

ELECTRONIC BRIEFS, FORMATTING FOR AN IPAD (OR ANY OTHER MEDIUM)

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Biography

Michael A. Cruz has been a Deputy Clerk for the Supreme Court of Texas since January 2011. He graduated magna cum laude with honors from St. Mary's University in San Antonio in 2003 with a Bachelor of Arts degree in Political Science. Michael graduated with a Juris Doctorate in 2006 from the University of Texas School of Law. During his tenure in law school, he was elected to 4 National Mock Trial Teams, was an Associate Editor for *The Review of Litigation*, and served on the Board of Advocates as the Moot Court Director. In 2006, Michael was one of ten students inducted into the Order of Barristers National Honor Society for his accomplishments in Oral Advocacy.

Mr. Cruz has clerked for several attorneys during his legal career including Jerry Galow, Cory Smith, Ranelle Meroney, and Ciara Williams. These clerkships afforded Mr. Cruz experience in all types of plaintiff cases, civil defense, criminal defense, and probate matters. In 2011, Michael joined the Court as a Deputy Clerk under the direct supervision of the Clerk of the Supreme Court of Texas, Blake A. Hawthorne. Mr. Cruz works with the Texas Rules of Appellate Procedure and the E-Filing Rules of the Court on a daily basis. He enforces these rules for all incoming cases and assists attorneys and paralegals with correctly e-filing their documents. Mr. Cruz has extensive experience in constructing electronic briefs and all facets of formatting including bookmarking, hyperlinking, and electronic signatures.

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ELECTRONIC BRIEFS, FORMATTING FOR AN IPAD (OR ANY OTHER MEDIUM)

Being a Deputy Clerk at the Supreme Court of Texas is a tough job. We are the rule enforcers—and nobody likes to hear about their own mistakes. Paralegals and Legal Secretaries curse us. Couriers say things under their breath at the counter. Attorneys argue with us about whether the rules should be applied. And often we can't win; if we don't enforce a rule one time the next time the rule is broken we're told, "you accepted my filing this way last time." Ninety-nine percent of our everyday communications with legal professionals amount to the following:

"You did something wrong. Please fix it."

Believe it or not, we're here to help. We want to help you present the best product possible to the Court. I have taken time to interview some of the justices to find out how they are consuming their e-briefs and what advice they have for practitioners. Their main advice was "follow the rules." They say the rules are there to help them do their jobs more efficiently. The rules provide a blueprint for how to create an electronic brief that the Justices like. And all of us, the Deputy Clerks especially, want to make the Justices happy!

I. iPad v. Laptop v. Desktop v. Smart Phone

It would be helpful to start off by thinking about how the Justices tend to read electronic briefs. It is extremely important to not only know the audience, but to know how the audience is receiving your message. The justices all have iPads. And most of them have a laptop that doubles as a desktop in their office via docking station. In addition, they all have some iteration of a smart phone. All of these devices are capable of downloading and displaying PDF documents to varying degrees of ease. But which devices are the justices using?

I interviewed four Justices for this discussion: Justice Johnson, Justice Hecht, Justice Boyd and Chief Justice Jefferson. Of the four, Justice Boyd uses his iPad for reading electronic briefs the most. Justices Johnson, Hecht, and the Chief mainly utilize their laptops/desktops for reading e-briefs but are known to use iPads as well. As I started researching and gathering information from them, I came to a stark realization: the medium matters less than the convenience with which the reader can consume the document.

Either on a mobile device or a traditional computer, PDF documents are easier to traverse if they have the following qualities:

- 1) The words are easy to see.
- 2) It's simple to jump back and forth within the document.
- 3) The file size is not too big

When constructing your e-brief, stay mindful of these three concerns. All of these subjects have one thing in common. They make it convenient for the reader. And convenience for readers that have to read a ton is a nice gesture.

II. Don't A-Zoom that the brief looks Font-astic

Bad puns aside, font size and zoom percentage are the two subjects that matter the most when determining how well the justices can see your brief when they open it up. First, the font size has changed with the latest update of the TRAP Rules to 14 point font for text and 12 point font for footnotes.

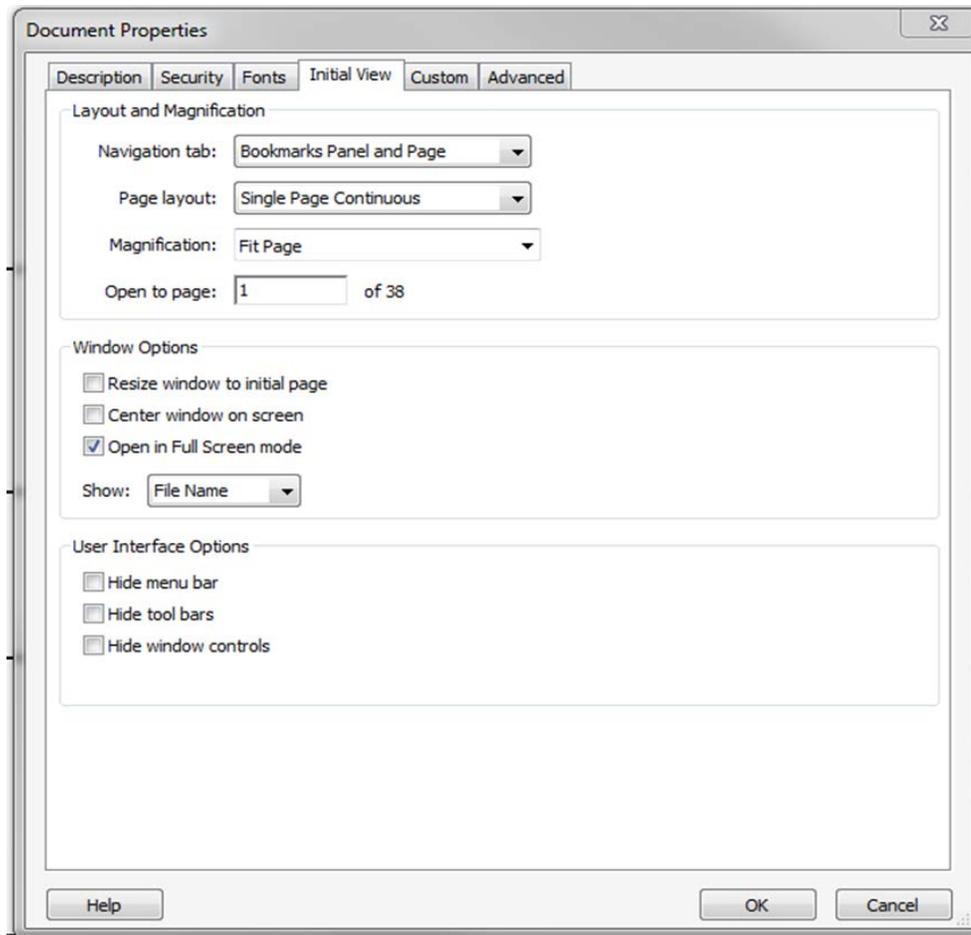
“A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point.”
T.R.A.P. 9.4(e)

There is no mystery why these font sizes were changed—bigger fonts are easier to read. In addition, the page limits being replaced with a word count certification ensured that there would be no loss of substance with a bigger font. You can read the rule yourself—it is TRAP 9.4(i) and, like most rules, it is wordy. Here is the short version:

- 1) Petitions, Responses and Motions for Rehearing: 4,500 Words
- 2) Replies in Support of Petitions: 2,400 Words
- 3) Briefs on the Merits (Except Reply Brief on the Merits): 15,000 Words
- 4) Reply Brief on the Merits: 7,500 Words.

Most attorneys are now using this 14 point font. It is important to note that the rule states that the font must be *no smaller* than 14 point font. Some attorneys have opted to go as high as 15 or 16 point font, which is not prohibited by the rule. This is certainly one option, although you want to make sure not to make the font size too big. Too little text per page can break up the flow of the document for the reader. All four justices agreed that the font size changes have been beneficial.

Second, optimize these rule changes even further by manipulating the zoom percentage when opening the document. In Adobe Acrobat, click on File and then Properties. The pop up that opens will look like this:



ADOBE ACROBAT: INITIAL VIEW TAB

It would be helpful to become familiar with this Initial View tab. The Navigation tab allows you to set the document to open with the Bookmarks Panel on the left side. The Justices overwhelmingly use these bookmarks at different stages of their reading process. With the bookmark panel open, the 14 point font size is reduced from a practical standpoint. The above screen shot shows the optimal settings. The document should open in Full Screen Mode, with the Bookmarks Panel open, and a single continuous Page Layout. The magnification should be set to Fit Page. The Justices may change your settings if they desire. The idea is to give them the option of viewing your bookmarks upon opening the document. It provides a useful roadmap for your brief and appendix. This coupled with the proper zoom magnification ensure that your e-brief will be easy to see.

III. My Appendix is Bursting

It naturally follows that bookmarking is a major part of how intuitive it is to jump back and forth within your document. Here is the text of the rule:

“If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item immediately following and any number or letter associated with the item in the table of contents.” Misc. Docket No. 11-9152 Rule 5(c)

If you read that rule carefully, it says nothing about bookmarking the entire document. (I am talking about bookmarking the Identity of Parties, Statement of Case, Summary of Argument, etc.) Here is the reality, though: A LOT OF PEOPLE DO IT! And here is the kicker: THE JUSTICES REALLY LIKE IT! So, if you are not bookmarking, you are instantly making it more difficult for the justice to quickly get around in your document. That is less time spent focusing on the merits of your case and more time spent hunting.

Additionally, you should make your bookmarks specific. We see an awful lot of Tab A, Tab B, Tab C, etc. instead of making it easier for the reader to get around with clear descriptions of each document. You know how to do bookmarks (cough, cough, scroll to the page and hit CTRL+B, repeat as necessary throughout the document, cough), so why stop at a general description? The Tab identifier does not need to disappear, it just needs to be supplemented with a description.

Hyperlinking is not required by the rules, but is encouraged and appreciated by the Justices. The best way to hyperlink to a case is to include the case within your document as an Appendix item. This way, there are two quick ways to get around your document: through the bookmark panel and through the actual hyperlink within the text of the document. You know how to hyperlink (cough, cough, select text within the PDF, right click and select Create Link, Link Action is Go to Page View, Click Next, and choose the destination page for the hyperlink, cough) so make sure that if you want the justice to read the case that you make it easy for them to get there and back.

This brings up one last good point about what to include in your appendix. The short answer is it depends on whether it is at the Petition Stage or the Briefing on the Merits Stage. Unless you are preparing a record for an original proceeding that doubles as an appendix, Justices typically want the bare bones for a petition:

- 1) the Court of Appeals Opinion and Judgment (required),
- 2) the Trial Court Judgment (required), and
- 3) any other relevant document (your decision).

This is where it gets tricky. Many practitioners take the “Kitchen Sink” approach to any appendix. I will not presume to tell an attorney what to include in their petition appendix. But I have repeatedly heard the Justices say that a kitchen sink appendix is not necessary at the petition for review stage.

The Justices read many documents and they want to get to the point quickly at the petition stage. If your case is selected for briefing on the merits, that would be the point at which to err on the side of inclusion. However, keep in mind by that point the Court will request the record from the Court of Appeals and have access to everything filed. If it is not paramount to include in the document for immediate reference in the appendix, you can probably leave it out. This will ensure a succinct road map of your document that is easily navigated.

IV. Big Files are Out of Style

Ah, the file size. Most E-Filing Service Providers have an upload limit of 30 MB. I will start by saying that only the most enormous of records in mandamuses (over 1000 pages) should ever sniff anywhere near 30 MB. If you are attempting to e-file any PDF document that is not over 1000 pages but over 30 MB, you have done something terribly wrong. Smaller file sizes make it easier for the justices to open your documents quickly.

Scanning documents is particularly problematic when the brief is being read on an iPad. The relatively slow processing speed of the second generation iPads that the Justices use make large briefs slow to load, which can make any of us impatient. And large file sizes can cause long pauses when attempting to change pages on the iPad—making the experience less like reading a paper brief and more like the days of dial up telephone internet connections.

Speaking of telephone connections, the Justices are often using the cellular connection on their iPads to upload the brief. If you have ever tried to download a large file on your cell phone when you only have two bars of service, you know this can be a frustrating experience. And you do not want the Justices to be frustrated when they are trying to read your brief, so keep your file size small when possible.

If you must scan a document, check your scanner settings before starting. The setting should be 300 DPI in Black and White Scale, instead of Color or Gray Scale. Most Xerox machines and high capacity scanners are set to very high resolutions to catch the details of photographic images. These settings are unnecessary for our purposes and only serve to make file sizes enormous. This particular issue is the catalyst for many rejections when legal professionals try to submit their filing in parts. The last touch to guarantee the smallest file size possible is to save as a Reduced Size PDF within Adobe Acrobat. It will normally knock a bit off the top of the file size and may be just what you need to submit that lengthy mandamus record in a single file. Smaller files equal convenience for the justices.

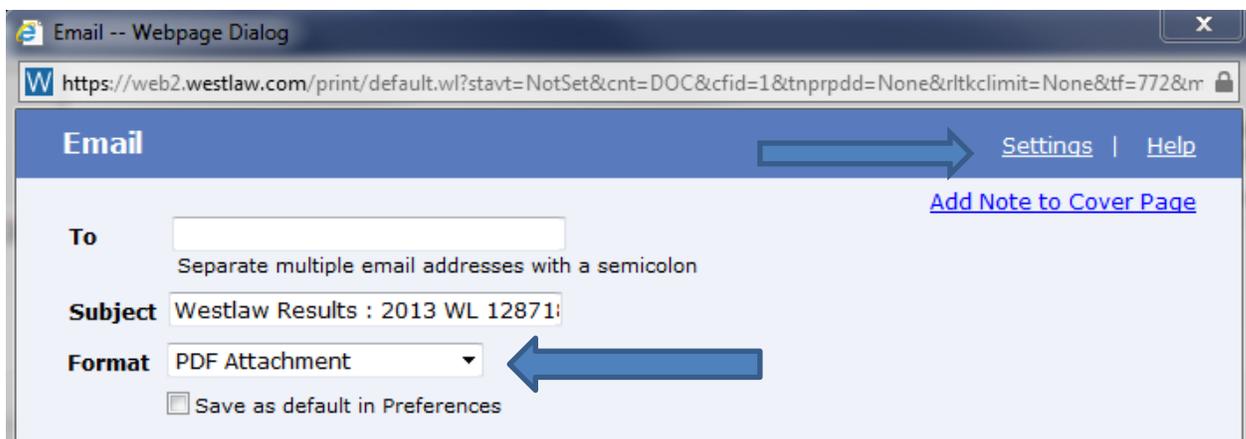
V. It's better to be Single (Column)

One way you can keep the file size small is to not scan cases or opinions that are available in PDF form. The Court of Appeals websites all have clean, converted PDF versions of their opinions and some even have the judgment as well. If you are using the Westlaw or Lexis versions of cases, save them straight to PDF and add them to your document that way instead of scanning. The justices all seem to agree that single column versions of cases work best when reading documents electronically.

This is the process for saving to PDF using Westlaw. First, you want to select the little envelope in the top right corner of the case:



This will bring up the email popup that allows you to email a copy of the case to yourself. You want to make sure to set the format to PDF Attachment and then click on the Settings link in the top right corner of the popup.



The Email Settings Screen is where you can change font size and column number to create the optimal PDF document. Set the Column to single and the Font Size to 12. Additionally, you can select a double line spaced document for easier reading. If you click on the box to save as your default preferences, you will only have to perform these steps once. Once you send the file, you will receive the case as a PDF attachment to your email address. Use this version in your electronic brief.

Change Westlaw email settings to Single Column, Double Line Spacing, and Font Size to 12

In conclusion, I hope these tips help you in avoiding some of the most common pitfalls of e-filing. Special thanks go to Chief Justice Jefferson, Justice Hecht, Justice Boyd, and Justice Johnson for all affording me personal interviews. I have recorded interviews for the first three that will be available for viewing at www.texasbarcle.com. Special thanks also go to Blake A. Hawthorne, Clerk of the Court and Brad Sonogo, Deputy Clerk for assisting me in directing and producing the videos.