

Travis Case # D-1-GN-13-001230
Appeals Case # 13-15-307 (previously 03-15-357)
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

October 18, 2015

Velva L. Price
Travis County District Clerk (TCDC)
1000 Guadalupe Street
Austin, Texas 78701
cc: 13COA and TSC (see pg 4 cc list)

VIA ELECTRONIC FILING (www.greenfiling.com)

Dear Travis County District Clerk (TCDC) (and cc to other clerks receiving this),

On 9/16/2016, we sent “curtesy copy/cc:” to the TCDC, and it was ironically rejected for the exact same rule we are asking the US Supreme Court to order the TCDC to follow with our Clerk’s Record fix request: a single-file with filenames as bookmarks.

So, herein is **attached**, the US Supreme Court Writ of Certiarari, **in a single document**, (see **Appendix C**: “Alan Hamilton WOC single document”), as requested in the 9/20/2016 filing rejection by TCDC (see **Appendix A**-filing rejection) per TRCP Rule 21(f)(8):

TRCP Rule 21(f) (8) Format An electronically filed document **must**:

- (A) be in text-searchable portable document format (PDF);
- (B) be directly converted to PDF rather than scanned, if possible;
- (C) not be locked; and
- (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

Again, ironically, this is the same rule we are asking the US Supreme Court to order the Travis County District Clerk (TCDC) and 13th COA Clerk to follow, in this same filing. It looks like we have come Round-Robin, arriving back to where we started, almost exactly one year ago. Our filing is rejected for not following the rules, but if the clerk doesn’t follow the rules, our case is dismissed? Heads, I Win, Tails, You Lose?

Again, ironically, you will see the pdf bookmarks with the correct filenames in the left hand navigation menu, is in the multifile combination “single document” **requested from us** by the TCDC, **but not delivered to us** by the TCDC, ultimately causing our case to be dismissed as we awaited a fixed and compliant Clerk’s record, after paying \$2000 for it, like blackmail, but then never delivered, by a government office. We are still in shock.

With great hopes of an intellectual mind-meld, we are complying with the TCDC Clerk's request to re-submit the electronic filing as a "single document/file". The best description we could find on the internet was at the Dallas County Clerk's website (see link pasted below, and **attached (Appendix B-Dallas County Clerk website on single documents per JCIT)**). It says **"single documents not required but preferred for Judicial efficiency"** (see page 3, paragraph 2, also pasted below)". We agree: the usefulness of the request for the single document could not be denied, and so we did not argue, indeed, appreciated the request from the TCDC. We hope this means they will demand the same from themselves. It is amazing that we are still discussing this simple bug fix a year later.

Dallas County Clerk's website (link and attached):

www.dallascounty.org/department/districtclerk/media/FinalDraft_DistrictClerk_eFileTexasRequirements_Amended_072814.pdf

"While JCIT standards no longer requires the combining of multiple documents pertaining to a single filing into a single pdf with bookmarks separating content, for the efficiency of the court processes and the judiciary, it is preferred."

This is what we have been asking for in the non-compliant Clerk's Record, where *it is required*, simple Judicial Efficiency with the required descriptive bookmarks. And it is SO simple, it is even automatic, as the requested "single document" re-filing here shows.

Open up the left-side navigation of this TCDC "single document" request attached. It shows the exact request we made of the TCDC for the fixed Clerk's record, for the single document bookmarks, *containing the document name*. **As simple as that**, Adobe Acrobat does the "bookmarks filename" **automatically**, and **correctly**, leading to a very navigable document, necessary for perusing a long document.

In contrast, the TCDC **custom** software "Appeal Creator", as it is called, instead does **not** get the document name, but the document category, resulting in the equivalent, of a Travel website listing "city" "city" "town" "town" as ridiculous non-descriptive choices of travel spots by category, instead of by name like "Miami" or "Detroit". At any private company, this would have been fixed immediately, with no further discussion, much less over a year later with a trip to the US Supreme Court. The bug is absurd and simple to fix, and yet the TCDC and 13th COA Clerks have joined forces to make sure this bug is NEVER fixed, regardless of the fact that they charge \$1/page, resulting in a \$2000 bill in order to appeal your case. Standing in the way of Justice rather than promoting it.

As well, readable pdf documents are clearly required in the exact rule for which the TCDC has just rejected our US Supreme Court WOC filing. And yet this "Appeal Creator", basically a "custom Adobe Acrobat" program, converts all documents into unreadable

scanned/TIFF documents and then back into pdfs, making the documents unreadable and non-compliant.

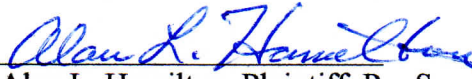
And yet instead of just fixing these simple bugs, these Clerks have teamed up to continue theft of money and justice daily from people stupid enough to even file a case in these corrupt courts and clerks, who would be very upset if someone interpreted their use of the word "must" as meaning "maybe".

And regardless of the fact that the Court Rule says "must". What if we refused to comply with the word "must" in any Court Order, or were just downright disagreeable for no reason, as the Texas Courts have been? The usefulness as separate files could as well be argued, but why not just supply it in both a single file and separate files, if someone prefers it one way or another? Why not try to be helpful?

We do hope that this is actually progress, and that by demanding it of others, you will demand it of yourselves as well. Interestingly, the 6th document in the single file, "DCA Guide to Electronic Appellate Documents", is actually attributed to the Texas Supreme Court Clerk, Blake Hawthorne (see last page). As well, on page 10 of the guide, it describes what the bookmarks should look like: descriptive names/filenames, not category names, as delivered to Alan Hamilton for a price of \$2000 entry fee into the appeals process, which was then dismissed due to the TCDC's sloppy, and non-compliant work.

Plaintiff is now exhausted and broke now, due to the non-compliance of the TCDC Office a year ago, with a simple bug fix request. A disgusting display of government incompetence burdens on citizens attempting to use the broken-on-purpose justice system. We are now at the US Supreme Court, asking them to tell us if the meaning of the word "must" is dependent on the participants, as Texas Courts have alleged.

Sincerely,


Alan L. Hamilton, Plaintiff, Pro Se

Attachments/Appendices:

- 1) 9/20/2016 filing rejected email from TCDC per TRCP 21(f)(8), "Please resubmit this as one document." – 4pgs
- 2) Dallas County District Clerk website on single doc reqs per TRCP 21(f)(8)-7pgs
- 3) "Alan Hamilton WOC single document", re-submission of 9/16/2016 filing, per TRCP 21(f)(8), with addition of 9/19/2016 (10 copies) and 10/7/2016 (sigs addendum) filings to the US Supreme Court. Waited until US Supreme Court filing requests completed in order to submit as single document for Judicial Efficiency. – 222 pgs

cc:

Appellee's Attorney:
Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Texas Supreme Court and Clerk (TSC)
Supreme Court of Texas
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas 78701
(512) 463-1312, **Fax:** (512) 463-1365

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Dorian E Ramirez
13th COA Court and Clerk
Nueces County Courthouse
901 Leopard, 10th floor
Corpus Christi, Texas 78401
361-888-0416, Fax: 361-888-0794

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Velva L. Price
Travis County District Clerk (TCDC)
1000 Guadalupe Street
Austin, Texas 78701

VIA ELECTRONIC FILING
(www.greenfiling.com)

No. _____

IN THE

SUPREME COURT OF THE UNITED
STATES

Alan L. Hamilton — PETITIONER
VS.
Daniel Davila III — RESPONDENT(S)

PROOF OF SERVICE

I, Alan L. Hamilton, do swear or declare that on this date, 10/18/2016, as required by Supreme Court Rule 29 I have served the enclosed the letter/notice of mailing of “Alan Hamilton WOC-Single Document”, on each party to the above proceeding or that party’s counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days: Served via www.GreenFiling.com on 10/18/2016 (www.eFileTexas.gov). 9/19/2016 and 10/7/2016 US Supreme Court supplemental filings, delayed and included here, for this single document filing, per request of Travis County District Clerk (TCDC).

The names and addresses of those served are as follows:

Respondent’s Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 10/18/2016.

Alan L. Hamilton
Alan L. Hamilton, Petitioner, Pro Se



Marjorie Miller <marjiemiller@gmail.com>

Filing Returned for Envelope Number: 12755790 in Case: D-1-GN-13-001230, HAMILTON V DAVILA for filing Notice

4 messages

No-Reply@efiletexas.gov <No-Reply@efiletexas.gov>
To: alanhamilton@probaitcourt.com

Tue, Sep 20, 2016 at 12:43 PM

**Filing Returned**

Envelope Number: 12755790
Case Number: D-1-GN-13-001230
Case Style: HAMILTON V DAVILA

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please, contact your local court for further information.

Return Reason(s) from Clerk's Office	
Returned Reason	Incorrect Formatting - TRCP 21 (f)(8)
Returned Comments	Please resubmit this as one document.

Document Details	
Case Number	D-1-GN-13-001230
Case Style	HAMILTON V DAVILA
Date/Time Submitted	9/16/2016 4:10:24 PM CDT
Filing Type	Notice
Filing Description	Notice
Activity Requested	EFileAndServe
Filed By	Alan Hamilton
Filing Attorney	

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Return Reason(s) from Clerk's Office	
Returned Reason	Incorrect Formatting - TRCP 21 (f)(8)
Returned Comments	Please resubmit as one document. If you have any questions, please call me @ 512-854-5832. Thanks, Nancy

Document Details	
Case Number	D-1-GN-13-001230
Case Style	HAMILTON V DAVILA
Date/Time Submitted	9/16/2016 4:10:24 PM CDT
Filing Type	Notice
Filing Description	Notice
Activity Requested	EFileAndServe
Filed By	Alan Hamilton
Filing Attorney	

For technical assistance, contact your service provider



Online: <http://greenfiling.com>

Phone: [\(801\) 448-7268](tel:8014487268)

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DALLAS COUNTY DISTRICT CLERK NEW STATEWIDE RULES FOR E-FILING

The e-filing mandate issued by the Supreme Court went into effect on January 1, 2014. In an effort to prepare for the mandate, the Dallas County District Clerk's Office went live with TexFile on November 13, 2013. TexFile has since been rebranded to eFileTexas.Gov. Listed below are highlights of the rules and standards for electronic filing in Texas.

Please refer to the Texas Rules of Civil Procedure, Rule 21(f) and version 1.3 of the Technology Standards released by the Judicial Committee on Information Technology (JCIT).

TRCP Rule 21(f) (8) Format

An electronically filed document must:

- (A) be in text-searchable portable document format (PDF);
- (B) be directly converted to PDF rather than scanned, if possible;
- (C) not be locked; and
- (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

TRCP Rule 21c. Privacy Protection for Filed Documents

Pursuant to Rule 21c of the Texas Rules of Civil Procedure, documents containing sensitive data must be redacted by the filer prior to submission. If the inclusion of the sensitive data is required, the filer must give notice to the clerk by:

- (1) Designating the document as containing sensitive data when the document is electronically filed; or
- (2) If the document is not electronically filed, by including on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

While TRCP Rule 21c (1) does not require the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA" on the upper left-hand corner of the first page for

documents that are electronically filed, it is preferred. Doing so will add an extra layer of precaution for the clerk processing said documents.

TRCP 21c(a): Sensitive data includes:

- * Driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;*
- * Bank account number, credit card number, or other financial account number; and*
- * The birth date, home address, and name of any person who was a minor when the suit was filed. This does not apply to the birth date or home address of an adult.*

JCIT Technology Standards, v1.2 – Section 3.1

- A. An e-filed document must be in text-searchable PDF, using fonts specified in the PDF specification, on 8.5 x 11 page size, with the content appropriately rotated.
- B. When possible, the document should be generated directly from the originating software using a PDF distiller.

Most word processing software packages now “print” to PDF; older versions may not have that capability. Scanning your completed pleadings should be avoided when possible because it creates larger file sizes with text images of lesser quality.

- C. Prior to being filed electronically, a scanned document must have a resolution of 300 DPI. Preferably, scanned documents should be made searchable using OCR technology.

A scanned document must be made text searchable using optical character recognition software (OCR), which you may have to purchase. Some scanners and scanning software may have that capability. All scanned documents must have a text resolution of 300 dots per inch (dpi) for black and white documents. Any documents filed with color images must have a minimum resolution of 600 dpi.

- D. An e-filed document may not contain any security or feature restrictions including password protection or encryption and may not contain embedded multi-media video, audio, or programming.
- E. Documents may not contain package PDFs. PDFs should not be embedded inside of another PDF. **Each document must be a single PDF.** An appellate court may require that multiple PDF documents be combined into a single PDF document and bookmarks used to separate content appropriately. The content of the document should not depend on bookmarks.

For example: Original petitions for divorce require that a copy of the Family Courts Standing Order be attached to the petition. When e-filing, the petition and standing order should be attached as one PDF. The standing order should not be an “attachment” to the PDF when e-filing in the portal.

While JCIT standards no longer requires the combining of multiple documents pertaining to a single filing into a single PDF with bookmarks separating content, for the efficiency of court processes and the judiciary, it is preferred.

When combining documents, multiple documents pertaining to a single filing should be combined into a single PDF with bookmarks separating the content, unless the resulting document exceeds the EFM’s size limit for documents of 35 megabytes. For example, the lead document and attachments should be combined into one PDF; and/or pleadings with exhibits should be combined into one PDF. The contents of the one PDF document that includes exhibits or appendices should contain bookmarks to each exhibit or appendix item. The bookmarks should be clearly labeled so as to identify the exhibit or appendix item. Whenever possible, scanning of exhibits should be avoided.

If the envelope size exceeds the 35 megabyte limit, the document will have to be split. When splitting the document, the remaining split documents should be loaded as a second lead document using the same filing code (as long as the filing code does not contain a fee) or a non-fee filing code. In the comments, indicate the description. For example: Comments: Motion to Dismiss, Part 2 of 3, etc. We have several clerks in a court processing documents. In order to avoid confusion, it would be best to contact the clerk of the court to inform them of a split filing prior to submission.

Documents should contain page numbering for the entire filing. When including one or more appendices to a filing, each should be numbered individually and then the entire document should be numbered as a whole.

- F. Any e-filed document filename should contain only alphanumeric characters that are part of the Latin1_General character set. No special characters are allowed and the length of the filename should be restricted to 50 characters.

NOTE FROM THE DISTRICT CLERK

In order to get the most out of e-filing, filers are encouraged to upgrade their existing word processing and document management software in order to facilitate compliance with the new requirements and standards conveniently and easily. Filers may also consider purchasing software products specifically designed to manage PDF files. Filers who become comfortable using more advanced document processing features will be able to avoid additional transaction fees by filing directly through the eFileTexas.Gov portal. Filers who are uncomfortable with using more robust word processing and document preparation functionality are encouraged to

“shop around” for an e-filing Service Provider which offers document management and preparation services.

CASE MANAGEMENT SYSTEM REQUIREMENTS

Pleadings filed with the District Clerk’s Office must be submitted to the clerk via the e-filing portal either directly through the eFileTexas.Gov web access or through your e-filing service provider. In the Dallas County District Clerk’s Office, the e-filing portal is integrated with the clerk’s case management system. In order to make this process as efficient as possible and reduce processing time and user error, the following requirements and guidelines have been implemented by the Clerk:

- **All information entered into the eFileTexas.gov portal must be completed in all caps!** Please do not use lower or mixed case letters.
- All parties to the case must be added with complete address information. Parties do not need to be added each time a pleading is filed unless it is a new party being added to the case.
- Documents may not contain multiple filings in the same document. The file-mark will only appear on document submitted as lead documents. For example:
 1. The filing of a motion with the order at the bottom of the motion. You must file a motion as one lead document and a proposed order as a separate lead document.
 2. The filing of an answer and counterclaim - you must file the answer as one lead document and the counterclaim as a separate lead document.
 3. The filing of Counter Claim/Intervention/Third Party – Each of these actions contains a separate filing fee. You may file each action separately using the same filing code. If necessary to file one document with any of these actions combined, you will need to submit the same document multiple times until all filing fees have been satisfied.
 4. A fiat should be filed as a separate Notice of Hearing and should not be part of the pleading, but should contain the name of the pleading associated to it. For example, Notice of Hearing on Motion for Continuance.
 5. Case cover sheets and cover letters should be submitted as attachments to the lead document.

REASONS FOR ITEMS RETURNED

If the District Clerk’s Office returns a filing for correction, you will be notified in the form of one of the following pre-determined reasons. Please take a moment to review the list below and

ensure you and your staff are familiar with them to avoid future inconvenience. Most are not new and self-evident, but others represent new standards:

Sealed Documents	Documents filed under seal or presented to the court in camera cannot be eFiled.	TRCP 21(f)(4)
Vexatious Litigant	Filer has been found to be a vexatious litigant and has not presented an order from the local administrative judge permitting the filing.	CPRC § 11.103
Insufficient Fees	Fees submitted are insufficient. Please resubmit your filing with the correct case type/filing type. Clerk is to provide a short summary as to what fees were not included.	TRCP 99(d) and Gov't Code §51.318(b)(7) and (8) Gov't Code § 51.317(a) Local Gov't Code §118.052; §118.121; or §118.131
Insufficient Funds	Credit Card was declined. Please resubmit with a valid method of payment.	TRCP 99(d) and Gov't Code §51.318(b)(7) and (8) Gov't Code § 51.317(a) Local Gov't Code §118.052; §118.121; or §118.131
Document Addressed to Wrong Clerk	The document is addressed to a court for which this clerk's office does not accept filings. Please correct or re-file with the appropriate clerk's office.	
Incorrect/Incomplete Information	Please resubmit using the correct <ul style="list-style-type: none"> • Cause number • Case Type • Case Category • Filing Code • Party Names on document(s) 	
Incorrect Formatting	Please resubmit the	TRCP 21 (f)(8)

	<p>document</p> <ul style="list-style-type: none"> • By rotating the document so that the file mark will appear in the upper right corner • In text searchable PDF • Directly converted to PDF if possible • With a 300 dpi resolution • With a page size of 8.5" x 11" • With no embedded fonts 	
PDF Documents Combined	You have submitted multiple documents for filing in a single PDF. The file-mark will only appear on documents submitted as lead documents. Please file all lead documents as separate PDF documents.	
Illegible/Unreadable	Please resubmit in a format that is legible.	
Sensitive Data	<p>Please resubmit in five (5) business days with all sensitive data redacted.</p> <ul style="list-style-type: none"> • DL, SSN, Passport Number, Tax ID Number, Government Issued ID Number • Bank Account Number, Credit Card Number, Financial Account Number • Birth Date, Home Address and name of any person who was a 	<p>TRCP 21c (a-f)</p> <p>NOTE: Family Code §102.008 and §105.006 require identification of children by name and DOB</p>

	minor when the suit was filed.	
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As we continue with this transformation, we would greatly appreciate your feedback on how the system can be improved to ensure it is as convenient for you and your staff as possible. That's the whole purpose of electronic filing. Please let us know if you have any questions or comments about these requirements now and in the months ahead. There may be some rough patches to come as we roll out the eFiling mandate and the new eFileTexas.Gov service, but we are confident that within a short period of time you will be very happy with the new system.

Please submit your questions or comments to:

GENERAL QUESTIONS:

Dallas County District Clerk's Office

Phone: 214/653-6807 or 6748

TexFileDistrictClerk@dallascounty.org

Gary Fitzsimmons, District Clerk

Phone: 214-653-7301 gfitzsimmons@dallascounty.org

Virginia Etherly, Chief Deputy District Clerk

Phone: 214-653-7196 Virginia.Etherly@dallascounty.org

Civil, Family, Family Juvenile and Court Clerk contact information may be found at:

<http://www.dallascounty.org/departments/districtclerk/civil-courtclerkcontact.html>

US Supreme Court
Writ for Certiorari (no number yet)
Texas Supreme Court Case #16-0063
Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

Sept 14, 2016

US Supreme Court and Clerk
Supreme Court of the United States
Supreme Court Building
1 First Street, NE
Washington, DC 20543-0001
(202)-479-3000

Dear US Supreme Court and Clerk,

This is our original Writ of Certiorari we are filing today via Fed Ex Express Delivery, with max delivery time of 3 days, per US Supreme Court Rules. The extra 10 printed copies will follow in overnight mail tomorrow, as print time did not allow their inclusion with the original today.

If there is anything that needs to be redone/not up to spec, per the Court's request, please let us know and we will be happy to fix it as desired by the Court.

Sincerely,

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

cc:

Appellee's Attorney:

Hon. Karen L. Landinger

Cokinos, Bosien and Young

10999 W Ih 10 Ste 800

San Antonio, TX 78230-1349

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L Hamilton — PETITIONER

VS.

Daniel Davila III — RESPONDENT(S) MOTION FOR LEAVE

TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Texas Supreme Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

/s/ Alan L Hamilton
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Alan L Hamilton, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>1400</u>	\$ <u>0</u>	\$ <u>1400</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child Support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>600</u>	\$ <u>0</u>	\$ <u>600</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): Trust pension	\$ <u>100</u>	\$ <u>0</u>	\$ <u>100</u>	\$ <u>0</u>
Total monthly income:	\$ <u>600</u>	\$ <u>1400</u>	\$ <u>600</u>	\$ <u>1400</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
1. "Retired"		2008 to 2016	\$0
(working on retirement embezzlement case investigation @ www.HowToStealAnAnnuity.com)			
2. Social Security			\$500 (600-100 medical automatic deduction)
3. Trust pension			\$100

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
1. Neocortechs	9902 Childress Dr Austin, Texas 78753	1982 to 2016	\$1400

(also assist disabled husband with retirement embezzlement case website/investigation/typing @ www.HowToStealAnAnnuity.com)

4. How much cash do you and your spouse have? \$200

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of account	Amount you have	Amount your spouse has
Fidelity	Inherited IRA	\$0	\$4000
Stocks	stocks	\$0	\$2300
Bank	checking	\$13.23	\$200

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

x♦ Home

Value \$120,000

♦ Other real estate

Value _____

x♦ Motor Vehicle #1

Year, make & model 1993 Ford Truck

Value \$1000

x♦ Motor Vehicle #2

Year, make & model 1992 Toyota Previa

Value \$1000

x♦ Other assets: Motor Vehicle #3,

Description: 2002 Ford Windstar

Value \$2000

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
1. Mutual of Omaha/Daniel Davila III, CPA	\$1.6 Million	\$0

This was embezzled and is the basis of the case. Entire Estate, Retirement Principal embezzled.

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
Our dogs, cats and fish.	Pets	various

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$250	\$250
Are real estate taxes included?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Is property insurance included?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$200	\$200
Home maintenance (repairs and upkeep)	\$200	\$200
Food	\$300	\$300
Clothing	\$50	\$50
Laundry and dry-cleaning	\$50	\$50
Medical and dental expenses	\$200	\$200

	You	Your spouse
Transportation (not including motor vehicle payments)	\$100	\$100
Recreation, entertainment, newspapers, magazines, etc.	\$100	\$100
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$50	\$50
Life	\$0	\$0
Health	\$100	100
Motor Vehicle	\$50	\$50
Other: _____	\$0	\$0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): property taxes _____	\$50	\$50
Installment payments		
Motor Vehicle	\$0	\$0
Credit card(s)	\$0	\$200
Department store(s)	\$0	\$0
Other: _____	\$0	\$0
Alimony, maintenance, and support paid to others	\$0	\$0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$0	\$0
Other (specify): Case investigation work@ www.HowToStealAnAnnuity.com (ink/paper/printer/computer for Court/law enforcement paperwork)	\$100	100
Total monthly expenses:	\$2000	\$2200

NOTE: Making up difference between income and expenses with wife's credit card currently.

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☒ Yes ☐ No

If yes, how much? \$16,000 + \$20,000 = \$36,000

If yes, state the attorney's name, address, and telephone number:

1. 2008-2009 – Wayne Gronquist – Probate - \$16,000 - deceased

2. 2012-2013 – Jason Coomer, filed original civil cases, \$20,000

Law Office of Jason S Coomer, PLLC
State Bar # 00793547
406 Sterzing, 2nd floor
Austin, Texas 78704
(512) 474-1477 - telephone

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Entire retirement embezzled to insolvency. Elder Financial Abuse, the subject of this case. We have already paid close to \$3000 in court costs, for an unreadable/unnavigable Clerk's Record. We weren't completely broke until we tried to use the Texas "Justice System".

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 9/14/2016

/s/ Alan L Hamilton

Alan L Hamilton

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L. Hamilton — PETITIONER

vs.

Daniel Davila III — RESPONDENT(S) ON PETITION

FOR A WRIT OF CERTIORARI TO

Texas 13th Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

1-PETITION FOR WRIT OF CERTIORARI

Alan L Hamilton

(Your Name)

9902 Childress Dr

(Address)

Austin, Texas 78753

(City, State, Zip Code)

512-832-6384 (AlanHamilton@ProBaitCourt.com)

(Phone Number)

2-QUESTION(S) PRESENTED

1. What is the meaning of the word “must”?
2. Does “must” mean “legally mandatory”? (as stated in the Federal Register)
3. Does the meaning of the word “must” vary depending on the participants?
4. Does the meaning of if x “must” y change depending on the value of x and y? And if so, is that the definition of corruption?
5. Can you win a game if only one-side has to play by the rules?
6. Do Court Clerk’s in Texas have to follow court rules and laws?
7. Should a Court Clerk be able to systematically steal thousands of dollars while denying Due Process, by dismissing the plaintiff’s appeal for requesting a compliant Court Record, while refusing to fix a simple software bug, which breaks the entire Texas Justice System?
8. Can a Court Clerk use the meaning of the word “must” to dismiss your case for “non-compliance”, but not use the meaning of the word “must” when preparing a non-compliant/readable/navigable Court Record?
9. If an item purchased from the Clerk does not meet legal specifications, can it be returned?
10. Can there be a “Nation of Laws” without a consistent word which means “legally mandatory” for all, such as discussed in the Federal Registry and Black’s Law Dictionary? (see Appendix H)
11. If “Thou shalt not kill” now means maybe, what does “Thou MUST not kill” mean? (See Appendix H, Bryan Gardner, Editor of Black’s Law Dictionary and the Federal Registry definition of the word “must”)

3-LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Alan L Hamilton, Individually and as Successor Trustee of the Hamilton Family Trust and as Independent Executor of the Estate of Maurine P. Hamilton

4-Table of Contents
(automatic Word TOC with headings)

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INDEX TO APPENDICES

(per instructions on page 5 of US Sup Ct. W.O.C Guide and Rule 14)

APPENDIX A – Decision of State Court of Appeals

- 10-7-2015 - Letter from Plaintiff requesting Clerk Record to be fixed
- 10-15-2015 – Texas 13th Court of Appeals dismisses case instead (DWOP)
- 12-7-2015 – Formal Motion for Contempt against TCDC Clerk DENIED
- 4pgs

APPENDIX B – Decision of State Trial Court

- 3-9-2015 – Travis County District Court
- Motion for Summary Judgement with Judge's Note's
- GRANTED to Defendant, within 12 minutes of Court opening, despite being told Plaintiff's had communicated they were on their way, driving thru flooding in Austin, Texas in March 2015
- 4 pgs

APPENDIX C – Decision of State Supreme Court Denying Review

- 4-1-2016 – Texas Supreme Court
- Petition for Review DENIED, on April Fool's Day. A Court Jester?
- 5pgs (4 repeats)

APPENDIX D – Order of State Supreme Court Denying Rehearing

- 6-17-2016 – Texas Supreme Court
- Motion for Rehearing DENIED
- 4pgs (4 repeats)

APPENDIX E - Texas Supreme Court - The "Must" Decision

- "must" overturn all lower courts-6pgs

APPENDIX F - Kentucky Clerk taught the meaning of "Must"

- 9-1-2015 Motion for Contempt affirmed-12 pgs

APPENDIX G - 13COA Mandate billing shows incompetence-worst Customer service dept ever

- 13COA still hasn't figured out Alan Hamilton paid \$2000 for something he never received. Fraud by the Court itself.-5pgs
-

APPENDIX H - TSC Motion for Rehearing-Blacks Law-Fed Registry

- Texas Supreme Court Motion for Rehearing-contains Blacks Law-Federal registry definition of "must"-DWRD Clerks Record samples-71 pgs

5-TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Kentucky 6 th Circuit, April Miller et all, vs Kim Davis (9/1/2016) (and all citations contained within it) (in sections 8-Constitutional, 9-Statement and 10-Reasons sections)	pgs 11,12-15
Texas Supreme Court – The “Must” decision (and all citations contained within it) (in sections 8-Constitutional, 9-Statement and 10-Reasons sections)	pgs 11,12-15

STATUTES AND RULES

Texas Supreme Court Orders on MINIMUM standards for electronic documents:
Note use of word “must”:

(in detail in TSC Motion for Rehearing in Appendix H)

TRAP 34.5. Clerk’s Record

TRAP 34.5 (d) Defects or Inaccuracies. If the clerk’s record is defective or inaccurate, the appellate clerk **must** inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

TRAP Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record
37.2. On Receiving the Record

On receiving the clerk’s record or the reporter’s record, the **appellate clerk must determine whether each complies with the Supreme Court’s and Court of Criminal Appeals’ order on preparation of the record**. If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. **If not, the clerk must endorse on the clerk’s record or reporter’s record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date.** In a criminal case, the record must not be posted on the Internet.

OTHER

Black’s Law and the Federal Registry (contained in the explanation to the Texas Supreme Court in the Motion for Rehearing, as to the Federal meaning of the word “must” which concurs with their usage of the word “must” in The TSC “Must” Decision (see Appendix H)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

6-OPINIONS BELOW (page 1 per US Sup Ct Rule 14)

☐ For cases from **federal courts**: **N/A**

The opinion of the United States court of appeals appears at Appendix_____to the petition and is

☐ reported at_____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix_____to the petition and is

☐ reported at_____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix **A** to the petition and is:

☒ reported at:

The Texas 13th COA website at:

<http://www.search.txcourts.gov/Case.aspx?cn=13-15-00307-CV&coa=coa13>

or, ☐ has been designated for publication but is not yet reported;

or, ☐ is unpublished.

The opinion of the Travis County District Court appears at Appendix **B** to the petition and is

☒ reported at:

Travis County District Court AARO (Attorney Access to Records Online)
No Pro Se allowed-we do not have access-NOT Public Access as claimed
Travis AARO website at:

<https://www.traviscountytexas.gov/district-clerk/public-access>;

or, ☐ has been designated for publication but is not yet reported;

or, ☐ is unpublished.

7-JURISDICTION

(Appendix A-D and 90 days from Appendix D date)

☐ For cases from **federal courts**: N/A

The date on which the United States Court of Appeals decided my case was_____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No.____A_____.

The jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided (or denied review-USSC WOC guide-pg5) my case was 4/1/2016 (Texas Supreme Court denial of Petition for Review). A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 6/17/2016, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No.____A_____.

The jurisdiction of this Court is invoked under 28 U.S. C. § 1257(a).

8-CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process has been denied to the Plaintiff/Petitioner, as the process of conveying the ideas and evidence cannot be achieved in the Court system without readable/navigable documents. That such a clear idea is argued about for a year, rather than just implementing a simple fix is amazing enough.

That “Due Process” is also outlined clearly in the law, with the word “must”, which is highly respected in the Texas Supreme Court “Must” Decision, which overturned all of the lower courts, because of the word “*must*”, just two weeks before denying our case, which asked the court if “must” meant “must” for Clerks.

The 13th COA does not dispute that the Clerk’s Record, as submitted, is non-compliant with the Texas Supreme Court Orders on minimum standards for electronic documents, when it states the following in it’s 10/15/2015 ruling being appealed:

“The Clerk’s Record...was prepared in substantial compliance with the applicable rules.”

“Substantial compliance” is non-compliance. Try getting your car registered with old Windshield wipers. But the 13th COA then holds the Appellant to strict compliance with all the other TRAP rules, not even finding the 10/7/2015 letter from the Appellant to be “substantially compliant” with informing the Court of the reasons for the late brief, which included the non-compliance of the Clerk’s Record, with the Court’s own rules.

If the Clerks don’t respect the word “must” as meaning “legally mandatory”, then they don’t have to do anything and Due Process is impossible, indeed, im-process-ible.

9-STATEMENT OF THE CASE

List of Events

- 1) 3/9/2015 (Travis County District Court - Trial Court),
- 2) 10/7/2015 (Letter to 13th COA Requesting Clerk's Record to be fixed-unreadable/un navigable)
- 3) 10/15/2015 (13th COA decision-DWOP for us but no Contempt for Clerk for DWRD (Dismissal for Want of a Readable/Navigable Document),
- 4) 4/1/2016 (Texas Supreme Court denial of Petition for Review),
- 5) 6/17/2016 (TSC denial of Rehearing)

(Full case details at www.HowToStealAnAnnuity.com, www.ProBaitCourt.com , Crime of the 21st century: Elder financial abuse)

On 3/9/2015, at 2:12pm, 12 minutes after Judge Tim Sulak's Court had officially opened, the Defendant was granted a Motion for Summary Judgement, despite the Judge's Notes included with the Clerk's record, saying a message was received from Plaintiff that they were on their way and stuck in Austin, Texas flooding in March 2015. The Courthouse had closed just a few days earlier because of "winter weather" conditions. Plaintiff had showed up at 8:30am, to find a note posted on the Courthouse door.

But somehow, over 12 minutes late during Austin floods ("Turn around, Don't drowned!) in a busy Courthouse justifies embezzlement of over a million dollars from Plaintiff. Plaintiff appealed to the 3rd COA, the Judges that we vote for, but somehow, it was transferred down to the 13th COA, people who still use faxes and phones, who have not joined the 21st century.

We attempted to work with these people to try to make the system better. Plaintiff's wife, a software engineer for 35+ years, told them how to fix a bug which is nothing more than a typo in fieldnames, which is making the entire Travis County system go haywire. The Clerk's Record are unreadable and unnavigable. How is justice to be served if the Clerk's Office destroys the paperwork that people are suppose to read and comprehend?

In terms of Texas law/statutes/Court Rules, this is clearly laid out in the Motion for Rehearing to the Texas Supreme Court, that they declined to hear, requesting, as here, the definition of the word "must". Two weeks prior to ruling on our case, the Texas Supreme Court ironically defined the important of the word "*must*", using italics in their decision to overturn all the lower courts. Two people died at two different times, so they "*must*" overturn. (See Appendix E for the Texas Supreme Court "Must" Decision).

We felt confident at that point that the Texas Supreme Court would enforce their own rules and court orders, as they used the word “must” in them. We were shocked on April Fool’s Day 2016, that the TSC denied the opportunity to enforce their Court Orders and rules, as we had been made to follow many times.

It is clear that the Texas Courts understand the meaning of the word “must”. But they seem to think the word “must” is variable. X “must” Y cannot be dependent on the values of X and Y. If the participants or the act define the meaning of the word “must” then that is corruption defined, and appears to be what is going on in Texas.

On the Federal Level, Kentucky clerk Kim Davis got taught the meaning of the word “must”, that she did not get to pick and choose which laws she followed. (See Appendix F, US District Court for Eastern District of Kentucky, Miller vs Davis 9/1/2015, Motion for Contempt GRANTED).

Similarly, our request for a Motion for Contempt against the Travis County District Clerk should have been granted by the 13COA. On 10/7/2015, we wrote a letter to the 13COA Court and Clerk *asking* for the Clerk’s Record to be fixed. Instead, the dismissed our case, DWOP, Dismissal for Want of Prosecution. It was a Dismissal for Want of Readable/Navigable Documents (DWRD). Paying \$2000 does not signify not wanting something.

We then wrote a formal Motion for Contempt to the 13th COA to get this bug in the Clerk’s Record fixed, which was also denied on 12/7/2015. So we appealed it to the Texas Supreme Court. It was a TSC Order and it said “must”. We thought it would be a slam dunk, and be a welcomed opportunity by the Court to enforce their Orders that were being openly ignored by the Court Clerk’s for some unknown reason, as they were simple requests. Plaintiff’s wife has repeatedly offered to help if their software staff needed it. The bug fixes should take no more than a week by any competent software engineer. And why is there any argument anyways, about making things better?

The complete incompetence and lack of care of the 13th COA office comes into clear view with the Mandate containing the Bill of Costs (see Appendix G). The 13th COA still lists the payer of all these costs as “unknown”. In all the filings, we have discussed that the Plaintiff is on \$500/month social security and the \$2000 cost for the Clerk’s Record and Reporter’s transcripts, was paid by Plaintiff, and he wanted what he paid for, and as ordered by the Texas

Supreme Court in the Court Rules. Why is this an argument? It was bought and paid for, the admission fee for the appeal, why not deliver it?

Basically the 13COA is the worst nightmare customer service department that you've ever encountered, that gives you the runaround for a year, and then a year later, can't even find your receipt, after telling you for a year that "they don't have to fix it so it works". Any court would hold a business to a contract of law, but it seems Clerks give other Clerks "free passes" to break the law.

By Stare Decisis with the TSC "Must" decision, the Kentucky Clerk Kim Davis "Must" decision, and the upcoming Texas appeals cases similar to the Davis, with Clerk's refusing to follow the rules, we hope the US Supreme Court will define the word "must" as the only word we have left that means mandatory, as "shall" has been litigated into "maybe".

The necessity of protecting the word "must" is described in the Federal Registry and Black's Law dictionary (see Appendix H). A Nation of Laws becomes meaningless if the word "must" becomes "maybe".

A varying meaning of the word "must", means the word "must" and the law that goes with it is for sale in Texas. If the courts don't want to fix themselves, we will be going to the Texas Rangers next to investigate the open RICO Racketeering corruption in the Texas Courts. Nothing makes sense without the word "must" having one meaning, and that means "legally mandatory", per Black's Law Dictionary and the Federal Registry (see Appendix H)

10-REASONS FOR GRANTING THE PETITION

As stated in the “Statement of the Case”, it is clear that with more than one meaning of the word “must”, one cannot have “Justice for All”. One cannot win a rigged-game, wondering if this usage of the word “must” means “must” to the Courts. The word “must” would then be “for sale” to the highest bidder, or the most well-connected, a certain belief system, or just plain lazy stupid corrupt people who don’t want to do their jobs or deliver the product they promised.

By law, and to remove conflicts in the lower courts, Stare Decisis demands that the conflicting use of the word “must” by Clerk’s in different States be addressed by the US Supreme Court.

There are 2 occurrences of the word “must in the Miller vs Davis, Kentucky Sixth circuit case. There are 31 occurrences of the word “must” in the US Supreme Court Rules. There is no way these documents can be correctly interpreted unless “must” means “legally mandatory”, for all.

11-CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Alan L Hamilton

Alan L Hamilton

Date: 9/14/2016

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L. Hamilton — PETITIONER

VS.

Daniel Davila III — RESPONDENT(S)

12-PROOF OF SERVICE

I, Alan L. Hamilton, do swear or declare that on this date, 9/14/2016, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Respondent's Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/14/2016.

/s/ Alan L Hamilton

Alan L Hamilton

Appendix A

CHIEF JUSTICE
ROGELIO VALDEZ

JUSTICES
NELDA V. RODRIGUEZ
DORI CONTRERAS GARZA
GINA M. BENAVIDES
GREGORY T. PERKES
NORA L. LONGORIA

CLERK
DORIAN E. RAMIREZ



Court of Appeals
Thirteenth District of Texas

NUECES COUNTY COURTHOUSE
901 LEOPARD, 10TH FLOOR
CORPUS CHRISTI, TEXAS 78401
361-888-0416 (TEL)
361-888-0794 (FAX)

HIDALGO COUNTY
ADMINISTRATION BLDG.
100 E. CANO, 5TH FLOOR
EDINBURG, TEXAS 78539
956-318-2405 (TEL)
956-318-2403 (FAX)

www.txcourts.gov/13thcoa

December 7, 2015

Mr. Alan L. Hamilton
9902 Childress Drive
Austin, TX 78753
* DELIVERED VIA E-MAIL *

Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
* DELIVERED VIA E-MAIL *

Re: Cause No. 13-15-00307-CV
Tr.Ct.No. D-1-GN-13-001230
Style: Alan L. Hamilton, Individually and as Successor Trustee of the Hamilton
Family Trust, and as Independent Executor of the Estate of Maurine P.
Hamilton v. Daniel Davila, III

Appellant's motion for contempt of court against Travis County District Clerk for
violation of Texas Supreme Court Order Per Minimum Electronic Document Standards
in the above cause was this day DENIED by this Court.

Very truly yours,

A handwritten signature in black ink that reads "Dorian E. Ramirez". The signature is written in a cursive style.

Dorian E. Ramirez, Clerk

DER:jgp



NUMBER 13-15-00307-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**ALAN L. HAMILTON, INDIVIDUALLY
AND AS SUCCESSOR TRUSTEE OF
THE HAMILTON FAMILY TRUST, AND
AS INDEPENDENT EXECUTOR OF
THE ESTATE OF MAURINE P. HAMILTON,**

Appellant,

v.

DANIEL DAVILA III,

Appellee.

**On appeal from the 353rd District Court
of Travis County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Perkes
Memorandum Opinion Per Curiam**

Appellant, Alan L. Hamilton, individually and as successor trustee of the Hamilton Family Trust and as independent executor of the estate of Maurine P. Hamilton, filed a pro se notice of appeal regarding a summary judgment rendered in cause number D-1-

GN-13-001230 in the 353rd District Court of Travis County, Texas, in favor of appellee, Daniel Davila III.¹ This matter is before the Court on the appellant's failure to file a brief or reasonably explain his failure to do so.

The appellant's brief in the above cause was originally due on August 6, 2015. Appellant sought and received an extension of time to file the brief until September 10, 2015. Appellant failed to file the brief. On September 28, 2015, this Court notified appellant that the brief had not been timely filed and the appeal was subject to dismissal for want of prosecution unless, within ten days, appellant reasonably explained his failure to file the brief and appellee was not significantly injured by the appellant's failure to timely file a brief. See TEX. R. APP. P. 38.8(a)(1). Appellant responded to this Court's directive on October 7, 2015. Appellant contends that he is unable to file the brief because the clerk's record is defective and this Court has previously denied his motion seeking a corrected clerk's record. Appellant also urges generally that he is in ill health and that this appeal should be considered in coordination with another case, allegedly related to this one, which was not filed with this Court.

The clerk's record in this matter was timely filed and, as previously determined by this Court, was prepared in substantial compliance with the applicable rules. Appellant has failed to reasonably explain his failure to file a brief, file a motion for extension of time to file his brief, or file his brief. Further, appellant neither argues nor addresses whether appellee has been injured by the delay in filing the brief in this matter.

¹ This case is before the Court on transfer from the Third Court of Appeals in Austin pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

This Court possesses the authority to dismiss an appeal for want of prosecution when an appellant in a civil case fails to timely file its brief and gives no reasonable explanation for such failure. See, e.g., *Jimenez v. Soria*, 224 S.W.3d 722, 722 (Tex. App.—El Paso 2006, no pet.). Accordingly, this appeal is DISMISSED FOR WANT OF PROSECUTION. See TEX. R. APP. P. 38.8(a); *id.* R. 42.3(b).

PER CURIAM

Delivered and filed the
15th day of October, 2015.

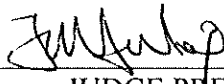
Appendix B

[illegible]

TRAVIS COUNTY, TEXAS

of the Hamilton Family Trust, and as Independent Executor of the Estate of Maurine P. Hamilton
is GRANTED.

SIGNED: MARCH 9, 2015.



JUDGE PRESIDING
TM SULAR

JUL 07 2015

At 9:00 A.M.
Velva L. Price, District Clerk

Judges Notes
Cause #D-1-GN-13-001230
HAMILTON ALAN L vs. DAVILA DANIEL III

Date Entered	Notes	Note Type	Date Last Edited	Last Edited By
10/29/2013	Hearing on the record re Def's M to Compel. Mr. Robt Smith here for Def. Pltf here pro se. Def limits arg to only Irog 18 and RFPs 32, 35, and 38. Objects are overruled and M to Compel responses is granted as to that Irog and those RFPs. Mr. Smith to prep Order and submit to court tomorrow AM. SHJ	Docket Sheet Entry	10/29/2013	Jenkins
10/30/2013	Order re Def's M to Compel, heard yesterday, is signed. SHJ	Docket Sheet Entry	10/30/2013	Jenkins
3/5/2015	PLAINTIFF APPEARED PRO SE. DEFENDANT APPEARED BY AND THROUGH COUNSEL ONLY. COURT HEARED ARGUMENT FOR P/M/CONTINUANCE. COURT TOOK THIS MATTER UNDER ADVISEMENT.	Docket Sheet Entry	3/5/2015	SanderD
3/5/2015	dls/COO CC2 pltf alan L hamilton pro se on Mtn for Continuance on Mtn for Summary Judgment; robert smith for defendant with law firm of cokinos(Jim's law firm) sent them to Judge Eric Shepherd.JON	Docket Sheet Entry	3/5/2015	NARANJO
3/6/2015	ORDER DENYING PLAINTIFF'S MOTION FOR CONTINUANCE.	Docket Sheet Entry	3/6/2015	SanderD
3/9/2015	dls/COO CC2 D's M/Summ/J urged by attys Robert Smith & Karen Landinger. No other appearance as of 2:15 pm. Attys indicate receipt of some garbled electronic message from P shortly before 2 pm docket, but nothing on file other than P's M/Continuance which was denied last week. GRANTED & signed. TSulak	Docket Sheet Entry	3/9/2015	SULAKT
3/9/2015	Deputy reports that P appeared @ 3 pm. Relayed message that Summ/J was granted @ 45 minutes earlier. TSulak	Docket Sheet Entry	3/9/2015	SULAKT
5/28/2015	Judge Crump presiding on Plaintiff's Motion to Vacate MSJ Order; DR took record; MSJ from March 9, 2015 based on failure of plaintiff to appear; Attys Robert Smith & Karen Landinger for Defendant; Plaintiff pro se requesting court to vacate	Docket Sheet Entry	5/28/2015	BEHARAS

Judges Notes
Cause #D-1-GN-13-001230
HAMILTON ALAN L vs. DAVILA DANIEL III

<u>Date Entered</u>	<u>Notes</u>	<u>Note Type</u>	<u>Date Last Edited</u>	<u>Last Edited By</u>
	order; Judge Sulak signed MSJ Order on 3/9; no response filed to MSJ which was due on 3/2; Motion to Vacate was filed but overruled by operation of law on May 4, 2015 (75 days after the Order signed); but the Court still has plenary power for 105 days until June 3; court takes matter under advisement			

Appendix C



Marjorie Miller <marjiemiller@gmail.com>

Notice(s): 16-0063

1 message

scnoticingservice@txcourts.gov <scnoticingservice@txcourts.gov>

Fri, Apr 1, 2016 at 6:08 PM

To: AlanHamilton@probaitcourt.com

You have received notice(s) for the following case(s):

16-0063

TC #D-1-GN-13-001230 /COA #13-15-00307-CV

ALAN L. HAMILTON v. DANIEL DAVILA, III

Files

PET FOR REVIEW DISP __DENIED_FILECOPY.pdf

Thank you,
Claudia Jenks, Chief Deputy Clerk
Supreme Court of Texas

Do not reply to this message. If you have questions, please contact the Court at [\(512\) 463-1312](tel:5124631312).

**PET FOR REVIEW DISP __DENIED_FILECOPY.pdf**

35K

RE: Case No. 16-0063

DATE: 4/1/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: ALAN L. HAMILTON

v. DANIEL DAVILA, III

Today the Supreme Court of Texas denied the petition for review as redrafted in the above-referenced case.

MS. DORIAN E. RAMIREZ

CLERK, THIRTEENTH COURT OF
APPEALS

901 LEOPARD STREET, 10TH FLOOR
CORPUS CHRISTI, TX 78401

AlanHamilton-013

RE: Case No. 16-0063

DATE: 4/1/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: ALAN L. HAMILTON

v. DANIEL DAVILA, III

Today the Supreme Court of Texas denied the petition for review as redrafted in the above-referenced case.

MS. KAREN L. LANDINGER
COKINOS, BOSIEN & YOUNG
10999 IH-10 WEST, SUITE 800
SAN ANTONIO, TX 78230

AlanHamilton-014

RE: Case No. 16-0063

DATE: 4/1/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: ALAN L. HAMILTON

v. DANIEL DAVILA, III

Today the Supreme Court of Texas denied the petition for review as redrafted in the above-referenced case.

MS. AMALIA RODRIGUEZ MENDOZA
TRAVIS COUNTY DISTRICT CLERK
P.O. BOX 1748
AUSTIN, TX 78767

AlanHamilton-015

RE: Case No. 16-0063

DATE: 4/1/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: ALAN L. HAMILTON

v. DANIEL DAVILA, III

Today the Supreme Court of Texas denied the petition for review as redrafted in the above-referenced case.

ALAN L. HAMILTON
9902 CHILDRESS DR.
AUSTIN, TX 78753

AlanHamilton-016

Appendix D

RE: Case No. 16-0063

DATE: 6/17/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: HAMILTON v. DAVILA

Today the Supreme Court of Texas denied the motion for rehearing, as amended, of the above-referenced petition for review.

MS. VELVA L. PRICE
TRAVIS COUNTY DISTRICT CLERK
P. O. BOX 1748
AUSTIN, TX 78767-1748
* DELIVERED VIA E-MAIL *

AlanHamilton-018

RE: Case No. 16-0063

DATE: 6/17/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: HAMILTON v. DAVILA

Today the Supreme Court of Texas denied the motion for rehearing, as amended, of the above-referenced petition for review.

MS. DORIAN E. RAMIREZ
CLERK, THIRTEENTH COURT OF APPEALS
901 LEOPARD STREET, 10TH FLOOR
CORPUS CHRISTI, TX 78401
* DELIVERED VIA E-MAIL *

AlanHamilton-019

RE: Case No. 16-0063

DATE: 6/17/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: HAMILTON v. DAVILA

Today the Supreme Court of Texas denied the motion for rehearing, as amended, of the above-referenced petition for review.

MS. KAREN L. LANDINGER
COKINOS, BOSIEN & YOUNG
10999 IH-10 WEST, SUITE 800
SAN ANTONIO, TX 78230
* DELIVERED VIA E-MAIL *

AlanHamilton-020

RE: Case No. 16-0063

DATE: 6/17/2016

COA #: 13-15-00307-CV

TC#: D-1-GN-13-001230

STYLE: HAMILTON v. DAVILA

Today the Supreme Court of Texas denied the motion for rehearing, as amended, of the above-referenced petition for review.

ALAN L. HAMILTON
9902 CHILDRESS DR.
AUSTIN, TX 78753

* DELIVERED VIA E-MAIL *

AlanHamilton-021

Appendix E

IN THE SUPREME COURT OF TEXAS

No. 14-0406

ELAINE STEPHENS, INDEPENDENT EXECUTRIX
OF THE ESTATE OF VENCIE BEARD, DECEASED, PETITIONER,

v.

BRANDON SCOTT BEARD, BRIAN JAKE GILMORE, PHILIP CHASE JOHNSON,
MEGAN JOHNSON, JEREMY HOPKINS, LINDSEY BEARD, PAMELA JOHNSON,
ROLAND SCOTT BEARD, JANET LEA HOPKINS, INDIVIDUALLY AND AS TRUSTEE
FOR MATTHEW C. HOPKINS, AND BEVERLY KAYE GILMORE,
RESPONDENTS

- consolidated with -

No. 14-0407

ELAINE STEPHENS, INDEPENDENT EXECUTRIX
OF THE ESTATE OF MELBA BEARD, DECEASED, PETITIONER,

v.

BRANDON SCOTT BEARD, BRIAN JAKE GILMORE, PHILIP CHASE JOHNSON,
MEGAN JOHNSON, JEREMY HOPKINS, LINDSEY BEARD, PAMELA JOHNSON,
ROLAND SCOTT BEARD, JANET LEA HOPKINS, INDIVIDUALLY AND AS TRUSTEE
FOR MATTHEW C. HOPKINS, AND BEVERLY KAYE GILMORE,
RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE TWELFTH DISTRICT OF TEXAS

PER CURIAM

This case concerns the construction of the nearly identical wills of Vencie and Melba Beard. Vencie and Melba were a married couple. Vencie shot and killed Melba shortly before taking his own life. The wills disposed of each testator's separate property and all of the couple's community property. Each will contained the following provision: "If both my [husband/wife and I] die in a common disaster or under circumstances making it impossible to determine which of us died first, I bequeath [specified cash amounts to nine individuals]." Each will also contained several other provisions devising and bequeathing certain property, including the residual estate, in the event that either spouse did not survive the other by 90 days.

It is undisputed that Melba died at 8:59 p.m. and Vencie died at 10:55 p.m. on the same night. After their deaths, Elaine Stephens—as independent executrix of both estates—filed two suits (one for each estate) seeking a declaration that the Beards did not die in a “common disaster or under circumstances making it impossible to determine [who] died first.” The trial court disagreed with Stephens and found that the Beards did die in a common disaster. Moreover, the trial court found that the Simultaneous Death Act (SDA), Probate Code Chapter 47,¹ was incorporated into the Beards' wills. The court of appeals affirmed both holdings. *See Stephens v. Beard*, 428 S.W.3d 385 (Tex. App.—Tyler 2014).

In construing a will, our focus is on the testator's intent, which is “ascertained by looking to the provisions of the instrument as a whole, as set forth within the four corners of the instrument.”

¹ The legislature repealed the Probate Code and re-codified its provisions in the Estates Code, effective January 1, 2014. Probate Code Chapter 47's provisions are now contained in Estates Code Chapter 121. Chapter 47 was in effect at the time of the Beards' deaths.

Perfect Union Lodge No. 10 v. Interfirst Bank of San Antonio, N.A., 748 S.W.2d 218, 220 (Tex. 1988). Thus, “[t]he court should focus not on ‘what the [testator] intended to write, but the meaning of the words [he] actually used.’” *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 639 (Tex. 2000) (quoting *Shriner’s Hosp. for Crippled Children of Tex. v. Stahl*, 610 S.W.2d 147, 151 (Tex. 1980)). Such words, “whether technical or popular,” are construed “in their plain and usual sense, unless a clear intention to use them in another sense” is present in the instrument. *White v. Taylor*, 286 S.W.2d 925, 926 (Tex. 1956). Generally, “[t]he will should be construed so as to give effect to every part of it, if the language is reasonably susceptible of that construction.” *Perfect Union Lodge*, 748 S.W.2d at 220; *Welch v. Straach*, 531 S.W.2d 319, 322 (Tex. 1975) (“all parts of the testamentary writings . . . are to be harmonized and given effect”).

The phrase “common disaster” has a well-recognized legal meaning: “[a]n event that causes two or more persons [with related property interests] . . . to die at very nearly the same time, *with no way of determining the order of their deaths.*” BLACK’S LAW DICTIONARY 333 (10th ed. 2014) (emphasis added); *see also White*, 286 S.W.2d at 926–27; *Glover v. Davis*, 366 S.W.2d 227, 231 (Tex. 1963) (“where two or more persons perished in the same disaster, there was no presumption at common law that either survived or that all perished simultaneously.”).² Common-disaster provisions are necessary because “[c]ases occasionally arise in which testator and legatee . . . are killed in a common disaster under circumstances which make it impossible to determine as a matter

² Courts in other jurisdictions have also applied this legal meaning to clauses providing for certain distributions in case of a “common disaster.” *See, e.g., In re Davis’ Estate*, 61 N.Y.S.2d 427, 429 (N.Y. Sur. 1946), *aff’d In re Davis’ Will*, 69 N.Y.S.2d 327 (N.Y. App. Div. 1947) (“It is plain to be understood that the petitioner in using the term ‘common disaster’ meant and intended to provide for a case where both parties perished and there were no proofs to establish the survivorship”); *Modern Woodmen of Am. v. Parido*, 253 Ill. App. 68, 74 (Ill. App. Ct. 1928), *aff’d*, 167 N.E. 52 (Ill. 1929) (“‘Dying at the same time’ or ‘dying in a common disaster,’ are merely, in law, different statements of the same situation or result . . .”).

of fact which of them died first.” 3 JEFFREY A. SCHOENBLUM, PAGE ON THE LAW OF WILLS § 29.174 (LexisNexis Matthew Bender, 2d ed. 2012); *see also* BLACK’S LAW DICTIONARY 333 (10th ed. 2014) (defining “common-disaster clause” as a “provision in a . . . will, covering the situation in which the transferor and transferee die in a common disaster.”). Using a common-disaster provision thus ensures that, when the order of death is uncertain, property passes in a planned and predictable way.

The court of appeals acknowledged the legal definition of “common disaster,” but then crafted its own definition by separately defining the words “common” and “disaster” and combining their separate definitions. *Stephens*, 428 S.W.3d at 387–88 (“‘common’ can mean shared by two or more . . . [and] disaster has been defined as a calamitous event or great misfortune.” (Citing MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 250, 355 (11th ed. 2011))). The resulting definition of “common disaster” was “any situation where the death of two or more people arose out of the same set of circumstances.” *Id.* at 388. Notably, the court of appeals’ definition excluded the requirement that it be impossible to determine who died first. *See id.* Applying its new definition, the court of appeals held the homicide-suicide was “a common disaster in spite of the fact that Vencie did not successfully kill himself immediately” because the shots that killed the Beards “were fired in one episode.” *Id.*

The court of appeals erred by ignoring the legal definition of “common disaster.” “[W]here the meaning of the language used in the will has been settled by usage and sanctioned by judicial decisions, it is presumed to be used in the sense that the law has given to it, and should be so construed, unless the context of the will shows a clear intention to the contrary.” *Mitchell v. Mitchell*, 244 S.W.2d 803, 806 (Tex. 1951) (internal quotation marks omitted); *see also Lang*, 35 S.W.3d at

639; *Davis v. Shanks*, 898 S.W.2d 285, 286 (Tex. 1995). As already noted, “common disaster” is a phrase with a settled legal usage. *See White*, 286 S.W.2d at 926–27; *Fitzgerald v. Ayres*, 179 S.W. 289, 291–92 (Tex. Civ. App.—Dallas 1915, writ ref’d);³ BLACK’S LAW DICTIONARY 333 (10th ed. 2014). It is used to ensure orderly distribution when the order of death is uncertain, and so—absent will language establishing an intent to the contrary—the order of death *must* be uncertain for a common-disaster provision to become effective.

The Beards’ wills do not demonstrate a contrary intent. It appears that the Beards used “common disaster” in its legal sense and then added “or under circumstances making it impossible to determine [who] died first.” This addition ensured that the common-disaster provision would become effective if the Beards died and it was “impossible to determine [who] died first,” but where their deaths did not result from any common occurrence or event. *See* 9 GERRY W. BEYER, TEXAS PRACTICE SERIES: TEXAS LAW OF WILLS § 29.2 (3d ed. 2002) (“‘Common disaster’ fails to encompass unrelated but closely-timed deaths.”). Reading the wills’ other provisions tends to support this reading. *See Welch*, 531 S.W.2d at 322. For example, when the Beards wanted to provide for close-in-time but non-simultaneous death situations, they did so using survival periods. Thus, had they intended for “common disaster” to encompass the circumstance in which they died

³ In *Fitzgerald*, a married couple from Dallas attempted to scale Pike’s Peak in Colorado. *Id.* at 289–90. When they were about two and a half miles from the summit, a snowstorm hit. *Id.* at 290. Although a train was available to take them to the summit, the wife refused, remarking, “We are from Texas, and I will show you that we will walk it.” *Id.* Sadly, their bodies were later found about half a mile from the summit. *Id.* The Dallas court of appeals asked how the couple’s property should transfer in a “common disaster” where there was “no evidence . . . showing which one of the testators died first.” *Id.* at 292. The court also noted “that there is no presumption either of survivorship or of the simultaneous death of persons who perish in a common disaster.” *Id.* at 291. In other words, the court recognized the order of deaths in a “common disaster” is unknown. *See id.*

in quick succession, but not simultaneously, it seems strange that they would have used a different (and ineffective) provision to accomplish that intent.

We note that the Beards' wills are not models of clarity—by including the broad phrase “or under circumstances making it impossible to determine [who] died first,” the drafter tends to render “common disaster” (or at least the common legal meaning of the phrase) meaningless. In the context of the Beards' wills, however, reading “common disaster” as the court of appeals did ignores common sense, the settled nature of the phrase, and—most importantly—the testators' intent as shown by “the meaning of the words [they] actually used.” *See Lang*, 35 S.W.3d at 639 (internal quotation marks omitted). Thus, this is a case in which we “prefer ordinary meaning to an unusual meaning that will avoid surplusage.” *Cf. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW* 176 (2012); *see also Stahl*, 610 S.W.2d at 151. Accordingly, we find that the Beards intended to use “common disaster” according to its settled legal meaning. Because Vencie died nearly two hours after Melba, their deaths did not trigger the common-disaster provisions in their wills.⁴

Accordingly, we grant the petition for review and, without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals' judgment and render judgment that the Beards did not die in a “common disaster.”

OPINION DELIVERED: March 18, 2016

⁴ Stephens also urges, as she did in the court of appeals, that the Beards' wills did not incorporate the SDA. We agree. The common-disaster and survival-period provisions of the Beards' wills clearly constitute “language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee . . . survive the testator for a stated period in order to take under the will,” thus supplanting the SDA's default provisions. *See TEX. PROB. CODE* § 47(c).

Appendix F

9-1-2015

April Miller et al. vs. Kim Davis (date filled September 1, 2015)

United States District Court for the Eastern District of Kentucky

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Recommended Citation

United States District Court for the Eastern District of Kentucky, "April Miller et al. vs. Kim Davis (date filled September 1, 2015)" (2015). *Kentucky Marriage Equality Media Collection*. Paper 16.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT ASHLAND

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

Electronically filed

**PLAINTIFFS' MOTION TO HOLD DEFENDANT KIM DAVIS
IN CONTEMPT OF COURT**

Regrettably, Plaintiffs move the Court to hold Defendant Kim Davis in contempt of court for failing to comply with this Court's August 12, 2015, preliminary injunction ruling. In support of their motion, Plaintiffs state as follows:

STATEMENT OF THE CASE

On June 27, 2015 — one day after the U.S. Supreme Court issued its decision in *Obergefell* — Rowan County Clerk Kim Davis decided that her office would no longer issue marriage licenses even though Kentucky law specifically imposes upon county clerks the obligation to do so.¹ She adopted the “no marriage license” policy solely because she opposes marriage for same-sex couples due to her personal religious beliefs

¹ KRS § 402.080 provides:

No marriage shall be solemnized without a license therefor. The license shall be issued by the clerk of the county in which the female resides at the time, unless the female is eighteen (18) years of age or over or a widow, and the license is issued on her application in person or by writing signed by her, in which case it may be issued by any county clerk.

and thus feels that issuing marriage licenses to them (or allowing her subordinates to do so under her authority) would violate her beliefs. Davis decided to bar *all* qualified applicants from obtaining marriage licenses in Rowan County rather than “discriminate” only against same-sex couples. Following Davis’ adoption of the “no marriage license” policy, Plaintiffs — two same-sex and two opposite-sex couples who reside in Rowan County, Kentucky, and who intend to marry — were denied marriage licenses by the Rowan County Clerk’s office pursuant to that policy even though Plaintiffs are otherwise legally entitled to marry.

Proceedings Below

Plaintiffs, upon being denied marriage licenses in their county of residence, filed a putative class-action suit challenging the “no marriage license” policy under the First and Fourteenth Amendments. Plaintiffs asserted official-capacity claims against Davis seeking preliminary and permanent injunctive relief barring future enforcement of the challenged policy.

After an evidentiary hearing and full briefing by the parties, this Court entered a preliminary injunction on August 12, 2015, barring Davis, in her official capacity, from enforcing the “no marriage license” policy against Plaintiffs. [RE #43.] In doing so, the court found that the policy directly and significantly interferes with the right to marry by preventing Rowan County residents, including those for whom travel is difficult or impractical, from obtaining marriage licenses in their home county. [*Id.* at 11-12.] The Court also noted that a contrary ruling could lead other clerks across the state to adopt similar policies, thus amplifying the burden on marriage — a result made foreseeable by the fact that “57 of the state’s 120 elected county clerks have asked Governor Beshear to

call a special session . . . to address religious concerns related to same-sex marriage licenses.” [*Id.* at 12.] The district court ultimately held that Davis’ “no marriage license” policy should be subjected to heightened review, concluding:

It does not seem unreasonable for Plaintiffs, as Rowan County voters, to expect their elected official to perform her statutorily assigned duties. And yet, that is precisely what Davis is refusing to do. Much like the statutes at issue in *Loving* [*v. Virginia*, 388 U.S. 1 (1968)] and *Zablocki* [*v. Redhail*, 434 U.S. 374 (1978)], Davis’ “no marriage licenses” policy significantly discourages many Rowan County residents from exercising their right to marry and effectively disqualifies others from doing so.

[*Id.* at 14.]

Applying heightened review, the district court concluded not only that the “no marriage license” policy failed to serve a compelling governmental interest, but that it actually undermined the state’s countervailing (and compelling) interests in preventing Establishment Clause violations and in upholding the rule of law. [*Id.* at 15.] Thus, the Court held that Plaintiffs were likely to succeed on the merits of their claims and would suffer irreparable harm absent the injunction. [*Id.* at 15-16.]

This Court also examined, and rejected, each of the purported harms Davis alleged would result if an injunction were granted. Specifically, the court found it unlikely that Davis would prevail on her free exercise claims because the claimed burden on her religious belief was caused by “Governor Beshear’s post-*Obergefell* directive” requiring county clerks to issue marriage licenses to same-sex couples — a neutral requirement of general applicability that did not target religious belief. [*Id.* at 18; 21.] The Court also rejected Davis’ free speech claim, reasoning that the “compelled speech” to which she objects — having to lend her “imprimatur and authority” to same-sex marriages — is likely government, as opposed to personal, speech and therefore not

subject to First Amendment protection. [*Id.* at 21; 22.] But the district court further found that even if Davis’ official-capacity act of issuing marriage licenses involved an element of personal speech, Davis’ claim would likely fail because the speech “is a product of her official duties” as County Clerk, not speech as a citizen on a matter of public concern. [*Id.* at 23; 24.]

Likewise, this Court rejected as unlikely to succeed Davis’ arguments under the Religious Test Clause and Kentucky’s Religious Freedom Restoration Act. [*Id.* at 25-26.] As to the former, the administrative tasks to which Davis objected simply did not rise to the level of a religious test oath: “The State is not requiring Davis to express a particular religious belief as a condition of public employment, nor is it forcing her to surrender her free exercise rights in order to perform her duties.” [*Id.* at 26.] And as to the latter, the Court found it unlikely that Davis would satisfy the threshold requirement for invoking heightened scrutiny under Kentucky’s RFRA — that she suffered a substantial burden upon her religious belief. This Court found the burden on Davis’ religious beliefs “more slight” than substantial, in that the Governor’s directive merely asked Davis “to signify that couples meet the legal requirements to marry”; did not restrict Davis’ ability to “engag[e] in a variety of religious activities”; and did not compel her to condone, approve, or otherwise endorse same-sex marriage. [*Id.* at 27.]

Following entry of this Court’s preliminary injunction ruling, Davis timely filed a notice of appeal, and she moved the Court to stay its ruling pending appeal. Though this Court denied Davis’ stay motion, it stayed its denial of the motion pending review by the

Sixth Circuit. [RE #52.]² Davis filed a request to stay the preliminary injunction with the Sixth Circuit Court of Appeals, but that request, too, was denied after full briefing by the parties. [*Miller, et al. v. Davis*, No. 15-5880 (6th Cir. Aug. 26, 2015).]

In rejecting Davis' stay request, the unanimous Sixth Circuit panel concluded that "it cannot be defensibly argued that the holder of the Rowan County Clerk's office, apart from who personally occupies that office, may decline to act in conformity with the United States Constitution as interpreted by a dispositive holding of the United States Supreme Court." The panel further concluded that "[t]here is thus little or no likelihood that [Davis] in her official capacity will prevail on appeal." [*Id.*]

Undeterred, Davis then filed an emergency application for a stay with the United States Supreme Court. But the Court, in a one line order, denied that request without asking for a response and without any apparent dissent. [*Davis v. Miller, et al.*, No. 15A250 (Aug. 31, 2015).]

Facts

Following the U.S. Supreme Court's denial of Davis' emergency application for a stay of the preliminary injunction, Plaintiffs Miller and Roberts went to the Rowan County Clerk's office on September 1, 2015, for the purpose of obtaining their marriage license. Unfortunately, they were again denied by a deputy clerk who asserted that no marriage licenses would be issued "pending appeal" in this case. Despite Plaintiffs' attempts to point out that Davis' stay requests had been denied, the deputy clerk reiterated the refusal. Plaintiffs' additional request to speak with Kim Davis was denied,

² On August 19th, the Court amended its earlier ruling, clarifying that the temporary stay would expire on August 31st absent a contrary ruling from the Court of Appeals. [RE #55.]

and Plaintiffs Miller and Roberts left the Clerk's office. [See attached Exh. 1: Declaration of April Miller.]

ARGUMENT

To prevail on a motion for contempt, a party must “produce clear and convincing evidence that shows that ‘[the opposing party] violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.’” *Electrical Workers Pension Trust Fund of Local Union # 58 v. Gary's Electric Service Co.*, 340 F.3d 373, 379 (6th Cir.2003) (quoting *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir.1987)). If the moving party establishes a prima facie case, the burden shifts to the opposing party to prove inability to comply with the court's order. *Electrical Workers*, 340 F.3d at 379. The opposing party must “show categorically and in detail why he or she is unable to comply with the court’s order.” *Rolex Watch U.S.A. v. Crowley*, 74 F.3d 716, 720 (6th Cir.1996). Unless the opposing party demonstrates that he took “all reasonable steps within [his] power to comply with the court’s order, the Court should hold him in contempt.” *Electrical Workers*, 340 F.3d at 379, quoting *Peppers v. Barry*, 873 F.2d 967, 969 (6th Cir.1989).

Here, Plaintiffs have established a prima facie case, in that they have shown by sufficient evidence that Defendant Davis, in refusing to grant Plaintiffs Miller and Roberts a marriage license following the U.S. Supreme Court’s denial of her most recent (and final) attempt to stay the August 12, 2015, preliminary injunction, has, in fact, violated a definite and specific order of this Court. Because Davis cannot show either that she is unable to comply with the August 12, 2015, order or that she has taken all reasonable steps to comply, this Court is left with no choice but to hold her in contempt.

Plaintiffs do not seek to compel Davis' compliance through incarceration. Since Defendant Davis continues to collect compensation from the Commonwealth for duties she fails to perform, Plaintiffs urge the the Court to impose financial penalties sufficiently serious and increasingly onerous to compel Davis' immediate compliance without further delay.

Respectfully submitted,

s/ William E. Sharp

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- and -

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(502) 561-2005
dan@justiceky.com
laura@justiceky.com
joe@justiceky.com
ACLU OF KENTUCKY Cooperating Attorneys

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on September 1, 2015, I filed this motion and accompanying proposed order with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Jeffrey C. Mando
Claire E. Parsons
Cecil Watkins
jmando@aswdlaw.com
cparsons@aswdlaw.com
cwatkins@prosecutors.ky.gov

Counsel for Rowan County

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Roger Gannam
Jonathan Christman
acdonahue@donahuelawgroup.com
rgannam@lc.org
jchristman@lc.org

Counsel for Kim Davis

s/ William E. Sharp

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT ASHLAND

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

DECLARATION OF APRIL MILLER, PhD.

I, April Miller, PhD., state that:

1. I am an adult resident of Rowan County, Kentucky, and I am a plaintiff in the above-styled action.
2. I am engaged to marry my partner, Karen Roberts, who is also a plaintiff in the above-styled action.
3. On September 1, 2015 at approximately 8:00 a.m., Karen Roberts and I went to the Rowan County Clerk's office for the purpose of obtaining a marriage license in order to marry. We did so following the United States Supreme Court's denial on August 31, 2015 of Defendant Kim Davis's request for an Emergency Stay of the preliminary injunction issued by this Court.
4. Upon asking a deputy clerk for a marriage license application, Ms. Roberts and I were informed by a deputy clerk that the Rowan County Clerk's office will not issue any marriage licenses "pending appeal." After I explained that the United States Supreme Court issued its ruling yesterday, the deputy clerk again replied that there would be no marriage licenses issued "pending appeal."

Further, declarant sayeth naught.

April D. Miller
April Miller, PhD.

Date: Sept. 1, 2015

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT ASHLAND

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

Electronically filed

ORDER

Motion having been made, and the Court being sufficiently advised,

IT IS HEREBY ORDERED:

The Plaintiffs' Motion to Hold Kim Davis in Contempt is hereby **GRANTED**.

IT IS FURTHER ORDERED:

That Defendant Davis' compliance with the Court's August 12, 2015 preliminary injunction ruling **shall** be compelled by appropriate financial penalties.

Appendix G

Bank of America, N.A.
SAN ANTONIO, TX

Personal Money Order- Customer Copy

No. 1304601831

Void After 90 Days

30-1/1140
NTX

Date 07/09/15 11:00:26 AM

Pay



***\$1,000.00

To The
Order Of

Tarrant County Clerk/District Court

Not Valid Over \$1,000

0005 0002771 0014 I-35/PARMER

Bank of America is not liable for lost or stolen Money Orders. For your protection
against loss or theft, sign and complete this Money Order as soon as possible.

Customer Copy
Non-Negotiable
Retain for your Records

001641003771



Personal Money Order

No. 1304601831

Bank of America, N.A.
SAN ANTONIO, TX

Void After 90 Days

30-1/1140
NTX

Date 07/09/15 11:00:26 AM

Pay



***\$1,000.00

To The
Order Of

Tarrant County Clerk/District Court

Not Valid Over \$1,000

0005 0002771 0014 I-35/PARMER

Bank of America is not liable for lost or stolen Money Orders. For your protection
against loss or theft, sign and complete this Money Order as soon as possible.

Alan L. Hamilton

Signature of Purchaser (Drawer)

Alan L. Hamilton

Name of Purchaser (Drawer)

9902 Childress Austin, Tx

Address

City, State, Zip

78753

1304601831 114000019 001641003771

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK.

HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

AlanHamilton-043

Bank of America, N.A.
SAN ANTONIO, TX

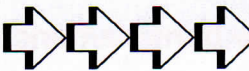
Personal Money Order- Customer Copy

No. 1304601832

Void After 90 Days

30-1/1140
NTX

Date 07/09/15 11:00:26 AM

Pay  BANK OF AMERICA ONE FIVE TWO CTSCTS

***\$152.00

To The Order Of Texas County Clerk / District Court

Not Valid Over \$1,000

0005 0002771 0014 I-35/PARMER

Bank of America is not liable for lost or stolen Money Orders. For your protection against loss or theft, sign and complete this Money Order as soon as possible.

Customer Copy
Non-Negotiable
Retain for your Records

001641003771

Bank of America 

Personal Money Order

No. 1304601832

Bank of America, N.A.
SAN ANTONIO, TX

Void After 90 Days

30-1/1140
NTX

Date 07/09/15 11:00:26 AM

Pay  BANK OF AMERICA ONE FIVE TWO CTSCTS

***\$152.00

To The Order Of Texas County Clerk / District Court

Not Valid Over \$1,000

0005 0002771 0014 I-35/PARMER

Bank of America is not liable for lost or stolen Money Orders. For your protection against loss or theft, sign and complete this Money Order as soon as possible.

Alan L. Hamilton
Signature of Purchaser (Drawer)

Alan L. Hamilton
Name of Purchaser (Drawer)

9902 Childress Austin, Tx
Address City, State, Zip
78753

⑈ 1304601832 ⑈ ⑆ 114000019 ⑆ 001641003771 ⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK.

HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

AlanHamilton-044

Velva L. Price
District Clerk, Travis County
P. O. Box 679003
Austin, TX 78767

BILL OF COST FOR CLERK'S RECORD

July 06, 2015

ALAN L HAMILTON
9902 CHILDRESS
AUSTIN, TX 78753

CASE NUMBER: D-1-GN-13-001230

ALAN L. HAMILTON, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE
HAMILTON FAMILY TRUST AND AS INDEPENDENT EXECUTOR OF

VS

DANIEL DAVILA III

BALANCE DUE FOR CLERK'S RECORD OBO PL-1: **\$1,152.00**

*****You can now pay your bill ONLINE*****

Visit <https://www.traviscountytexas.gov/district-clerk> and click on **Online Payment**

THE RECORD WAS REQUESTED BY: ALAN L HAMILTON

Please direct your payment to the attention of the undersigned within thirty (30) days.

If you have any questions, or need further assistance, please contact the District Clerk's office.

Thank You,

/s/Shawn Glasson
GLASSON SHAUN

Type/Form Number: B03 - 000001937

Administrative Offices
(512) 854-9737
Fax: 854-4744

Civil and Family Division
(512) 854-9457
Fax: 854-6610

Criminal Division
(512) 854-9420
Fax: 854-4566

Jury Office
(512) 854-4295
Fax: 854-4457

AlanHamilton-045



BILL OF COSTS
THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI - EDINBURG

No. 13-15-00307-CV

**Alan L. Hamilton, Individually and as Successor Trustee of the Hamilton Family Trust,
and as Independent Executor of the Estate of Maurine P. Hamilton**

v.

Daniel Davila, III

(No. D-1-GN-13-001230 IN 353RD DISTRICT COURT OF TRAVIS COUNTY)

TYPE OF FEE	CHARGES	PAID	BY
FILING	\$5.00	PAID	ANT
FILING	\$10.00	PAID	ANT
FILING	\$10.00	E-PAID	ANT
LOIS	\$3.00	PAID	UNK
FILING	\$10.00	E-PAID	ANT
CLERK'S RECORD	\$1,142.00	UNKNOWN	UNK
REPORTER'S RECORD	\$669.75	UNKNOWN	UNK
SUPREME COURT CHAPTER 51 FEE	\$50.00	TRANSFER	ANT
INDIGENT	\$25.00	TRANSFER	ANT
STATEWIDE EFILING FEE	\$20.00	TRANSFER	ANT
FILING	\$100.00	TRANSFER	ANT

Balance of costs owing to the Thirteenth Court of Appeals, Corpus Christi, Texas: 0.00

Court costs in this cause shall be paid as per the Judgment issued by this Court.

I, **DORIAN E. RAMIREZ**, CLERK OF THE THIRTEENTH COURT OF APPEALS OF THE STATE OF TEXAS, do hereby certify that the above and foregoing is a true and correct copy of the cost bill of THE COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS, showing the charges and payments, in the above numbered and styled cause, as the same appears of record in this office.



IN TESTIMONY WHEREOF, witness my hand and the Seal of the **COURT OF APPEALS** for the Thirteenth District of Texas, this June 30, 2016.

Dorian E. Ramirez

Dorian E. Ramirez, Clerk

CHIEF JUSTICE
ROGELIO VALDEZ

JUSTICES
NELDA V. RODRIGUEZ
DORI CONTRERAS GARZA
GINA M. BENAVIDES
GREGORY T. PERKES
NORA L. LONGORIA

CLERK
DORIAN E. RAMIREZ



Court of Appeals
Thirteenth District of Texas

NUECES COUNTY COURTHOUSE
901 LEOPARD, 10TH FLOOR
CORPUS CHRISTI, TEXAS 78401
361-888-0416 (TEL)
361-888-0794 (FAX)

HIDALGO COUNTY
ADMINISTRATION BLDG.
100 E. CANO, 5TH FLOOR
EDINBURG, TEXAS 78539
956-318-2405 (TEL)
956-318-2403 (FAX)

www.txcourts.gov/13thcoa

June 30, 2016

Hon. Velva L. Price
Civil District Clerk
Travis County Courthouse
P. O. Box 1748
Austin, TX 78767
* DELIVERED VIA E-MAIL *

Re: Cause No. 13-15-00307-CV
Tr.Ct.No. D-1-GN-13-001230
Style: Alan L. Hamilton, Individually and as Successor Trustee of the Hamilton
Family Trust, and as Independent Executor of the Estate of Maurine P.
Hamilton v. Daniel Davila, III

Dear Ms. Price:

The appeal in the above cause was DISMISSED FOR WANT OF PROSECUTION by this Court on the 15th day of October, 2015. The mandate is enclosed.

Pursuant to Section 51.204(b) of the Government Code, the attorneys of record are hereby notified that any exhibits submitted to the Court by a party may be withdrawn by that party or the party's attorney of record within 30 days. Exhibits on file with the Court will be destroyed three (3) years after final disposition of the case or at an earlier date if ordered by the Court.

Very truly yours,

Dorian E. Ramirez, Clerk

Enc.

cc: Hon. Robert Smith (DELIVERED VIA E-MAIL)
Hon. Stephanie O'Rourke (DELIVERED VIA E-MAIL)
Mr. Alan L. Hamilton (DELIVERED VIA E-MAIL)
Hon. Karen L. Landinger (DELIVERED VIA E-MAIL)

M A N D A T E

TO THE 353RD DISTRICT COURT OF TRAVIS COUNTY, GREETINGS:

Before our Court of Appeals for the Thirteenth District of Texas, on the 15th day of October, 2015, the cause upon appeal to revise or reverse your judgment between

Alan L. Hamilton, Individually and as
Successor Trustee of the Hamilton
Family Trust, and as Independent
Executor of the Estate of Maurine P.
Hamilton,

Appellant,

v.

Daniel Davila, III

Appellee.

CAUSE NO. 13-15-00307-CV

(Tr.Ct.No. D-1-GN-13-001230)

was determined; and therein our said Court made its order in these words:

THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes the appeal should be DISMISSED. The Court orders the appeal DISMISSED FOR WANT OF PROSECUTION in accordance with its opinion.

We further order this decision certified below for observance.

★ ★ ★ ★ ★ ★ ★

WHEREFORE, WE COMMAND YOU to observe the order of our said Court of Appeals for the Thirteenth District of Texas, in this behalf, and in all things have it duly recognized, obeyed and executed.

WITNESS, the Hon. Rogelio Valdez, Chief Justice of our Court of Appeals, with the seal thereof affixed, at the City of Edinburg, Texas this 30th day of June, 2016.



Dorian E. Ramirez

Dorian E. Ramirez, CLERK

Appendix H

NO. 16-0063

In the Supreme Court of Texas

**(From NO. 13-15-307 in 13th COA, TEXAS
NO. 03-15-357 in 3rd COA, TEXAS**

And the Travis County District Court Cause No. D-1-GN-13-001230)

ALAN L HAMILTON,
Petitioner,

V.

DANIEL DAVILA III,
Respondent.

Amended Motion for Rehearing for Petition for Review
(with digital sig and TOC corrections)

Alan L Hamilton
Petitioner, Pro Se
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

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Identity of parties and counsel and related cases:

Petitioner

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Pro Se

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Austin, Texas 78753

512-832-6384

AlanHamilton@ProBaitCourt.com

Respondent

Daniel Davila III

Respondent's Attorney(s):

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Robert M. Smith

Cokinos, Bosien and Young

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San Antonio, TX 78230-1349

klandinger@cbylaw.com

rsmith@cbylaw.com

Related case:

In Travis County District Court (TCDC):

Case # D-1-GN-12-002777 - Alan Hamilton vs Sylvia Hamilton

This is the original case, (with earlier filing date on 9/7/2012, well before any SOL supposedly claimed in Respondent's MSJ) , which was GRANTED a Motion to Retain on Docket on 10/19/2015, due to this related case (Texas Supreme Court (TSC) case #: 16-0063/13COA case: 13-15-307, file 4/12/2013), being in the 13th Court of Appeals (13th COA). Our initial attorney, Jason Coomer, added a second case, rather than just add a party to the original case as requested, with the resulting DWOP case confusion. The cases need to be merged after the Appeals process is complete on this second case, which has taken over the case timeline.

TO THE HONORABLE TEXAS SUPREME COURT:

Motion for Rehearing for Petition for Review

As always, to start, we do hope the Supreme Court Judges and Clerks are reading this document in Adobe Acrobat and taking advantage of the bookmarks provided to assist in easy document navigation by the Justices and other parties, as well as ourselves while writing this document. Descriptive bookmark tabs along the left-hand side of the screen, allows speed-editing, as well as speed-reading.

Note: Internet Browsers do not yet display pdf bookmarks. You must use Acrobat to see the Table of Contents bookmarks box on the left, in order to do “document acrobatics”, by clicking on the bookmarks. **If you do not see the bookmarks, go to Acrobat “View” menu and click on “Navigation Pane” show box/button.**

Petitioner submits this Motion for Rehearing for Petition for Review per TRAP Rule 64, as requested by the Texas Supreme Court Clerk, by 5/12/2016 (amended with digital sig and TOC corrections on 5/18/2016).

By the doctrine of Stare Decisis (Court Precedent), the Texas Supreme Court *must* grant our review and reverse the Trial and Appeal Courts in this case, just as they did on 3/18/2016 with TSC case #14-0406. The Texas Supreme Court has already defined the word “*must*” on 3/18/2016, 2 weeks before the decision on our case. “Must” *must* mean mandatory, or the rule of law breaks down. Otherwise there is nothing one “must” do, if “must” has no clear meaning, and becomes the same as “may”.

Statement of Jurisdiction:

This court has jurisdiction pursuant to section 22.001(a)(6) of the Texas Government Code.

Summary of Argument:

We didn’t have to go far to find a Stare Decisis decision which set precedent to support our argument for our Petition for Review before the Texas Supreme Court.

On 3/18/2016, the Texas Supreme Court stated the following in it's Opinion for Case #14-0406, what we refer to as the "Must" Opinion/Decision – (red is for our emphasis, italics are all *as used* in original Opinion/Decision by Court):

"It is used to ensure orderly distribution when the order of death is uncertain, and so—absent will language establishing an intent to the contrary—the order of death *must* be uncertain for a common-disaster provision to become effective."

If the word "must" does not mean "must", as in "to be mandatory", the Court's statement above, has no meaning at all. As the Court uses the word "must" above in italics, without definition, but with sure implication, as the Court grants the review and reverses the Lower Courts decisions, all based on the meaning of the word "must" above. The Black's Law Dictionary editor, Bryan Garner, quoted in the same Court decision, and the Federal Registry Writing Rules quoted below, concur with the Courts use of the word "must" above.

Issues Presented:

1) Stare Decisis precedent

We were shocked when we were received notice that our Petition for Review had been denied on April Fools Day 2016. We were sure it was either an April Fool's Court Jester or an oversight, as we had already read the Court's Opinion/Decision of March 18, 2016, overturning the Trial and Appeals court because of the word "*must*", printed in italics by the court, as the deciding factor. The meaning of the word "*must*" is not debated in the Opinion, but the consequences were clear: the lower courts had erred and were reversed. Because "*must*" means "*must*", just as we had asked the court in our Petition for Review.

3/18/2016 TSC Opinion sets precedent of meaning of word "must":

See full quotes below (in Arguments and Authorities section) from TSC 3/18/2016 Opinion for TSC Case# 14-0406, the "*Must*" Opinion. (also see entire TSC Case# 14-0406 in [Appendix B](#) and Stare Decisis definition from Black's Law Dictionary in [Appendix D](#))

TSC-14-0406 Opinion uses “must” in italics :

Quote from the TSC Case #14-0406, 3/18/2016 Opinion/Decision (also attached in [Appendix B](#)):

On page 5, paragraph 1 (note: the word “must” put in italics by Texas Supreme Court itself), the Texas Supreme Court said on 3/18/2016 :

Begin quote:

It is undisputed that Melba died at 8:59pm and Vencie died at 10:55pm on the same night...The court of appeals erred by ignoring the legal definition of “common disaster.”...It is used to ensure orderly distribution when the order of death is uncertain, and so—absent will language establishing an intent to the contrary—the order of death *must* be uncertain for a common-disaster provision to become effective.... Accordingly, we grant the petition for review and, without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals’ judgment and render judgment that the Beards did not die in a “common disaster.”

End Quote.

In short:

To quote the 3/18/2016 TSC 14-0406 Opinion on page 1, paragraph 2:

“It is undisputed that Melba died at 8:59pm and Vencie died at 10:55pm on the same night.”

Which leads to the TSC’s following conclusion on page 5 (“*must* in italics” done by the Court in the original Opinion):

“...the order of death *must* be uncertain for a common-disaster provision to become effective.”

And concludes with the reversal of the lower court decisions. The Court *must* do the same here, per the doctrine of Stare Decisis/Precedence.

It is undisputed that the Clerk’s Record is non-compliant

It is identical in our appeal: It is undisputed that the Clerk’s Record was non-

compliant, by the Court of Appeals own words. The 13th COA does not dispute that the Clerk's Record, as submitted, is non-compliant with the Texas Supreme Court Orders on minimum standards for electronic documents, when it states the following in it's 10/15/2015 ruling being appealed:

"The Clerk's Record...was prepared in substantial compliance with the applicable rules."

"Substantial compliance" is non-compliance. Try getting your car registered with old Windshield wipers. But the 13th COA then holds the Appellant to strict compliance with all the other TRAP rules, not even finding the 10/7/2015 letter from the Appellant to be "substantially compliant" with informing the Court of the reasons for the late brief, which included the non-compliance of the Clerk's Record, with the Court's own rules.

It is also undisputed that the TRAP Rule says "must":

It is also undisputed that the TRAP Rule says **Appeals Clerk must reject non-compliant Clerk's Record**, multiple times with clear intent:

TRAP 34.5. Clerk's Record

TRAP 34.5 (d) Defects or Inaccuracies. If the clerk's record is defective or inaccurate, the appellate clerk **must** inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

TRAP Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record 37.2. On Receiving the Record

On receiving the clerk's record or the reporter's record, the **appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record**. If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. **If not, the clerk must endorse on the clerk's record or reporter's record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date.** In a criminal case, the record must not be posted on the Internet.

If x "must" y:

If x "must" y here, is x = **Appeals Clerk** and y = **"reject non-compliant Clerk's**

Record". Now all of the "must" TRAP Rules we have been held to, including being told by the TCDC Clerk's Office that **Appellant must pay \$1200 for a defective Clerk's Record**, or our Appeal would be dismissed. It appears "must" only means "must" when it suits the court's objectives.

But the Texas Supreme Court has clearly said in its 3/18/2016 decision, TSC case 14-0406 quoted above, that the word "must" means "*must*" with italics, leading to the conclusion that because of the word "*must*", there is no choice but to throw out the Lower Court decisions. The Texas Supreme Court must do the same with this case or it becomes a Rigged Game, which becomes too dangerous to play, with upside down odds. Basically, the "House" always wins. And the "House" includes "Friends of the House (FROTH)". The Dealer has a card up his sleeve, if the word "must" does not always mean "must".

Why would someone appeal something to the Supreme Court, if shockingly, the Supreme Court did not even enforce their own Orders? Petitioner never contemplated losing the PFR, as the Petitioner was merely quoting a Texas Supreme Court Order. The time, money and energy wasted, attempting to find out if "must" does not mean "must", even at a cost of \$2000? A guarantee any department store could be sued for not abiding by contractual obligations, things that *must* work? Who would endanger themselves in a Court of Law, against such odds, of a varying meaning of the word "must"?

2) 13th COA thinks the redefinition of the word "must" is "reasonable"

13th COA's reference to the Jimenez v. Soria, 224 S.W.3d 722, 722 (Tex. App.-El Paso 2006, no pet) decision, does not allow the redefinition of the word "reasonable", to include the redefinition of the word "must", to fit their desired outcome of the case, to leave Clerk's Record Evidence documents, unreadable and unnavigable, ironically.

The Texas Supreme Court must conclude that the 13th COA erred in thinking it was "reasonable" to redefine the word "must", for some reason. Against a simple bug fix request, for the assumed benefit of all, a navigable and readable Clerk's Record.

Nor is it "reasonable" to not think the 10/7/2015 letter to the 13th COA explaining the late brief to the 13th COA was not also "substantially compliant", as the 13th COA defended the TCDC Clerk, rather than enforcing the rules per a Texas

Supreme Court Order. The 13th COA rigs the game by deciding when “must” means “must”, calling their friends and colleagues, “substantially compliant”, and allowing the theft of \$2000 from the Petitioner by the court.

Nor is it “reasonable” for the 13th COA to mock the disabled and their doctors, essentially closing the doors of the court to the elderly and disabled, who have had their retirements investments stolen by the very professionals hired to protect it. (see [Appendix C](#) – 13th COA 10-15-2015 Opinion and [Appendix H](#) – Letter from Alan Hamilton’s doctor/EKG/Hand problems).

A Rigged Game equals corruption.

And the corruption can be found in the values of x and y, and the varying meaning of the word “must” on that day, for that case, for whoever “must” do something. The breakdown of the equality of the Law, or the meaning of the word “must”, any means to the desired endpoint, is a Rigged Game, and the game is called RICO Racketeering.

3) Black’s Law Dictionary definition of “must”

Bryan Garner, quoted below in the TSC Case 14-0406-Quote3, is the editor of Black’s Law Dictionary, and is quoted the Rules of the Federal Registry in it’s definition of the word “must”, clearly state the confusion that results when the word “must” isn’t used, and that “must” means “mandatory”, with no confusion. The Federal Registry Rules state the word “must” be used to mean “mandatory” without confusion. So why are we confused here?

Below, the FAA quotes Bryan Garner, editor of Black’s Law Dictionary, and the Rules of the Federal Registry, on the use of the word “must” to mean “legally mandatory”. (See [Appendix E](#)-Federal Registry/Black’s Law Dictionary)

Begin quote:

https://www.faa.gov/about/initiatives/plain_language/articles/mandatory/

What's the only word that means mandatory? Here's what law and policy say about "shall, will, may and must."

We call "must" and "must not" words of obligation. "Must" is the only word that imposes a legal obligation on your readers to tell them something is mandatory. Also, "must not" are the only words you can use to say something is prohibited. Who says so and why?

Nearly every jurisdiction has held that the word "shall" is confusing because it can also mean "may, will or must." Legal reference books like the *Federal Rules of Civil Procedure* no longer use the word "shall." Even the Supreme Court ruled that when the word "shall" appears in statutes, it means "may."

Bryan Garner, the legal writing scholar and editor of *Black's Law Dictionary* wrote that "In most legal instruments, *shall* violates the presumption of consistency...which is why *shall* is among the most heavily litigated words in the English language."

Those are some of the reasons why these documents compel us to use the word "must" when we mean "mandatory."

- [The Federal Register Document Drafting Handbook \(Section 3\)](http://www.archives.gov/federal-register/write/legal-docs/clear-writing.html) states "Use 'must' instead of 'shall' to impose a legal obligation on your reader." (weblink = <http://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>)
- [The Federal Plain Language Guidelines \(page 25\)](http://www.plainlanguage.gov/howto/guidelines/bigdoc/fullbigdoc.pdf) (PDF) referred to in the Federal Plain Writing Act of 2010, compel the FAA and every federal department to "use 'must,' not 'shall'" to indicate requirements. (weblink = <http://www.plainlanguage.gov/howto/guidelines/bigdoc/fullbigdoc.pdf>)
- [FAA Plain Language Writing Order 1000.36, \(page 4\)](https://www.faa.gov/documentlibrary/media/order/branding_writing/order1000_36.pdf) (PDF) says avoid the word "shall" and use "must" to impose requirements, including contracts. (weblink = https://www.faa.gov/documentlibrary/media/order/branding_writing/order1000_36.pdf)
- *****end quote

Shall once meant “must”:

God is rolling over in his grave. Thou shalt not kill does not mean maybe. The 10 Commandments are now suggestions. The word “must” *must* be protected, and is protected by the Federal Register government writing rules posted online:

*** Begin quote:

<http://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>

3. Use "must" instead of "shall".

shall	imposes an obligation to act, but may be confused with prediction of future action
will	predicts future action
must	imposes obligation, indicates a necessity to act
must not	indicates a prohibition
should	infers obligation, but not absolute necessity
may	indicates discretion to act

To impose a legal obligation, use "must."

To predict future action, use "will."

DON'T SAY: The Governor shall approve it.

SAY: The Governor must approve it. [obligation]

OR: The Governor will approve it. [future action]

***** End quote.

Without the word must meaning *must*, there is no way to express *mandatory* anymore, as the TSC has done in italics even, to imply “no choice” with “*must*” being *necessary* legally. The word “shall” has been destroyed by litigation, to paraphrase Black’s Law Dictionary editor Bryan Garner, (also quoted by the TSC in it’s 3/18/2016 TSC 14-0406 Opinion, with a nod to the late Antonin Scalia’s demand for the actual meaning of the words on paper.)

https://www.faa.gov/about/initiatives/plain_language/articles/mandatory/

*** Begin quote

Bryan Garner, the legal writing scholar and editor of *Black's Law Dictionary* wrote that "In most legal instruments, *shall* violates the presumption of consistency...which is why *shall* is among the

most heavily litigated words in the English language."...Those are some of the reasons why these documents compel us to use the word "must" when we mean "mandatory:"

*** End quote

It is immediately clear the danger to the pilot, should there be any ambiguity of the meaning of the word “must” (at the www.FAA.gov website).

Argument and Authorities:

Do Texas Supreme Court Orders matter? Does the word “must” mean “must”? The Appeals Court, Appeals Clerk and TCDC Clerk seem to think they are above the law, above the Texas Supreme Court and above the word “*must*”.

Below is the TSC Case #14-0406 definition, as well as the Black’s Law Dictionary legal definition, of the word “*must*” quoted above. (Also see [Appendix A](#): Authorities/Rules section, [Appendix B](#): entire TSC Case #14-0406 Opinion-(the “Must” Opinion) and [Appendix E](#): Federal Registry/ Black’s Law Dictionary, attached below in Appendices).

1) TSC case #14-0406 (full quotes) and the doctrine of Stare Decisis (Court Precedent)

a) TSC-14-0406 Quote 1 – Meaning of words used:

Quotes from the TSC Case #14-0406, 3/18/2016 Opinion/Decision:
At the top of page 3:

Thus, “[t]he court should focus not on ‘what the [testator] intended to write, but the meaning of the words [he] actually used.’”

b) TSC-14-0406 Quote 2 - “Must” in italics in TSC Opinion:

On page 5, paragraph 1 (note the word “must” put in italics by Texas Supreme Court itself):

***** begin quote2

The court of appeals erred by ignoring the legal definition of “common disaster.” “[W]here the meaning of the language used in the will has been settled by usage and sanctioned by judicial decisions, it is presumed to be used in the sense that the law has given to it, and should be so construed, unless the context of the will shows a clear intention to the contrary.” *Mitchell v. Mitchell*, 244 S.W.2d 803, 806 (Tex. 1951) (internal quotation marks omitted); *see also*

Lang, 35 S.W.3d at 639; *Davis v. Shanks*, 898 S.W.2d 285, 286 (Tex. 1995). As already noted, “common disaster” is a phrase with a settled legal usage. *See White*, 286 S.W.2d at 926–27; *Fitzgerald v. Ayres*, 179 S.W. 289, 291–92 (Tex. Civ. App.—Dallas 1915, writ ref’d); BLACK’S 3 LAW DICTIONARY 333 (10th ed. 2014). **It is used to ensure orderly distribution when the order of death is uncertain, and so—absent will language establishing an intent to the contrary—the order of death *must* be uncertain for a common-disaster provision to become effective.**

***** end quote2

c) TSC-14-0406 Quote 3 – “Must” Reverse Lower Courts:

The Court then adds at the end of page 6:

***** begin quote3

We note that the Beards’ wills are not models of clarity—by including the broad phrase “or under circumstances making it impossible to determine [who] died first,” the drafter tends to render “common disaster” (or at least the common legal meaning of the phrase) meaningless. In the context of the Beards’ wills, however, reading “common disaster” as the court of appeals did **ignores common sense, the settled nature of the phrase, and—most importantly—the testators’ intent as shown by “the meaning of the words [they] actually used.”** *See Lang*, 35 S.W.3d at 639 (internal quotation marks omitted). Thus, this is a case in which **we “prefer ordinary meaning to an unusual meaning that will avoid surplusage.” Cf. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 176 (2012); see also Stahl**, 610 S.W.2d at 151. Accordingly, we find that the Beards intended to use “common disaster” according to its settled legal meaning. Because Vencie died nearly two hours after Melba, their deaths did not trigger the common-disaster provisions in their wills.⁴ **Accordingly, we grant the petition for review and, without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals’ judgment and render judgment that the Beards did not die in a “common disaster.”**

OPINION DELIVERED: March 18, 2016

***** end quote3

Our case also relies on meaning of word “must”:

Below is a snippet from our Petition for Review, which was denied only 2 weeks after TSC overturned the Case #14-0406 Trial Court and Appeals Court decisions, because of the word “*must*”. (See [Appendix B](#) for entire copy of TSC 3/18/2016 Opinion for TSC Case# 14-0406, the “**Must**” Opinion. Also see [Appendix A: Authorities/Rules](#)).

*****begin quote

Our Question: Supreme Court’s meaning of word “must”:

The only thing in question here is the meaning of the word “**must**”. And whether it matters that the Texas Supreme Court said it.

The Texas Supreme Court Orders on *minimum standards* for electronic court documents states the following:

"If the clerk’s record is filed in electronic form, the clerk **must** use **bookmarks** to **link** each **document description** in the **table of contents**, except descriptions of sealed documents, **to the page on which each document begins**; and..."

The word is "**must**". There is no leeway for the Appeals Court to decide. The law clearly states "must".

To make clear that the request is not just a frivolous application of rules, we have repeatedly attached the “How to use pdf Bookmarks” tutorial ([Exhibit A-from original PFR attachments](#)) from the rejected Motion for reference. Please make sure you are in Adobe Acrobat while reading this document, in order to utilize the provided descriptive bookmarks to assist in reading this document, the importance of the rule requiring them, and why the Texas Supreme Court said “**must**”:

TRAP RULES-2014 Appendices (see Authorities for links)

APPENDIX C

CLERK’S RECORD 1.1. Preparation of Electronic or Paper Clerk’s Record.

(i) If the clerk’s record is filed in electronic form, the clerk **must** use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins

Rejecting defective Clerk's Records are listed as a duty of the Appeals Clerk (TRAP Rules 37.2, 34.4 and 34.5(d)).

TRAP 34.4. Form.

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

TRAP Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record
37.2. On Receiving the Record

On receiving the clerk's record or the reporter's record, the **appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record**. If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. **If not, the clerk must endorse on the clerk's record or reporter's record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date.** In a criminal case, the record must not be posted on the Internet.

TRAP 34.5. Clerk's Record

TRAP 34.5 (d) Defects or Inaccuracies. If the clerk's record is defective or inaccurate, the appellate clerk **must** inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

For Appellant (entire length rule cited in Authorities):

TRAP 9.4 (i)

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule **must** include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

For Travis County District Clerk:

TRAP 9.4 (j)

Electronically Filed Documents. An electronically filed document **must**:

(2) be directly converted to PDF rather than scanned, if possible;

(5) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

5) Binding Precedence

The Texas Supreme Court is bound by it's own precedent. (Binding and Persuasive Authorities (Stare Decisis): see [Appendix D](#) and weblink: <https://www.youtube.com/watch?v=ktg2LDoYmro&feature=share>)

Summary

Precedence/Stare Decisis

We did not know it would be necessary to resort to Precedence/Stare Decisis in order to get the Texas Supreme Court to enforce it's own Order. Indeed, we had thought the Court would welcome the challenge, so that they would have navigable and readable documents as well.

If x “*must*” y.

If x “*must*” y. The value of “*must*” cannot change based on the value of x or y, or an outside influence of corruption/privilege is implied. If “*must*” does not mean “*must*” for all, then there can't be “Justice for all”, as cases will be decided at the whim of the Judge, essentially ruling by decree, preventing and corrupting the equal rule of law and order on which the American Justice System is based.

By the doctrine of Stare Decisis, the Texas Supreme Court *must* grant our review and reverse the Trial and Appeal Courts in this case, as it did with TSC Case #14-0406. The Texas Supreme Court has already defined the word “*must*” on 3/18/2016, 2 weeks before the decision on our case.

Rule of Law depends on meaning of “*must*” being upheld

Examples of ramifications of “*must*” not meaning “*must*”:

How can anyone think it is worth their while to appeal to the Texas Supreme Court, if “*must*” may not mean “*must*”, to see if the TSC will enforce their own order? Why would anyone do what a law or order says they “*must*” do, if they are unsure of what “*must*” means? Must someone tell the truth? Must someone fulfill contract agreements?

In particular, is the 4500 word limit TRAP Rule that Petitioner *must* follow with this document, or it will be rejected by TSC Clerk. If *must* doesn't mean *must* then

this wouldn't be a worry at this present moment as length becomes an issue, per the rule below with the word "must" in it:

For Appellant (entire length rule cited in Authorities):

TRAP 9.4 (i)

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule **must** include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

13th COA thinks the redefinition of the word "must" is "reasonable"

13th COA thinks the redefinition of the word "must" is "reasonable", and that a doctor's order to an elderly man to take it easy, *as a matter of life and death*, is "unreasonable". It appears that the 13th COA defines "reasonable" at whim, to fit whatever decision they wish, is all we can presume. But they cannot legally change the definition of "must". This is the difference between Rule by Decree and Rule by Law. Without the word "must", no one has to do anything they are told.

13th COA's reliance and reference to the Jimenez v. Soria, 224 S.W.3d 722, 722 (Tex. App.-El Paso 2006, no pet) decision, does not allow the redefinition of the word "reasonable", to include the redefinition of the word "must", to fit their desired outcome of the case, to leave Clerk's Record Evidence documents, unreadable and unnavigable, ironically.

13COA continues with its "reasonable" definition to include the mocking of the disabled, their health conditions and their doctors, essentially closing the doors of the court to the elderly and disabled who have had their retirements investments stolen by the very professionals hired to protect it. The Court does not want to sanctify the RICO racketeering end game (www.HowToStealAnAnnuity.com, www.DannyDavilaCPAComplaint.com) being played on the elderly by Organized Crime, and can see it in its full glory, once the Clerk's Record is made readable and navigable for the Court. Being unreadable hides the crime, which is not in the interest of justice.

Consequences of selective use of word "must":

Selective use of the word "must" for mandatory, only when it serves the courts interest, is nothing but corruption defined. "Must" a CPA prepare non-fraudulent taxes? "Must" we pay \$2000 for an unreadable/navigable Clerk's Record? "Must" anyone follow any court rules at all, and if so, which ones?

The TRAP Rules online use bookmarks, per the TSC Order on “MINIMUM standards for electronic documents” (see [Appendix F](#):TRAP Rules online screenshots, compare with [Appendix G](#): Clerk’s Record samples – [G-1](#)-unreadable Clerk’s Record, [G-2](#)-readable as submitted and [G-3](#)-no descriptive-bookmarks bug). Imagine what a nightmare it would be, if all the TRAP Rule bookmarks just said “Rule”, with no description of which Rule, such as “Rule 61. Reversible Error”. This is what the Travis County District Clerk thinks is acceptable to sell for \$1200 to a captive public. (\$2000 total – 4 months of Petitioner’s Social Security payments, leaving nothing for food and living expenses).

Prayer for Relief

Petitioner prays that Texas Supreme Court upholds the doctrine of Stare Decisis and tells the Appeals Court that “must” means *mandatory*, that Texas Supreme Court orders DO matter, to reverse the 13th COA and order the TCDC Clerk fix the Clerk’s record, and to allow us to use this fixed Clerk’s Record to reference the self-perjuring statements in the Respondent’s own Motion for Summary Judgment.

Petitioner clearly meets the conditions of reversible error, per TRAP Rule 61.1(b), the Reversible Error Rule: “probably prevented the petitioner from properly presenting the case to the appellate courts”. Why would the Petitioner be punished because the TCDC Clerk did not do their job, per the TSC Case # 14-0406 3/18/2016 opinion’s definition of the word “*must*”. Damaged evidence documents are no different than a mishandled gun in a crime evidence lab. And the Clerk shouldn’t be the one damaging them.

Petitioner’s wife extends an offer to assist the TCDC’s Office in fixing the bookmark and TIFF/Scan bugs in their “Appeal Creator” program, if the Travis Clerk doesn’t have staff competent to handle it alone. Both bugs can be fixed in less than 2 weeks, by someone who has never even seen the code before, with a simple search and replace text editing on the code. It is the same software work Petitioner’s wife has been contracted to do for 35 years. They should be fixable by someone who knows the code within a week. Anyone in the private sector would have been fired long ago for not fixing those bugs, which damage the evidence documents, render them and the Justice System, useless.

We hope that this Motion for Rehearing brings to light that this is just an oversight mistake made by the Courts. As we have gone to extraordinary lengths to merely ask the Courts to fix two bugs, which the Courts have shockingly refused, while demanding thousands of dollars for unreadable documents, we will also be forwarding this KXAN News Investigative Team, to find out why government has been so resistant to simple document bug fixes since June 2015, nearly a year now, and yet have no problem charging thousands of dollars for unreadable documents they cannot possibly read, while violating the simple meaning of the word "must", except when it serves the Courts purposes to enforce the meaning of the word "must".

To quote Ronald Reagan's 1937 Movie on Racketeering ("Love is on the Air", George Copelin at the 2 minute mark):

We "have been paying tribute to organized racketeers for years. Complaints to the authorities availed as nothing. Realizing a sinister influence was tying the hands of the police...the only way to rid our city of racketeering, is by fearlessly and ruthlessly turning the white light of publicity upon those who are responsible for it. And when that is done gentlemen, then and only then, can we hope for a better city government."

Sincerely,

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

Alan L. Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(scanned signature also – if filing time allows)

cc:

Appellee's Attorney:
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Appendices Table of Contents

Appendix A – Index of Authorities:

The Authorities section is attached as a separate file so as to be able to get a screenshot of word count for compliance with TRAP rule 9.4(i). The Index of Authorities section does not count in the word count per TRAP 9.4(i). The max word count for a Supreme Court PFR electronic document is 4500 words.

Appendix B – Entire TSC Case # 14-0406 3/18/2016 Opinion/Decision

Appendix C – 13COA Opinion saying redefining the word “must” is reasonable and mocking a doctor’s opinion of the Petitioner’s health disabilities slowing him down.

10-15-2015-13COA– Dismissal Opinion –says redefining meaning of “must” is reasonable, and that a doctor’s excuse is “no reasonable excuse”

Appendix D_Stare Decisis definition screenshot

Appendix E-1_Federal Registry-What's the only word that means mandatory-MUST

Appendix E-2_Federal Registry Legal Writing Rules for word MUST

Appendix F-1_ TRAP Rules pdf has required bookmarks screenshot.JPG

Appendix F-2_ TRAP Rules pdf has required bookmarks screenshot-pg2.JPG

Appendix G-1_Unreadable screenshots of Clerks Record-RFAs-RFPs-ROGs spreadsheets-critical to appeal-single page example

Appendix G-2_Readable pdf-as submitted to TCDC Office-RFAs-RFPs-ROGs-spreadsheets-single page example

Appendix G-3_Clerks Record Non-Descriptive TOC bug in Appeal Creator program

Appendix H – Alan Hamilton’s health disabilities:

Letter from Alan Hamilton’s doctor about heart and hand conditions which require extra time to do tasks, **that was mocked in the 13th COA opinion**, though they did even not require the Travis County District Clerk’s Office to comply with TRAP Rule 9.4(j), in assumed good health.

Appendix H-1 – Dr Pekar’s Letter:

7-24-2015-Letter-heart-hand docs from Dr Pekar -6 pgs.

Letter from Alan Hamilton’s doctor/EKG/Hand problems.

Dr Nathan Pekar is Alan Hamilton’s doctor.

Appendix H-2 – AHA Bradycardia-Slow Heart Rate webpage:

AHA-Bradycardia _ Slow Heart Rate

Appendix I: 9.4(j)Certificate of Compliance word-count screenshot:

Screenshot of Certificate of Compliance document word count and how descriptive bookmarks in this document should look in Adobe Acrobat with bookmarks tab open.

Appendix J: Change-Log for Amended Motion for Rehearing

CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure I certify that a copy of this Petition for Review was served on Respondent through counsel of record, via www.greenfiling.com, on 5/18/2016.

Counsel for Respondent:

Attorney for: Daniel Davila, III
Attorneys name: Karen Landinger, Robert M Smith
Attorneys address: COKINOS, BOSIEN & YOUNG
10999 West IH-10, Suite 800
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RMSmith@cbylaw.com

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

Alan L. Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(scanned signature also - if filing time allows)

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this Petition for Review contains 2641 counted words. This is a computer-generated document created in Microsoft Word, attempting to use 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

Per TRAP 9.4 (i), subtracted from the word count total is:

1) Caption	62 words
2) ID of Parties	174 words
3) Table of Contents	340 words
4) statement of case	221 words
5) statement of issues presented	2189 words
6) statement of jurisdiction	16 words
7) signature/proof of service/proof of	640 words

compliance	
8) appendix	separate document not included in word count
Total # words not counted per TRAP 9.4(i)	$62+174+340+221+2189+16+640=3644$
Total # of counted words by MSWord	6577 words (approx. before final edits)
Total # of counted words per TRAP 4.1(i)	$6577-3644=2933$ words
Per TRAP 9.4(i) is well below the limit of 4500 words for this document.	Note: words counts are accurate prior to final edits, but with over 1500 words to spare, total remains well below 4500 word limit.

TRAP 9.4 (i)

(i) *Length.*

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

Note: As the midnight filing deadline approaches, we do not currently have the time to figure out and fix Microsoft Word's auto-font sizing, and feel leaving the rules as formatted online by the courts, as is, for continued readability. We will gladly fix this if the court would prefer it.

/s/ Alan Hamilton

Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

Alan L. Hamilton

Alan L. Hamilton, Appellant, Pro Se
(scanned signature also - if filing time allows)

Appendix A

Appendix A: Authorities (for Petition for Review)

For the convenience of the court and clerk, cited rules are pasted below:

Time Rules:

Court Rule reference links:

<http://www.txcourts.gov/rules-forms/rules-standards.aspx>

<http://www.txcourts.gov/media/1055394/trcp-20150901.pdf>

<http://www.txcourts.gov/media/514722/texas-rules-of-appellate-procedure-updated-with-amendments-effective-9115-w-appendices.pdf>

TRCP RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION

501.4 (a) *Method of Service.*

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. **Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.**

TRAP Rule 4. Time and Notice Provisions

4.1. Computing Time

(a) *In General.* **The day of an act, event, or default after which a designated period begins to run is not included** when computing a period prescribed or allowed by these rules, by court order, or by statute. **The last day of the period is included, but if that day is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday.**

http://www.txcourts.gov/media/514722/trap_2014_01_01.pdf

TRAP 9.2. Filing

(4) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider,...

(5) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.

Format Rules:

TRAP Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record

37.2. On Receiving the Record

On receiving the clerk's record or the reporter's record, the **appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record.** If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. **If not, the clerk must endorse on the clerk's record or reporter's record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date.** In a criminal case, the record must not be posted on the Internet.

TRAP 34.4. Form.

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

TRAP 34.5. Clerk's Record

TRAP 34.5 (d) Defects or Inaccuracies. If the clerk's record is defective or inaccurate, the appellate clerk **must** inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

Requested Compliance Rules

For Appellant:

TRAP 9.4 (i)

(i) *Length.*

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

For Travis County District Clerk:

TRAP 9.4 (j)

Electronically Filed Documents. An electronically filed document must:

(2) be directly converted to PDF (“vector” graphics, **resizable without loss of resolution/i.e. readability**) rather than scanned, if possible; (**i.e. No TIFF conversion, scan=TIFF = “raster” graphics – i.e. dot-matrix pixilation, unreadable when resized**) (**added technical explanations in red above**)

(5) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

TRAP RULES-2015 Appendices APPENDIX C

CLERK’S RECORD 1.1. Preparation of Electronic or Paper Clerk’s Record.

(i) If the clerk’s record is filed in electronic form, the clerk **must** use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins

Other Orders/Rules:

1) Texas Supreme Court Orders (#13-9165 and #14-9079) on descriptive bookmark requirements for navigating Multi-file pdf documents – minimum standards for electronic documents. These same Orders are repeated in the TRAP Rules Appendices at <http://www.txcourts.gov/media/806639/texas-rules-of-appellate-procedure-updated-with-amendments-effective-1114-w-appendices.pdf> - search for “bookmark” or “document description”, Appendix C, Rule 1, 1.1(i))

(NOTE: #13-9165 online at:

www.txcourts.gov/media/273991/order-13-9165.pdf
(search for “bookmark” to find all “bookmark” rules,
search for “document description” to find “pdf descriptive bookmarks” rule).

(NOTE: #14-9079 online at:

www.efiletexas.gov/documents/Technology_Standards_032114.pdf)

2) JCIT Duties per Texas Code Sec. 77.031 – minimum standards for electronic documents (with JCIT Technology Standards v1.3)

3) Texas Rules of Civil Procedure (TRCP) 21 (f)(8)

TRCP Rule 21(f) (8) Format

An electronically filed document must:

(A) be in text-searchable portable document format (PDF);

(B) be directly converted to PDF rather than scanned, if possible; (**i.e. No TIFF conversion, scan=TIFF**)

(C) not be locked; and

(D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

4) Texas Code 21.002, Motion for Contempt

5) TRAP rule 34.4 (d) *Defects or Inaccuracies* in Clerk's Record

6) TRAP 38.6. Time to File Briefs – 30 days AFTER Clerk's Record received which meets minimum standards for electronic court documents.

TRAP 38.6. Time to File Briefs

(a) *Appellant's Filing Date*. Except in a habeas corpus or bail appeal, which is governed by Rule 31, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

Appendix B

IN THE SUPREME COURT OF TEXAS

No. 14-0406

ELAINE STEPHENS, INDEPENDENT EXECUTRIX
OF THE ESTATE OF VENCIE BEARD, DECEASED, PETITIONER,

v.

BRANDON SCOTT BEARD, BRIAN JAKE GILMORE, PHILIP CHASE JOHNSON,
MEGAN JOHNSON, JEREMY HOPKINS, LINDSEY BEARD, PAMELA JOHNSON,
ROLAND SCOTT BEARD, JANET LEA HOPKINS, INDIVIDUALLY AND AS TRUSTEE
FOR MATTHEW C. HOPKINS, AND BEVERLY KAYE GILMORE,
RESPONDENTS

- consolidated with -

No. 14-0407

ELAINE STEPHENS, INDEPENDENT EXECUTRIX
OF THE ESTATE OF MELBA BEARD, DECEASED, PETITIONER,

v.

BRANDON SCOTT BEARD, BRIAN JAKE GILMORE, PHILIP CHASE JOHNSON,
MEGAN JOHNSON, JEREMY HOPKINS, LINDSEY BEARD, PAMELA JOHNSON,
ROLAND SCOTT BEARD, JANET LEA HOPKINS, INDIVIDUALLY AND AS TRUSTEE
FOR MATTHEW C. HOPKINS, AND BEVERLY KAYE GILMORE,
RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE TWELFTH DISTRICT OF TEXAS

PER CURIAM

This case concerns the construction of the nearly identical wills of Vencie and Melba Beard. Vencie and Melba were a married couple. Vencie shot and killed Melba shortly before taking his own life. The wills disposed of each testator's separate property and all of the couple's community property. Each will contained the following provision: "If both my [husband/wife and I] die in a common disaster or under circumstances making it impossible to determine which of us died first, I bequeath [specified cash amounts to nine individuals]." Each will also contained several other provisions devising and bequeathing certain property, including the residual estate, in the event that either spouse did not survive the other by 90 days.

It is undisputed that Melba died at 8:59 p.m. and Vencie died at 10:55 p.m. on the same night. After their deaths, Elaine Stephens—as independent executrix of both estates—filed two suits (one for each estate) seeking a declaration that the Beards did not die in a “common disaster or under circumstances making it impossible to determine [who] died first.” The trial court disagreed with Stephens and found that the Beards did die in a common disaster. Moreover, the trial court found that the Simultaneous Death Act (SDA), Probate Code Chapter 47,¹ was incorporated into the Beards' wills. The court of appeals affirmed both holdings. *See Stephens v. Beard*, 428 S.W.3d 385 (Tex. App.—Tyler 2014).

In construing a will, our focus is on the testator's intent, which is “ascertained by looking to the provisions of the instrument as a whole, as set forth within the four corners of the instrument.”

¹ The legislature repealed the Probate Code and re-codified its provisions in the Estates Code, effective January 1, 2014. Probate Code Chapter 47's provisions are now contained in Estates Code Chapter 121. Chapter 47 was in effect at the time of the Beards' deaths.

Perfect Union Lodge No. 10 v. Interfirst Bank of San Antonio, N.A., 748 S.W.2d 218, 220 (Tex. 1988). Thus, “[t]he court should focus not on ‘what the [testator] intended to write, but the meaning of the words [he] actually used.’” *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 639 (Tex. 2000) (quoting *Shriner’s Hosp. for Crippled Children of Tex. v. Stahl*, 610 S.W.2d 147, 151 (Tex. 1980)). Such words, “whether technical or popular,” are construed “in their plain and usual sense, unless a clear intention to use them in another sense” is present in the instrument. *White v. Taylor*, 286 S.W.2d 925, 926 (Tex. 1956). Generally, “[t]he will should be construed so as to give effect to every part of it, if the language is reasonably susceptible of that construction.” *Perfect Union Lodge*, 748 S.W.2d at 220; *Welch v. Straach*, 531 S.W.2d 319, 322 (Tex. 1975) (“all parts of the testamentary writings . . . are to be harmonized and given effect”).

The phrase “common disaster” has a well-recognized legal meaning: “[a]n event that causes two or more persons [with related property interests] . . . to die at very nearly the same time, *with no way of determining the order of their deaths.*” BLACK’S LAW DICTIONARY 333 (10th ed. 2014) (emphasis added); *see also White*, 286 S.W.2d at 926–27; *Glover v. Davis*, 366 S.W.2d 227, 231 (Tex. 1963) (“where two or more persons perished in the same disaster, there was no presumption at common law that either survived or that all perished simultaneously.”).² Common-disaster provisions are necessary because “[c]ases occasionally arise in which testator and legatee . . . are killed in a common disaster under circumstances which make it impossible to determine as a matter

² Courts in other jurisdictions have also applied this legal meaning to clauses providing for certain distributions in case of a “common disaster.” *See, e.g., In re Davis’ Estate*, 61 N.Y.S.2d 427, 429 (N.Y. Sur. 1946), *aff’d In re Davis’ Will*, 69 N.Y.S.2d 327 (N.Y. App. Div. 1947) (“It is plain to be understood that the petitioner in using the term ‘common disaster’ meant and intended to provide for a case where both parties perished and there were no proofs to establish the survivorship”); *Modern Woodmen of Am. v. Parido*, 253 Ill. App. 68, 74 (Ill. App. Ct. 1928), *aff’d*, 167 N.E. 52 (Ill. 1929) (“‘Dying at the same time’ or ‘dying in a common disaster,’ are merely, in law, different statements of the same situation or result . . .”).

of fact which of them died first.” 3 JEFFREY A. SCHOENBLUM, PAGE ON THE LAW OF WILLS § 29.174 (LexisNexis Matthew Bender, 2d ed. 2012); *see also* BLACK’S LAW DICTIONARY 333 (10th ed. 2014) (defining “common-disaster clause” as a “provision in a . . . will, covering the situation in which the transferor and transferee die in a common disaster.”). Using a common-disaster provision thus ensures that, when the order of death is uncertain, property passes in a planned and predictable way.

The court of appeals acknowledged the legal definition of “common disaster,” but then crafted its own definition by separately defining the words “common” and “disaster” and combining their separate definitions. *Stephens*, 428 S.W.3d at 387–88 (“‘common’ can mean shared by two or more . . . [and] disaster has been defined as a calamitous event or great misfortune.” (Citing MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 250, 355 (11th ed. 2011))). The resulting definition of “common disaster” was “any situation where the death of two or more people arose out of the same set of circumstances.” *Id.* at 388. Notably, the court of appeals’ definition excluded the requirement that it be impossible to determine who died first. *See id.* Applying its new definition, the court of appeals held the homicide-suicide was “a common disaster in spite of the fact that Vencie did not successfully kill himself immediately” because the shots that killed the Beards “were fired in one episode.” *Id.*

The court of appeals erred by ignoring the legal definition of “common disaster.” “[W]here the meaning of the language used in the will has been settled by usage and sanctioned by judicial decisions, it is presumed to be used in the sense that the law has given to it, and should be so construed, unless the context of the will shows a clear intention to the contrary.” *Mitchell v. Mitchell*, 244 S.W.2d 803, 806 (Tex. 1951) (internal quotation marks omitted); *see also Lang*, 35 S.W.3d at

639; *Davis v. Shanks*, 898 S.W.2d 285, 286 (Tex. 1995). As already noted, “common disaster” is a phrase with a settled legal usage. *See White*, 286 S.W.2d at 926–27; *Fitzgerald v. Ayres*, 179 S.W. 289, 291–92 (Tex. Civ. App.—Dallas 1915, writ ref’d);³ BLACK’S LAW DICTIONARY 333 (10th ed. 2014). It is used to ensure orderly distribution when the order of death is uncertain, and so—absent will language establishing an intent to the contrary—the order of death *must* be uncertain for a common-disaster provision to become effective.

The Beards’ wills do not demonstrate a contrary intent. It appears that the Beards used “common disaster” in its legal sense and then added “or under circumstances making it impossible to determine [who] died first.” This addition ensured that the common-disaster provision would become effective if the Beards died and it was “impossible to determine [who] died first,” but where their deaths did not result from any common occurrence or event. *See* 9 GERRY W. BEYER, TEXAS PRACTICE SERIES: TEXAS LAW OF WILLS § 29.2 (3d ed. 2002) (“‘Common disaster’ fails to encompass unrelated but closely-timed deaths.”). Reading the wills’ other provisions tends to support this reading. *See Welch*, 531 S.W.2d at 322. For example, when the Beards wanted to provide for close-in-time but non-simultaneous death situations, they did so using survival periods. Thus, had they intended for “common disaster” to encompass the circumstance in which they died

³ In *Fitzgerald*, a married couple from Dallas attempted to scale Pike’s Peak in Colorado. *Id.* at 289–90. When they were about two and a half miles from the summit, a snowstorm hit. *Id.* at 290. Although a train was available to take them to the summit, the wife refused, remarking, “We are from Texas, and I will show you that we will walk it.” *Id.* Sadly, their bodies were later found about half a mile from the summit. *Id.* The Dallas court of appeals asked how the couple’s property should transfer in a “common disaster” where there was “no evidence . . . showing which one of the testators died first.” *Id.* at 292. The court also noted “that there is no presumption either of survivorship or of the simultaneous death of persons who perish in a common disaster.” *Id.* at 291. In other words, the court recognized the order of deaths in a “common disaster” is unknown. *See id.*

in quick succession, but not simultaneously, it seems strange that they would have used a different (and ineffective) provision to accomplish that intent.

We note that the Beards' wills are not models of clarity—by including the broad phrase “or under circumstances making it impossible to determine [who] died first,” the drafter tends to render “common disaster” (or at least the common legal meaning of the phrase) meaningless. In the context of the Beards' wills, however, reading “common disaster” as the court of appeals did ignores common sense, the settled nature of the phrase, and—most importantly—the testators' intent as shown by “the meaning of the words [they] actually used.” *See Lang*, 35 S.W.3d at 639 (internal quotation marks omitted). Thus, this is a case in which we “prefer ordinary meaning to an unusual meaning that will avoid surplusage.” *Cf. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW* 176 (2012); *see also Stahl*, 610 S.W.2d at 151. Accordingly, we find that the Beards intended to use “common disaster” according to its settled legal meaning. Because Vencie died nearly two hours after Melba, their deaths did not trigger the common-disaster provisions in their wills.⁴

Accordingly, we grant the petition for review and, without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals' judgment and render judgment that the Beards did not die in a “common disaster.”

OPINION DELIVERED: March 18, 2016

⁴ Stephens also urges, as she did in the court of appeals, that the Beards' wills did not incorporate the SDA. We agree. The common-disaster and survival-period provisions of the Beards' wills clearly constitute “language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee . . . survive the testator for a stated period in order to take under the will,” thus supplanting the SDA's default provisions. *See TEX. PROB. CODE* § 47(c).

Appendix C



NUMBER 13-15-00307-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**ALAN L. HAMILTON, INDIVIDUALLY
AND AS SUCCESSOR TRUSTEE OF
THE HAMILTON FAMILY TRUST, AND
AS INDEPENDENT EXECUTOR OF
THE ESTATE OF MAURINE P. HAMILTON,**

Appellant,

v.

DANIEL DAVILA III,

Appellee.

**On appeal from the 353rd District Court
of Travis County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Perkes
Memorandum Opinion Per Curiam**

Appellant, Alan L. Hamilton, individually and as successor trustee of the Hamilton Family Trust and as independent executor of the estate of Maurine P. Hamilton, filed a pro se notice of appeal regarding a summary judgment rendered in cause number D-1-

GN-13-001230 in the 353rd District Court of Travis County, Texas, in favor of appellee, Daniel Davila III.¹ This matter is before the Court on the appellant's failure to file a brief or reasonably explain his failure to do so.

The appellant's brief in the above cause was originally due on August 6, 2015. Appellant sought and received an extension of time to file the brief until September 10, 2015. Appellant failed to file the brief. On September 28, 2015, this Court notified appellant that the brief had not been timely filed and the appeal was subject to dismissal for want of prosecution unless, within ten days, appellant reasonably explained his failure to file the brief and appellee was not significantly injured by the appellant's failure to timely file a brief. See TEX. R. APP. P. 38.8(a)(1). Appellant responded to this Court's directive on October 7, 2015. Appellant contends that he is unable to file the brief because the clerk's record is defective and this Court has previously denied his motion seeking a corrected clerk's record. Appellant also urges generally that he is in ill health and that this appeal should be considered in coordination with another case, allegedly related to this one, which was not filed with this Court.

The clerk's record in this matter was timely filed and, as previously determined by this Court, was prepared in substantial compliance with the applicable rules. Appellant has failed to reasonably explain his failure to file a brief, file a motion for extension of time to file his brief, or file his brief. Further, appellant neither argues nor addresses whether appellee has been injured by the delay in filing the brief in this matter.

¹ This case is before the Court on transfer from the Third Court of Appeals in Austin pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

This Court possesses the authority to dismiss an appeal for want of prosecution when an appellant in a civil case fails to timely file its brief and gives no reasonable explanation for such failure. See, e.g., *Jimenez v. Soria*, 224 S.W.3d 722, 722 (Tex. App.—El Paso 2006, no pet.). Accordingly, this appeal is DISMISSED FOR WANT OF PROSECUTION. See TEX. R. APP. P. 38.8(a); *id.* R. 42.3(b).

PER CURIAM

Delivered and filed the
15th day of October, 2015.

Appendix D

CITES BY TOPIC: stare decisis

STARE DECISIS: Lat: to stand by that which was decided; rule by which common law courts “are slow to interfere with principles announced in the former decisions and often uphold them even though they would decide otherwise were the question a new one.” 156 P. 2d 340, 345. “Although [stare decisis] is not inviolable, our judicial system demands that it be overturned only on a showing of good cause. Where such a good cause is not shown, it will not be repudiated.” The doctrine is of particularly limited application in the field of constitutional law. 298 U.S. 38, 94. See **precedent**.

PRECEDENT: a previously decided case which is recognized as authority for the disposition of future cases. At **common law**, precedents were regarded as the major source of law. A precedent may involve a novel question of common law or it may involve an interpretation of a **statute**. In either event, to the extent that future cases rely upon it or distinguish it from themselves without disapproving of it, the case will serve as a precedent for future cases under the doctrine of **stare decisis**.

United States Ex. Rel. Shore v. O’Leary, 833 F.2d 663 (7th Cir. 1987):

“One foundation block of our judicial system is the principle of stare decisis which demands adherence to precedents. Decisions are made in accord with previous authoritative decisions in similar cases emanating from one’s own circuit and from the Supreme Court. A lower court owes deference to those above it; ordinarily it has no authority to reject a doctrine developed by a higher court. See, e.g., *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, [460 U.S. 533](#), 535, 103 S.Ct. 1343, 1344, 75 L.Ed.2d 260 (1983) (per curiam); *Perri v. Director, Dept. of Corrections of Ill.*, 817 F.2d 448, 451 n.4 (7th Cir. 1987).”

[United States Ex. Rel. Shore v. O’Leary, 833 F.2d 663 (7th Cir. 1987)]

Black’s Law Dictionary, Sixth Edition, p. 1406:

Stare decisis. Lat. To abide by, or adhere to, decided cases.

Policy of courts to stand by precedent and not to disturb settled point. *Neff v. George*, 364 Ill. 306, 4 N.E.2d 388, 390, 391. Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, when facts are substantially the same; regardless of whether the parties and property are the same. *Horne v. Moody*, Tex.Civ.App., 146 S.W.2d 505, 509, 510. Under doctrine a deliberate or solemn decision of court made after argument on question of law fairly arising in the case, and necessary to the determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy. *State v. Mellenberger*, 163 Or. 233, 95 P.2d 709, 719, 720. Doctrine is one of policy, grounded on theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified or overruled is within court’s discretion under circumstances of case before it. *Otter Tail Power Co. v. Von Bank*, 72 N.D. 497, 8 N.W.2d 599, 607. Under doctrine, when point of law has been settled by decision, it forms precedent which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. The doctrine is not ordinarily departed from where decision is of long-standing and rights have been acquired under it, unless consideration of public policy demand it. *Colonial Trust Co. v. Flanagan*, 344 Pa. 556, 25 A.2d 728, 729. The doctrine is limited to actual determination in respect to litigated and necessarily decided questions, and is not applicable to dicta or obiter dicta. See also Precedent; Res (*Res judicata*).

[Black’s Law Dictionary, Sixth Edition, p. 1406]

Appendix E



Federal Aviation Administration

What's the only word that means mandatory? Here's what law and policy say about "shall, will, may and must."

We call "must" and "must not" words of obligation. "Must" is the only word that imposes a legal obligation on your readers to tell them something is mandatory. Also, "must not" are the only words you can use to say something is prohibited. Who says so and why?

Nearly every jurisdiction has held that the word "shall" is confusing because it can also mean "may, will or must." Legal reference books like the *Federal Rules of Civil Procedure* no longer use the word "shall." Even the Supreme Court ruled that when the word "shall" appears in statutes, it means "may."

Bryan Garner, the legal writing scholar and editor of *Black's Law Dictionary* wrote that "In most legal instruments, *shall* violates the presumption of consistency...which is why *shall* is among the most heavily litigated words in the English language."

Those are some of the reasons why these documents compel us to use the word "must" when we mean "mandatory:"

- The Federal Register Document Drafting Handbook (Section 3) (<http://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>) states "Use 'must' instead of 'shall' to impose a legal obligation on your reader."
- The Federal Plain Language Guidelines (page 25) (<http://www.plainlanguage.gov/howto/guidelines/bigdoc/fullbigdoc.pdf>) (PDF) referred to in the Federal Plain Writing Act of 2010, compel the FAA and every federal department to "use 'must,' not 'shall'" to indicate requirements.
- FAA Plain Language Writing Order 1000.36, (page 4) (www.faa.gov/documentlibrary/media/order/branding_writing/order1000_36.pdf) (PDF) says avoid the word "shall" and use "must" to impose requirements, including contracts.

Until recently, law schools taught attorneys that "shall" means "must." That's why many attorneys and executives think "shall" means "must." It's not their fault. The *Federal Plain Writing Act* and the *Federal Plain Language Guidelines* only appeared in 2010. And the fact is, even though "must" has come to be the

only clear, valid way to express "mandatory," most parts of the Code of Federal Regulations (CFRs) that govern federal departments still use the word "shall" for that purpose.

With time, laws evolve to reflect new knowledge and standards. During this transition, "must" remains the safe, enlightened choice not only because it imposes clarity on the concept of obligation, but also because it does not contradict any instance of "shall" in the CFRs." Right now, federal departments go through their documents to replace all the "shalls" with "must." It's a big hassle. If you look at [page A-2, section g \(www.faa.gov/documentlibrary/media/order/nd/1000.37.pdf\)](http://www.faa.gov/documentlibrary/media/order/nd/1000.37.pdf) (PDF) of this link, it shows a sample of how a typical federal order describes this shift from "shall" to "must." Don't go through this tedious process. If you mean mandatory, write "must." If you mean prohibited, write "must not."

What should you say if someone tells you "shall is a perfectly good word?" Always *agree* with them because they're correct! But in your next breath, be sure to say "yes, shall is a perfectly good word, but it's *not* a perfectly good word of obligation."

If you've got comments or questions about this, please contact:

Dr. Bruce V. Corsino
FAA Plain Language Program Manager
Phone: 202-493-4074
email: bruce.corsino@faa.gov

Page last modified: September 05, 2013 10:36:31 AM EDT

This page was originally published at: https://www.faa.gov/about/initiatives/plain_language/articles/mandatory/

3. Use "must" instead of "shall".

shall	imposes an obligation to act, but may be confused with prediction of future action
will	predicts future action
must	imposes obligation, indicates a necessity to act
must not	indicates a prohibition
should	infers obligation, but not absolute necessity
may	indicates discretion to act

To impose a legal obligation, use "must."

To predict future action, use "will."

DON'T SAY: The Governor shall approve it.

SAY: The Governor must approve it. [obligation]

OR: The Governor will approve it. [future action]

4. **Be direct.** Talk directly to your readers. Use the imperative mood. Regulations lend themselves to this style, especially procedures, how-to instructions, and lists of duties.

Directness avoids the passive voice:

SAY: Sign all copies.

SAY: Attach a copy of your W-2 to your return.

This style results in procedures that are shorter, crisper, and easier to understand.

5. **Use the present tense.** A regulation of continuing effect speaks as of the time you apply it, not as of the time you draft it or when it becomes effective. For this reason, you should draft regulations in the present tense. By drafting in the present tense, you avoid complicated and awkward verb forms.

DON'T SAY: The fine for driving without a license shall be \$10.00.

Appendix F



Bookmarks

- Rule 60. Judgments in the Supreme Court
- Rule 61. Reversible Error
- Rule 62. Damages for Frivolous Appeals
- Rule 63. Opinions; Copy of Opinion and Judgment to Interested Parties and Other Courts
- Rule 64. Motion for Rehearing
- Rule 65. Enforcement of Judgment after Mandate
- Section 5. Proceedings in the Court of Criminal Appeals
- Appendices
 - Appendix A. Order Regarding Fees Charged in Civil Cases in the Supreme Court and Court of Criminal Appeals and before the Judicial Panel on Multidistrict Litigation
 - Appendix B. Order Regarding Disposition of Court Papers in Civil Cases
 - Appendix C. Order Directing the Form of the Appellate Record in Civil Cases
 - Appendix D. Certification of Defendant's Right of

(i) prepare and include after the front cover of the clerk's record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk's record, rather than in alphabetical order. If the clerk's record consists of multiple volumes, the table of contents must indicate the page on which each volume begins. If the clerk's record is filed in electronic form, the clerk must use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins; and

(j) conclude the clerk's record with a certificate in substantially the following form:

The State of Texas)
County of _____)

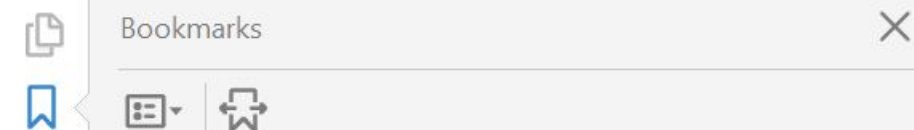
I, _____, Clerk of the _____ Court of _____ County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in _____, County, Texas this ____ day of _____.

signature of clerk _____

name of clerk _____

title _____



- Rule 60. Judgments in the Supreme Court
- Rule 61. Reversible Error
- Rule 62. Damages for Frivolous Appeals
- Rule 63. Opinions; Copy of Opinion and Judgment to Interested Parties and Other Courts
- Rule 64. Motion for Rehearing
- Rule 65. Enforcement of Judgment after Mandate
- Section 5. Proceedings in the Court of Criminal Appeals
- Appendices
 - Appendix A. Order Regarding Fees Charged in Civil Cases in the Supreme Court and Court of Criminal Appeals and before the Judicial Panel on Multidistrict Litigation
 - Appendix B. Order Regarding Disposition of Court Papers in Civil Cases
 - Appendix C. Order Directing the Form of the Appellate Record in Civil Cases
 - Appendix D. Certification of Defendant's Right of

Unless the clerk receives permission from the appellate court to file the record in paper form, the clerk must file the record electronically. When filing a clerk's record in electronic form, the trial court clerk **must**:

Page 3 of 6

- (a) file each computer file in text-searchable Portable Document Format (PDF);
- (b) create electronic bookmarks to mark the first page of each document in the clerk's record;
- (c) limit the size of each computer file to 100 MB or less, if possible;
- (d) directly convert, rather than scan, the record to PDF, if possible;
- (e) comply with the Technology Standards set by the Judicial Committee on Information Technology;

Appendix G-1

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- OTHER FILING
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- !ORD:OTHER ORDER
- NTC:NOTICE OF APPEAL

Note: 121 RFAs, 55 RFPs and 20 ROGs for each "Alan". 1) Individually 2) Successor-Trustee 3) Executor. We assume all Qs are the same, but will double-check. If they have mixed them up, it is even clearer abusive discovery.
Answers in pink and green, are still being pondered.

	Admit or Deny:	answer (individually)	notes	page#	translation	demand readable sentences	answer (as Executor)	answer (as Successor-Trustee)
RFA-1	Davila was NOT engaged or hired to do Estate tax return	deny	double negative		Davila was engaged and hired to do Estate taxes	vague		
RFA-2	Davila did NOT do Estate tax returns	admit	double negative		Davila did NOT do the Estate tax returns and was supposed to	vague		
RFA-3	Davila did NOT do Trust taxes AFTER Maurine died.	admit	double negative		Nor did he do them in 2004 when they were due BEFORE Maurine died			
RFA-4	Alan did NOT engage or hire Davila to provide:		double negative					
	a) accounting services	deny			Did engage for accounting services			
	b) Personal financial services	admit	careful - taxes?					
	c) Retirement Counseling services	admit	careful					
RFA-5	same as RFA-4 as Successor-Trustee	same						
RFA-6	same as RFA-4 as Executor	same						
	oral murder1 start: "act of murder"							
RFA-7	Alan stated orally that Davila committed "an act of murder"	deny	committed					
	Alan stated orally that Davila conspired to committed murder with others		conspired					
RFA-8	Alan stated orally that Davila concealed murder	deny	concealed					
RFA-9	Alan stated orally that Davila failed to report murder	deny	report					
	oral murder2 start: word change = "murdered"							
RFA-11	Alan stated orally that Davila committed "murder"	deny	committed					
RFA-12	Alan stated orally that Davila conspired to "murder"	deny	conspired					
RFA-13	Alan stated orally that Davila concealed "murder"	deny	concealed					
RFA-14	Alan stated orally that Davila report "murder"	deny	report					
RFA-15	Alan believes Maurine was "murdered"	vague. Suspicious death	opinion					
RFA-16	Alan stated that Maurine was "murdered"	vague. Suspicious death	Alan stated murder					
	stolen1: begin oral "Davila stole it" (from "Maurine Hamilton")		end murder1 oral					
	word change: "Mutual of Omaha annuities (or their proceeds)"							
RFA-17	Alan stated orally that Davila "stole Mutual of Omaha annuities"	deny	oral Davila stole it					
RFA-18	Alan stated orally that Davila conspired to "steal annuities"	deny	conspired to steal it	5				
		admit. Davila informed us						

8:00 PM 7/30/2015

Appendix G-2

RFAs from Davila

Note: 121 RFAs, 55 RFPs and 20 ROGs for each "Alan": 1) Individually 2) Successor-Trustee 3) Executor. We assume all Qs are the same, but will double-check. If they have mixed them up, it is even clearer abusive discovery.								
	Answers in pink and green, are still being pondered.							
	Admit or Deny:	answer (individually)	notes	page#	translation	demand readable sentences	answer (as Executor)	answer (as Successor-Trustee)
RFA-1	Davila was NOT engaged or hired to do Estate tax return	deny	double negative		Davila was engaged and hired to do Estate taxes	vague		
RFA-2	Davila did NOT do Estate tax returns	admit	double negative		Davila did NOT do the Estate tax returns and was supposed to	vague		
RFA-3	Davila did NOT do Trust taxes AFTER Maurine died.	admit	double negative		Nor did he do them in 2004 when they were due BEFORE Maurine died			
RFA-4	Alan did NOT engage or hire Davila to provide:		double negative					
	a) accounting services	deny			Did engage for accounting services			
	b) Personal financial services	admit	careful - taxes?					
	c) Retirement Counseling services	admit	careful					
RFA-5	same as RFA-4 as Successor-Trustee	same						
RFA-6	same as RFA-4 as Executor	same						
	oral murder1 start: "act of murder"							
RFA-7	Alan stated orally that Davila committed "an act of murder"	deny	committed					
RFA-8	Alan stated orally that Davila conspired to committed murder with others		conspired					
RFA-9	Alan stated orally that Davila concealed murder	deny	concealed					
RFA-10	Alan stated orally that Davila failed to report murder	deny	report					
	oral murder2 start: word change = "murdered"							
RFA-11	Alan stated orally that Davila committed "murder"	deny	committed					
RFA-12	Alan stated orally that Davila conspired to "murder"	deny	conspired					
RFA-13	Alan stated orally that Davila concealed "murder"	deny	concealed					
RFA-14	Alan stated orally that Davila report "murder"	deny	report					
			Alan's murder opinion					
RFA-15	Alan believes Maurine was "murdered"	vague. Suspicious death.						
RFA-16	Alan stated that Maurine was "murdered"	vague. Suspicious death.	Alan stated murder					
	stolen1: begin oral "Davila stole it" from "Maurine Hamilton"		end murder1 oral					
	word change "Mutual of Omaha annuities (or their proceeds)"							
RFA-17	Alan stated orally that Davila "stole Mutual of Omaha annuities"	deny	oral Davila stole it					
RFA-18	Alan stated orally that Davila conspired to "steal annuities"	deny	conspired to steal it	5				
RFA-19	Alan stated orally that Davila "had knowledge of stolen annuities"	admit. Davila informed us with Ticker tape on 9/10/2008	Davila knowledge of theft	5				
RFA-20	Alan stated orally that Davila "had knowledge of and failed to report stolen annuities"	admit. Davila said "Police never look into these kinds of things" and then filed fraudulent taxes to IRS to cover up embezzlement.	failed to report	5				
RFA-21	Alan believes "annuities were stolen"	admit	Alan believes stolen	5				
RFA-22	Alan stated orally that "annuities stolen"	admit. Written confession and bank records.	Alan stated oral stolen	5				
	stolen2: word change = "multiple annuities (or their proceeds)"			6				
RFA-23	Alan orally stated that Davila "stole annuities"	deny	committed	6				
RFA-24	Alan orally stated that Davila "conspired to steal annuities"	deny	conspired	6				
RFA-25	Alan orally stated that Davila "concealed theft of annuities"	admit	concealed	6				
RFA-26	Alan orally stated that Davila "failed to report stolen annuities"	admit	report	6				
RFA-27	Alan believes "annuities were stolen"	admit	Alan believes stolen	7				
RFA-28	Alan stated orally that "annuities stolen"	admit	stated orally stolen	7				
	stolen3: begin - word change = "sum of \$800,000" from "Maurine or Estate" added			7				
RFA-29	Alan orally stated that Davila "stole sum of \$800,000"	deny	committed					
RFA-30	Alan orally stated that Davila "conspired to steal annuities"	deny	conspired					
RFA-31	Alan orally stated that Davila "concealed theft of annuities"	admit	conceal					
RFA-32	Alan orally stated that Davila "failed to report stolen annuities"	admit	report					
	begin stolen4 - oral as "theft"							
RFA-33	Alan orally stated that Davila "committed theft"	deny	committed					
RFA-34	Alan orally stated that Davila "conspired to steal"	deny	conspired					
RFA-35	Alan orally stated that Davila "concealed theft"	admit	conceal					
RFA-36	Alan orally stated that Davila "failed to report theft"	admit	report					
	begin Alan "believes" or "stated orally" stolen as "money" or "\$800,000"		end stolen4					

Appendix G-3

① CLERKS RECORD PDF WITH NON-DESCRIPTIVE TOC BUG ON LEFT
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FILED DATE	CATEGORY	DESCRIPTION	ADDITIONAL INFO
3/25/2015	OTHER	!OTH:OTHER FILING	MEMORANDUM OF OPPOSITION TO SUMMARY JUDGMENT FOR DEFENDANT CONTRADICTING EVIDENCE EXHIBITS - TABLE OF CONTENTS
3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBIT BB)

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FILED DATE	CATEGORY	DESCRIPTION	ADDITIONAL INFO
3/25/2015	OTHER	!OTH:OTHER FILING	MEMORANDUM OF OPPOSITION TO SUMMARY JUDGMENT FOR DEFENDANT CONTRADICTING EVIDENCE EXHIBITS - TABLE OF CONTENTS
3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBIT BB)
3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBITS CC - II)
4/7/2015	MOTION	MTN:OTHER MOTION	PLAINTIFFS MOTION TO VACATE DEFENDANTS SUMMARY JUDGMENT ORDER OBTAINED WITH A FRAUDULENT AND PERJURING MOTION
5/8/2015	NOTICE	NTC:OTHER NOTICE	NOTICE OF HEARING
5/22/2015	ANS-RESP	OTHER ANSWER/RESPONSE	DEFENDANT DANIEL DAVILA, III'S RESPONSE AND OBJECTIONS TO "PLAINTIFF'S MOTION TO VACATE DEFENDANT'S SUMMARY JUDGMENT ORDER OBTAINED WITH A FRAUDULENT AND PERJURING MOTION"
5/28/2015	OTHER	OTHER FILING	LETTER-ALAN L HAMILTON (WITH ORDER FORWARDED TO CLERK OF THE 353RD

8.50 x 11.00 in

7:20 PM 7/30/2015

② INDEX PAGE WITH 2 IDENTICAL CATEGORY FIELDS
BUT NO DOCUMENT TITLES (ADDITIONAL INFO FIELD)

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3/16/2015	OBJECTIONS	OBJECTIONS	653-708
3/17/2015	JUDGMENT NOTICE MAILED	JUDGMENT NOTICE MAILED	709-709
3/17/2015	JUDGMENT NOTICE MAILED	JUDGMENT NOTICE MAILED	710-710
3/25/2015	OTHER ANSWER/RESPONSE	OTHER ANSWER/RESPONSE	711-727
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	728-783
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	784-803
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	804-842
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	843-983
4/7/2015	MTN:OTHER MOTION	MTN:OTHER MOTION	984-1004
5/8/2015	NTC:OTHER NOTICE	NTC:OTHER NOTICE	1005-1007
5/22/2015	OTHER ANSWER/RESPONSE	OTHER ANSWER/RESPONSE	1008-1115
5/28/2015	OTHER FILING	OTHER FILING	1116-1120
5/29/2015	OTHER FILING	OTHER FILING	1121-1124
5/29/2015	OTHER FILING	OTHER FILING	1125-1130
6/3/2015	!ORD:OTHER ORDER	!ORD:OTHER ORDER	1131-1132
6/5/2015	NTC:NOTICE OF APPEAL	NTC:NOTICE OF APPEAL	1133-1134
6/5/2015	OTHER FILING	OTHER FILING	1135-1136
6/9/2015	OTHER FILING	OTHER FILING	1137-1137
7/2/2015	DESIGNATION CLERKS RECORD	DESIGNATION CLERKS RECORD	1138-1145
7/7/2015	OTHER FILING	OTHER FILING	1146-1147
	Court Docket Record	Docket Record	1148-1152
	Court Cost Record	Bill of Cost	1153-1153

3



Appendix H



Victory Medical

7/24/2015

RE: HAMILTON, ALAN DOB: 7/7/1946

To Whom It May Concern:

Alan Hamilton is under my care and has medical issues I am currently trying to stabilize. These conditions including undiagnosed chest pain, bradycardia, carpal tunnel syndrome, and worsening fatigue for unknown reasons.

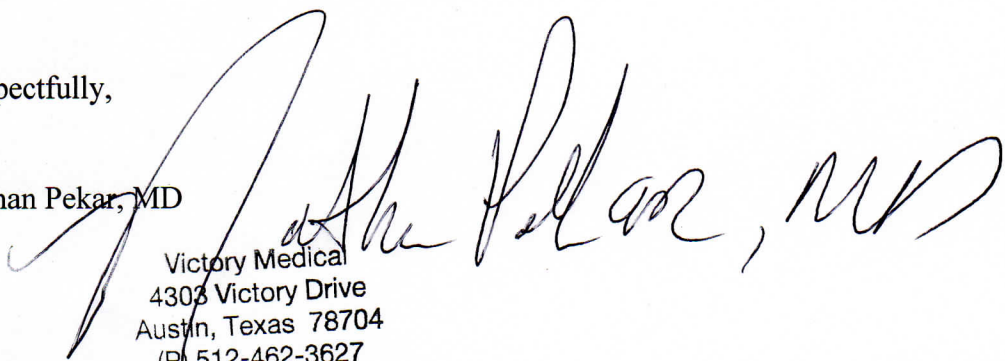
Do to his age and these medical conditions it would be difficult to keep to tight deadlines and he may need extra time to perform tasks due to his medical conditions which limit his energy levels and ability to perform activities (ie: hard to type/write with carpal tunnel syndrome).

As a medical professional, I request the court take these medical conditions when assigning dead-lines and tasks for my patient.

Any consideration shown to this patient is appreciated. Please feel free to contact me if you have any questions.

Respectfully,

Nathan Pekar, MD


Victory Medical
4303 Victory Drive
Austin, Texas 78704
(P) 512-462-3627
(F) 512-462-2898

4303 Victory Drive
Austin, TX 78704

Phone: (512) 462-3627
FAX: (512) 462-2898
www.victorymed.com

3003 Bee Caves Road
Austin, TX 78746

ID:
DOB: 7/7/1946 (69 yr)
Gender: Male

Name: Hamilton, Alan
Comments:

7/24/2015 9:15:00 PM

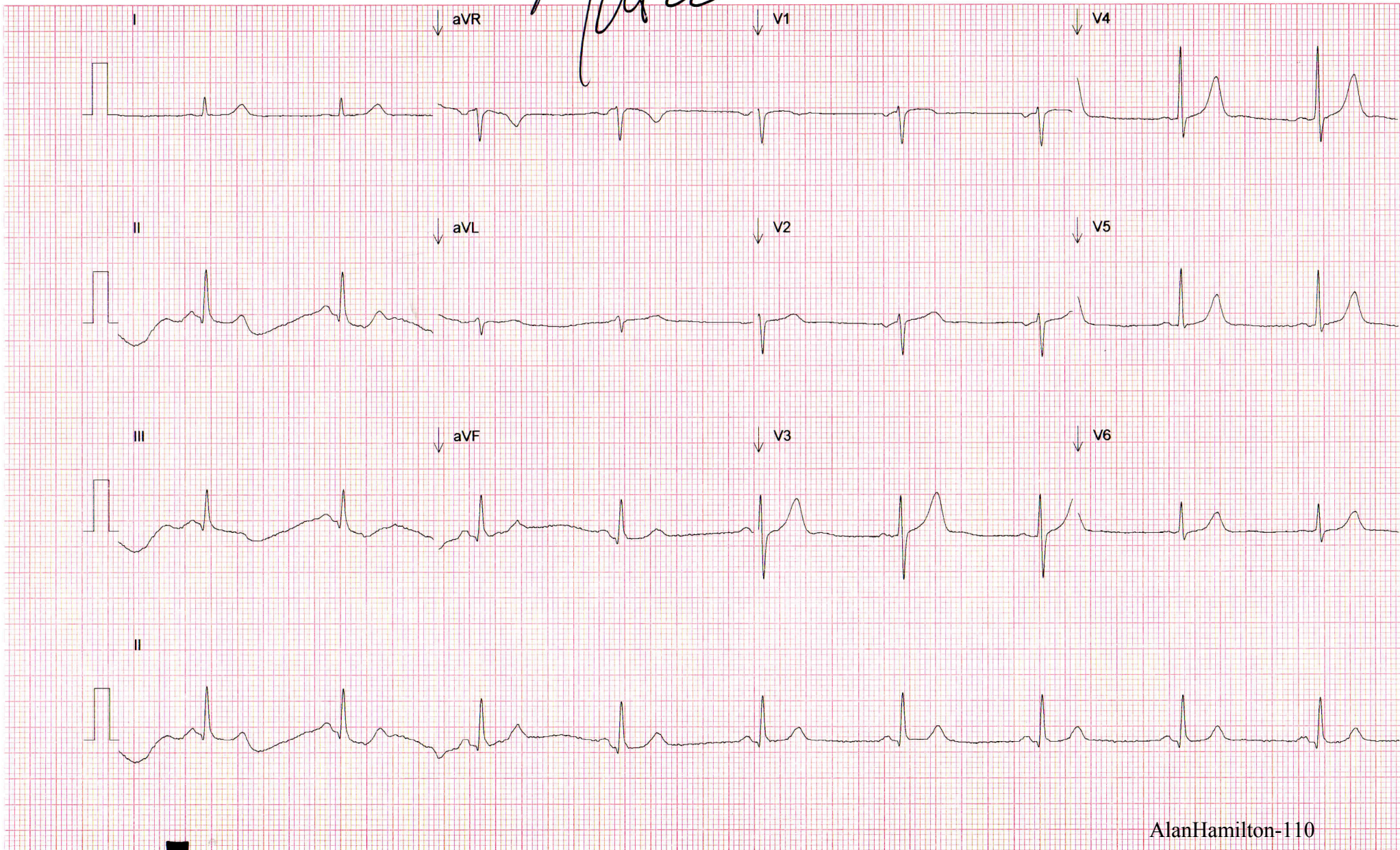
sinus rhythm (slow)
Normal ECG

P/PR: 114/144 ms
QRS: 96 ms
QT/QTc: 428/413 ms
P/QRS/T Axis: 76/70/40 deg
Heart Rate: 56 BPM

Unconfirmed Report

BRADY CARDIA

[Signature]



AlanHamilton-110

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WELCOME TO: AUSTIN HAND GROUP

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Hand Surgery Austin | Occupational Therapy | Minimally Invasive Procedures

Austin Hand Group is a resource for comprehensive treatment of the hand and wrist, including consultations, diagnostics, treatment, surgery and hand therapy. We are a private physician practice consisting of a fellowship trained hand surgeon, a nurse practitioner and two occupational hand therapists. Austin Hand Group specializes in the treatment of hand and wrist pain, trauma, chronic hand conditions and minimally invasive procedures. Minimally invasive procedures include Endoscopic Carpal Tunnel Release and Endoscopic Cubital Tunnel Release in addition to minimally invasive office procedures such as percutaneous trigger finger release. Our practice provides in-house digital imaging, digital communications with major local imaging facilities, electronic medical records and billing, as well as online and verbal communication with all major insurance carriers for benefits and eligibility services. Our highly, well trained, friendly support staff can assist you with benefits, eligibility, and financial estimates of visits, procedures and surgeries. Utilizing our combined experience in the treatment of hands and wrists, Austin Hand Group aims to meet the quality and cost objectives for patients in an evolving healthcare industry.



Ira G. Lown MD, FACS

Austin Hand Surgery: Austin Hand Group | phone: 512.327.4263 | fax: 512.327.4265 | 3345 Bee Cave Rd Suite 101 Austin, TX 78746 | austinhandgroup@austinhandgroup.com

Carpal Tunnel Syndrome

What is carpal tunnel syndrome?

Carpal tunnel syndrome is a common, painful disorder of the wrist and hand.

How does it occur?

Carpal tunnel syndrome is caused by pressure on the median nerve in your wrist. People who use their hands and wrists repeatedly in the same way (for example, illustrators, carpenters, and assembly-line workers) tend to develop carpal tunnel syndrome.

Pressure on the nerve may also be caused by a fracture or other injury, which may cause inflammation and swelling. In addition, pressure may be caused by inflammation and swelling associated with arthritis, diabetes, and hypothyroidism. Carpal tunnel syndrome can also occur during pregnancy.

What are the symptoms?

The symptoms include:

- pain, numbness, or tingling in your hand and wrist, especially in the thumb and index and middle fingers; pain may radiate up into the forearm
- increased pain with increased use of your hand, such as when you are driving or reading the newspaper

- increased pain at night
- weak grip and tendency to drop objects held in the hand
- sensitivity to cold
- muscle deterioration especially in the thumb (in later stages).

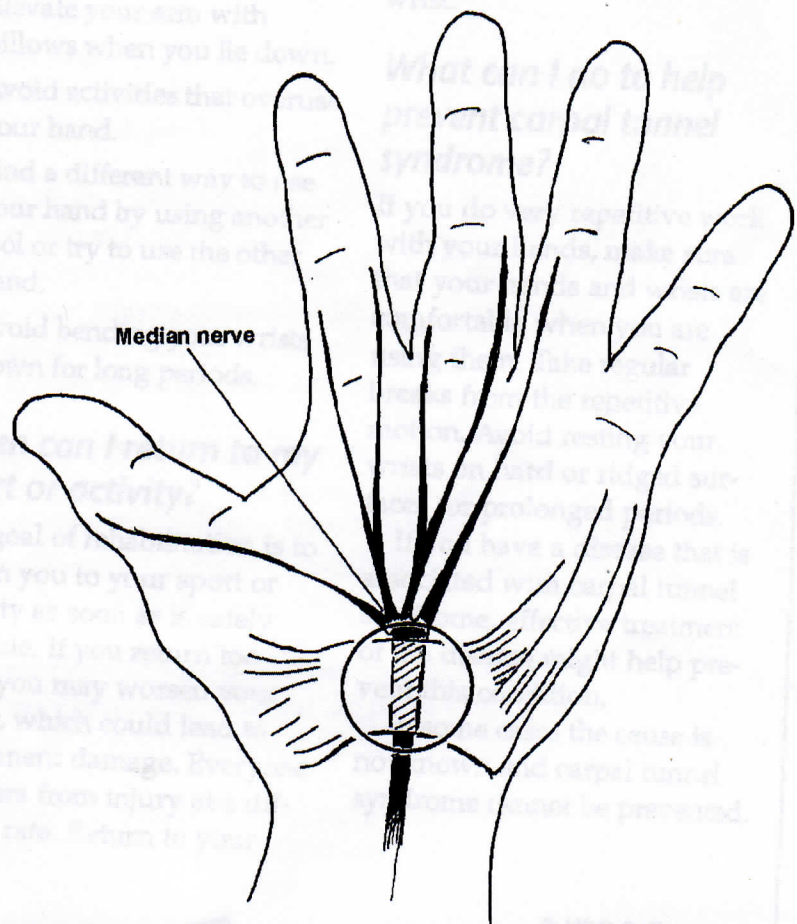
How is it diagnosed?

Your doctor will review your symptoms, examine you, and discuss the ways you use your

hands. He or she may also do the following tests:

- The doctor may tap the inside middle of your wrist over the median nerve. You may feel pain or a sensation like an electric shock.
- You may be asked to bend your wrist down for one minute to see if this causes symptoms.
- The doctor may arrange to test the response of your

Carpal Tunnel Syndrome



Carpal Tunnel Syndrome

nerves and muscles to electrical stimulation.

How is it treated?

If you have a disease that is causing carpal tunnel syndrome (such as rheumatoid arthritis), treatment of the disease may relieve your symptoms. Other treatment focuses on relieving irritation and pressure on the nerve in your wrist. To relieve pressure your doctor may suggest:

- restricting use of your hand or changing the way you use it
- wearing a wrist splint during sleep and physical activity involving the wrist
- exercises.

Your doctor may prescribe a cortisone-like medicine or a nonsteroidal anti-inflammatory medicine, such as ibuprofen. Your doctor may recommend an injection of a cortisone-like medicine into the carpal tunnel area. In some cases surgery may be necessary.

How long will the effects last?

How long the symptoms of carpal tunnel syndrome last depends on the cause and your response to treatment. Sometimes the symptoms disappear without any treatment, or they may be relieved by

nonsurgical treatment. Surgery may be necessary to relieve the symptoms if they do not respond to treatment or they get worse. Surgery usually relieves the symptoms, especially if there is no permanent damage to the nerve.

Symptoms of carpal tunnel syndrome that occur during pregnancy usually disappear following delivery.

How can I take care of myself?

Follow your doctor's recommendations. Also try the following:

- Elevate your arm with pillows when you lie down.
- Avoid activities that overuse your hand.
- Find a different way to use your hand by using another tool or try to use the other hand.
- Avoid bending your wrists down for long periods.

When can I return to my sport or activity?

The goal of rehabilitation is to return you to your sport or activity as soon as is safely possible. If you return too soon you may worsen your injury, which could lead to permanent damage. Everyone recovers from injury at a different rate. Return to your

sport will be determined by how soon your wrist recovers, not by how many days or weeks it has been since your injury occurred. In general, the longer you have symptoms before you start treatment, the longer it will take to get better.

You may return to your sport or activity when you are able to painlessly grip objects like a tennis racquet, bat, golf club, or bicycle handlebars. In sports such as gymnastics, it is important that you can bear weight on your wrist without pain. You must have full range of motion and strength of your wrist.

What can I do to help prevent carpal tunnel syndrome?

If you do very repetitive work with your hands, make sure that your hands and wrists are comfortable when you are using them. Take regular breaks from the repetitive motion. Avoid resting your wrists on hard or ridged surfaces for prolonged periods.

If you have a disease that is associated with carpal tunnel syndrome, effective treatment of the disease might help prevent this condition.

In some cases the cause is not known and carpal tunnel syndrome cannot be prevented.

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Carpal Tunnel Rehabilitation Exercises

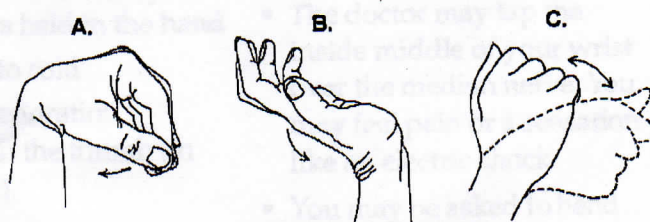
You may do all of these exercises right away.

1. Active range of motion

A. Flexion: Gently bend your wrist forward. Hold for 5 seconds. Repeat 10 times. Do 3 sets.

B. Extension: Gently bend your wrist backward. Hold this position 5 seconds. Repeat 10 times. Do 3 sets.

C. Side to side: Gently move your wrist from side to side (a handshake motion). Hold for 5 seconds at each end. Repeat 10 times. Do 3 sets.

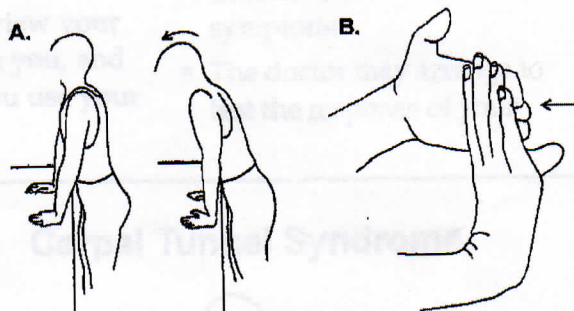


Active range of motion

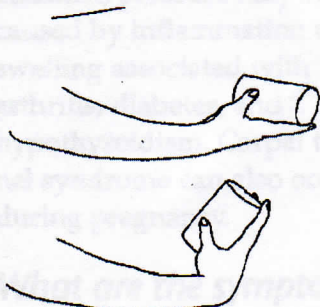
2. Stretching

A. Place both palms on a desk or table. Gently lean your body forward over your wrists and hold for 15–30 seconds. Repeat 3 times.

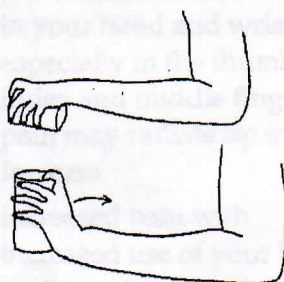
B. With your uninjured hand, help to bend the injured wrist down by pressing the back of your hand and holding it down for 15 to 30 seconds. Next, stretch the hand back by pressing the fingers in a backward direction and holding it for 15 to 30 seconds. Do this twice.



Stretching



Wrist flexion



Wrist extension

3. Tendon glides: Start with the fingers of your injured hand held out straight. Gently bend the middle joint of your fingers down toward your upper palm. Hold for 5 seconds. Repeat 10 times. Do 3 sets.



Tendon glides

4. Wrist flexion: Hold a can or hammer handle with your palm up. Bend your wrist upward. Hold this position for 5 seconds. Repeat 10 times. Do 3 sets. Gradually increase the weight of the object you are holding.

5. Wrist extension: Holding a can or similar object with the palm down, bend the wrist up. Hold this position for 5 seconds. Repeat 10 times. Do 3 sets.

6. Grip strengthening: Squeeze a rubber ball and hold for 5 seconds. Repeat 10 times.



Grip strengthening

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Bradycardia | Slow Heart Rate

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Bradycardia = too slow

A [heart rate](#) of less than 60 beats per minute (BPM) in adults is called bradycardia. What's too slow for you may depend on your age and physical condition.

- Physically active adults often have a resting heart rate slower than 60 BPM but it doesn't cause problems.
- Your heart rate may fall below 60 BPM during deep sleep.
- Elderly people are more prone to problems with a slow heart rate.

[View an animation of bradycardia.](#)

Causes of bradycardia

- Problems with the sinoatrial (SA) node, sometimes called the heart's natural pacemaker
- Problems in the conduction pathways of the heart (electrical impulses are not conducted from the atria to the ventricles)
- Metabolic problems such as hypothyroidism
- Damage to the heart from heart attack or heart disease

Symptoms of bradycardia

A heart rhythm that's too slow can cause insufficient blood flow to the brain with symptoms such as:

- Fatigue
- Dizziness
- Lightheadedness
- Fainting or near-fainting spells
- In extreme cases, cardiac arrest may occur.

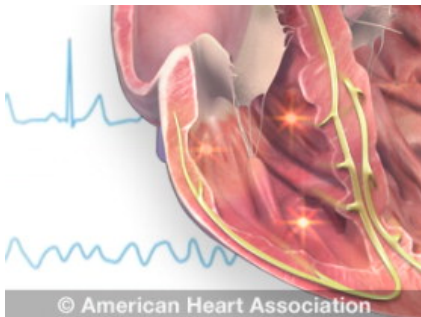
Complications of bradycardia

Severe, prolonged untreated bradycardia can cause:

- Heart failure
- [Syncope](#) (loss of consciousness; fainting)
- Angina pectoris (chest pain)
- High blood pressure

Treatment of the underlying medical cause

- Not usually needed except with prolonged or repeated symptoms
- Can usually be corrected with an [artificial pacemaker](#) to speed up the heart rhythm as needed
- Medication may be adjusted.



Arrhythmia

• Home

• About Arrhythmia

Introduction
Atrial Fibrillation
Bradycardia
Conduction Disorders
Premature Contractions
Tachycardia
Ventricular Fibrillation
Other Rhythm Disorders
Types of Arrhythmia in Children

• Why Arrhythmia Matters

• Understand Your Risk for Arrhythmia

• Symptoms, Diagnosis & Monitoring of Arrhythmia

• Prevention & Treatment of Arrhythmia

• Arrhythmia Tools & Resources

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- 4 [What are the Symptoms of High Blood Pressure?](#)
- 5 [Low Blood Pressure](#)
- 6 [Heart Attack Symptoms in Women](#)
- 7 [What Your Cholesterol Levels Mean](#)
- 8 [Warning Signs of a Heart Attack](#)

AlanHamilton-115

Why join any other "support group" when you can be part of our new professionally moderated American Heart Association/American Stroke Association's Support Network!

Created for individuals just like you.

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IT'S FREE. IT'S TOTALLY PROTECTED.

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SUPPORT NETWORK

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This content was last reviewed on 10/23/2014.

About Us

Our mission is to build healthier lives, free of cardiovascular diseases and stroke. That single purpose drives all we do. The need for our work is beyond question. [More](#)



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[Go Red Por Tu Corazón](#)
[My Heart My Life](#)
[Power To End Stroke](#)

The Warning Signs

Online Communities

Heart and Stroke Encyclopedia

Volunteer

Our Sites

[American Heart Association](#)
[American Stroke Association](#)
[My Life Check](#)
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[verify here.](#)

Appendix I

FileHomeInsertPage LayoutReferencesMailingsReviewViewAdd-InsAcrobat

CutCopyFormat PainterClipboard

Times New Rom: 10A A Aa

B *I* U abc x₁ x₂ Aa ab A

Paragraph

AaBbCcDd

¶ Normal

AaBbCc

Body Text

AaBbCcDd

¶ No Spacing

AaBbCc

Heading 1

AaBbC

Heading 2

AaBbC

Heading 3

AaBbC

Heading 4

FindReplaceSelect

Change Styles

Editing

Navigation

Search Document

Prayer for Relief

Appendices Table of Contents

Appendix A – Index of Authorities:

Appendix B – Entire TSC Case # 14-0406 3/18/2016 Opinion/D...

Appendix C – 13COA Opinion saying redefining the word "mu...

10-15-2015-13COA– Dismissal Opinion –says redefining m...

Appendix D_Stare Decisis definition screenshot

Appendix E-1_Federal Registry-What's the only word that mea...

Appendix E-2_Federal Registry Legal Writing Rules for word ...

Appendix F-1_ TRAP Rules pdf has required bookmarks scree...

Appendix F-2_ TRAP Rules pdf has required bookmarks scree...

Appendix G-1_Unreadable screenshots of Clerks Record-RFAs...

Appendix G-2_Readable pdf-as submitted to TCDC Office-RFA...

Appendix G-3_Clerks Record Non-Descriptive TOC bug in App...

Appendix H – Alan Hamilton's health disabilities:

Appendix H-1 – Dr Pekar's Letter:

Appendix H-2 – AHA Bradycardia-Slow Heart Rate webpag...

Appendix I: 9.4(j)Certificate of Compliance word-count scree...

Appendix J: Change-Log for Amended Motion for Rehearing

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

Total # words not counted per TRAP 9.4(i)	62+174+340+221+2189+16+640=3644
Total # of counted words by MSWord	6577 words (approx. before final edits)
Total # of counted words per TRAP 4.1(i)	6577-3644=2933 words
Per TRAP 9.4(i) is well below the limit of 4500 words for this document.	Note: words counts are accurate prior to final edits, but with over 1500 words to spare, total remains well below 4500 word limit.

TRAP 9.4 (i)
(i) *Length.*
(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

Page: 25 of 25Words: 6,577

120%AlanHamilton-118

10:52 PM5/18/2016

Appendix J

5-18-2016 – Change-Log for Amended Motion for Rehearing for PFR
(for digital signature format and Appendices Table of Content (TOC) fixes)

1. page 3 – final MSWord Table-of-Contents “update button click” (to fix Appendices Table of Contents)
- (Appendix refs added: search for “[appendix](#)” to see all, in [purple](#))
2. page 6 – “??mcm” changed to exact appendix ref ([Appendix B and D](#))
3. page 10 – “??mcm” changed to exact appendix ref ([Appendix C, H and E](#))
4. page 13 – “??mcm” changed to exact appendix ref ([Appendix A, B and E](#))
5. page 15 – “??mcm” changed to exact appendix ref ([Appendix B and A](#))
6. page 15 – “??mcm” changed to exact appendix ref (Exhibit A is in original PFR)
7. page 17 – “(mcm more?)” removed, [Appendix D](#) ref added
8. page 19 – “??mcm” changed to exact appendix ref ([Appendix F and G](#))
9. page 20 – “June 2016” changed to correct “June 2015”, page 9 “FOTH” to “FROTH”
10. page 20 – digital signature fixed with “/s/ *name*” format and scanned signature added as well.
11. page 22 – Appendix E-3 removed as duplicate of G-3
12. page 22 and 23 - fixed Appendix F-1/F-2 mixup with H-1/H-2 in the Appendices Table of Contents (correctly attached in original, but TOC incorrect).
13. page 24 – date of service of Amended Motion is today, 5/18/2016
14. page 24 and 25 - digital signature fixed with “/s/ *name*” format and scanned signature added as well.
15. 9_Appendix H-2_AHA-Bradycardia _ Slow Heart Rate.pdf renumbered to 8_Appendix H-2_AHA-Bradycardia _ Slow Heart Rate.pdf
(attachment count typo)
16. 10_Appendix I-word count screenshot for cert of compliance.JPG renumbered to 9_Appendix I-word count screenshot for cert of compliance.JPG
(attachment count typo)
17. Added this Change-Log to Appendices of this Amended Motion

US Supreme Court
Writ of Certiorari (no number yet)
Texas Supreme Court Case #16-0063
Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

Sept 19, 2016

US Supreme Court and Clerk
Supreme Court of the United States
Supreme Court Building
1 First Street, NE
Washington, DC 20543-0001
(202)-479-3000

Dear US Supreme Court and Clerk,

Enclosed are the extra 10 printed copies of our Writ of Certiorari filed on 9/14/2016. Attached is a copy of the shipping receipt and Proof of Delivery (POD).

Paper filing costly and time-consuming

Luckily the Petitioner's \$500 social security check arrived on 9/15/2016, as it cost about \$200, and 2 days time, to print these 10 copies, with expenses for:

- 1) ink cartridges (\$20 each),
- 2) paper (\$10 per ream of 500-5 reams-150 pgs, 3 copies per ream, 4 reams total=\$40),

3) Binders (\$3 x 10 = \$30) (all Purple for easier identification, “The Purple Case”

3) DVDs (\$10) and

4) Fed Ex shipping costs (\$30 for original alone).

5) 20(ink)+40 (paper)+30 (binders) +10 (DVDs) + 30 (orig ship cost)=\$130

6) We have a quote of \$60.25 from the Post Office for express mailing ,to mail a 30 lbs package (original weighed 3 lbs, 10 times as many = 30 lbs).

7) \$130 + \$60 (minimum projected ship cost of the 10 binders) = about \$200.

\$300 left until Oct 15th now

This means the Petitioner will have about \$300 left from from his social security to feed himself until the next check on 10/15/2016. Petitioner “*must*” eat. All this money is being spent so that a Clerk in Texas will be forced do what the law says they legally “*must*” do, and **for which they were paid \$2000** by the Petitioner as well (4 months of social security checks).

www.Greenfiling.com

We (Petitioner and his wife, Marjorie Miller who is assisting Petitioner with typing/computer) were shocked when we called and found out that the US Supreme Court does not accept electronic filing. All the Texas Courts (3) and the Respondent/Defendant were served electronically, with www.greenfiling.com , on 9/16/2016, in an effort to reduce costs and time. It took 20 minutes total and cost \$1 per filing.

Electronic filings DVD included

We have included DVDs with the digital documents filed, in each the 10 binders in order to encourage the US Supreme Court to partake in the digital revolution, and the advantages inherent in digital documents, including the electronic pdf bookmarks which are discussed in our appeal to the US Supreme Court.

A very good online discussion and help guide on Fed Court bookmarks link, (<http://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf> - also included on DVD, search document for “bookmarks”), discusses the use of pdf bookmarks and electronic filings in more detail (found with google of “federal courts pdf bookmarks”) and reference the impending day when they are required by law EVERYWHERE. They are already required by law in Texas. As well as no digital (pdf) to analog (scan/TIFF) to digital (pdf) document readability destruction is allowed, by law in the Texas Courts. The Texas Supreme Court Clerk actually rejected a one page filing by the Respondent/Appellee/Defendant’s, because it was a TIFF/scanned filed with a digital signature. It’s called “unnecessary TIFFing/scanning”. In the Texas Court Rules. We were impressed and sure they would then enforce the other MINIMUM STANDARDS rules for electronic Clerk’s Records, but then they strangely didn’t...

So it was a shock for Petitioner’s Texafornian wife let’s say, that the US Supreme Court is not leading by example, but is actually lagging behind the rest of the country in electronic filing, that Texas is more digitally advanced than the US Supreme Court?

As well as costs and the destruction of trees for printed filings, in a discussion with the US Supreme Clerk’s Office on the phone, it was mentioned that all filings had to be searched by Court bodyguards for possible bombs or anthrax or other terrorist things against the US Supreme Court Judges, and how electronic filings would be therefore safer for the Judges as well, as well as cheaper and easier to navigate, with digital searches/pdf bookmarks/hyperlinks, like a webpage.

It is already the law in Texas and some Clerk’s are resisting this law, for what we have to assume is some religious attachment to the printed page and the sacrificial killing of trees. ;). And therefore the need to define the word “must”, per our appeal.

We do hope the US Supreme Court joins the digital revolution soon, with the changing of the Court System and a citizen’s connection to Justice with it. It should be but an extension of what the other courts use already. The cost and time

savings will be very appreciated by all. Petitioner's wife always extends the offer to assist, with 35 years experience as a software engineer.

Until then we have also included a link to the digital filings online at: www.HowToStealAnAnnuity.com in the civil court section.

USPS bug report

Ironically, while trying to mail the binders on Saturday, 9/17/2016, we found a bug in the USPS website, strangely enough, on it's "Service Commitments" webpage. It said that 9 Post Offices were open until 5pm on Saturday. We were overjoyed and it also said it would deliver them on Monday, 9/19/2016, today. But upon calling the locations, they said they were closed.

So Petitioner's wife called the USPS General #, **1-800-ASK-USPS®**, to ask why the USPS website "Service Commitment" page said the wrong Post office hours it seemed. And we were pleasantly surprised. It appears the USPS customer service has been "Amazon-ed"! ☺! A very competent and patient USPS customer service representative, Danielle, walked thru the inputs to a series of webpages and a beautiful "additional locations and times" dialog box, which displayed the wrong dropoff open hours information for shipping a 30 lbs, 18 x 12 x 12 inch box to Washington DC. Danielle then took a bug report, gave me a confirmation #, got my email address and said someone would get back with me within 3 days with the resolution report.

WOW. Now this is a new day and a new face for government service. **Attached** is an email I received from Danielle's supervisor a couple of hours later, at 5:31pm, on a SATURDAY, THANKING me for reporting this issue. OMG.

We hope to have a similar experience with the US Supreme Court. This is the experience we had expected to have with the Texas Clerk's who have refuse to do their jobs, while ripping off citizens of their money and their justice.

Please let us know if the court needs anything else from us, and we will be happy to provide it. Hopefully if anything else is requested, we can mail it in on a DVD. Electronic files are much cheaper, easier to navigate with pdf bookmarks/link and search capabilities, and last but not least, safer for the Judges.

We have gotten these 10 copies to the court as quickly as possible, with printing and shipping time and costs. Had Petitioner's social security check not arrived on Sept 15th, we would have been at an impasse. With each W.O.C. copy taking an hour, at 12 copies, that's 12 hours minimum, 2 days of printing. And we still could have gotten it there by 9/19/2016, had it not been for the USPS "open Saturday until 5pm" website bug. And we indeed cannot afford the \$244 Fed Ex shipping price for 30 lbs. (FedExwebsite price quote). And besides that, with the great USPS customer service call on Saturday, they have EARNED our business!

Thank you for your consideration. There is only one thing better than MINIMUM STANDARDS with a "must", it's doing more than you have to, in order to make things better for the next person, and we hope we have done that by including these DVDs with the electronic files for easier perusal. (pdf bookmarks in the electronic version of this letter also included on DVD)

Sincerely,

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

Attachments List:

(these separate attachment files will appear automatically as pdf bookmarks/hyperlinks in this document in a menu on the left side in the electronic documents – also included on DVD with www.greenfiling.com documents – GO GREEN!!!):

- 1) 9/14/2016 FedEx shipping receipt
- 2) 9/16/2016 Fed Ex Proof-of-Delivery
- 3) 9/17/2016 USPS bug report acknowledgement email from Danielle's supervisor
- 4) screenshot of USPS "open until 5pm on Saturday" on "Service Commitment" webpage, recreated with customer service representative Danielle on 9/17/2016.
- 5) <http://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf> - downloaded pdf included on DVD, search document for "bookmarks"

cc:

Appellee's Attorney:
Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Texas Supreme Court and Clerk
Supreme Court of Texas
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas 78701
(512) 463-1312, Fax: (512) 463-1365

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Dorian E Ramirez
13th COA Court and Clerk
Nueces County Courthouse
901 Leopard, 10th floor
Corpus Christi, Texas 78401
361-888-0416, Fax: 361-888-0794

VIA ELECTRONIC FILING
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cc:

Velva L. Price
Travis County District Clerk
1000 Guadalupe Street
Austin, Texas 78701

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No. _____

IN THE

SUPREME COURT OF THE UNITED
STATES

Alan L. Hamilton — PETITIONER
VS.
Daniel Davila III — RESPONDENT(S)

PROOF OF SERVICE

I, **Alan L. Hamilton**, do swear or declare that on this date, 9/19/2016, as required by Supreme Court Rule 29 I have served the enclosed the letter/notice of mailing of 10 copies to court of MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI, on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. Also served via www.GreenFiling.com on 9/17/2016 and 9/19/2016.

The names and addresses of those served are as follows:

Respondent's Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 9/19/2016.

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)



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Transaction: 880145293006

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784090755841 2.4 lbs. (S) \$26.50
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Declared Value 0

Shipment subtotal: \$26.50

Total Due: \$26.50

(S) CreditCard: \$26.50

*****1423

M = Weight entered manually
S = Weight read from scale;
T = Taxable item

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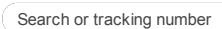
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*** Thank you ***

Spencer





Marjorie Miller <marjiemiller@gmail.com>

**USPS Acknowledgement of Inquiry - Case CA129969310
(KMM38917309V51511L0KM)**

1 message

eCustomerCare National <ECCADUSER@usps.gov>
To: MARJORIE MILLER <marjiemiller@gmail.com>

Sat, Sep 17, 2016 at 5:31 PM

Dear Marjorie Miller,

This message is to let you know that we have received your inquiry at the Post Office.

After we review and investigate the information you have provided, we will contact you and work with you until the case is resolved.

Thank you for letting us know about this issue. We look forward to serving you.

Sincerely,

Your United States Postal Service

NiAngela Phillips
Supervisor of Customer Service
(512) 454-3859
niangela.a.phillips@usps.gov

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Additional Drop-Off Locations

Drop-Off By	Facility Type	Address	Guarantee
Sat, Sep 17 by 5:35 PM	POST OFFICE	900 BLACKSON AVE, AUSTIN, TX 78752	No Guarantee
Sat, Sep 17 by 5:30 PM	POST OFFICE	3507 N LAMAR BLVD, AUSTIN, TX 78705	No Guarantee
Sat, Sep 17 by 5:30 PM	POST OFFICE	4516 BURLESON RD, AUSTIN, TX 78744	No Guarantee
Sat, Sep 17 by 5:25 PM	POST OFFICE	7700 NORTHCROSS DR, AUSTIN, TX 78757	No Guarantee
Sat, Sep 17 by 5:00 PM	POST OFFICE	9001 TUSCANY WAY, AUSTIN, TX 78710	No Guarantee
Sat, Sep 17 by 5:00 PM	POST OFFICE	8557 RESEARCH BLVD STE 124, AUSTIN, TX 78758	No Guarantee
Sat, Sep 17 by 5:00 PM	CONTRACT POSTAL UNIT	900 CHICON ST, AUSTIN, TX 78702	No Guarantee
Sat, Sep 17 by 5:00 PM	CONTRACT POSTAL UNIT	1700 W FARMER LN STE 620, AUSTIN, TX 78727	No Guarantee
Sat, Sep 17 by 3:00 PM	POST OFFICE	8225 CROSS PARK DR, AUSTIN, TX 78710	No Guarantee
Sat, Sep 17 by 3:00 PM	POST OFFICE	3201 BEE CAVES RD STE 120, AUSTIN, TX 78746	No Guarantee

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Guide to Creating Electronic Appellate

- I. Briefs
- II. Appendices
- III. Hyperlinking



California Courts of Appeal

5/1/2016

Introduction

This guide was created to help filers provide working electronic briefs to the Courts of Appeal and the Supreme Court in California. While there are other products that can produce the same result, this manual focuses on Word (2007, 2010 and 2013) and Adobe Acrobat Pro. Some of these steps may be similar in other programs.

Be sure to check all rules with the court you are filing with to make sure you have met all the requirements for electronic documents.

Bookmarks and consecutive pagination are required by some courts and will, in the near future, be required by all Courts of Appeal.

E.g., each topic heading in the table of contents or index for each document, including the heading "Table of Contents" or "Index", must be electronically bookmarked. Document pages must be consecutively numbered beginning from the cover page of the document and using only the Arabic numbering system, as in 1, 2, 3.

I. Creating Electronic Appellate Briefs

Tools

Word processor

The primary tool for creating an electronic brief is your word processor. Microsoft Word provides some helpful features that make creating an electronic brief easier. In particular, Word's Styles feature (see *Generating Bookmarks* below) allows you to create headings in your brief that will automatically create bookmarks when you convert the document as a PDF.

Adobe Acrobat Standard or Pro

Adobe Acrobat sets the standard for creating, combining, editing, redacting and making PDFs searchable. And eventually you will need to do all of these things if you are working with electronic briefs. There are other less expensive PDF software programs, but you will find a variety of resources to assist you with Adobe Acrobat. For example, Adobe hosts a free [Acrobat for Legal Professionals Blog](#) that provides tips and techniques for working with electronic legal documents. Adobe Acrobat Standard will do everything that you need a PDF program to do—except for redacting PDFs. You will need the more expensive Adobe Acrobat Pro if you want to redact documents electronically.

Basic Steps

There are three basic steps to creating an electronic brief for California appellate courts:

1. Convert your brief from the original word processing document, such as Word, WordPerfect or Pages, directly to PDF (do not scan the brief to create a PDF).
2. Create bookmarks¹ from the Table of Contents.
3. Redact any information that must be redacted under the rules, like social security numbers, children's names, bank account numbers, etc.

If you do not have an appendix or attachment, just save your document as a PDF. You can skip step 3 above if your document does not contain any information that must be redacted.

Brief Pagination

Before saving/converting the brief as a PDF, make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Every page must have a number. Do *not* use a separate pagination system for tables within the document. The page number does not need to appear on the cover page.

¹ Bookmarks are a fast and easy way to quickly navigate to different parts of a brief.

1. Saving/Converting directly to PDF

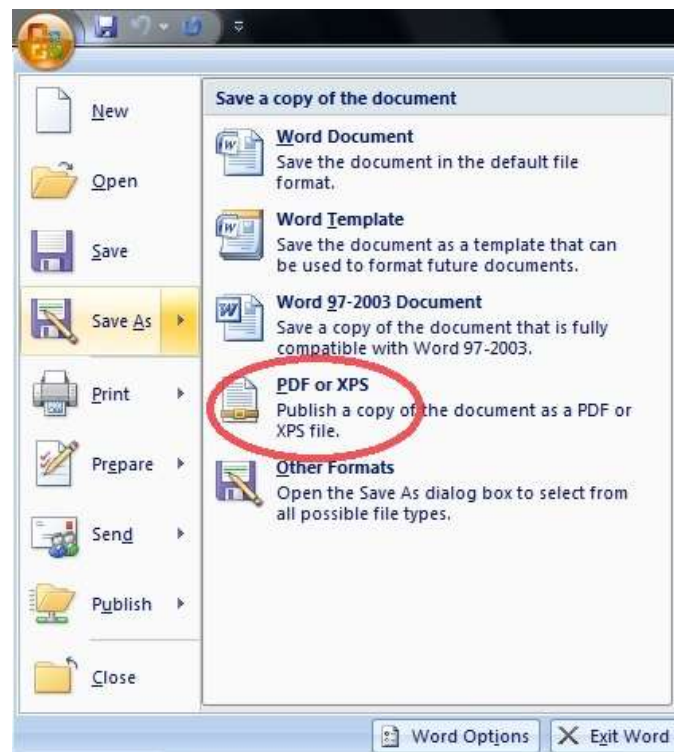
You can easily save your Word document as a PDF.

Word 2007 (without Adobe Acrobat Pro installed)

Click the Microsoft Office Button in the top left hand corner of Word.



Choose **Save As** and **PDF or XPS** (see below).

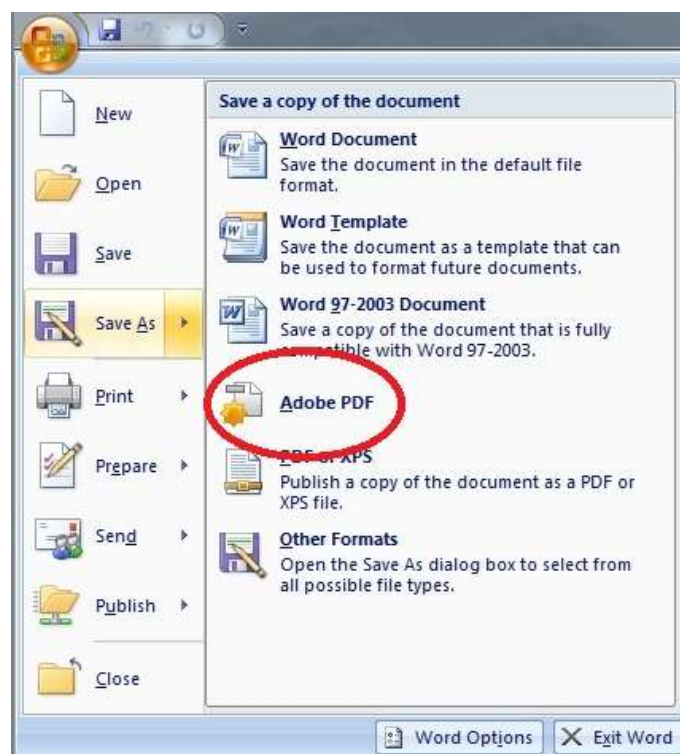


In the dialog box that appears, click the button in the lower right hand corner that says **Publish**.

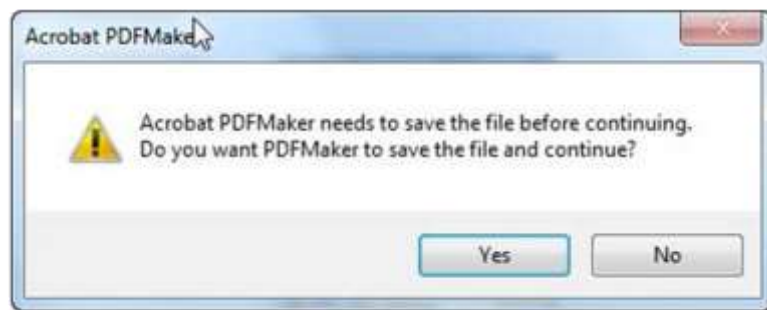


Word 2007 (with Adobe Acrobat Pro installed)

Choose **Save As** and **Adobe PDF** (see below).

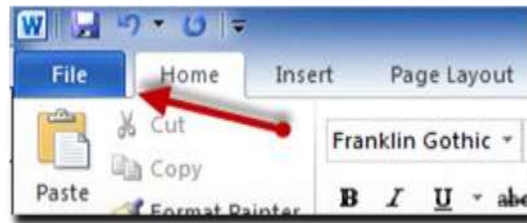


A dialog box appears that says **Acrobat PDFMaker needs to save the file before continuing. Do you want PDFMaker to save file and continue?** Choose **Yes**.

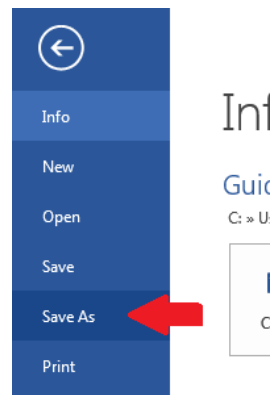


Word 2010 and 2013

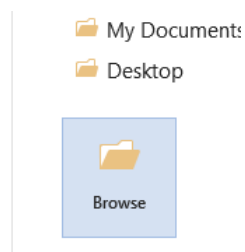
Click on the **File** tab.



Choose **Save As**.



Click **Browse**



In the dialog box that appears, choose the Save as type = PDF.



Click **Save**.

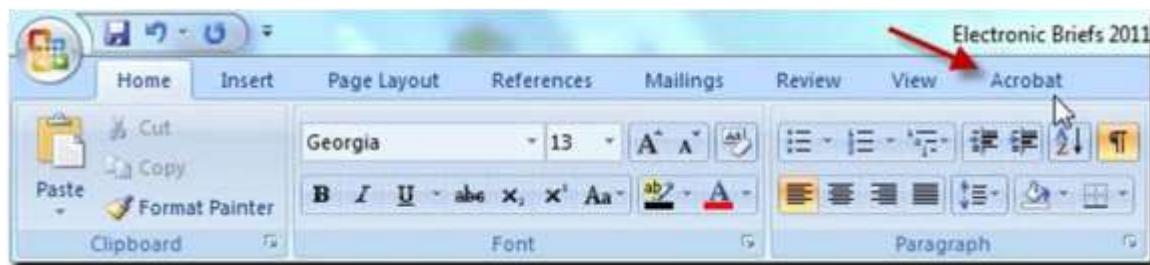
Adobe Acrobat Ribbon in Word

If you have installed Adobe Acrobat, you also have the option of using the Acrobat ribbon to create a PDF in Word. When you install Adobe Acrobat, the installer adds Acrobat buttons or menu commands to Microsoft Office applications (e.g., Word, Excel, PowerPoint). In Word 2007 and 2010, in the ribbon at the top of the screen you should see **Acrobat** next to **View**. Selecting **Acrobat** reveals the Acrobat ribbon.

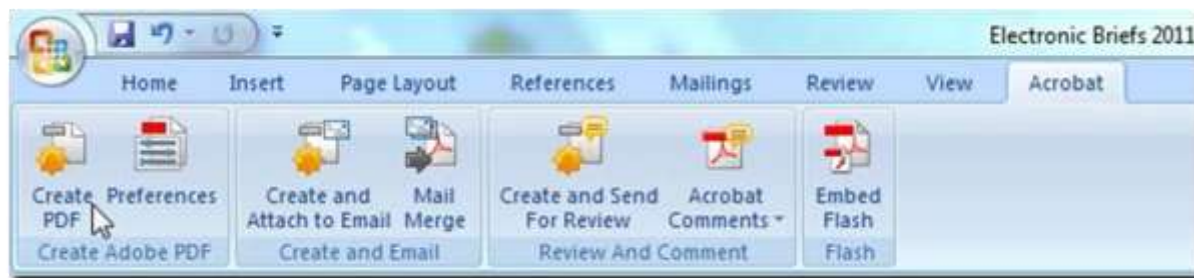
The advantage of using the Acrobat Ribbon to create PDF from Word is that it will automatically create bookmarks for your document if you have used Word's Styles feature.

Follow these steps to convert your brief directly to Word using the Acrobat ribbon:

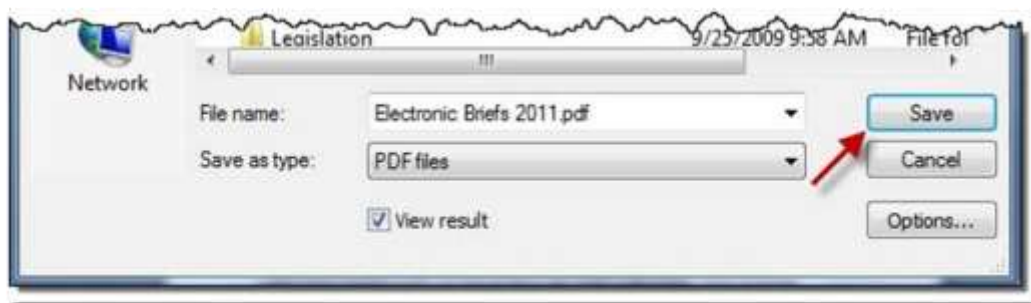
Choose **Acrobat** at the top of the screen (to the right of **View**).



Click **Create PDF** in the menu.



In the dialog box that appears, click **Save**.



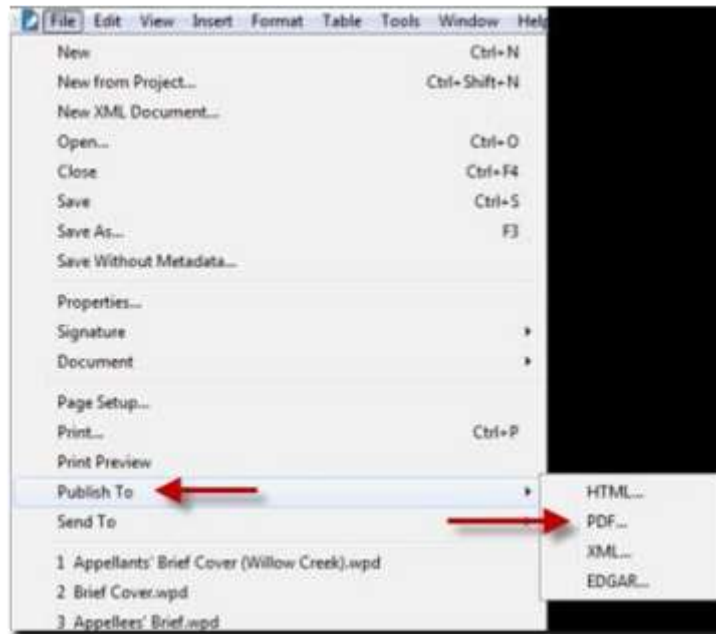
WordPerfect

WordPerfect implemented a Publish to PDF tool beginning with WordPerfect 9. The tool has been changed several times, so depending on which version of WordPerfect you are using the steps may be slightly different.

In WordPerfect 9 to WordPerfect X3, follows these steps to directly convert your brief to PDF:

Click **File**.

Select **Publish To** and **PDF**



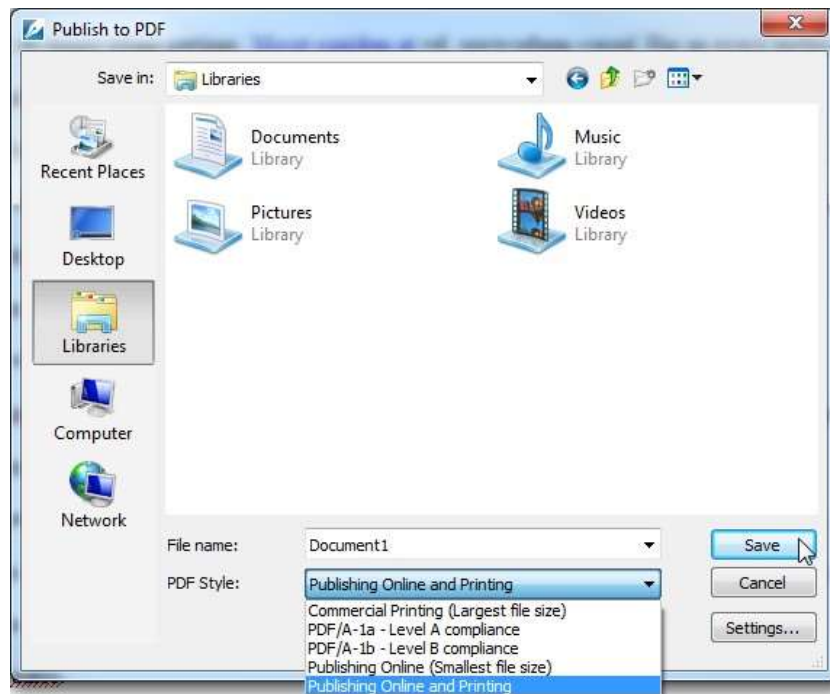
In the dialog box that appears, select the button that says **OK**.

In WordPerfect X4 and later, follow these steps to directly convert your brief to PDF:

Click **File**

Select **Publish to PDF**

Select the PDF Style. If you have hyperlinks in your document, you will want to select the PDF Style Publishing Online and Printing, which is the default style. Federal courts may require you to select PDF/A, which is an archival format. If you select PDF/A, your hyperlinks will not work.



Click **Save**

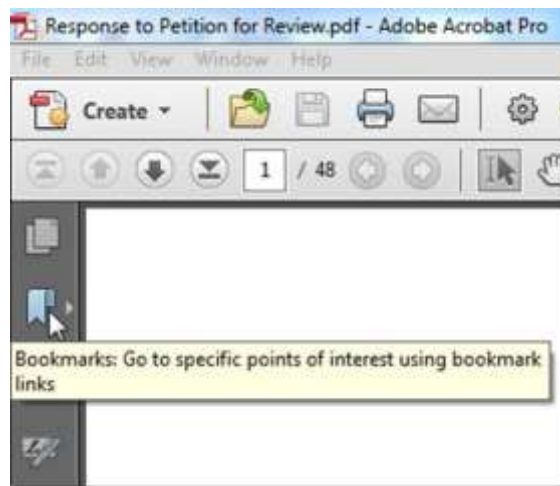
When printing a hard-copy of a brief, be sure to use the PDF file to insure that the print exactly replicates the e-file version. Pagination and sentence structure may change when converting a Word or WordPerfect document to a PDF.

2. Create bookmarks.

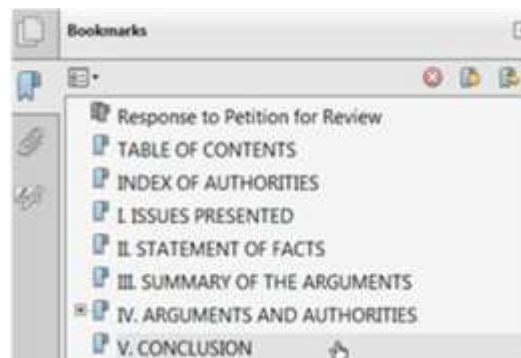
What is a bookmark?

A bookmark is a text link that appears in the **Bookmarks Panel** of Adobe Reader and Adobe Acrobat. Readers can use the bookmarks to quickly navigate to different sections of a brief. Make sure to include bookmarks in all electronic documents and be sure to use descriptive labels for your bookmarks (e.g. Trial Court Judgment, Court of Appeals Opinion) as illustrated below.

To see the **Bookmarks Panel**, open the **Navigation Pane** and click on the **Bookmarks Icon**.



Clicking on the **Bookmarks Icon** opens the **Bookmarks Panel** revealing the list of bookmarks, as in this illustration.



Setting the bookmarks panel to open automatically.

To maximize the impact of your brief:

While the document is open, click **File > Properties > Initial View tab**
Click the Navigation tab dropdown and select **Bookmarks Panel and Page**
Click **OK**

Generating bookmarks

Adobe Acrobat will also automatically generate bookmarks during PDF creation if you use Microsoft Word's built-in Styles feature when you create your document. In other words, if you use the paragraph styles available in Word to label the headings in your document, when you use the built-in Acrobat ribbon to generate your PDF, your document will already include bookmarks to the headings in your document.

A tutorial on Word's Styles feature is beyond the scope of these instructions, but Microsoft provides a [tutorial](#) on the web. Word's Styles feature is a tremendous time saver for generating bookmarks, the table of contents, and formatting your document.

Manually adding bookmarks

To manually add a bookmark, in Adobe Acrobat, follow these steps:

1. Click on the page where you want to create a bookmark
2. Click the **New Bookmark** Icon in the Bookmarks Panel or select **CTRL** and **B** keys on your keyboard at the same time.
3. In the text of the new bookmark, type the name or label that you want to give the bookmark.

OR

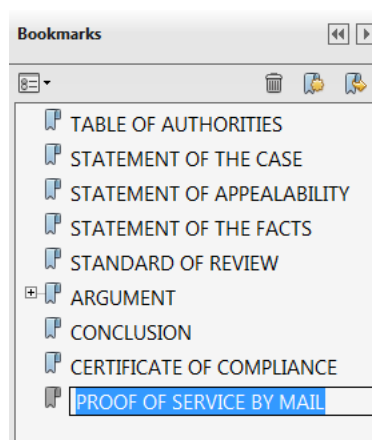
Highlight the text on the page you want to bookmark, then press the **CTRL** and **B** keys on your keyboard at the same time (or right click and select add bookmark). The bookmark will appear in the panel and the name will be the same as the text you highlighted.

Editing bookmarks

If you want to delete a bookmark, **select the bookmark** and press the **delete key**.

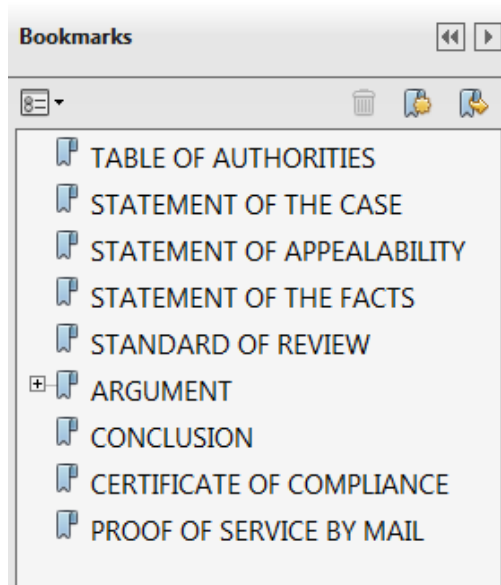
To edit the name of a bookmark, **double click** on the **bookmark**. Once the bookmark text is highlighted, you can **retype the name** of the bookmark. **Press enter** or return when you are satisfied with the results.

Be sure to give your bookmarks meaningful and descriptive names. Names like Header A, Header B, etc. are not helpful. Instead try something like Statement of the Case, Conclusion.

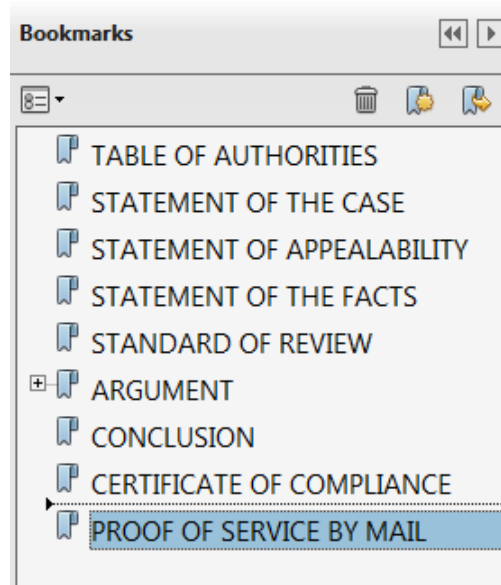


Moving bookmarks

To move bookmarks up and down in the Bookmarks Panel, left click and drag the bookmark ribbon symbol on the left side of the bookmark's name to the desired location in the Bookmarks panel. Once the arrow and dotted line are in the new location, release the left mouse button to drop the bookmark in its new location.



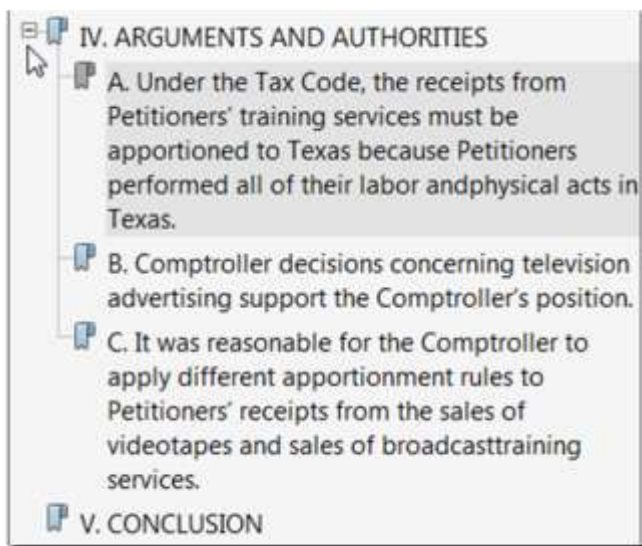
Step 1: Click on the ribbon symbol to the left of the bookmark name.



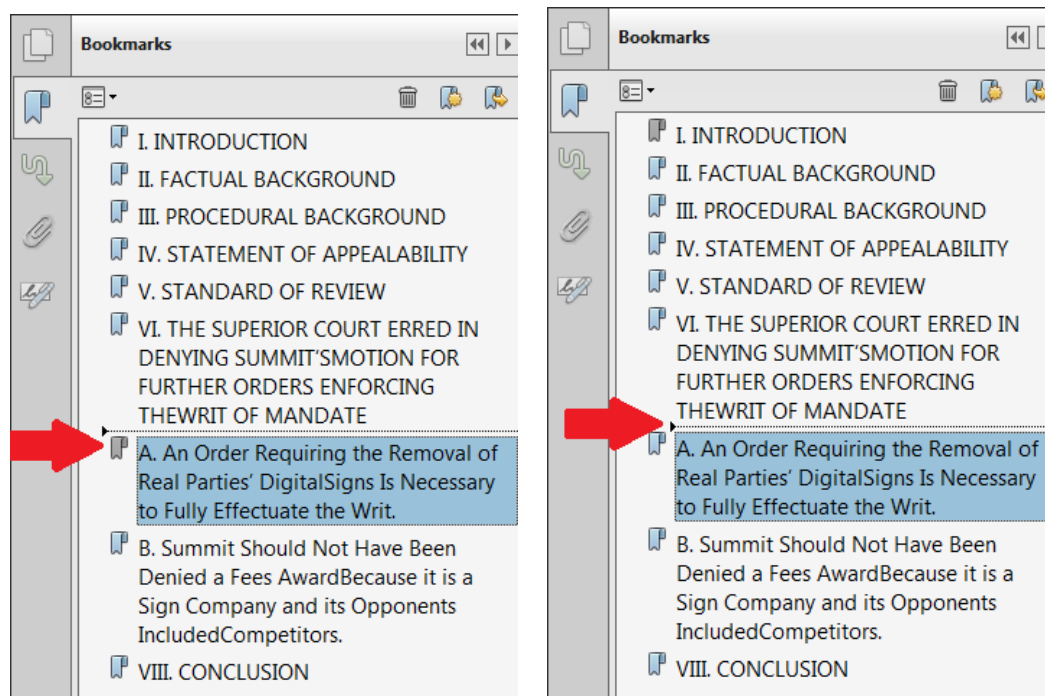
Step 2: Left click and hold while you drag the bookmark to the new location. Release the left mouse button to drop the bookmark to its new location.

Nesting bookmarks

Bookmarks can also be nested underneath other bookmarks to create a tiered structure of bookmarks, as in the illustration. Notice that the Argument and Authorities bookmark has three nested bookmarks underneath. These bookmarks link to different argument headings in that section of the brief. Clicking on the minus sign next to the Argument and Authorities bookmark collapses these bookmarks so that they are not visible. A plus sign then appears next to the Arguments and Authorities bookmark, which will expand the nested bookmarks and make them visible again when selected.



To nest a bookmark underneath another bookmark, move the bookmark as described above. But this time, move the bookmark up and over underneath the bookmark where you want it nested. In other words, select the bookmark by left clicking and holding the mouse button down. Then move it up and to the right without releasing the mouse button. Release the mouse button once the bookmark appears to be indented. Once you have the bookmarks the way you want them, be sure to save your document in order to save your changes!



3. Redacting

You must redact the following information from your briefs, appendix materials, records in original proceedings and any other electronic documents that you send to the court: (1) **social security numbers**; (2) **a birth date**; (3) **a home address**; (4) **the name of any person who was a minor when the underlying suit was filed**; (5) **a driver's license number**; (6) **a passport number**; (7) **a tax identification number**; (8) **any similar government-issued personal identification number**; (9) **bank account numbers**; (10) **credit card numbers**; and (11) **any other financial account number**.

The best way to avoid having to redact your brief is not to use any of the above information in your brief. This information will seldom be of use to an appellate court.

The most important thing to remember about redacting documents is to **permanently remove the information from the document. Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). *Please note that Adobe Acrobat Standard does not have redaction features.*

Redacting using Word

If you do not have Adobe Acrobat Pro, then you should edit the text of any document that you have in the original file (e.g., a Word document) to remove the information. Replace any characters that you remove with the letter x and then save the edited document as a new document. Here is an example:

Original text document:

Mike Brown's social security number is 357-57-7372. His home address is 1510 Maple Avenue, New York, 201292. His credit card number is 2138 2912 2938 2919.

Edited Text:

Mike Brown's social security number is xxxxxxxxxxx. His home address is xxxx xxxxx xxxxxxxx xxx xxxxx xxxxxxxx. His credit card number is xxxx xxxx xxxx xxxx.

As you can see, depending on the font you are using, editing the document in this way may slightly alter the layout of your document. Be sure to check the page layout to see if your page numbering has been altered. If you do not have Adobe Acrobat Pro and you only have the documents in paper format, you will need to copy the documents, redact them manually, and then scan the redacted documents.

Redacting Using Adobe Acrobat Pro

Redaction should be done before creating bookmarks and making the appendices text searchable. The steps below will remove bookmarks and text recognition.

You must redact the following information from an appendix submitted to the court: (1) **social security numbers**, (2) **a birth date**, (3) **a home address**, (4) **the name of any person who was a minor when the underlying suit was filed**, (5) **a driver's license number**, (6) **a passport number**, (7) **a tax identification number**, (8) **any similar government-issued personal identification number**, (9) **bank account numbers**, (10) **credit card numbers**, and (11) **any other financial account number**. (Cal. Rules of Court, rule 1.20.)

The most important thing to remember about redacting documents is to **permanently remove the information from the document**. **Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

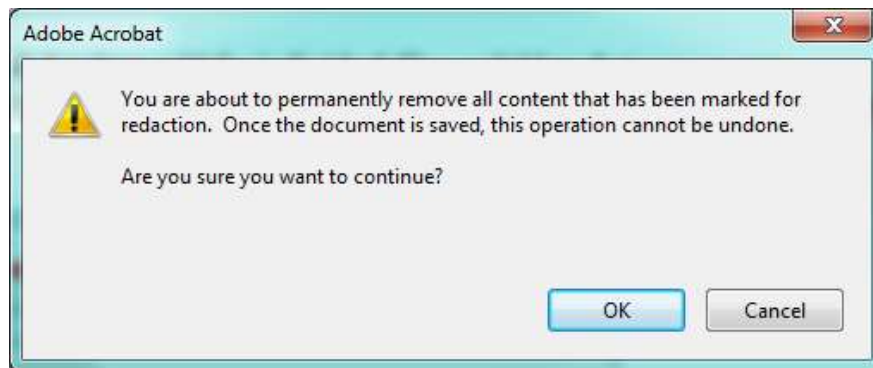
If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). *Adobe Acrobat Standard does not have redaction features.*

Click the **Tools** panel > **Protection** > **Mark for Redaction**.

Select the text you want to redact. To select text, click the left button on the mouse and drag it across the text using the redaction tool. You can also double click a word to mark it for redaction.

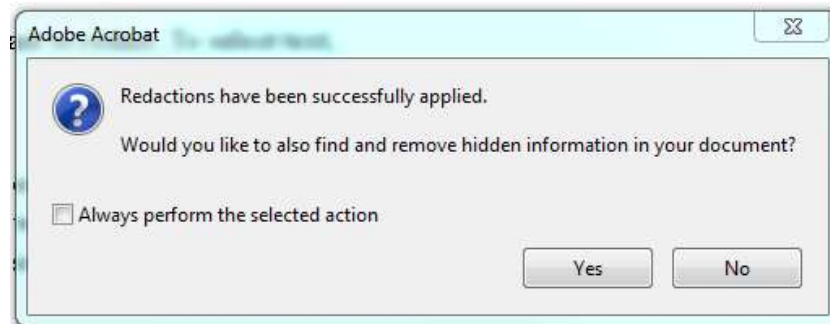
1. Place the cursor over the word marked for redaction to preview what the text will look like when redacted.
2. Once you are satisfied with the appearance, choose **Apply Redactions**.

This window will appear



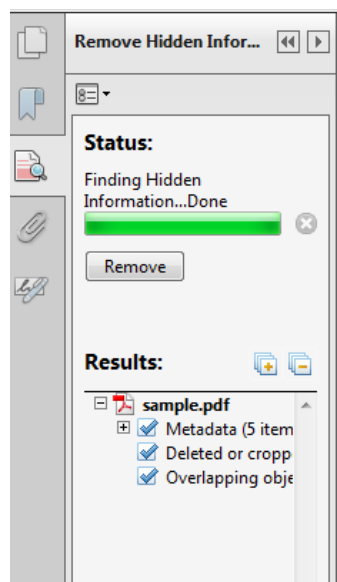
Click **OK**

When this window appears



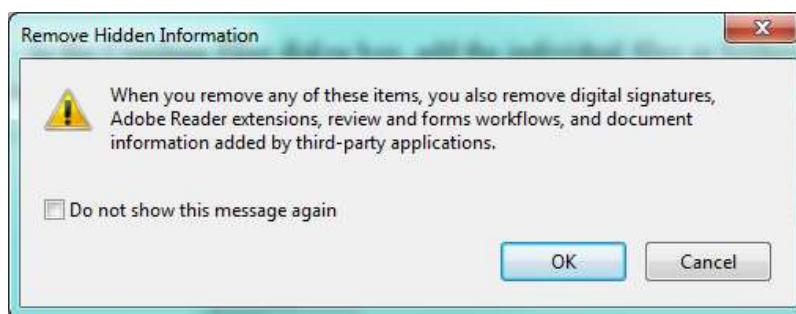
Click **Yes**

Adobe will open the panel below and find hidden information



Click **Remove**

When this window appears

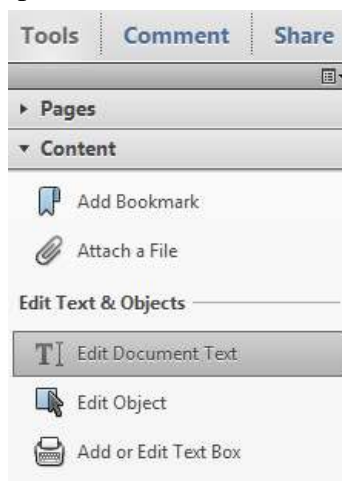


Click **OK**
Then Save the document.

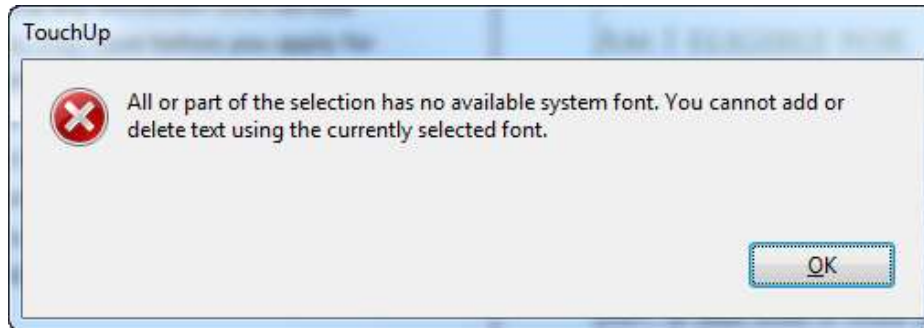
Fixing Mistakes

The Edit Document Text tool

It is not unusual to get to the end of the process of creating an electronic brief and discover that you have made a typographical error. This can be especially frustrating and stressful when you are trying to meet a deadline. Your first inclination might be that you have to fix any mistakes in your brief in Word or WordPerfect and then convert everything to PDF again. But you may be able to fix some simple typographical errors using Adobe Acrobat. The **Edit Document Text** tool allows you to erase and type in a PDF as though it were a word processing document. Adobe Acrobat automatically recognizes the font type and size, and you can backspace to remove text and then retype. To use the tool, select **Tools > Content > Edit Document Text**. Then place your cursor where you want to edit and type as you would with a word processor.



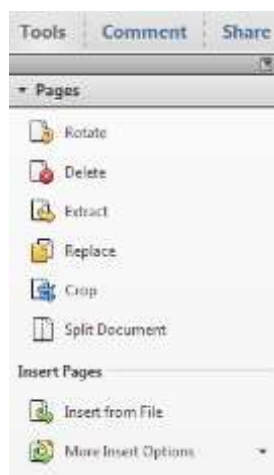
The tool has some serious limitations. First, not all fonts are available in Adobe Acrobat. If you used an unusual font you may get the following message:



The **Edit Document Text** tool also cannot reflow all of the text in your document like a word processor, so you may be able to fix a simple typographical error, but you cannot use the tool to retype sizeable portions of your brief.

Replacing Pages

If the mistake cannot be fixed with the **Edit Document Text** tool, you may be able to fix the error by deleting the offending page and replacing it with a corrected page. To replace a page, first fix the mistake in your word processing program. Then convert the corrected word processing document to PDF. Now **Extract** the corrected page from your corrected PDF and save it as a separate PDF document. Then **Delete** the page with the error from your original PDF. Now **Insert** the corrected page into the proper place in the original PDF.



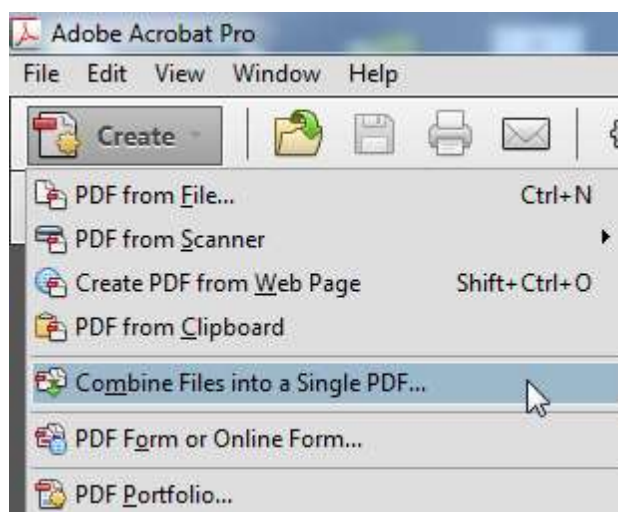
Depending on the mistake, it may just be easier to start over and recombine all your files after fixing the error in your brief. But if you have done a lot of manual bookmarking and hyperlinking, replacing the page using Adobe Acrobat may be easier than starting all over again.

Combine individual files into one PDF file.

If your document consists of several files, e.g., the brief, attachments, and a proof of service, the rules require that you combine them into a single PDF file before filing. You must have Adobe Acrobat or a similar PDF program to accomplish this task. Recent versions of Adobe Acrobat may vary slightly, but the process is similar. To combine individual files into a single PDF document, follow these steps:

Within a document in Adobe Acrobat

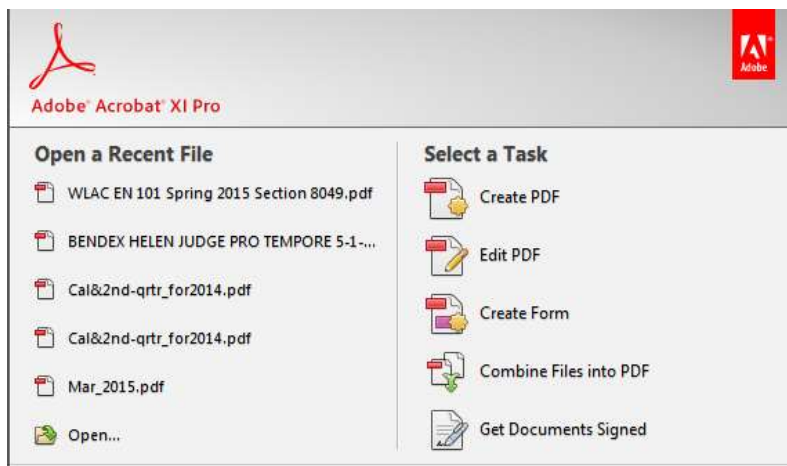
Choose **Create > Combine Files in to a Single PDF**



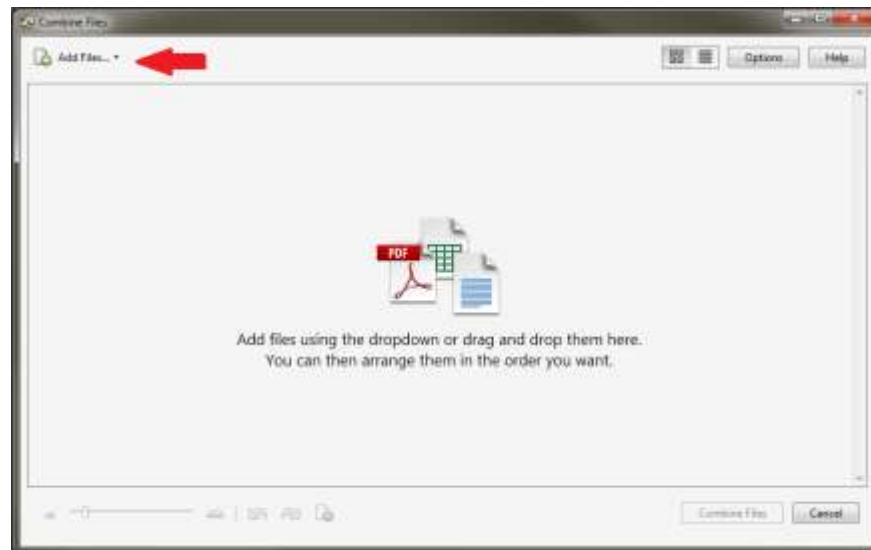
Or

From the Main Menu in Adobe Acrobat

Choose **Combine Files into PDF**



In the dialog box, add the individual files or folders that you want to combine into a single PDF. The files can be of any format supported by Adobe Acrobat (Word, PDF, Excel, etc.).



Arrange the files in the order that you want to combine them.
Select **Combine Files**.
Save and name the combined document

II. Creating Electronic Appellate Appendix

Appendices must comply with California Rules of Court, rule 8.124, including chronological and alphabetical indices. When possible, use PDF files that are converted from native formats, rather than scanned documents. (See [Saving/Converting directly to PDF](#).) Counsel or parties should cooperate in providing electronic copies of documents when requested and should check the local rules of the court where they will be filing to make sure all requirements for electronic documents have been met. (See also [Appendix A - Step-by-Step Digital Appendix Guide](#) and [Appendix B - Courts of Appeal Digital Appendix Requirements](#).)

1. Chronological Index

The chronological and alphabetical index should be converted from the wordprocessing program used to create them.

2. Pagination

Make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Every page must have a number. Do *not* use a separate pagination system for chronological or alphabetical index within the document. The page number does not need to appear on the cover page.

3. Scanning Documents

Although you are prohibited from scanning your documents that are available in electronic format (e.g. cases, statutes, etc.), there are occasions where you will need to scan a document in order to include it in your appendix. For example, a trial court may not have electronic filing so you may have to scan a trial court order. Or maybe you really want to include a contract in your appendix and it is only available in paper form. In those situations the only solution is to scan the document.

You can create a PDF file directly from your scanner using Adobe Acrobat or other software. When scanning, make sure that the scanner settings are:

- 300 dots per inch (dpi)
- Black and white (not gray scale or color, unless scanning an image)
- OCR (optical character recognition)

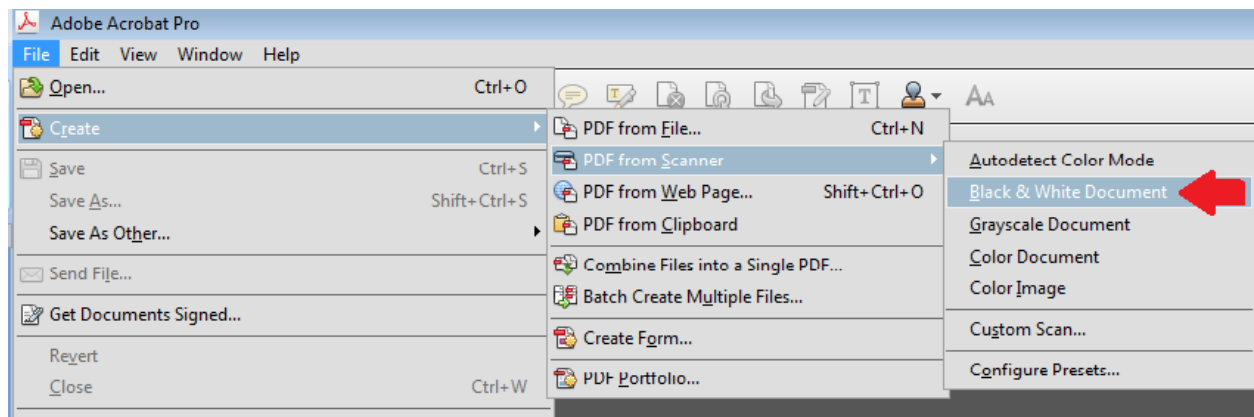
A one hundred page scanned document (that does not include images) with these settings should be about 3.5 megabytes in size. (NOTE: File size may vary with certain documents.) If scanning is creating files that are too large, check the settings on your scanner. Most office copiers, have a menu that allows the scanner settings to be adjusted.

If you have already adjusted the scanner settings, and the file size is still too large, some computer programs have the capability to reduce the file size. Adobe Acrobat Pro can do that (see instructions below). Make sure to do this before bookmarking the appendix. There are also a number of online resources that explain how to reduce the file size of scanned documents.

Scanning with Adobe Acrobat

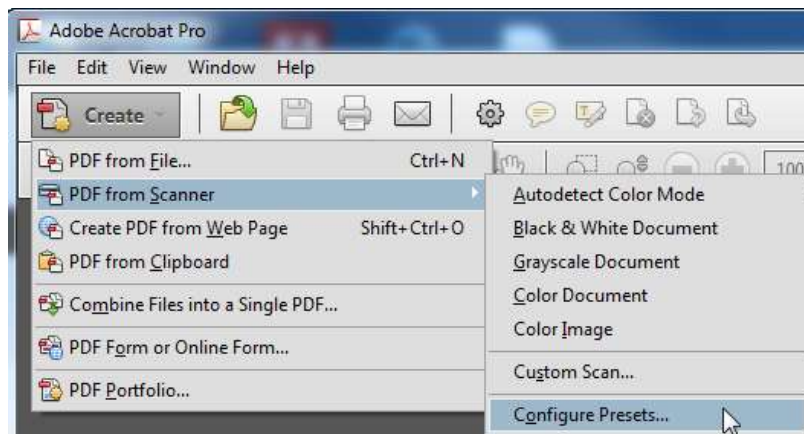
If you have a scanner connected to your computer that Adobe Acrobat recognizes, you can scan documents using Adobe Acrobat. Follow these steps:

1. Insert the document into your scanner
2. Open Adobe Acrobat
3. In Acrobat, choose **Create> PDF From Scanner**
4. Choose Black and White



Preset scanning settings for Adobe Acrobat

Adobe allows you to preset settings for scanning a document. To configure these settings choose **Create> PDF from Scanner> Configure Presets**.



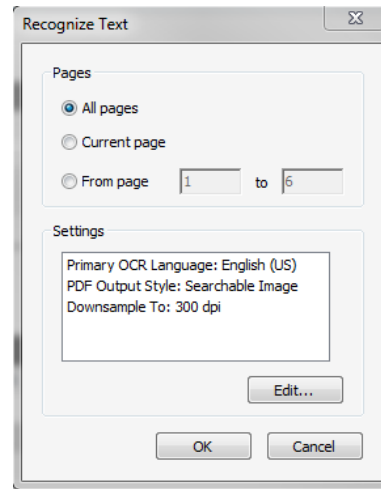
Configure your presets to scan at 300 dpi. Be sure to check **Make Searchable (Run OCR)**. For standard black and white documents you do not need to move the slider to create a high quality scan—smaller file size is preferred. Save your settings before scanning. The default settings are now set and each time you choose to use the Black & White Document preset the document will be scanned using these settings.



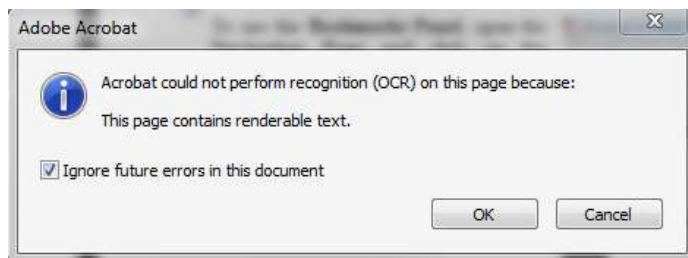
4. Make a document searchable from any scanned or otherwise non-searchable material searchable by using Recognize Text

Open the document in Adobe Acrobat Pro.

Click **Tools > Recognize Text > In This File > OK**



If some text has already been rendered searchable, check the box Ignore future errors in document and click on OK. When the OCR process is complete, remember to save the text searchable version of the document.



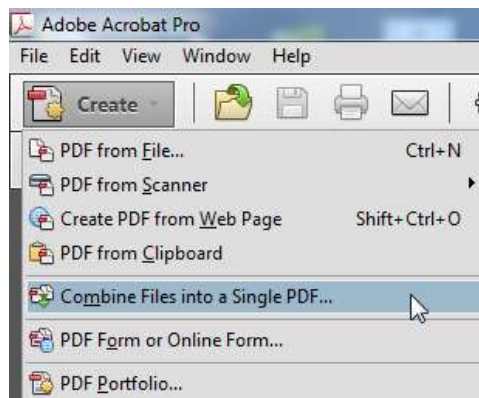
NOTE: If a header, e-filing stamp or bates no. has been added to a non-searchable document, Acrobat will not OCR that page.

5. Combine individual files into one PDF file.

An appendix typically consists of many separate documents, e.g., the complaint, minute orders and a proof of service. These documents must be combined into a single PDF file before filing. You must have Adobe Acrobat or a similar PDF program to accomplish this task. Recent versions of Adobe Acrobat may vary slightly, but the process is similar. To combine individual files into a single PDF document, follow these steps:

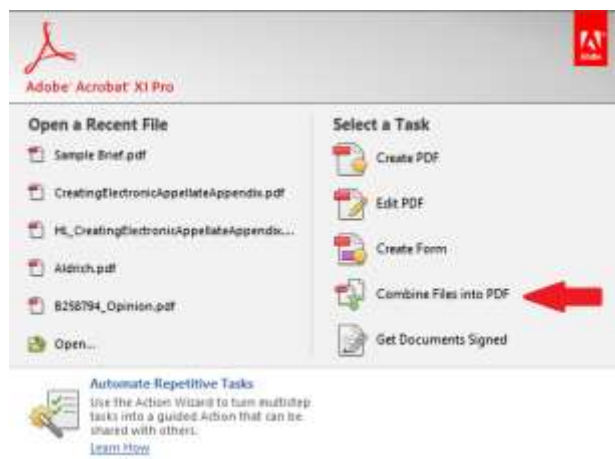
Within a document in Adobe Acrobat

Click **Create > Combine Files in to a Single PDF**



OR

From the Getting Started Menu in Adobe Acrobat



In the Combine Files dialog box, add the individual files or folders that you want to combine into a single PDF. The files can be any format supported by Adobe Acrobat (Word, PDF, Excel, etc.).

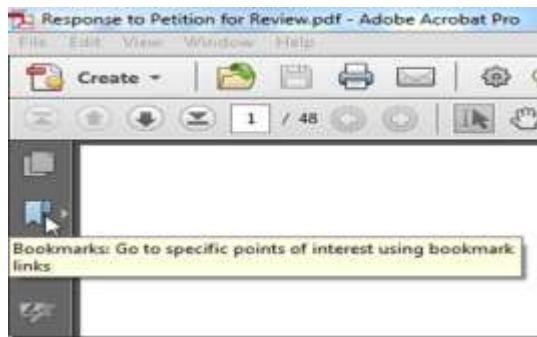


Arrange the files in the order that you want to combine them.
Click **Combine Files**.
Name and save the combined document.

6. Create bookmarks for all documents contained in the appendix.

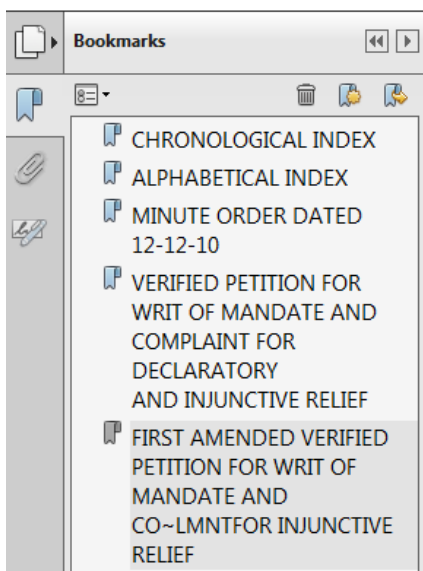
A bookmark is a text link that appears in the Bookmarks Panel of Adobe Acrobat. Some rules require bookmarks for each document that is listed in the index. Be sure to check the local rules of the court you are filing with to make sure you have met all requirements for electronic appendices. For documents without titles, be sure to use descriptive labels for your bookmarks.

To see the Bookmarks Panel, click on the Bookmarks Icon in the Navigation Panel.



Automatically generating bookmarks using Adobe Acrobat

Adobe Acrobat automatically creates bookmarks for each combined file when you use the **Combine Documents** feature discussed above in Step 3. The bookmarks will have the names of the files that you merged. However, some document titles listed in the index can be longer than what the filename should be. Using the **Combine** feature will require renaming the bookmarks.



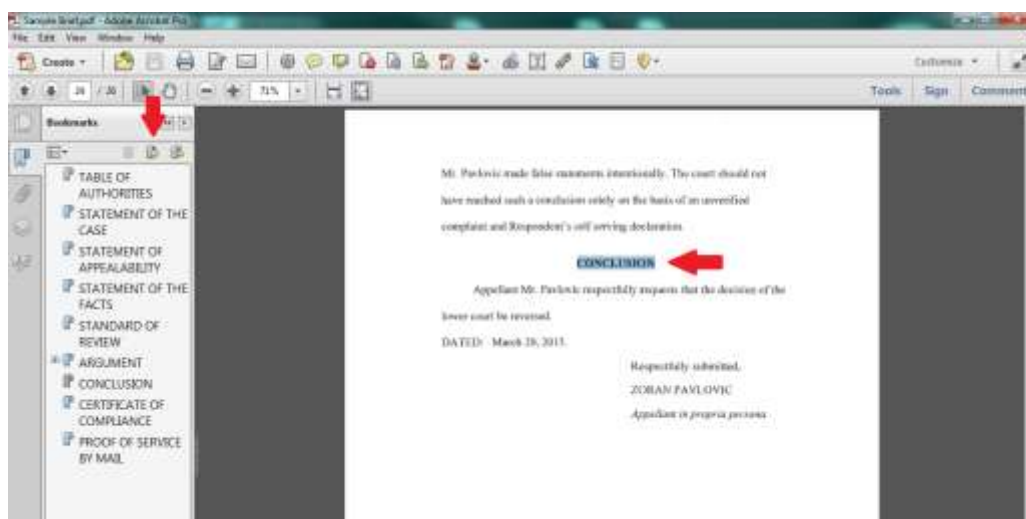
Manually adding bookmarks

You can manually add and edit the bookmarks. To add a bookmark, follow these steps:

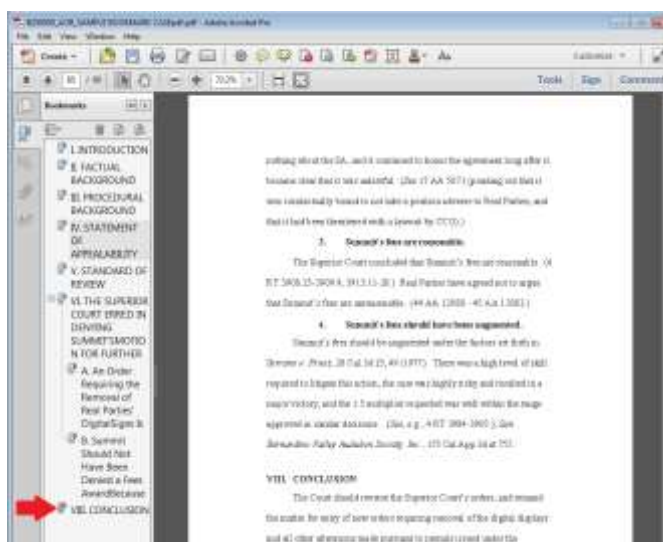
1. Click on the page where you want to create a bookmark
2. Click the **New Bookmark** Icon in the Bookmarks Panel or select **CTRL** and **B** keys on your keyboard at the same time.
3. In the text of the new bookmark, type the name or label that you want to give the bookmark.

OR

Highlight the text on the page you want to bookmark, then press the **CTRL** and **B** keys on your keyboard at the same time (or right click and select add bookmark). The bookmark will appear in the panel and the name will be the same as the text you highlighted.



The bookmark name will be the same as the text you highlighted.



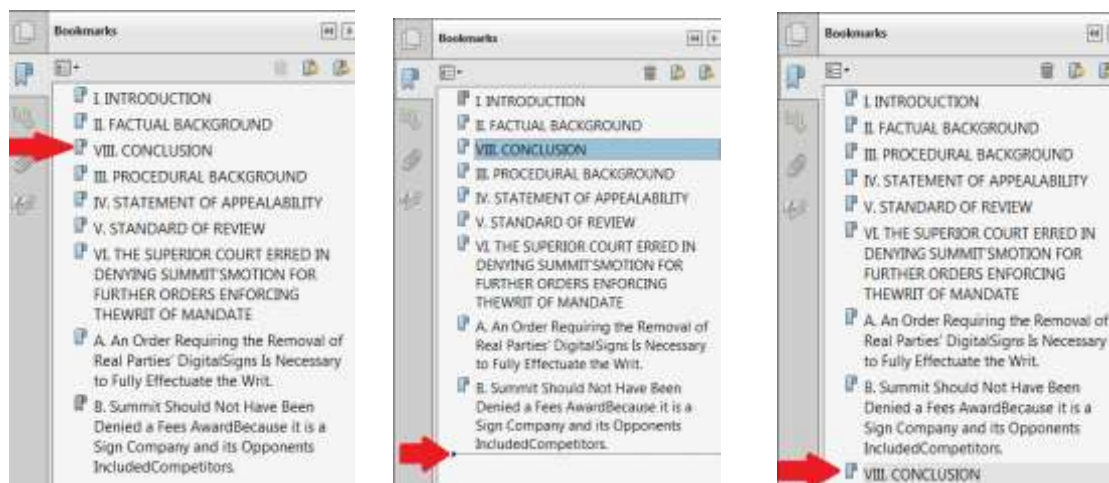
Bookmarks should use the same names that are listed in the index

Editing bookmarks

If you want to delete a bookmark, select the bookmark and press the delete key. To edit the bookmark name, double click on the bookmark to highlight the name, enter the new name and press Enter.

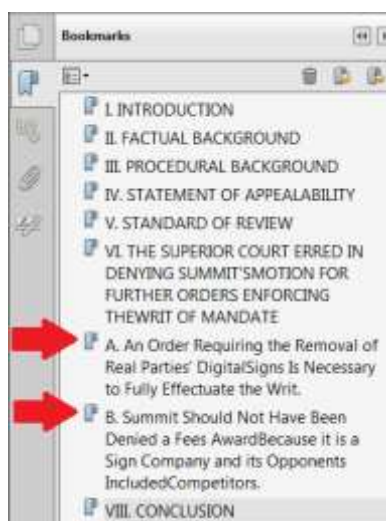
Moving bookmarks

To move bookmarks up and down in the Bookmarks Panel, click and drag the bookmark icon to the desired location and release the mouse button.

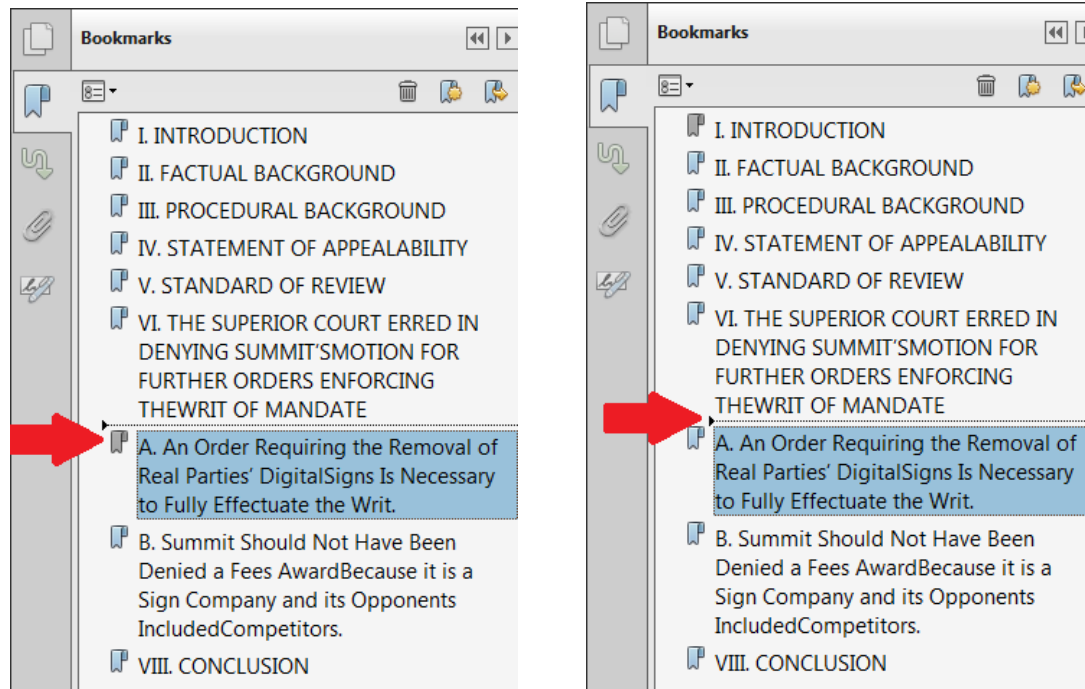


Nesting bookmarks

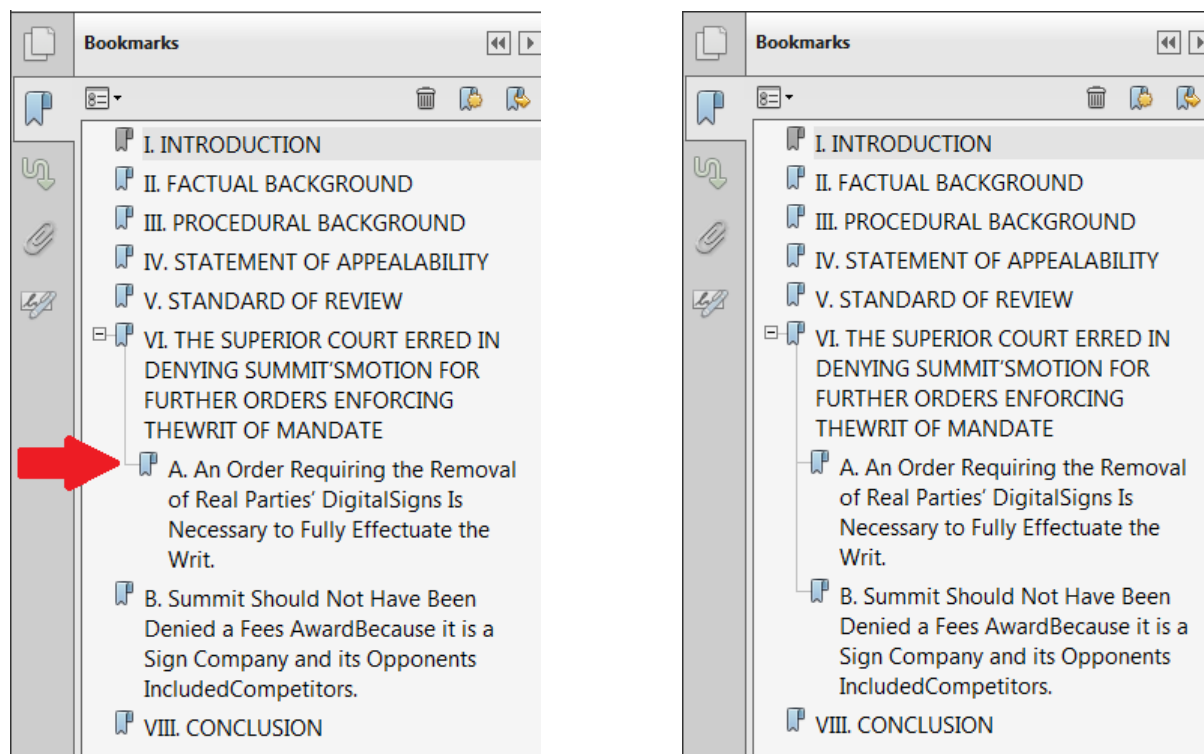
Bookmarks can be nested under other bookmarks to create a hierarchical, tiered structure. In the example below, A and B are subheadings under Argument VI.



To nest a bookmark, click and hold on the bookmark icon. Move the icon to the desired location and to the right until the black line shortens, then release the mouse button.

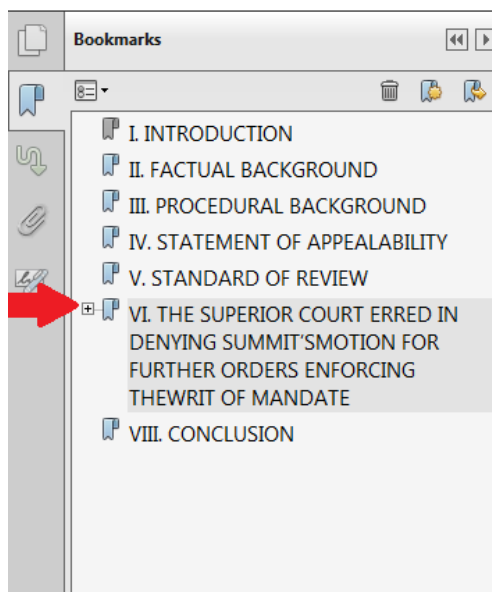


Release the button to nest the bookmark. Repeat for subheading B.



Alternatively, the mouse, the Shift and Control keys can be used simultaneously to mark two or more bookmarks to be nested, which can then be moved as a group to a new location.

Close and open the primary bookmark by clicking on this icon.



7. Redacting

Redaction should be done before creating bookmarks and making the appendices text searchable. The steps below will remove bookmarks and text recognition.

You must redact the following information from an appendix submitted to the court: (1) **social security numbers**, (2) **a birth date**, (3) **a home address**, (4) **the name of any person who was a minor when the underlying suit was filed**, (5) **a driver's license number**, (6) **a passport number**, (7) **a tax identification number**, (8) **any similar government-issued personal identification number**, (9) **bank account numbers**, (10) **credit card numbers**, and (11) **any other financial account number**. (Cal. Rules of Court, rule 1.20.)

The most important thing to remember about redacting documents is to **permanently remove the information from the document**. **Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). ***Adobe Acrobat Standard does not have redaction features.***

Redacting Using Adobe Acrobat Pro

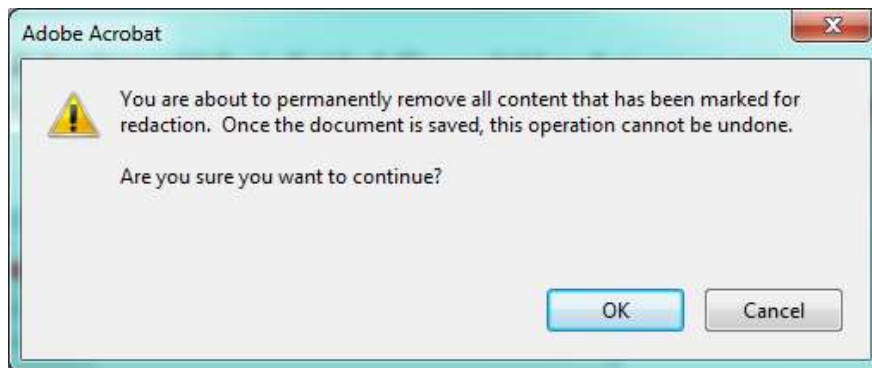
Click the **Tools** panel > **Protection** > **Mark for Redaction**.

Select the text you want to redact. To select text, click the left button on the mouse and drag it across the text using the redaction tool. You can also double click a word to mark it for redaction.

Place the cursor over the word marked for redaction to preview what the text will look like when redacted.

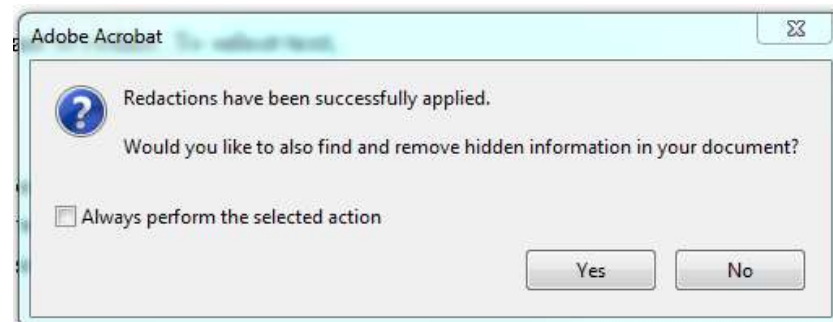
Once you are satisfied with the appearance, choose **Apply Redactions**.

This window will appear



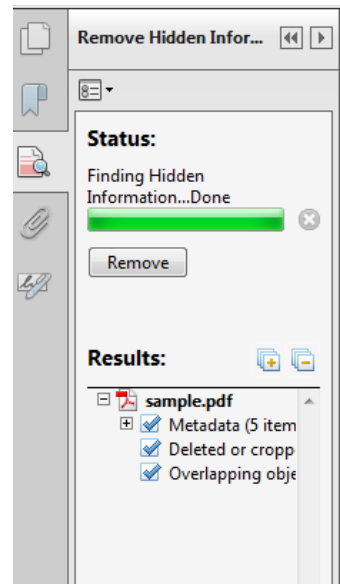
Click **OK**

When this window appears



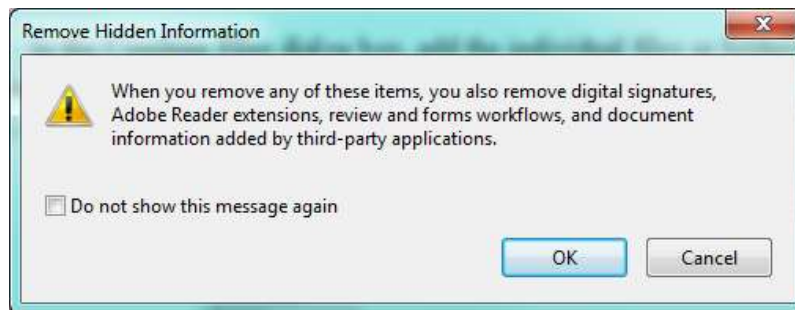
Click **Yes**

Adobe will open the panel below and find hidden information



Click **Remove**

When this window appears



Click **OK**

Then Save the document.

Optimize PDFs to reduce file size

Large documents or documents containing forms, photos or graphics should be saved as an optimized PDF to reduce file storage size. Select **File** and Click **Save As**. From the **Save as type** dropdown menu, select **PDF**. From the **Optimize for** radio buttons, select **Minimum size (publishing online)**. Click **Save**.



III. Hyperlinking

Overview of Hyperlinking


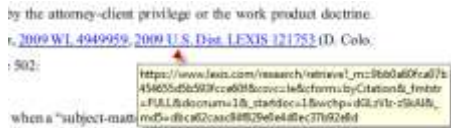

In the internet research world, hyperlinks are a standard way of “drilling down” for more detail or specific information. Just as all web pages contain links to other pages, cases downloaded from legal research services such as Westlaw or Lexis contain links to the cases, statutes, articles, or other sources cited within the opinion. The links allow immediate access by the reader to these referenced materials.

Attorneys can include links to cited law and their Appendix or Clerk’s Transcript and Reporter’s transcript, adding another level of persuasion to their writing. Hyperlinks in briefs and other court filings provide quick, easy, and pinpoint access to particular sections of a case, or to specific filings in the court’s record. The attorney can thereby highlight the precise issue presented, and the specific evidence and controlling or persuasive law the court should consider.

Though it is not required, rather preferred, hyperlinks in court filings are very beneficial for court chambers. Court submissions which include links to relevant case law and case filings are easy for chambers staff to review. The attorneys’ arguments can be immediately verified in the context of the relevant law. The justice or judicial clerk is able to read the text of the cited case law on one screen while reading the attorney’s brief on the other. And if a brief contains links to referenced exhibits, and even to specific pages within those exhibits, the judge or judicial clerk can access the relevant evidence without having to navigate through the paper record. Particularly when dealing with large and complex cases, links save chambers considerable time and effort. Links make it easy for the court to verify – and adopt – the positions taken by an advocate.

Types of Permissible Hyperlinks

Subject to the court's local rules, the following types of hyperlinks are typically allowed in court documents.

Internal Links	For example, the Table of Contents located at the beginning of this Guide.
Links to attachments and exhibits being filed with your brief	<p>Note: Evidence <i>must</i> be filed of record. A hyperlink to a public website where evidence can be found is not a substitute for filing evidence in support of a motion.</p>
Links to case and statute citations <p>Note: Unless a cited case cannot reasonably be found from a public source, it is not necessary to attach copies of cases or statutes to your brief.</p>	<p>For example:</p> <p>Westlaw,</p>  <p>Lexis,</p>  <p>or court websites.</p>  <p>A party has been fraudulently joined if there is no reasonable basis for predicting that the state law involved. <u>Bradley Timberland Lumber Co., No. 12-1892 (8th Cir. April 8, 2013)</u></p>

Creating a Hyperlinked Table of Contents

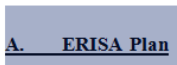


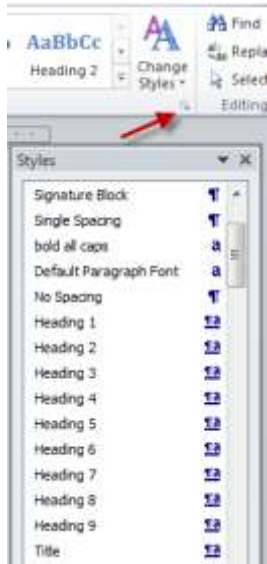
A table of contents in a Word document can include internal hyperlinks for navigating the document. When the document is converted to PDF format, these links will become bookmarks in the PDF document. Note that the Table of Contents is different from the Bookmarks that are required in the PDF version.


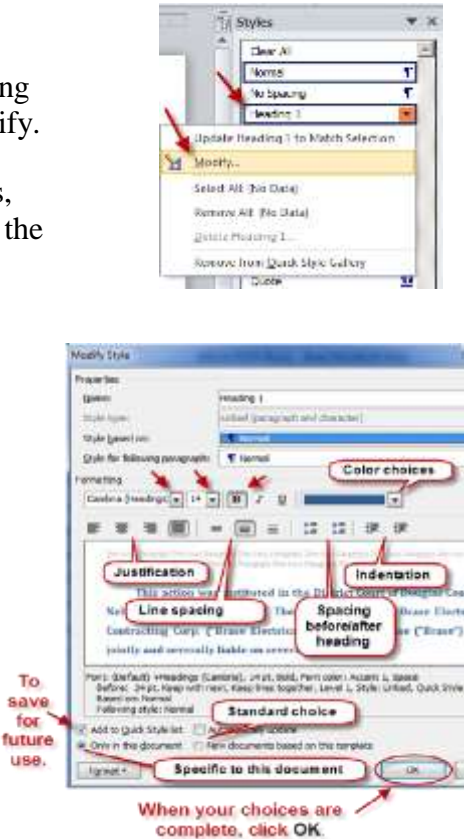
Although there are several methods for creating a table of contents in Word, the one most useful to attorneys (and discussed below), is to create the document, include any headings as you write, and then:

- Mark and format the headings to be included in the table of contents;
- Generate and insert the table of contents; and
- Edit as needed.

Marking and Formatting Table of Contents Entries

To mark and format entries to be included in the table of contents using Microsoft Word:

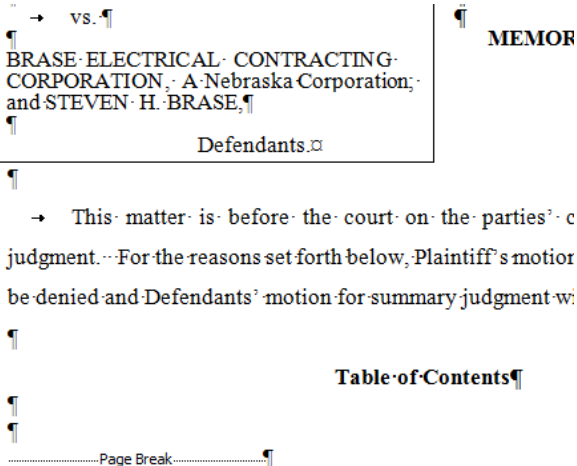
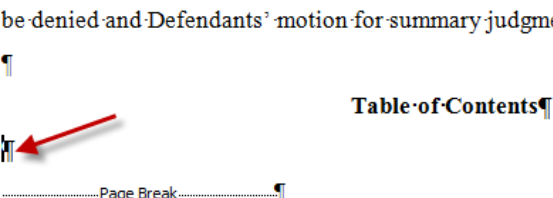
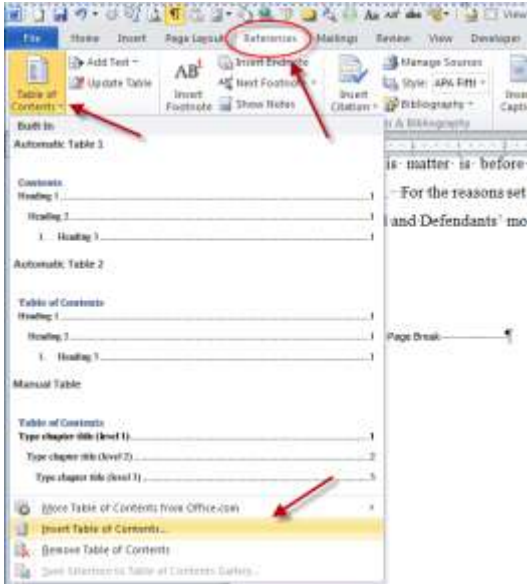
STEP	ACTION
1	Create your document, inserting all headings with the format of your choice.
2	Using your cursor, scroll over and select the heading you want to include in the table of contents. <div style="text-align: right;">LEGAL ANALYSIS</div> <div style="text-align: center;">  </div>
3	<p>From the Styles section on your Home tab,</p>  <p>Click the down arrow in the right lower corner.</p>  <p>A drop down list will appear.</p>  <p>Note: There are pre-formatted Heading Styles available in MS Word, but only 2 may be visible in your styles drop-down menu. Additional heading options will appear, as you make your selections. For example, when you select and apply Heading 2, the Heading 3 option will appear and be available for the next heading level, and so on.</p>

If...	Then...
<p>You want the text of the table of contents entries to match the headings already created within your document (e.g. font, font color, bold, etc.):</p>	<p>Use your cursor to select the heading to be included in the table of contents.</p>  <p>From the Styles list, Right-click the heading level you wish to apply. In the box that appears, select:</p> <p>Update Heading [x] to Match Selection.</p> <p>Continue until a heading style has been applied to all heading levels within your brief.</p>
<p>You want to:</p> <p>Set a standard format (e.g. font, font color, bold, etc.), for all headings and table of contents entries created with your Word program,</p> <p>Or</p> <p>Change the heading format in the brief already created:</p>	<p>From the Styles list,</p> <p>Right-Click the heading level you wish to modify.</p> <p>In the box that appears, select Modify to open the Modify Style box.</p>  <p>Choose text:</p> <ul style="list-style-type: none"> • font • font size • appearance • color • justification • line spacing <p>Save settings for:</p> <ul style="list-style-type: none"> • only in this document, or • all documents created using your standard templat • Add to Quick Style List. <p>Click OK.</p>

Scroll through your document. For each heading, select the heading text with the cursor, then click the heading style to be applied.

Generating and Inserting the Table of Contents

To add the Table of Contents to your document:

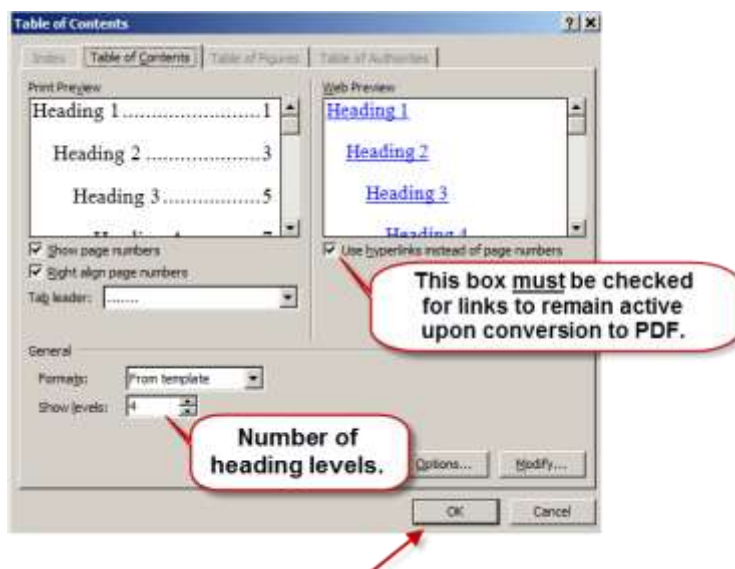
STEP	ACTION
<p>Place your cursor in the document at the location you want to insert the table of contents.</p> <p>Add a title for the Table of Contents.</p> <p>Enter a few hard returns.</p> <p>Control + Enter to insert a page break.</p>	
<p>Place your cursor where the table of contents entries should begin.</p>	
<p>From the References tab of your Word ribbon,</p> <p>Select Table of Contents, and from the menu that appears,</p> <p>Select: Insert Table of Contents.</p>	

Make selections for the appearance of the table of contents.

Click **OK**.

Note: If your table has more than three levels, you must set **Show levels** to the correct number.

Note: The “Use hyperlinks instead of page numbers” must be checked or the table of contents will not have active links upon conversion to PDF.



The Table of Contents, with active section links, will be inserted into your document.

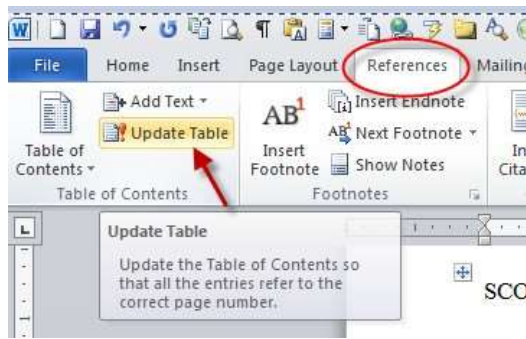
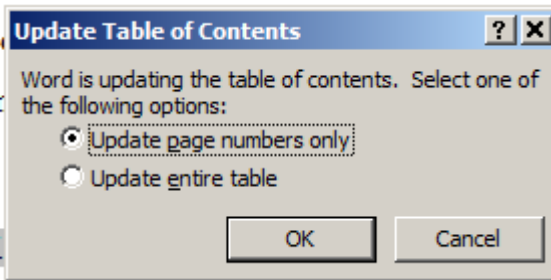
Note: You can manually modify the page numbers to appear as other links in your document, blue and underlined).

PROCEDURAL BACKGROUND	2
STANDARD OF REVIEW	2
UNDISPUTED FACTS	
LEGAL ANALYSIS	
A. ERISA Plan	5
B. ERISA Preemption	7
C. ERISA Claims	8
1. ERISA--The Well-Pleaded Complaint Rule	8
2. The Merits of Plaintiff's Claim for ERISA benefits	10
a) ERISA Standard of Review	10
b) Right to Recovery under the Terms of the Retirement Plan	11
c) Right to "Appropriate Equitable Relief" under ERISA	17

Editing the Table of Contents (if needed)

Inserting the Table of Contents may result in page break changes. For example, hard page breaks or extra lines that were added during drafting to adjust the overall look of the document may no longer be needed, or some may now need to be added.

If the brief was modified after the table of contents was inserted:

STEP	ACTION
<p>From the reference tab on the Word ribbon, select Update Table.</p>	
<p>Select Update page numbers only. Click OK.</p> <p>Note: If you have added or changed a heading, choose Update entire table.</p>	

When the entire document is complete, using MS Word, **Save** the document as a PDF or **Create PDF**.

Note: Do *not* Print to PDF. All active links in your Word document become inactive in PDFs created using Print to PDF.

Formatting the Appearance of the Links Inserted

Before inserting links into a document, you may choose how those links will appear in the final document. For example, do you want them to appear:




blue and underlined, **bold**

and black, *black and*


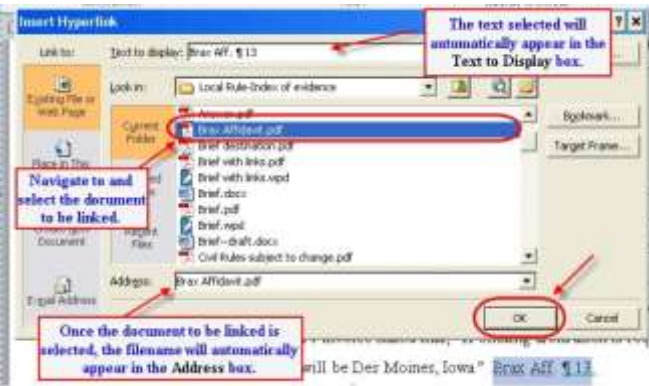
italicized, or

some other appearance?

To select the appearance of the links in your document:

STEP	ACTION
1	On the Home tab, click on the tiny arrow under Changes Styles . 
2	A drop down menu will appear. Scroll down until you see Hyperlink . Right-click on Hyperlink , and from the choices that appear, select Modify . 
3	A Modify Style box will appear. Change the color, font, and underlining, etc. for hyperlinks. Note: Choose a specific font and font size for the linked text <i>only</i> if the linked text font and font size should appear different from that of the document text. Otherwise, leave the font and font size selections blank. Click OK . 

Adding Links to Attachments

STEP	ACTION
1	Save all the attachment documents you will cite in your brief into a single folder in your computer. The documents must be in PDF format. Be sure the names of the files do not contain special characters, such as apostrophes or ampersands, as these will break the hyperlinking process.
2	While drafting your brief, include the citations to the documents saved in your computer.
3	Using your cursor, select the text to which a link will be added. for any seed disputes, the 2011 invoice stated that, "If binding arbitration is required (see bag), the place of arbitration will be Des Moines, Iowa." Brax Aff. ¶ 13 .
4	On the Insert ribbon, select Hyperlink . 
5	In the Insert Hyperlink dialog box: <ul style="list-style-type: none"> • Navigate to cited file saved on your computer; • Select the file; and • Click OK. 

- 6 A link to the file will be added to the text. If you hover over the link with your cursor, you will see the link address.

and conditions sheet, and again putting Plaintiffs on notice that ar
for any seed disputes, the 2011 invoice stated that, "If binding ar
bag), the place of arbitration will be Des Moines, Iowa." [Brax Aff. ¶ 13](#) (emphasis added).

Add links to all the citations in your brief accordingly.

Note: Specific page links can be added by following the directions in the previous section. Use the **PDF** page number, not a Bates number or footer page number, for the citation.

Automated Links to Legal Citations

Links to legal citations can be added manually or, assuming the software is compatible with your computer and word processing software, by using automated linking software available through Westlaw or Lexis.

Access to Linking Software

Tool	Cost	URL
Westlaw InsertLinks	Must purchase a West BriefTools subscription. Estimated cost: \$100/month for small firms; \$300 to 500/month for larger firms (10 licenses)	http://legalsolutions.thomsonreuters.com/law-products/solutions/brief-tools?searchterms=brief+tool
Lexis for Microsoft Office	This Lexis software product will add links for research and drafting purposes, but those links are lost upon conversion to PDF. Lexis is investigating the issue.	http://www.lexisnexis.com/en-us/products/lexis-for-microsoft-office.page

Linking Software—Compatibility Information

The following graph outlines the compatibility of Shepard's Links 2008, West InsertLinks, and Lexis Links for Microsoft Office for inserting links into MS Word and WordPerfect documents with a Windows XP (SP3) 2GB Memory, Windows Vista (SP2) 4GB Memory, or Windows 7 – 4GB Memory computer.*

	Shepard's Links 2008	Lexis for Microsoft Office	West InsertLinks
MS Word 2010		X**	X***
MS Word 2007		X**	X***
MS Word 2003	X		X***
MS Word 2000	X		
WordPerfect X6****			
WordPerfect X4 – X5			X
WordPerfect X3	X		X
WordPerfect 10 – 12	X		

* The West and Lexis linking software programs cannot be used on Apple computers. Moreover, although Shepard's Links was not designed to operate on Windows Vista and Windows 7 (as reflected in the Lexis literature), it is working on these computer systems.

** Lexis for Microsoft Office is being developed and tested. However, in its current stage of development, any links added by Lexis for Microsoft Office are being stripped out upon conversion to PDF. Lexis is investigating this issue.

*** Westlaw product information states InsertLinks is compatible with both 32- and 64-bit Microsoft Word. However, while it works well with 32-bit Word, InsertLinks is not fully compatible or useful with 64-bit Word.

**** West currently has no linking software compatible with WordPerfect X6. West indicates it may develop and release this product during the summer of 2013.

Westlaw InsertLinks

InsertLinks is a Westlaw computer software program which scans Microsoft Word or Corel WordPerfect¹ documents to locate legal citations, and then automatically inserts hyperlinks to the Westlaw internet address (url) for those citations into the word processing document.

See attached InsertLink example-Word

InsertLink example-WordPerfect



Installing West InsertLinks

InsertLinks is part of the West BriefTools suite, and a BriefTools subscription is required in order to use this software.

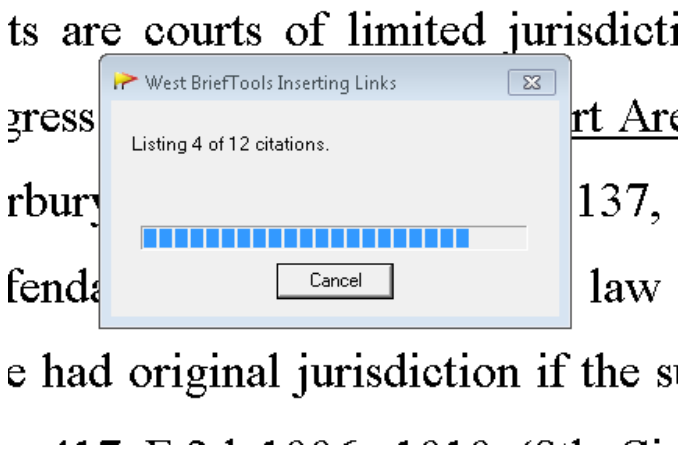
- The current West BriefTools product is Version 2.7.2039, which was updated on December 10, 2012.
- The attached BriefTools Software Download instructions outline the system requirements and provides instructions on how to install West BriefTools.

Using West InsertLinks

Once InsertLinks software is installed, Westlaw links can be installed automatically in Microsoft Word documents using the following steps:

STEP	ACTION
1	<p>With the Microsoft Word document to which you are adding links open on your screen:</p>  <p>Select the Westlaw Solutions tab on the Word ribbon.</p>
2	<p>The West BriefTools options will open.</p>  <p>Select InsertLinks.</p>

¹ Currently, InsertLinks is not compatible with, and cannot be used for, automatically inserting links into WordPerfect X6 documents. It does, however, work with prior versions of WordPerfect.

STEP	ACTION
3	<p>The InsertLinks software will begin searching the document for citations and inserting the appropriate links.</p>  <p>The box depicted above will disappear when the process is complete and all links are installed.</p>

Manually Inserting Hyperlinks

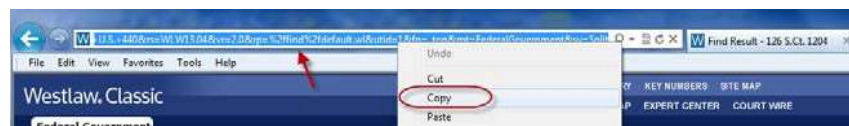
As previously described, hyperlinks to documents filed can be manually added to a document about to be filed. It is also possible to manually create links to documents available through commercial legal websites (e.g., Lexis or Westlaw), and those posted on the court's website (Local Rules).

Manually adding links can be labor intensive if the document is long, but the process is not difficult. And even if you are primarily using software to add links to a document, understanding the underlying mechanics of hyperlinking within WordPerfect and Word documents is helpful and may be necessary if, for example, you need to make corrections to the automatically created links.

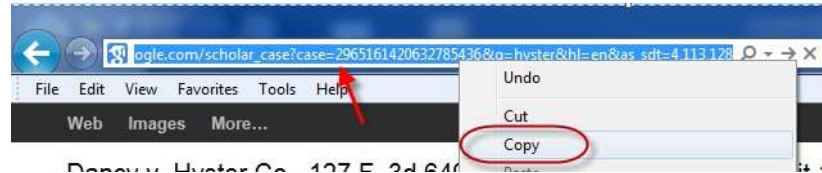
Manually Creating Links to Online Research Resources

The process for manually adding links to Westlaw, Lexis, Google Scholar, or any other online research resource (LoisLaw, FastCase, etc.) is the same.

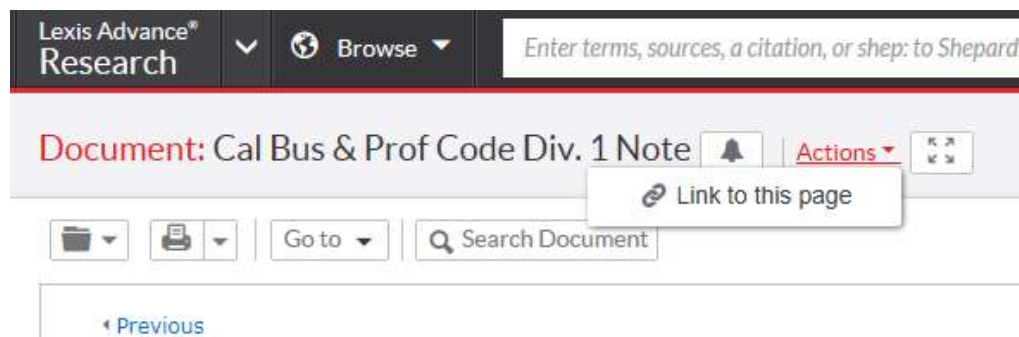
STEP	ACTION
1	<p>In the brief, use your cursor to select the citation to which you are adding a link.</p> <p>The United States Supreme Court has held that the FAA “embodies the national policy favoring arbitration.” <u>Buckeye Check Cashing, Inc. v. Cardegna</u>, 546 U.S. 440, 443 (2006). See also <u>Mastrobuono v. Shearson Lehman Hutton, Inc.</u>, 514 U.S. 52, 56 (1995);</p>
2	<p>Sign into the legal research website and open the cited document. Select the url address for the document.</p> <p>Note: When using this method, if the link on the website changes, the link in the document may not work.</p> <p>Right-click, and Copy the address. See below:</p>



OR

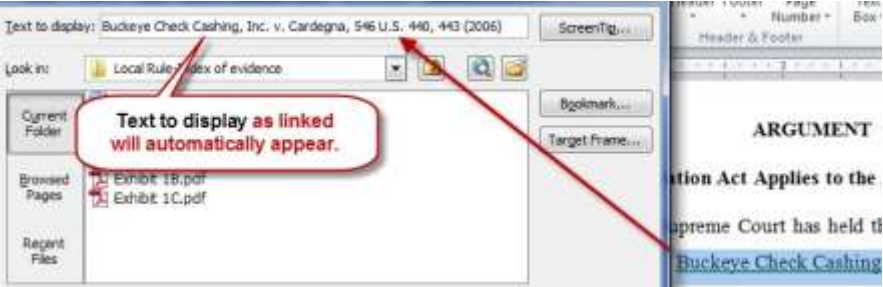




When using Lexis Advance, select Actions > Link to this page. This will use a static link, which should always work.



Note: Check your local rules for any authority or limitations on the legal research websites to which links are permitted.

Note: Some attorneys have reported difficulty using this method to insert links to Lexis research.

STEP	ACTION
3	<p>a Select the Insert ribbon, then select Hyperlink. An Insert Hyperlink dialog box will appear.</p>  <p>Note: The text you selected will automatically appear in the “Text to display” line.</p>
	<p>b Place your cursor in the Address box of the Insert Hyperlink dialog box. Right-click. From the drop-down that appears, select Paste.</p>  <p>Click OK.</p>
	<p>c The link to the citation will be added in your brief.</p> 

Optimize PDFs to reduce file size

Large documents or documents containing forms, photos or graphics should be saved as an optimized PDF to reduce file storage size. Select **File** and Click **Save As**. From the **Save as type** dropdown menu, select **PDF**. From the **Optimize for** radio buttons, select **Minimum size (publishing online)**. Click Save.



Appendix A

STEP-BY-STEP DIGITAL APPENDIX GUIDE

1.0 Preparing the Trial Exhibits

Trial exhibits are often retained in diverse file formats as well as hardcopy. For e-filing, all must be converted to searchable PDF. Additionally, because of maximum file size limitations for e-filing, scanning and OCR settings become critical.

- 1.1 Convert native file formats to searchable PDF
- 1.2 Scan hardcopy to PDF and apply OCR
- 1.3 Issues with “second-hand” PDF and OCR
- 1.4 Reduce size of “bloated” files and maintain optimal file sizes

Files are now searchable PDF, appendix-ready and ready for efficient review.

2.0 Assembling the Appendix

2.1 When all exhibits that make up the appendix have been selected, create a Chronological index template with columns for **Tab No., Description, Date, Volume, and Page**. Populate the columns for Tab No., Description and Date.

2.2 Rename exhibit files with Tab No. and description, e.g. “Tab 001 - Summons and Complaint for Damages filed 01-15-2014”. (The Tab no. will sort the files in Chronological order; see § 2.4 below about suggested file name format.)

2.3 Move exhibit files into folders (Vol. 01; Vol. 02...) with total file size less than 24MB.

2.3.1 When needed, split large files between two or more volumes. Name the sub-divisions of the file with “(Part 1), (Part 2)...” preceding the description, e.g. “Tab 025 – (Part 1) Declaration of James Smith filed 07-15-2015.pdf”

2.4 Use Acrobat’s “Combine files” feature to merge the files in each folder and automatically create bookmarks (from the file names) linked to the beginning of each document or document sub-division.

2.4.1 If any exhibit files have been split between volumes, add an additional entry to the index template in § 2.1 above, with Tab No. and “(Part #)” preceding the description.

2.5 Rename the compiled appendix file in each folder (suggest Vol. 01, Vol. 02...) so the appendices sort correctly during Bates stamping, and move them to a new folder.

Appendix volumes, meeting the 25 MB limit have now been created with bookmarks linked to each exhibit. They lack a cover page and index pages as well as bookmarks to the indices.

3.0 Preparing Interim Alpha and Chron Index Pages

Interim indices are now needed to determine the number of pages to be added to each volume for cover page and index.

3.1 Using the Chron index template from § 2.1 above, create interim Master Chron and Alpha index pages for the first volume and individual Chron index pages for all other volumes. (The 4th COA also requires a “local” Alpha index for each volume) Note that when creating the Alpha indices, you must take into account the “(Part #)” text when sorting by description. All indices must be formatted exactly as the final index pages are formatted, including any heading, case description, etc. Save as PDF.

3.2 Use the Acrobat thumbnail panel to insert the appropriate interim index pages plus a blank cover page at the beginning of each volume.

4.0 Bates Stamping the Volumes

With interim Index pages and blank cover pages added, the volumes are now ready for Bates stamping which, when finished, will provide the page numbers needed to complete the final index pages and cover pages.

4.1 With the appendix volumes in a single folder *with no other PDF files*, Bates stamp them sequentially from the cover page of the first volume through the final page of the last volume.

4.2 Use the bookmarks in each volume to link to the first page of each exhibit and note the Bates number for the index.

5.0 Finalizing the Master Chron, Master Alpha, Individual Chron and Alpha Indices and Volume Cover Pages.

5.1 Using the interim Master Chron index from § 3.1 above, fill in the volume and page number columns and finalize the Master Chron and Alpha index pages for the first volume. Next, create the final individual Chron and Alpha (4th COA) index pages for all other volumes. Save to PDF.

5.2 Create a cover page template and fill in the volume number and page range for each volume. Save to PDF.

6.0 Replacing Temporary Cover and Index Pages in Each Volume

6.1 Use Acrobat's thumbnail panel to replace the temporary cover and index pages in each volume with the final versions. Note that this process removes the Bates numbers on the replaced pages.

6.2 Use Acrobat's Remove Bates Numbering tool to remove all Bates numbers in the folder, and then use the Bates Numbering tool to recreate them in all volumes.

7.0 Additional Requirements

7.1 Create bookmark links to indices in each volume. (Only included in 6th COA rule but should apply to all)

7.2 Sync the number in the page navigation window (Acrobat page counter) with Bates numbers in each volume. (Only included in 5th COA rule but should apply to all)

7.3 Create bookmark links to listed sub-attachments, such as an exhibit to an attachment. (6th COA)

7.4 Set all bookmark zoom settings to "Inherit Zoom" (Only included in 5th COA rule but should apply to all)

Appendix B

Creating Digital Appendices for E-Filing in the CA COA

Five of the six California Appellate Districts have implemented mandatory e-filing and the one remaining, the 2nd, will do so late this year. With the requirement for continuous Arabic page numbers throughout multiple appendix volumes, determining volume splits, adding indices and bookmarks, and applying Bates numbers can be a challenge – with each item depending on another in some way. The following table is a compilation of the local rules by district (as of 3.29.16), and the step-by-step guide that follows is intended to simplify the processes required to meet the new rules.

(The 4th COA Local Rule 5 requirements will go into effect 4/4/2016 and are included in the table)

CA COA Digital Appendix Requirements	1st COA (SF)	2nd COA (LA)	3rd COA (Sac)	4th COA (SD, OC, RS)	5th COA (Fresno)	6th COA (Santa Clara)
Local Rule	16		5	5	8	2
A. File Preparation						
1. Searchable PDF	X		X	X	X	X
2. Scanning resolution of 300 dpi; B/W; <u>not</u> grayscale; use color only for images, charts	X		X	X	X	X
B. Indices						
1. Master Chron and Alpha in first volume	X		X	X	X	X
2. Individual Chron in all other volumes	X		X	X	X	
3. Individual Alpha in all other volumes				X		
C. Bookmarks						
1. Linked to indices in each volume						X
2. Linked to each listed exhibit or attachment	X		X	X	X	X
3. Linked to each listed sub-attachment						X
4. Name must include "Tab no., Description"	X		X	X		
5. All "zoom" settings must be "Inherit Zoom"					X	
D. Assembled Volumes						
1. Maximum individual volume size 25 MB	X		X	X	X	X
2. Cover pages to include Volume no. and page range	X		X	X	X	
3. Consecutive Arabic page/Bates numbering from the cover of the first volume continuing throughout the volumes	X		X	X	X	X
4. Appendices <i>may</i> be delivered on optical reading media under some circumstances	X		X	X		
5. Number in Acrobat page counter must be synched with page/Bates numbering					X	

Special thanks is given to Blake A. Hawthorne, Clerk of the Texas Supreme Court and the Texas Supreme Court for sharing their *Guide to Creating Electronic Appellate Briefs*.

US Supreme Court
Writ of Certiorari (no number yet)
Texas Supreme Court Case #16-0063
Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

Oct 7, 2016

Attn: Clayton Higgins
US Supreme Court and Clerk
Supreme Court of the United States
Supreme Court Building
1 First Street, NE
Washington, DC 20543-0001
(202)-479-3000

Clayton,

Thank you for your voicemail message about the needed analog signatures and great talking to you on the phone yesterday. Here are the analog signature pages that you requested.

We have included 10 copies of this “WOC signature addendum” to add to the 10 purple binders we sent on 9/19/2016. We figured this would be the easiest way to integrate the contents with the least amount of re-printing or page insertion confusion.

As well, a DVD is included, with the already scanned "WOC signature addendum", should you need to print out more copies.

Sincerely,


Alan L. Hamilton, Petitioner, Pro Se

Attachments List:

Printed:

1) 7 pages – analog WOC signatures (original + 10 copies)

On DVD:

2) 7 pages – analog WOC signatures (pdf - already scanned in - should more copies be needed to printout)

cc:

Appellee's Attorney:
Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Texas Supreme Court and Clerk
Supreme Court of Texas
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas 78701
(512) 463-1312, Fax: (512) 463-1365

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Dorian E Ramirez
13th COA Court and Clerk
Nueces County Courthouse
901 Leopard, 10th floor
Corpus Christi, Texas 78401
361-888-0416, Fax: 361-888-0794

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Velva L. Price
Travis County District Clerk
1000 Guadalupe Street
Austin, Texas 78701

VIA ELECTRONIC FILING
(www.greenfiling.com)

No. _____

IN THE

SUPREME COURT OF THE UNITED
STATES

Alan L. Hamilton — PETITIONER
VS.
Daniel Davila III — RESPONDENT(S)

PROOF OF SERVICE


I, Alan L. Hamilton, do swear or declare that on this date, 10/7/2016, as required by Supreme Court Rule 29 I have served the enclosed the letter/notice of mailing of "WOC signature Addendum", on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days: Served via www.GreenFiling.com on 10/7/2016 (www.eFileTexas.gov).

The names and addresses of those served are as follows:

Respondent's Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 10/7/2016.



Alan L. Hamilton, Petitioner, Pro Se

US Supreme Court
Writ for Certiorari (no number yet)
Texas Supreme Court Case #16-0063
Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

Sept 14, 2016

US Supreme Court and Clerk
Supreme Court of the United States
Supreme Court Building
1 First Street, NE
Washington, DC 20543-0001
(202)-479-3000

Dear US Supreme Court and Clerk,

This is our original Writ of Certiorari we are filing today via Fed Ex Express Delivery, with max delivery time of 3 days, per US Supreme Court Rules. The extra 10 printed copies will follow in overnight mail tomorrow, as print time did not allow their inclusion with the original today.

If there is anything that needs to be redone/not up to spec, per the Court's request, please let us know and we will be happy to fix it as desired by the Court.

Sincerely,

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L Hamilton — PETITIONER

VS.

Daniel Davila III — RESPONDENT(S) MOTION FOR LEAVE

TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Texas Supreme Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.



/s/ Alan L Hamilton
(Signature)

NOTE: Making up difference between income and expenses with wife's credit card currently.

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☒ Yes ☐ No

If yes, how much? \$16,000 + \$20,000 = \$36,000

If yes, state the attorney's name, address, and telephone number:

1. 2008-2009 – Wayne Gronquist – Probate - \$16,000 - deceased

2. 2012-2013 – Jason Coomer, filed original civil cases, \$20,000

Law Office of Jason S Coomer, PLLC

State Bar # 00793547

406 Sterzing, 2nd floor

Austin, Texas 78704

(512) 474-1477 - telephone

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Entire retirement embezzled to insolvency. Elder Financial Abuse, the subject of this case. We have already paid close to \$3000 in court costs, for an unreadable/un navigable Clerk's Record. We weren't completely broke until we tried to use the Texas "Justice System".

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 9/14/2016



/s/ Alan L Hamilton

Alan L Hamilton

10-REASONS FOR GRANTING THE PETITION

As stated in the "Statement of the Case", it is clear that with more than one meaning of the word "must", one cannot have "Justice for All". One cannot win a rigged game, wondering if this usage of the word "must" means "must" to the Courts. The word "must" would then be "for sale" to the highest bidder, or the most well-connected, a certain belief system, or just plain lazy stupid corrupt people who don't want to do their jobs or deliver the product they promised.

By law, and to remove conflicts in the lower courts, Stare Decisis demands that the conflicting use of the word "must" by Clerk's in different States be addressed by the US Supreme Court.

There are 2 occurrences of the word "must" in the Miller vs Davis, Kentucky Sixth circuit case. There are 31 occurrences of the word "must" in the US Supreme Court Rules. There is no way these documents can be correctly interpreted unless "must" means "legally mandatory", for all.

11-CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Alan L Hamilton
Alan L Hamilton



Date: 9/14/2016

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L. Hamilton — PETITIONER

VS.

Daniel Davila III — RESPONDENT(S)

12-PROOF OF SERVICE

I, Alan L. Hamilton, do swear or declare that on this date, 9/14/2016, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Respondent's Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/14/2016.



/s/ Alan L Hamilton
Alan L Hamilton

We have gotten these 10 copies to the court as quickly as possible, with printing and shipping time and costs. Had Petitioner's social security check not arrived on Sept 15th, we would have been at an impasse. With each W.O.C. copy taking an hour, at 12 copies, that's 12 hours minimum, 2 days of printing. And we still could have gotten it there by 9/19/2016, had it not been for the USPS "open Saturday until 5pm" website bug. And we indeed cannot afford the \$244 Fed Ex shipping price for 30 lbs. (FedExwebsite price quote). And besides that, with the great USPS customer service call on Saturday, they have EARNED our business!

Thank you for your consideration. There is only one thing better than MINIMUM STANDARDS with a "must", it's doing more than you have to, in order to make things better for the next person, and we hope we have done that by including these DVDs with the electronic files for easier perusal. (pdf bookmarks in the electronic version of this letter also included on DVD)

Sincerely,

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)



Attachments List:

(these separate attachment files will appear automatically as pdf bookmarks/hyperlinks in this document in a menu on the left side in the electronic documents – also included on DVD with www.greenfiling.com documents – GO GREEN!!!):

- 1) 9/14/2016 FedEx shipping receipt
- 2) 9/16/2016 Fed Ex Proof-of-Delivery
- 3) 9/17/2016 USPS bug report acknowledgement email from Danielle's supervisor
- 4) screenshot of USPS "open until 5pm on Saturday" on "Service Commitment" webpage, recreated with customer service representative Danielle on 9/17/2016.
- 5) <http://www.courts.ca.gov/documents/DCA-Guide-To-Electronic-Appellate-Documents.pdf> - downloaded pdf included on DVD, search document for "bookmarks"

No. _____

IN THE

SUPREME COURT OF THE UNITED
STATES

Alan L. Hamilton — PETITIONER
VS.
Daniel Davila III — RESPONDENT(S)

PROOF OF SERVICE

I, Alan L. Hamilton, do swear or declare that on this date, 9/19/2016, as required by Supreme Court Rule 29 I have served the enclosed the letter/notice of mailing of 10 copies to court of MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI, on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. Also served via www.GreenFiling.com on 9/17/2016 and 9/19/2016.

The names and addresses of those served are as follows:

Respondent's Attorney(s):

Karen L. Landinger
Robert M. Smith
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349
klandinger@cbylaw.com
rsmith@cbylaw.com

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 9/19/2016.

/s/ Alan Hamilton
Alan L. Hamilton, Petitioner, Pro Se
(digital signature)

Alan L. Hamilton