

The background of the page features a glowing blue folder on the left and a magnifying glass at the bottom left, both rendered in a wireframe style. The folder is open, and the magnifying glass is positioned over a dark surface. The overall aesthetic is futuristic and digital.

Better Digital Briefs

Help your readers—and be more persuasive—by adding useful digital features to appellate documents

By Jason D. Killips



“Why even bother with electronic filing if you’re not going to make the brief more useful than a paper one?”

I was sitting in the Michigan Hall of Justice, interviewing appellate readers—the commissioners, research attorneys, clerks, and judges who work on and decide appeals—when an interview subject posed this rhetorical question. Sure, electronic filing is a more convenient way to deliver documents to a court. But it also allows lawyers to add features to digital documents to make them more useful than paper documents.

As the interview subject suggested, lawyers should seize this opportunity. Why? The energy a reader can spend understanding your brief and evidence is limited, and distractions waste it. So if you add features to your documents that make it easier for readers to navigate your brief and locate the critical evidence, your readers will have more energy available to devote to understanding your brilliant arguments. In other words, submitting a more useful brief can help you win.

How do you make a digital brief more useful? A modern PDF can be a multimedia experience, with animations, audio, and video included for maximum effect. But inserting a video of the training montage from *Rocky IV* before the summary of argument or playing the *Top Gun* anthem over the conclusion won’t make your brief better. The purpose of my interviews was to find out what digital features in a brief or appendix really help our readers. (Hint: not the *Top Gun* anthem.) This article shares what I learned.

Before I begin, I want to thank Michigan Supreme Court Chief Justice Bridget McCormack, Justice Brian Zahra, Michigan Court of Appeals Chief Judge Christopher Murray, Judge Michael Riordan, Regina Delmastro, Jonathan Ludwig, Adam Pavlik, Larry Royster, Amber Tykoski, Geoffrey Weed, and Jerry Zimmer. When I first contacted Royster and Zimmer about my proposed article, they quickly rounded up this group, which graciously volunteered to talk to me for more than a combined 13 hours. Thank you to these public servants, without whom this article wouldn’t have been possible.

AT A GLANCE

Electronic filing gives lawyers the opportunity to include digital features that will allow readers to more easily use submitted documents.

Ensure that the text is crisp and searchable, include bookmarks in briefs and appendices, and point the readers directly to the relevant evidence.

Incorporating these features can reduce or eliminate distractions for your readers, allowing them to focus on your arguments.

How your readers read, and how to help them

The first step to understanding how to help our readers is understanding how they read our documents. They usually read the brief straight through—or as close to it as they ever will—the first time they read it. Commissioners, research attorneys, and clerks usually read the briefs first on a computer screen, although many still prefer to print paper copies. They are even more likely to access appendices and the record digitally at first, perhaps printing the most critical pages if they prefer to work on paper. The practices of the justices and judges vary widely, from Chief Judge Murray, who relies heavily on paper documents arranged on a wheeled cart in his chambers, to Chief Justice McCormack, who prizes her dual-monitor computer and iPad.

Their work doesn’t end with a single read. Commissioners, research attorneys, and clerks must prepare reports and memos about the cases, and justices and judges must prepare for argument and write opinions. These tasks require the readers to refer regularly to the briefs and appendices to find critical information and arguments, and to understand how the parties respond to each other’s points. It is at this stage that a digital brief can most help a reader.

One jurist summarized the best way lawyers can help here: “Point!” Readers at this stage need to find arguments and information as quickly as possible. If a reader must scroll through pages and pages of transcripts to find the key testimony, that scrolling is distracting. If a reader must flip through a long

brief to find your response to the appellant's mootness argument, that's distracting. If a reader must review your entire fact section to locate the name of the plaintiff's dog, that's distracting, too. Minimizing or eliminating these distractions keeps your readers focused on your arguments.

To minimize these distractions, follow four principles identified by the interview subjects. *Clarity* means that your brief is easy to read, whether printed or on screen. Use *structure* to organize your facts and arguments in a memorable and understandable way. Provide *guideposts*—bookmarked headings in briefs and bookmarks in appendices—to help readers rapidly locate key passages and evidence. And provide *easy references* from one document to another so a reader can immediately locate the caselaw, contract provision, or testimony that matters.

What digital features make your readers' jobs easier?

You can improve your briefs and appendices by following the above principles and adding digital features accordingly.

Features to add to briefs

The readers I interviewed identified the following features in briefs that make their jobs easier.

Improve your typography

Typography is about how text appears on the screen or page, and includes everything from font selection to spacing to the proper use of punctuation. (For example, hyphens, en dashes, and em dashes serve different purposes.) Good typography doesn't wow readers so much as it eliminates distractions. Grab a copy of *Typography for Lawyers* to get started.¹

Consider a professional font

Many system fonts—those included with Microsoft Word or other software—were designed at a lower resolution for older screens and printers and to take up less computer memory. This means they aren't as sharp as they could be on a modern screen or when printed by a modern printer. Professional fonts don't have that problem and create crisper, clearer text. The website *Practical Typography* by Matthew Butterick, the author of *Typography for Lawyers*, offers some good suggestions.²

Use charts and pictures

Maps, charts, and images are often worth far more than the space they take up on the page, and appellate readers love them. With digital briefs, it becomes even easier to include color drawings and high-quality photographs. Even

readers who prefer paper have access to color printers and will use a digital document to review high-quality pictures and graphics.

Create your PDFs digitally

Most word processing software offers the option to save or print a document as a PDF.³ Doing this results in the clearest possible PDF document. It also ensures that the text is searchable, making it easy for a reader to find a key word or memorable phrase and to cut and paste critical text into a report or memo. A good scanner and OCR software is the next best option, but OCR software often makes a few errors (such as reading a lowercase "m" as "rn") that saving or printing to PDF avoids.⁴

Use lots of clear headings and bookmark them

Clear headings help readers of both digital and paper briefs, particularly when looking for important information and arguments. Use your PDF software to create bookmarks for each heading and set the PDF to open with the bookmark pane visible to the reader.⁵ This makes it a snap for readers to jump to the section they're looking for.

Cite precisely to the record and appendices

This point applies to both briefs and appendices. Nothing disrupts a reader's attention more than a long search for a key piece of evidence. So point as precisely as possible. Add page numbers to the bottom of every page in the appendix, clearly identified as an appendix, not document, page number (consider something like "Appellant's Appendix 001a" for the first page of the first volume). Then include this page number in your citation (perhaps "Contract, § 6 (App'x 092b)"). This sort of citation tells the reader which appendix volume to open and which page in the PDF to jump to. No scrolling, no distraction.

Features to add to appendices

Add similar features to your appendices to make them as accessible as possible. Below are the features readers love.

Print to PDF or OCR as much as possible

A searchable appendix is even more valuable to a reader than a searchable brief. Convert Word, Excel, and other native files, and documents from databases like Relativity and Concordance directly to PDF for maximum clarity and searchability. Then run OCR software on everything else. But be sure to review the converted files carefully. Sometimes running OCR software on a document with many graphics produces distorted results. If this happens, that document (or at least that page) may best be left in its original form.

Add as many bookmarks as necessary

Just as with your brief, bookmark your appendices, with at least one bookmark for every document. Then consider adding others. In a trial transcript, bookmark where the direct and cross of each witness begins. In a long contract, consider bookmarking the key articles or schedules. Think about how you would approach the case as a reader trying to master it and give the reader every guidepost you'd want along the way.

A final note: Test everything! While readers lauded the benefits of these digital features, they reported being terribly distracted (and annoyed) when they clicked a bookmark or link that didn't work. Review your documents both on a computer (using the free Adobe Reader, at least) and on a tablet if possible (using the apps popular with the judges, GoodReader and PDF Expert). If you discover a problem, a quick Google search usually provides the solution.

What not to do

Some appellate lawyers, perhaps relying too much on the freedom of the digital form, sometimes stray into poor practice. Don't fall into this trap.

The guiding principle is this: *If you wouldn't do it in a paper brief, don't do it in a digital one.* Cite every factual statement. Include your best arguments but consider abandoning weaker ones. Cite with specificity. Edit any material you reuse from a different brief to make sure it addresses the case at hand. In short, don't get sloppy.

Make an extra effort to be concise

Paper briefs have the benefit of giving the writer physical feedback about how much they've written. It takes a long time to print a 50-page brief, and that brief is a significant stack of paper sitting on your desk. In paper form, verbosity has literal weight. Don't forget the value of being concise simply because you're operating in the weightless digital form.

Don't get sloppy with citations

Don't think that you can provide vague citations and rely on your readers to use searchable text and bookmarks to find key evidence. It's true that a reader can usually do this with digital documents more easily than with paper, but it's still a difficult task that distracts and annoys your readers. To make the most of the digital appendix you took the time to build, point your readers to precisely the evidence you're referring to.

Learn how to add and use these features now

An experienced appellate reader offered this parting wisdom: If you're more than 15 years from retirement and don't know how to add and use the digital features discussed here, learn now. Software will evolve more rapidly each year, and digital features that are encouraged today will be required tomorrow. It will never be easier to learn these skills than it is today. Do yourself and your readers a favor and learn how to include these digital features in your appellate documents.

Conclusion

Appellate courts already encourage—and even require—lawyers to include features in their documents to make them easier to use. Tables of contents, tables of authorities, headings, and indexes of exhibits have served this function in paper documents for years. Electronic filing provides even more opportunities for lawyers to help their readers navigate and understand their submissions. Use these features to make your documents less distracting and you'll find that they become more persuasive. ■



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ENDNOTES

1. Butterick, *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* (2d ed) (Houston: Thomson Reuters, 2015).
2. *Butterick's Practical Typography: Font Recommendations* <<https://practicaltypography.com/font-recommendations.html>> [<https://perma.cc/V99D-PEQJ>]. All websites cited in this article were accessed July 27, 2019.
3. If you don't have Adobe's Acrobat software, PDF printers such as CutePDF Writer are available at low cost or even free. See *CutePDF* <<http://www.cutepdf.com>>.
4. OCR (optical character recognition) capability allows a user to convert the image that is the PDF document into a more usable text document that can be searched, highlighted, or manipulated with a word processor.
5. Internet research will quickly turn up a few excellent sources about how to perform these tasks. See, e.g., Heinrich, *How to add electronic bookmarks to a PDF* (November 17, 2016) <<https://www.onelegal.com/blog/how-to-add-electronic-bookmarks-to-a-pdf/>> [<https://perma.cc/DNR9-GNEQ>] and *Set PDF to Automatically Display the Bookmarks Panel When Opened*, The Court of Appeal for Saskatchewan (May 9, 2012) <<https://ecourt.sasklawcourts.ca/sites/default/files/Set%20PDF%20to%20Automatically%20Display%20the%20Bookmarks%20Panel%20When%20Opened.pdf>> [<https://perma.cc/PGS3-R26W>]. YouTube is also an excellent source for short how-to instructions.