both the trial court and the court of appeals (if appropriate), the jury charge or findings

of fact, and any opinions below. If the case is based on a contract, the appellate rules may also require it to be included.

Failure to include one of these items is one of the most common reasons that the Texas Supreme Court clerk's office bounces briefs and orders them redrafted.

Your staff can assemble these materials and handle the initial processing well before the brief is complete.

To make things easier, you should try to gather these appendix materials in a native electronic format. So, if you are getting the slip opinion from the court of appeals, try to download the PDF file that it publishes rather than starting with a paper copy. Starting with a native version will make the rest of the process easier.

Use some judgment in deciding what to include. In Texas, the burden falls on the Petitioner to include the required items in the petition for review. Beyond that, including appendix items is usually a matter of strategic choice. The usual guidance is to consider what you want the Court to have at its fingertips reading your brief.

The e-Brief Lite adds another wrinkle: With Acrobat, you can put internal hyperlinks to guide the reader to appendix items in your own brief. So, if you want to be able to point the Court to a specific document, you may want to include it in your own appendix -- even if the other side has already done so. For example, I have included a copy of the court of appeals opinion to an amicus brief just so I could make these links.

This is bad for the trees, and it adds a little to physical printing costs, but it seems to be the best practice under the Texas Supreme Court's current briefing rules. Someday, we will have electronic trial court records and (perhaps) it will be possible to simply link to those records. But we're not there yet.

> *Remember: Under the current rules, your electronic appendix has to match your paper appendix. So if you include it in paper, it has to be in the PDF. And if you want it embedded in the PDF, you need to include it on paper.*

> *I'm told that this rule may change in the fairly near future, as the Court starts to adapt to using eBriefs. I will update this guide if there is a rule change.*

For convenience, set up a temporary work folder to use for assembling your brief. Put each of these intermediate PDF files into the folder as you go.

1A. Paper appendices: Scan and make them word-searchable.
For your appendix items that are trapped on paper, you need to scan them and make them word-searchable.

These instructions don't tell you how to use your scanner. (My ScanSnap is a one-button operation.) But you should pay attention to how detailed the scanned image is. My practice is to choose 300dpi resolution in black-and-white mode. That's the detail level required by the federal Fifth Circuit's e-filing rules, and it's probably the minimum to get reliable optical-character recognition.

> *Here's a comparison: If a 300dpi scan were a digital camera photo, it would be something like an 8.4 megapixel image. That's not incredibly large, if you just have a single photo. But if you have a 10- or 20-page document to scan, these files start to add up very quickly. This is why it's important to limit your resolution and to choose black-and-white mode. There are also compression tools within Acrobat that you may need to investigate if you have particularly large documents to scan.*

Once you get the scanned document into Acrobat, you need to do optical character recognition (OCR). On my Mac, it's under the menu `Document --> OCR Text Recognition --> Recognize Text Using OCR...`

For long documents, this can take a little time. Optical character recognition is a sophisticated computation, so be a little patient.

Save the resulting file to your work folder with a name that signals its order within the exhibits, such as "Exhibit A: Final Judgment". This will make it easier to combine with the other materials.

1B. Electronic appendices: Make them word-searchable and verify there isn't improper metadata.

If an appendix item is already in a PDF document, then you have to make two quick determinations about it.

First, you need to verify that the PDF is word-searchable. To do that, you can try highlighting some words to see if Adobe can recognize the words. You might also do a very quick search for a word or two on the screen. Typically, native PDF documents are word-searchable, but scanned documents require someone to have done the OCR work to make them so.

If this appendix item contains pages that look very different -- for example, if the first page of the PDF is a cover letter or something similar -- then you might want to check one of the interior pages, too.

When you discover that the PDF is <u>not</u> word-searchable, just follow the procedure above for dealing with paper documents (in discussed in Step 1A above). Run them through Adobe's OCR process to make it word-searchable.

Second, the security minded should spend a moment thinking about whether the PDF might have improper metadata. For example, is this a PDF that was given to you by a client? Is this a PDF that you generated natively within the firm? In most cases, PDF files are fairly clean. But if you have doubts, you should either work with the metadata removal tools (mentioned below in Step 8) or should perhaps use the "analog security hole" of printing the PDF to paper and then re-scanning and OCR'ing the text as you would for a paper document.

If someone else already redacted the PDF before sending it to you, you should be doubly sure that they did not inadvertently leave in sensitive information.

Once you've verified that the exhibit is ready, then save it to your work folder.

2. Use Acrobat's conversion tool to import the Word file.

When you installed Acrobat, it should have installed a PDF print driver (perhaps called a "distiller") on your system. To convert a Word file to PDF, just print to that driver.

You can also use other tools that you may have, such as the native "Save as PDF…" built into the Mac OS X operating systems. But everyone who has a full license for Adobe should have the distiller installed and accessible.

Save this file to your temporary work folder and give it a recognizable (but short) name. You'll be giving it a new name in the final step, so don't fret that detail now.

2A. Sign the brief with /s/.

My practice is to use the Typewriter tool of Acrobat to place "/s/" in the blank signature areas. (Another option is to type the "/s/" in Word before exporting the file to Acrobat. It's up to you.)

This is not strictly necessary, under the Texas Supreme Court's current rules "no signature is required" on these electronic copies. But it's fine for this purpose, and the rules expressly permit this shorthand notation.

If you preferred, the Texas Supreme Court rules would also permit you to use a scanned image of your written signature or to use Acrobat's true "digital signature" option. Because those add a little complexity, I don't deal with them in this workflow.

Note: If you've added a pretty picture of your signature (instead of just "/s/"), you might want to also *flatten* the final file, which blends your signature into the page instead of leaving it as a separate element that someone else could move to the signature box of their choice. Detailed instructions are in this post on Acrobat for Legal Professionals. My preference is to put "/s/".

3. Use Acrobat's "combine" feature.

You may have heard about the fancy new "PDF Portfolios." That's *not* what we're going to use. (Why not? Portfolios behave a little differently with some of the other tools. No need to get into details, but there's no advantage to using them here.)

I recommend the older "Combine…" PDF function. It turns a series of PDFs into a single, continuous PDF file that any client software can handle with grace. You find this function at `File --> Combine --> Merge Files Into a Single PDF`.

First, you want to "Add Files" and select the brief and all the exhibits.

> *Tip: If you want to include interstitial pages --- such as a blank page that just says "Tab A" or "Appendix A" or the like --- the easiest way is to make each a separate one-page PDF file and add them just as any other document.*

They should be listed in the "Combine Files" dialog box on your screen, where you can rearrange them to match the same order as your paper brief. (Cover, Brief, Appendix A, Appendix B, etc.)

Second, double check that the order is correct. It's a real pain to reshuffle these pages after you have finished the process of combining into a single PDF.

Third, scan down the list of exhibits to see if you have any particularly large attachments. Under the Texas Supreme Court's current rules, the total combined PDF cannot be larger than 10MB. If you have exhibits that are too large, you may want to try to reduce the file size before folding it into your brief.

One option you have is on the lower right: File Size. It gives you three iconic options, which if you hover your mouse over, introduce themselves as "Smaller File Size" (suitable for on-screen display only), "Default File Size" (suitable for reliably printing most business documents), and "Large File Size" (which does no compression at all).

I'd choose the "Default File Size," the middle icon, unless you have some particular reason to want an ultra-high resolution version of your PDF.

When you're done, click "Combine Files" and give the new file a temporary name.

4. Finish out the "bookmarks" generated by Acrobat.

Adobe has a "bookmarks" feature that --- in the sidebar --- displays an outline of the document and lets a user easily navigate between major sections. You can also use it to skip between the main brief and the various exhibits that you have attached.

Check to see what bookmarks are in your brief. If you don't see them yet, then look in the sidebar for this icon .

If you used "styles" in Word to generate your table, then Acrobat may have made its own initial set of bookmarks tracking the outline of your brief. And if you used good file names for the exhibits, you may also have a list showing each exhibit.

Now make sure that the bookmarks are what you want -- and that they are arranged as you like. You can manually create a new bookmark by highlighting the text you want to appear and then clicking the "new bookmark" icon: .

You can also rearrange the bookmarks and indent them, so that they form an outline structure to match your brief. Just click and drag one of the existing bookmarks to a new location. If you want to indent it, then drag it to a more indented position. (This is a little clumsy, but it works eventually.)

The Court likes these bookmarks. The most recent order on electronic briefing singles them out for praise: "The use of bookmarks to assist in locating specific appendix materials is encouraged."

> Extra credit: At least in the Texas Supreme Court, you might also want to enable an option within the PDF file that asks the computer to open the "bookmarks" sidebar when it opens the file. This makes clear to the reader that the bookmarks are available, and it lets them quickly flip to what interests them about the brief. To do this, go under the `File --> Properties` setting and find the tab labeled "Initial View." Look for the drop-down menu "Navigation tab." Choose the option "Bookmarks panel and page," and whenever you open this PDF, the program will automatically pop open the bookmark sidebar.

5. [optional] Add appropriate links to outside materials.

The traditional CD-ROM e-Brief has tried to include links to every single authority, regardless of its importance to the case. The result has been bloated files that are too big to compress into a single PDF and that are visually cluttered.

Embrace the constraints here. You want to link your brief to the key authorities, but perhaps not spend the time to insert hyperlinks to every single outside authority. Choosing a few key authorities -- such as the other briefs in your own case, or maybe a key piece of legislative history -- can be powerful.

> **Federal differences:** *The federal Fifth Circuit has its own set of CM/ECF filing standards (PDF), limiting when hyperlinks can be used. They are: "links*

to other portions of the same document; links to other CM/ECF or PACER documents; links between documents filed at the same time." So if there are materials you want to cite, they either need to be attached as exhibits or to otherwise be on file with the Court.

The general procedure for making links within Acrobat is detailed in this blog post.

Here are a few tips:

First, if you type out the full hyperlink in the text of your Word document when writing your brief (as suggested by Bluebook form), then your task of making links is amazingly simple. Acrobat has a feature that automatically turns all URLs into clickable hyperlinks. Just go under `Advanced --> Document Processing --> Create Links from URLs`.

Some PDF viewers will make these URLs clickable even without this step.

Second, you can add the links in Word using its hyperlink tool, which is easily accessed if you highlight some anchor text and click Control-K. The downside is that your link will (usually) be both blue and underlined. This makes it clear that it's clickable, but because you created this in Word, even the paper copy of your brief will have this underlining. That can make a very noisy page.

Third, if you want to hand-code some links in Acrobat, you use the Link Tool, which is found at `Tools --> Advanced Editing --> Link Tool`. (To make this easier, you can go under `View --> Toolbars` and activate the "Advanced Editing"

toolbar. Then you can just look for this icon: , which looks like a link in a chain.)

The way it works is a little strange. Instead of highlighting the text you want to link, you actually use the Link Tool to draw a rectangle around the text. Once you do, a dialog box pops up asking for details needed to create the link.

Here's how it appears on my computer:
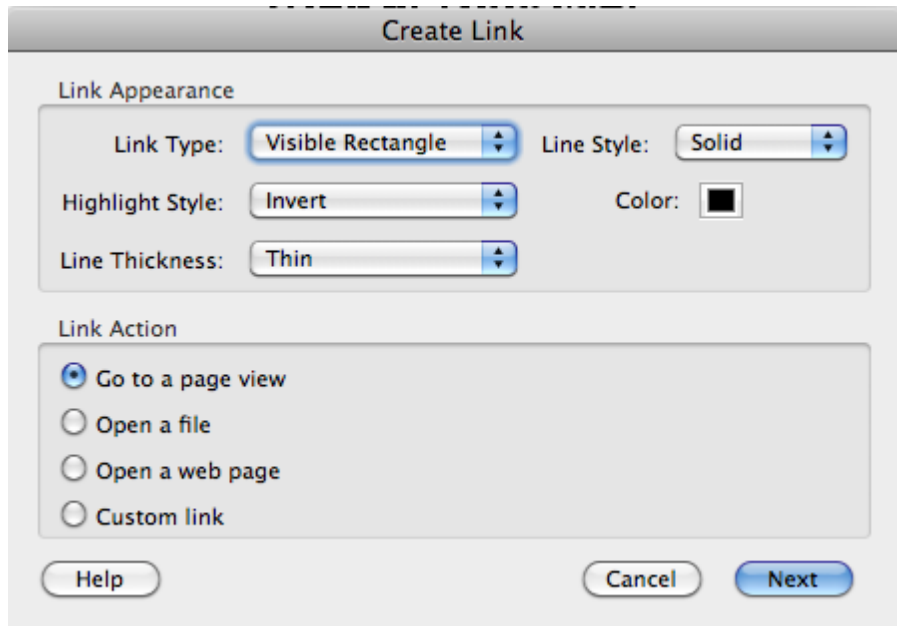
The "Link Appearance" options should be clear enough. The default is to draw a light rectangle that acts as a kind of clickable button. The style rules for eBriefs are still in flux. You don't want invisible, and you also don't want links to be the center of attention. The Adobe default seems to be an accepted medium ground.

You make an external link by choosing the "Open a web page" option.

If you make that selection and then click "Next," you are asked to enter a URL:
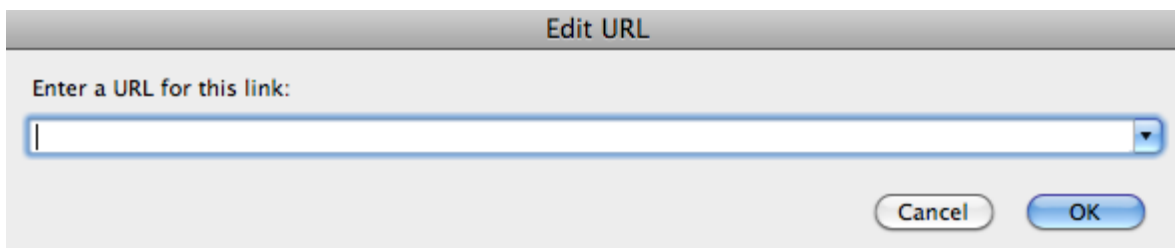
Paste your URL into that box. If you've typed out the URL as part of the citation, then this is easy. If not, then you have to grab this URL from somewhere else. (I recommend keeping a text file open with a list of these URLs that you plan to include.)

Here are some situations to consider a hyperlink:

- Other briefs previously filed in your case. The Texas Supreme Court has an electronic briefs archive, and each brief posted there has a unique URL.
- The court of appeals's slip opinion. *I prefer to attach this as an exhibit to get the easier page-pinpoint citation of internal hyperlinks.*
- Legislative history documents about the key statute, citing to the Texas Legislature's excellent online resources.

- Previous order lists or very recent opinions issued by the Texas Supreme Court, which are available through the Texas Supreme Court's orders page.
- Outside authorities that you are citing for support, if they are available readily in online form, such as law review articles (rare, due to publishing contracts) or official federal documents (increasingly common). If you give both the Bluebook citation and a URL citation, then the Court can easily find the materials however it chooses.

There are two dangers in citing to external hyperlinks.

Broken links. The obvious fear is that the link will break as someone takes down or moves the webpage. You should use some care in picking resources unlikely to change. (Some newspapers, for example, take down their articles after a short period.) But the real answer to this fear is to *have a good enough citation that would let the reader find it another way.* Where possible, use a good citation format plus a hyperlink; don't put all your trust in the hyperlink.

If you do not have a good citation to a readily-available paper version, then by all means you should download and attach a PDF version of the webpage. (There are online services that will "archive" the current version of webpages for you.)

More subtly changed pages. The less obvious -- but more serious -- fear is that the cited resource will change between the time you write your brief and the end of your case. Let's say that you cite a webpage that contains the text of a statute. Then the statute is amended, and the webpage owner changes its page to reflect the new version. Now, when the Court follows your hyperlink, they come to the wrong information.

The ultimate cure is for more websites (especially government websites) to adopt systems for showing the *different versions* of the same page. Wikipedia gets a bad rap from the legal community for letting anyone make edits, but it has a phenomenal system for *tracking changes* that should be the envy of every legal website. In short, you can grab a "permanent link" to the specific version of the Wikipedia page you're citing to use as the URL. When a reader follows that permanent link next month, they will always get the same page you see today -- plus a small alert at the top if there is a newer version and a chance to view a redline of the differences in the two versions. That's phenomenal. And it means that you can safely cite to Wikipedia today in a way that you *can't* cite to an online version of a statue or a rule.

In the meantime, you should try only to hyperlink to things that don't change. For example, court opinions, past legislative history, briefs that have already been filed. If you must cite something that is in flux, consider attaching a PDF version or using an online service that archives webpages.

**If in doubt, don't put a hyperlink.** There is no requirement (yet) that you link to

everything that your brief mentions; use some judgment and avoid the headaches of having these things break.

6. [optional] Consider adding internal links within your PDF.

If you followed Step 4 above, the user will already have a list of your major argument headings and the exhibits as Bookmarks. This gives them a rough way to navigate.

In appropriate cases, you might consider adding a second type of internal navigation: links between the body of your brief and the exhibits. With this method, you can direct the reader from your argument to the key page of a contract or other exhibit.

You create these links the same basic way as external hyperlinks (discussed in Step 5), but they point to another page in your document. Here's what you select:
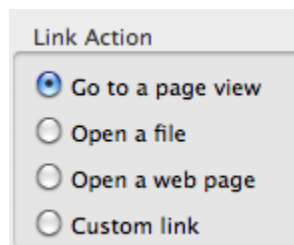
Remember: This means another page in your combined PDF, so you can direct them to one of your required or optional appendix items.

Once you click "Next," you will see the following dialog box appear:
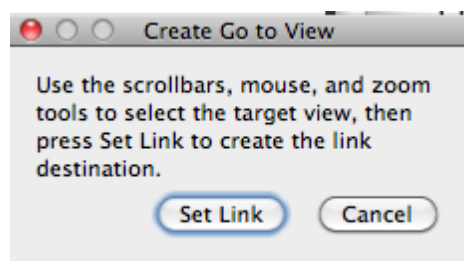
When it does, navigate to the page you want (inside your PDF) using the sidebar, bookmarks, or other navigation tools. Then click "Set Link," and you're done.

Here are some good uses for internal hyperlinks:

- If you are stuck with an occasional "infra" or "supra" in your brief, then by all means use these internal hyperlinks to help the Court follow your line of thought.
- If you have included the court of appeals's opinion as an appendix item at the back of your PDF, then you can take the Court to the particular page you are discussing in your argument.

- You can point the Court to the specific page of an attached appendix item, such as a particular answer on a verdict form or a page in a contract.
- If there was an online source that you were worried might be in too much flux to use an external hyperlink (in Step 5), then you can attach a PDF printout of that webpage as an appendix item and link to it as any other exhibit.

7. Double-check your file size.

When you did the "Combine" step above, you checked the total file size to keep it below the Texas Supreme Court's 10MB limit. That's the time to catch this problem -- before you have invested the time in making bookmarks and hyperlinks.

If you are over the size limit, then you might try using Adobe's set of compression tools to make a smaller PDF. Just don't get carried away. The more compressed your file, the harder it will be to read any scanned text or scanned images.

> *Caution: I would advise against using the feature named ClearScan. Although the Adobe blog [touts it as making smaller, better looking scans](#), it just requires too much faith. Here's how it works: It does an OCR of your text (which is good) but then actually replaces each letter it finds with a smoothed-out version of the same letter, just as if it were a native PDF. That makes the file clearer and the file size smaller -- both virtues. But it means that if Adobe's OCR guesses wrong, you're filing an <u>inaccurate</u> document.*

If your file is significantly over the limit, the most likely explanation is that one of your exhibits was scanned from paper at too high a resolution. The culprit might be a PDF file that you got from another source, such as a copy of a trial exhibit that someone scanned at a much higher resolution than 300dpi. (If your court rules permit it, you might try rescanning that exhibit at a lower resolution or running Adobe's own compression tools just on that single file.)

8. Check your metadata.

You might want to check the basic metadata that Adobe transmits about each file.

The most basic stuff is under `File --> Properties`. Then you can look under the "Description" tab. In that list, I like to change the title to match the name of the brief, and I ensure that the primary brief author's name appears as the author of the PDF (rather than any staffer who might have worked on it).

You should generally be in the clear about more advanced metadata if you've followed good practices about turning your Word file into a PDF and you know the provenance of the other PDFs (i.e., none of them might have metadata from your client, for example).

This workflow has you making fresh PDFs; nothing in this workflow should be creating new metadata that you might want to remove.

But if you really want to get under the hood, or if you're worried that your redaction might not have been up to snuff, then you should use Adobe's advanced Examine Document tool, which is under the top menu as `Document --> Examine Document`. It's powerful --- and it can really mess up your e-Brief unless you use it very carefully.

That's because Examine Document can remove your OCR'd text. Believe it or not, one of its settings would take the word-searchable file you've worked so hard to create and turn it back into a dumb image once again. The searchable text, after all, *is* a form of metadata; it being left under the surface is what can trip you up with redaction unless you are very careful. (Adobe's blog also touts removing OCR text as a feature, so as not to give the other side "free" OCR.) But at that point, your file would no longer satisfy the Texas Supreme Court's briefing rules. So be careful.

9. Save it with the required filename.

The Texas Supreme Court has issued guidelines for naming the PDF that is sent to the Court. The basic formula is that it is the docket number, plus the type of brief, plus a party name (if needed to be clear).

For example, the petition might be "10-0001.pet.pfr," and the response might be "10-0001.response.pfr." If there are two respondents, that might be "10-0001.response.smith.pfr" and "10-0001.response.jones.pfr."

A longer list of abbreviations, and some more guidance, is at the Texas Supreme Court's electronic briefing page.

If you don't yet have a Texas Supreme Court docket number (in an initial petition or mandamus proceeding), you are instructed to use the court of appeals's docket number. (If you have a direct appeal or a mandamus over which the Texas Supreme Court has exclusive jurisdiction, you should probably call the clerk's office to ask for guidance.)

10. Send a copy to the Court and to other counsel in the case.

In the Texas Supreme Court, the brief must be sent to the clerk's office the day of filing at the email address "scebriefs@courts.state.tx.us".

As of May 31, 2010, counsel will also be required to send a courtesy copy of this electronic brief to all other counsel of record. The rule says "simultaneously"; the easiest way to comply is by including them on the cc: line of the email.

With that, you're finished. The electronic brief is available to the Court immediately and

should appear on its website within a day or two.

Redaction: How It Changes the Workflow

Redaction trips people up because it asks you to know what's happening inside the PDF file. A PDF is not a snapshot of what you see on the screen; like an iceberg, it has a huge amount of data underneath the surface (such as the words used for word-search of a scanned document). If you just redact on the surface, the data left beneath the surface can still sink you.

Why Redacting PDFs Is Hard

Failing to properly redact a PDF is one of the classic blunders. The high-profile examples just from the past few years include the court transcript that revealed Facebook's valuation in a private transaction, some juicy stuff in a brief filed by lawyers for a former Governor of Illinois, as well as numerous examples of the government inadvertently disclosing sensitive information. If you do redaction wrong, it may take nothing more than simple "copy and paste" to reveal your secrets.

Here's how to do it wrong: Put a black rectangle over the text and verify, by looking at the screen or a printout, that you can't read the words. This feels satisfying, but it's basically worthless.

Here's why that doesn't work: A PDF file is not a picture of a page of paper. Instead, it's a complex set of instructions to the computer about <u>how</u> to put together a page. So, when you convert a Word document to PDF, the resulting PDF file actually contains a huge list of instructions that mean things like "Take the words 'reverse and render' and put them at this location on the page, in this font, at this font size."

In this way, a native PDF resembles a word processing document more than it does a photograph. That's why a generated PDF can look so much cleaner than a scanned file while taking up less memory. It's also a trap for the unwary.

When you draw that black rectangle in Acrobat, the PDF file now adds the instruction to "Draw a black rectangle at this location on the screen." It <u>does not necessarily delete the instructions about the text</u>. So, when you print or view the page, you see the rectangle. But beneath the surface, the text is still there, visible to "copy and paste," "export to text," or even by someone opening up the raw PDF file in a text editor.

What Redaction Tools Do You Need?

If you only redact rarely, you might get by without Acrobat Professional. So long as you

have the skills to scan a paper document and make it word-searchable through OCR (as described in Step 1A above), you can --- for the very rare redaction --- print the page, redact the paper copy, scan it back in, and then insert the redacted page back into its rightful place in the PDF. That's not a smooth workflow, but if it's your only option, it's a perfectly workable one.

Otherwise, the newest version of Adobe Acrobat 9.0 Professional has special tools to assist you with redaction. They include the ability to search for patterns (such as a social security number or a particular word, such as a minor child's name) and helpful reminders that you have not yet completed the redaction process.

Acrobat 9.0 Professional also lets you tag each redaction with explanatory notes to help with supporting motions -- such as if you are fighting about whether information should remain under seal. Those extra features do not help with the appellate briefing process, however, and are only useful if you are fighting about commercially sensitive information, not the more typical information prohibited by the Court's rules.

Early Is Better Than Late. Analog Is Safer Than Digital.

In general, the earlier in the process that you redact the sensitive information, the safer you are. If you redact the information in Word (by removing it from the document before converting to PDF), then the sensitive information should never make it into the Acrobat file at all.

By the same token, if you redact a paper document *on paper* before scanning it, then you are also safe. (Well, you probably don't just want to use a black marker because your scanner might be sensitive enough to detect the letters bleeding through. So, use redacting tape or, for the particularly paranoid, an x-acto knife.)

It's when you are starting with PDF documents that you have to be especially careful about redaction. Adobe has provided sophisticated tools, but it's still possible to do something wrong and fail to actually remove the underlying information.

Adobe redaction works on a two-stage process. First, you queue up all the items that you want to redact by placing a special redaction box on top of the text to be redacted. (At this step, you can make notations about each one, but those are not necessary for e-Briefs.)   Second, you select "Apply Redactions" to tell Adobe that it's safe to actually remove the underlying text, delete any notes you made about the redaction, and leave only the redaction box in place. Critically, if you don't complete the second step, your document isn't truly redacted -- even though if you printed it or glanced at the screen, it might appear to be so.

Three Different Redaction Scenarios

Scenario 1) Word Documents

If text you need to redact is in a Word document -- such as your brief -- the first option to consider is simply rephrasing your brief to avoid ever saying the sensitive item. That may not be your call to make, but it would be the rare appellate issue that truly turns on a particular financial account number or a minor child's first name.

If you do not have that choice, then you might follow the guidelines put together by the NSA for redacting government Word documents. These guidelines were written before Acrobat had good redaction tools, but they work just as well today --- and by keeping the sensitive information out of the PDF in the first place, they are a little safer.

In short, the guidelines recommend that you make a duplicate of the Word document and then replace the sensitive information with "X"s in the Word document itself. That way, when you convert this redacted version to PDF, the original sensitive text is lost.

The Texas Supreme Court has referenced this technique as part of its own "Redaction Guidelines," which primarily discuss Word documents.

Scenario 2) Scanned PDF Documents

The surest way to redact a scanned document is to redact <u>before</u> you scan it. If it's redacted well enough on paper, then the sensitive information never makes into the the digital document at all.

If you have already scanned the document before redacting, and you don't want to break the flow to go back and rescan, then just follow the workflow below for native PDF documents.

Scenario 3) Native PDF Documents

This is the tricky situation. Once information is inside a digital document, it can be hard to completely remove it (and any of its associated metadata). If you can avoid trying to redact a native PDF, you should do so. But Adobe has provided improved tools that can do the job, if used correctly.

Adobe has posted a detailed article about doing redaction in Acrobat 8.0, as well as some articles about new redaction features in Acrobat 9.0. If you'd like, Adobe has posted an hour-long movie walking through the basics of how to redact using its tools.

At first, using this native tool resembles doing it the "wrong" way --- using its tool, you draw rectangles over the text that you want to redact to mark each spot. But you have extra levels of control. You can, for example, attach notes about the reason for each redaction. And you can more easily search to find the words you need to redact (such as a minor child's name or a pattern such as a social security number). At the end of the process, after you've had a chance to preserve a record of what you deleted (if you need to; the Texas Supreme Court rules don't ask you to), Adobe will permanently scrub the

material from the PDF.

The #1 hint -- the one thing you *must not* get wrong -- is that the document is not truly redacted until you "Apply Redactions." Until you take that step, the data is still there waiting for you to change your mind or apply a new note; you can see the redacted text just by hovering your mouse over the redaction rectangles. The final step of "Apply Redactions" makes your decisions permanent and actually redacts the document.

You can find the "Apply Redactions" option on the redaction toolbar or (if you don't see that) under `Advanced --> Redaction --> Apply Redactions`.

The extra features added in Acrobat 9.0 Professional include the ability to search for certain common patterns that need to be redacted (like social security numbers). These are nice if you have a high volume of redactions, such as if your practice involves lots of family or criminal law issues. But these patterns are less likely to be helpful in the typical commercial case.

After all, you don't have to redact the whole appellate record --- just the portions that you choose to include in the appendix to your brief. You should have reviewed those documents carefully enough to know whether there is sensitive information. Still, the pre-defined search patterns can be a helpful backstop or can aid staff members who might not themselves have read the record quite so closely.