

Appellate Briefs of the Future

Blake Hawthorne
Don Cruse

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 10-9065

AMENDED ORDER REQUIRING ELECTRONIC DOCUMENTS IN THE SUPREME COURT

It is hereby **ORDERED** that:

1. Attorneys must e-mail electronic copies of the following documents to the Clerk of the Court on the same day the original paper documents are filed: (1) petitions; (2) responses to petitions; (3) replies to responses to petitions; (4) briefs on the merits, including respondents' briefs on the merits and petitioners' reply briefs on the merits; (5) amicus briefs; (6) post-submission briefs; (7) motions for rehearing; and (8) emergency motions or motions for stay. The electronic-copy requirement applies to both petition-for-review proceedings under Rule of Appellate Procedure 53 and original proceedings under Rule of Appellate Procedure 52. But documents submitted under seal or that are the subject of a pending motion to seal should not be submitted electronically.
2. Documents may not be filed by e-mail. Submitting the electronic copy of the original document to the Clerk of the Court does not constitute filing of the document. The electronic copy is for the convenience of the Court, attorneys, parties, and the public. A party must still file an original and 11 copies of any document addressed to the Court, except that only an original and one copy must be filed of any motion or response to the motion. Attorneys need only e-mail electronic copies of the motions referenced in paragraph 1.
3. Electronic copies must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. Petitions, responses, briefs, and other original documents should not be scanned, but must instead be directly converted into PDF files using Adobe Acrobat, the word processing program's PDF conversion utility, or another software program. Appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and is to be avoided when possible. Any scanned materials must be made searchable using optical-character-recognition software, such as Adobe Acrobat. The use of bookmarks to assist in locating appendix materials is encouraged.

A few highlights

- Native format PDF where possible
- Word-searchable (if you have to scan)
- Redacted (where required)
- Email sent to Court when paper filed
- Copy that electronic copy to other side
- Fewer paper copies (as of May 31, 2010)

Some things are
going really well

I. Combining files into one PDF

The image shows a legal document titled "Case No. 04-082" in the "SUPREME COURT OF TEXAS". The parties are "WAL-MART STORES, INC. Petitioner" and "ALYNO CRAIGON Respondent". The document is a "Brief on the Merits" filed in the "Thirtieth District Court of Appeals at Corpus Christi, Edinburg".

Annotations include:

- A sidebar on the left with a "COURT OF APPEALS" logo and a list of "Appell", "Appelle", and "Appel" entries.
- Red boxes labeled "EXHIBIT" pointing to specific sections of the text.
- A red "PDF" icon and the Adobe logo overlaid on the document.
- A sidebar on the right containing a table of contents and a list of "Appell", "Appelle", and "Appel" entries.

I. Combining files into one PDF

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Annotations include:

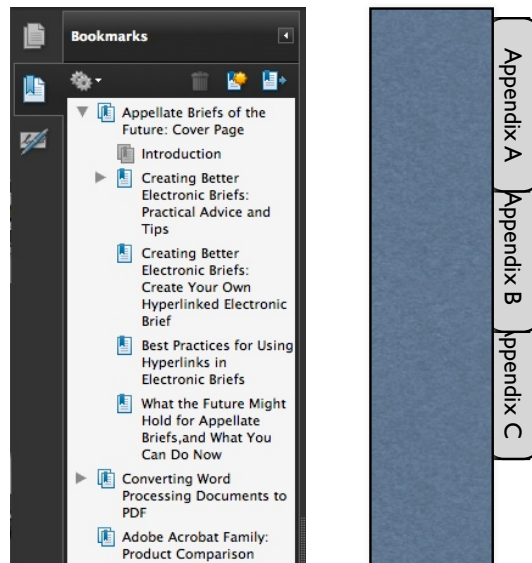
- A red "PDF" icon and the Adobe logo overlaid on the document.

Permits easy circulation, easy internal links

2. Using internal navigation

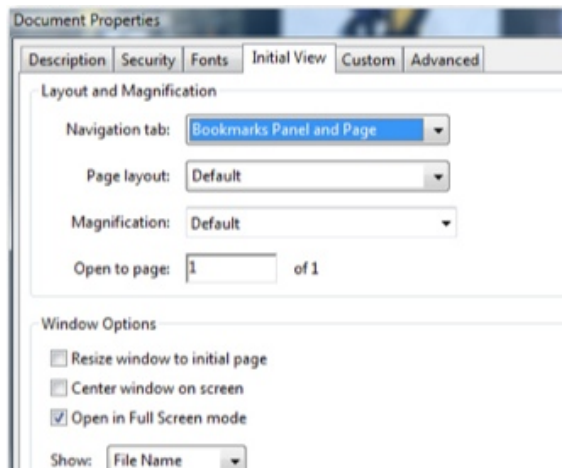
The Court order encourages using “bookmarks” to help with internal navigation.

Think about them like tabs, for your table of contents.



Extra tip: Set the bookmarks pane to open automatically

In your PDF document's Properties, you can set the “Initial View” to open up the Bookmarks Panel



Some things need
improvement

Native PDF vs. Scanned

If in doubt, zoom in
and take a look.

The Court
the Court

Taken from two PDF briefs filed in the same case.

A scanned document can
look very pretty
on your original screen.

But it can't be used for
word searches without
extra work.

Why rules ask for native PDF

- Files directly converted to PDF are smaller (those scanned and sent to OCR are not)
- Helps court circulate your brief internally
- Scanned documents are very hard to use on portable devices
- Better search accuracy

Appellate counsel, after many years liberated from document review, sometimes fail to [REDACTED] sensitive information.

Some things must be redacted

- Names of minor children (use “A.B.”)
- Social security numbers
- Financial account numbers
- Date of birth
- Home address



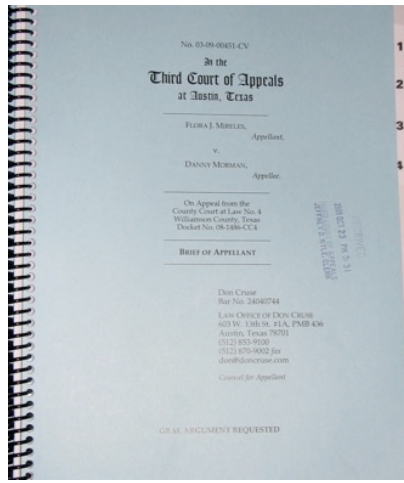
Would you want this stuff on Google?

Top tips for creating better electronic briefs

- Buy Adobe Acrobat
- Combine appendix materials into your main document
- When possible, convert directly to PDF
- Use bookmarks
- Set the bookmarks to show in the initial view
- Create hyperlinks to internet resources and use internal hyperlinks to appendix items
- In the right case, fold images into your brief

**An opportunity
for advocacy**

“Paper or Plastic?”



The PDF file itself is now
your first impression.



[10-0182.pfr.pdf](#)

The PDF file itself is now your first impression.

- First, don't break the rules.
- Polish and typography matter on screen.
- Be helpful. You want the judge to stick with your PDF instead of digging for paper.
- This really is your first impression -- you want the brief to look professional.

“Do I need to file a motion?”

- If it violates any of the briefing rules for the Court, you need to file a motion.
- The rule to watch out for is paragraph 4:

Electronic copies must be substantively identical to the original documents filed with the Clerk of the Court, except to the extent they are redacted as described in paragraph 7. Electronic copies may not contain any document or portion thereof that is not included in the original filing. By submitting an electronic copy to the Clerk of the Court, all attorneys of record for the party submitting the electronic copy represent that the electronic copy is substantively identical to the original filed with the Clerk of the Court, except to the extent the electronic copy has been redacted as described in paragraph 7, and that the electronic copy does not contain any viruses.

Comparing federal and the new Texas rules

Fundamentals are the same

- (6) In addition to a certificate of service, all ECF pleadings must include certifications that: 1) required privacy redactions have been made, 5TH CIR. R. 25.2.13; 2) the electronic submission is an exact copy of the paper document, 5TH CIR. R.25.2.1; and 3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

Comparing federal and the new Texas rules

But the federal rules are more restrictive about links

- (8) Electronically filed documents may contain the following types of hyperlinks: links to other portions of the same document; links to other CM/ECF or PACER documents; links between documents filed at the same time. Hyperlinks to cited authority may not replace standard citation format, see 5TH CIR. R. 25.2.14.

Judgment calls

Even these technical choices
become advocacy decisions

How should an e-brief signal that something is linked?

- Should links be [blue and underlined](#), like on a webpage (or the default in Word)?
- Should they be **enclosed in a dark box** (default for links in Adobe)?
- Does this change the debate about in-line citations versus placing them in footnotes?

Should every possible citation be linked?

- One school says every link helps. And completeness is what CD-ROMs offer.
- But links are an invitation for the reader to stop reading. Should advocates be choosy about which sources to highlight?

The screenshot shows a blog post on the website 'ROUGH TYPE' by Nicholas Carr. The page header includes 'nicholas carr's blog' and navigation links for 'home', 'archives & search', 'the shallows', and 'nicholasgarr.com'. The post title is 'Experiments in delinkification' dated May 31, 2010. The text discusses the author's changing views on hyperlinks, mentioning Steve Gillmor's crusade against them. A sidebar on the right features a portrait of Nicholas Carr, a 'Subscribe to Rough Type' button, and a book promotion for 'WHAT THE INTERNET IS DOING TO OUR BRAINS: THE SHALLOWS' by Nicholas Carr, with several positive reviews from 'Library Journal', 'Kirkus Reviews', 'Booklist', and 'Salon'.

http://www.roughtype.com/archives/2010/05/experiments_in.php

The future of ...



“The Fun They Had”
(1951 science fiction
story about 2155)



“The Fun They Had”
(1951 science fiction
story about 2155)



The iPad
(2010 reality)

How will clients feel about e-briefs?



Learn More Online

- Supreme Court of Texas site:
<http://www.supreme.courts.state.tx.us/>
- SCOTXblog hosts a copy of this paper & a workflow for making simple e-briefs:
<http://www.scotxblog.com/>
- Adobe has a blog about this:
<http://blogs.adobe.com/acrolaw/>

And there are many more links in our paper.

Blake A. Hawthorne

Clerk of the Supreme Court of Texas
blake.hawthorne@courts.state.tx.us
(512) 463-1312

Don Cruse

Law Office of Don Cruse
don@doncruse.com
(512) 853-9100