

**Presented:**  
20<sup>th</sup> Annual Conference on State and Federal Appeals

June 3-4, 2010  
Austin, Texas

## **Appellate Briefs of the Future**

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## Introduction

Modern American appellate practice involves a great deal of writing and little oral advocacy. But this was not always the case. American appellate courts initially operated in much the same way as their English counterparts, deciding cases based almost entirely on oral argument. Early on, the United States Supreme Court allowed unlimited time to counsel to argue their case. It was not until 1849 that the Supreme Court imposed a time limit on oral argument, promulgating a rule that year limiting oral argument to two hours per side.<sup>1</sup> Today, a four-hour argument seems unimaginable in all but the most extraordinary of cases.

But even as American appellate courts began limiting the time permitted for oral arguments, written submissions were typically no more than a bare bones outline of legal points and authorities. It was not until at least the middle of the 19<sup>th</sup> century that American appellate lawyers began filing documents that we would recognize today as an appellate brief.<sup>2</sup>

So what drove this change in American appellate practice away from presenting cases orally towards a heavy reliance on written briefs? It's difficult to say. After all, English and Australian appellate courts continued the tradition of relying primarily upon oral argument until very recently. Writing in 1994, one author stated:

To this day, in England practice before the Court of Appeal is oral, and the only written item is a short “notice of appeal” giving a one to two sentence description of a legal point to be asserted without revealing the legal argument to be made. The practice of written legal argument, which is such a major part of modern U.S. procedure, is in fact a nineteenth century American innovation in the common law.<sup>3</sup>

Whatever the motive for this “American innovation,” advances in technology helped make it possible. New technology no doubt drove much of what was expected from appellate attorneys in terms of their written products—just as it does today.

For example, at the same time that American lawyers were beginning to produce more polished and extensive appellate briefs, the typewriter was being refined by American inventors and American companies. American inventors named Christopher Latham Sholes, Carlos Soule, and Carlos Glidden (a lawyer) were granted a patent for a typing machine in 1868. They would later sell their patent to E. Remington and Sons (which

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<sup>1</sup> R. Kirkland Corzine, *The Emergence of Written Appellate Briefs in the Nineteenth-Century United States*, 38 *Am. J. Legal Hist.* 482 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 483.

became the Remington Arms Company). And in 1873, Sholes invented the QWERTY keyboard we still use today on our computers. Remington, IBM, and other American companies would soon dominate the office equipment business.

Not only did an American lawyer have a hand in inventing the typewriter, but an American lawyer also invented another piece of office equipment essential to the legal profession today: the photocopier. Chester Carlson, the inventor of photocopying, was a patent attorney at the patent office in New York. Because he was arthritic, he found the process of copying documents painful, which motivated him to conduct experiments with “electrophotography” in his kitchen. He applied for a patent for this process in 1938. Carlson later had a hand in renaming the process “xerography” (derived from the Greek words for “dry writing”) and Xerox Corporation would sell the first xerographic machine in 1949.

Within twenty years, the federal appellate courts embraced photocopies in lieu of directly typed or typeset briefs. In 1967, the Advisory Committee changed Federal Rule of Appellate Procedure 32 to expressly permit them.<sup>4</sup> Eventually, the Advisory Committee removed all references to carbon copies from Rule 32 “because the use of carbon paper is now very rare.”<sup>5</sup> And the Advisory Committee noted that “[t]oday few briefs are produced by commercial printers or by typewriters,” to explain the need for rules regarding computer fonts.<sup>6</sup>

Now, all of the federal appellate courts have electronic filing. And many state appellate courts have implemented electronic filing or plan to implement electronic filing in the near future. The most recent estimate is that electronic filing will be available in the Supreme Court of Texas and the two Houston courts of appeals in October 2010—with deployment to other Texas appellate courts soon thereafter.

Some advocates have pushed the limits of these new technologies to give their clients an edge. Consider a few examples from the Supreme Court of Texas. In 1888, an attorney for Walgreen’s filed a typeset, bound brief printed on high quality paper along with a professional photographer’s photograph of the Walgreen’s store at issue, while Walgreen’s opponent filed a brief typed on thin onion skin paper. In more recent times, Pam Baron inserted a photocopied image of a trial court’s erroneous postcard notice into her application for writ of error to catch the Court’s eye.<sup>7</sup> In *Timpte Industries v. Gish*, a products-liability case, Timpte’s attorney Gary Bellair inserted color photographs of the grain-hopper trailer at issue to clarify the Court’s understanding of

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<sup>4</sup> Fed. R. App. P. 32, Advisory Committee Notes on Rules—1967 Amendments.

<sup>5</sup> Fed. R. App. P. 32, Advisory Committee Notes on Rules—1998 Amendments.

<sup>6</sup> *Id.*

<sup>7</sup> Cause No. 95-0405, *Stokes v. Aberdeen*, Application for Writ of Error filed 6-5-1995 (copy available upon request to Clerk, Supreme Court of Texas).

his arguments.<sup>8</sup> And in *Whirlpool v. Camacho*, attorney Lynne Liberato filed a CD-ROM brief with hyperlinks to the record and legal authorities, including an interactive, animated diagram illustrating the different parts of Whirlpool's allegedly defective dryer.<sup>9</sup> In each of these examples, the attorneys that used technology to better present their case prevailed.

There may even be reason to think that these efforts have helped the Court complete its work more quickly. In the *Timpte* case, the Court issued its opinion just three months after oral argument. In the *Whirlpool* case the Court issued its opinion just nine months after oral argument.

Where do we go from here? The adoption of electronic filing opens up new ways for attorneys to prepare more effective briefs. Some attorneys are already submitting electronic briefs containing hyperlinks to the record and legal sources, as well as photographic evidence. No doubt, creative attorneys will push the limits of this technology to better advance a particular argument. Their innovations may set the standard for the briefs of tomorrow.

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<sup>8</sup> Cause No. 08-0043, *Timpte Indus., Inc. v. Gish*, Petition for Review filed 3-17-2008 (<http://www.supreme.courts.state.tx.us/ebriefs/08/08004301.pdf>).

<sup>9</sup> Cause No. 08-0175, *Whirlpool Corp. v. Camacho*, Petition for Review filed 4-3-2008 (<http://www.supreme.courts.state.tx.us/ebriefs/08/08017501.pdf>).

## Creating Better Electronic Briefs: Practical Advice and Tips

### 1. Buy Adobe Acrobat or another PDF conversion and editing software program.

The simplest piece of advice for creating better electronic briefs is to purchase, and learn a few techniques for using, a full version of Adobe Acrobat. That software converts documents into the PDF format, combines files together into one PDF document, creates bookmarks in PDFs, and performs a variety of other tasks useful in creating better electronic briefs.

Adobe Acrobat comes in three different versions: Adobe Acrobat Standard, Adobe Acrobat Pro, and Adobe Acrobat Pro Extended. Many attorneys will find that Acrobat Standard fulfills their needs. One significant tool added in Acrobat Pro is the ability to redact PDF documents in electronic form—an important feature when your appendix or brief contains information such as social security numbers, drivers' license numbers, minors' names, and other sensitive data that should be or must be removed. The redaction features of Acrobat Pro are fast, easy to use, and effective. But if you don't foresee yourself redacting documents, then buy Adobe Standard.

This software is not cheap. The list prices for these programs on Adobe's website are: Adobe Acrobat Standard 9 (\$299); Adobe Acrobat Pro 9 (\$449); and Adobe Acrobat Pro Extended 9 (\$699). Some retailers offer the software for less. For a complete list of the features offered in the different versions of these programs, please refer to the appendix where you will find a copy of Adobe's online side-by-side comparison of the different versions (which was created by using Adobe Acrobat to convert Adobe's web page into a PDF). Adobe also offers a free trial version at <http://www.adobe.com/products/>.

If you have an older version of Adobe Acrobat (like version 6 or 7) you can upgrade to the latest version for less than the full price. Even if you are happy with the version you are using, you should consider upgrading to the latest version in order to get the latest security patches from Adobe. Files you receive from other people—especially people you don't know—may contain malicious code that can take over your machine, steal your passwords and client data, and otherwise make your life miserable. Always remember to practice safe computing—especially with strangers.

If the cost of Adobe Acrobat is too steep or you don't like Adobe, there are other programs that perform many of the same functions as Adobe Acrobat. Although Adobe created the PDF format, it is an open standard recognized by the International Standards Organization ("ISO") as ISO 32000 – 1:2008. Because it is an open standard, several software applications are available to convert documents into the PDF format—and many of them cost less than Adobe Acrobat. Some of the available

alternatives, in no particular order, are [Sonic PDF Creator](#) (\$74.95), [PDF Converter Elite](#) (\$99.95), [PDF Converter 6](#) (\$99.99) by Nuance, [1-2-3 PDF Converter](#) (\$59.90), [NitroPDF Professional](#) (\$99.99), [CutePDF Professional](#) (\$49.95), [PDFtypewriter](#) (\$29.99), [PdfEdit995](#) (\$19.95) and the free programs [pdfforge](#), [cutepdf](#), and [Pdf995](#) (free version). Additionally, Adobe can perform the conversion for you on the company's website and so can [Neevia](#).

Before purchasing any PDF conversion software, it is highly recommended that you read more about the program's features and that you try out a free downloadable version when possible. While there are many programs that will convert documents into PDF, one must remember that the Supreme Court of Texas requires the appendix to be text searchable. Adobe Acrobat will create searchable files from scanned documents using optical character recognition (OCR)—but alternative programs may not provide this feature or it may not be of the same quality.

Whatever your personal choice, Adobe Acrobat remains the most written about, blogged about, and discussed PDF conversion and editing software. In fact, Adobe sponsors a blog specifically for legal professionals called [Acrobat for Legal Professionals](#). This blog is essential reading for any attorney or legal professional that is interested in how to create better electronic briefs. The blog links to videos and step-by-step instructions for all of the tips discussed below—so if the instructions below are not clear enough, or if you want to learn more about Adobe Acrobat, be sure to visit the blog. For a list of other useful blogs, books, and other resources, please see the list of resources for creating better electronic briefs at the end of this article.

For those reasons, most of the step-by-step instructions in this paper focus on how to use Adobe Acrobat in Microsoft Windows. And where the instructions discuss Word and WordPerfect, the instructions were written using Word 2007 and WordPerfect X3.

## **2. Combine Appendix Materials Together With the Petition or Brief.**

For almost ten years, the Supreme Court of Texas Clerk's Office has requested electronic courtesy copies of briefs, which are posted online for the convenience of attorneys, the public, and the Court. Initially, the Clerk's Office only requested electronic courtesy copies when the Court requested briefs on the merits. Once the Court requested briefs on the merits, attorneys were asked to submit copies of all the principal briefs filed in the case, including the petitions for review, the response, and the reply.

Until recently, the Court provided few standards or guidelines for creating an electronic copy. Many attorneys simply scanned their briefs in order to create electronic copies in compliance with the Court's request, and these scanned copies were often not text-searchable. This scanning also created large files that, due to file-size limitations, often

required appendix items to be broken into a separate file. This became the accepted way of providing the Court with an electronic copy of the appendix.

But on December 15, 2009, the Court issued an [Order Requiring Electronic Documents in the Supreme Court](#).<sup>10</sup> This new order mandated that electronic copies of petitions and briefs be created by converting these documents directly into a PDF rather than scanning them. Recognizing that some appendix materials are not available in electronic form, the order allows appendix materials to be scanned—but discourages the use of scanners to create PDFs. But however the PDF files are created, they must be searchable—including the appendix.

The thought was that attorneys would eventually have to electronically file documents and the appendices as a single unitary document (as opposed, e.g., to an electronic petition and a separate electronic appendix). And the intent of the order was to help attorneys adjust to this new way of creating electronic briefs.

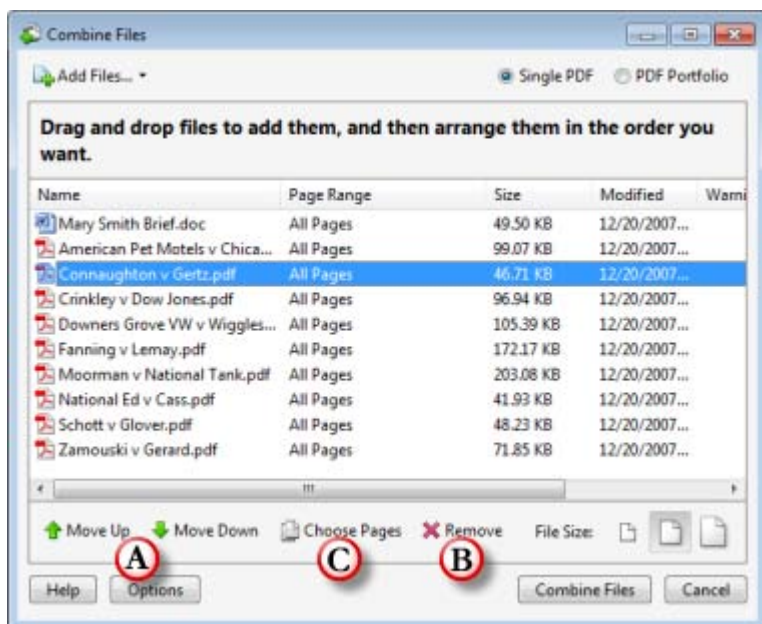
Nevertheless, many attorneys continue to submit an electronic copy of the petition or brief along with a separate electronic copy of the appendix. If one takes advantage of Adobe Acrobat's ability to convert just about any document directly into a searchable PDF and to combine PDF files together, submitting a separate appendix should rarely be necessary or desirable. Having one document that contains the petition or brief and any appendix is more convenient for the reader.

What's more, it's easy to combine PDF files together using Adobe Acrobat or another similar program. In Adobe Acrobat follow these simple steps:

1. Open Adobe Acrobat.
2. Click on the Combine menu in the main ribbon.
3. Choose Merge Files into a Single PDF.
4. Drag and drop files into the dialog box.
5. Once all of your files have been dropped into the dialog box, put the documents in the order you would like for them to appear in the combined file. You can move documents up and down in the dialog box and by clicking on them and then choosing the Move Up or Move Down arrows in the dialog box.
6. Click Combine Files in the lower right hand corner of the dialog box.
7. Give your new document a name and click Save.

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<sup>10</sup> The Court then amended this order on May 4, 2010.



You can also combine files together without opening your copy of Adobe Acrobat. Simply select all the files you want to combine together, right click, and choose Combine Supported Files in Adobe Acrobat.

Regardless of which of these methods you use, you do not have to convert the documents into PDF before combining the files together—so long as Adobe Acrobat is capable of converting the files into PDF. Adobe Acrobat will both convert the files and combine them together in one process.

You can [watch a video](#) demonstration about of how to combine PDF files together on the [Adobe Acrobat for Legal Professionals](#) blog.

### 3. Whenever Possible, Convert Documents Directly to PDF Instead of Scanning.

Unfortunately it is not yet possible to obtain all the required contents of an appendix in a native electronic format. Perhaps someday all Texas trial courts will have electronic filing and will issue orders electronically. Until then, trial court judgments, orders, jury charges and verdicts will have to be scanned in order to create an electronic appendix.

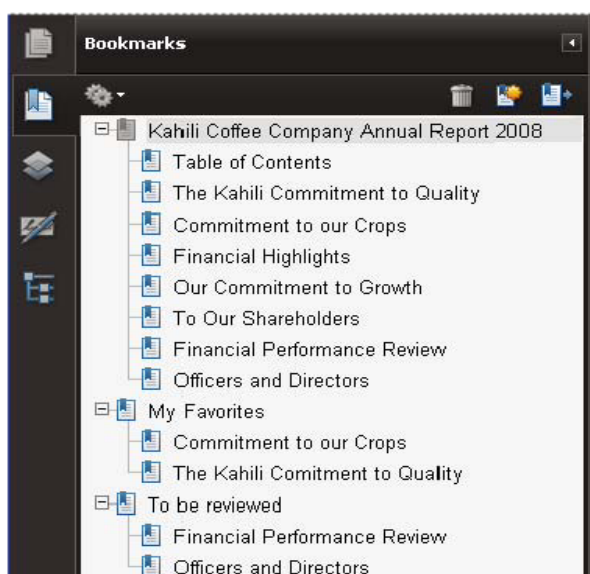
But many attorneys are still printing out documents that they have in electronic format and scanning them in order to create the electronic copy of the appendix. For example, many attorneys print out and scan the court of appeals' opinion rather than converting it directly to a PDF. And many statutes, regulations, and rules that are available in electronic format are printed and scanned. A better practice is to do this conversion directly from one electronic format to another using Adobe's tools. This will help reduce



the size of your files (making them easier to transmit, download, and store) and make them easier to read because the images are sharper and clearer.

How does one convert a document directly to PDF? The answer depends on whether you are using Word, WordPerfect, or Adobe Acrobat (or similar software). Rather than reinventing the wheel and create a new set of instructions, we have included the [step-by-step instructions](#) for converting documents into PDF posted on the United States Court of Appeals for the Fifth Circuit's website. This set of instructions (which was originally developed by the Fourth Circuit) is included in this paper's appendix.

#### 4. Use Bookmarks



What's a bookmark? PDF bookmarks appear on the left side of the Adobe Reader window (pressing F4 will toggle the visibility of the Bookmark panel). PDF bookmarks act like a hyperlink allowing one to jump immediately to other sections of the document that have been bookmarked. By creating bookmarks, one essentially creates clickable table of contents or index for a brief. But unlike a table of contents or index, the list of bookmarks does not disappear once you turn the page; the bookmark panel is always within view (until you decide to hide it).

Bookmarks are such a useful tool for creating more easily navigable electronic documents that the Texas Supreme Court's Amended Order Requiring Electronic Documents encourages attorneys to use them.<sup>11</sup> Bookmarks are particularly useful in helping Justices and their staff find appendix materials that are attached to a petition or brief.<sup>12</sup> And revisions to the Uniform Format Manual for Court Reporters will require the use of bookmarks to make court reporters' records easier to use.

Adobe Acrobat will generate bookmarks automatically during PDF creation from the table-of-contents entries of a document created by most desktop publishing programs like Word. But how you do the conversion matters. In Word 2003 and 2007, using the

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<sup>11</sup> Misc. Docket No. 10-9065, Amended Order Requiring Electronic Documents in the Supreme Court, paragraph 3.

<sup>12</sup> *Id.* ("The use of bookmarks to assist in locating appendix materials is encouraged").

Acrobat PDFMaker<sup>13</sup> tool will also generate bookmarks automatically, but merely saving the file as a PDF from within Word does not. In any event, to generate bookmarks automatically using Word, you must use paragraph styles (e.g. Heading 1, Heading 2). A tutorial on Word's paragraph styles is beyond the scope of this paper, but it would be worth your time to learn to set them. (Your staff may have already defined the formatting details for each style as part of a brief template file that you are using.)

One advantage of using paragraph styles in Word is that each time you update the Word document and convert it to PDF, the bookmarks created by Adobe Acrobat will be updated. Adobe will also use these styles to properly nest the bookmarks into an outline form.

If Adobe does not automatically generate them, it is easy enough to manually create individual bookmarks in Adobe Acrobat. Follow these steps to create a bookmark in Adobe Acrobat 9:

1. Click on the page where you want to create a bookmark. Make sure the Single Page button on the toolbar is selected; a bookmark will display a page at the magnification that was used when the bookmark was created.
2. In the Bookmarks panel, click the New Bookmark icon. Or press the CTRL and B keys simultaneously.
3. In the text box of the new bookmark, type the name or label that you want to give to the bookmark (e.g. Appendix A-Summary Judgment Order). If you are bookmarking an argument heading, a shortcut is to highlight the text of that argument heading before hitting Control-B. Adobe will then use that text for the bookmark name.
4. If you need to rearrange the order of your bookmarks, drag the bookmark into the correct location in the bookmark hierarchy and release the bookmark when you see the arrow and dotted line where you want the new bookmark to appear.
5. Choose File > Save to save your work.
6. Test your bookmark to make sure it works.

If you inadvertently put your bookmark in the wrong place, you can delete the bookmark and repeat the steps above. Or you can change the bookmark's destination by following these steps:

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<sup>13</sup>“ When you install Acrobat, the install utility searches your machine for Microsoft Office applications. When a supported Microsoft Office applications is found, Acrobat installs Acrobat PDFMaker as a helpful utility. With Acrobat PDFMaker, you can create a PDF that looks identical to the Microsoft Office file by clicking a Convert to Adobe PDF icon which is added to your Microsoft Office 2003 application. If you own a Microsoft Office 2007 application, Acrobat creates an Acrobat Ribbon with icons to convert files to PDF.” Doug Sahlin, *How to Do Everything: Adobe Acrobat 9* (McGraw-Hill 2009).

1. In the Bookmarks panel, click the icon for the bookmark whose destination you want to change. The document pane will display the page the selected page.
2. Click the Next Page button or Previous Page button on the toolbar as many times as necessary to go to the desired page of the document (i.e. the page you want the bookmark to link to).
3. Click the Options button at the top of the Bookmarks panel and choose Set Bookmark Destination from the menu. Click Yes in the confirmation message to update the bookmark's destination.
4. Choose File > Save to save your work.

Be sure to give your bookmarks names that will be useful to a reader. Using names like Appendix A, Appendix B, etc. is not particularly helpful (although better than nothing). Instead, try something like Appendix A—Summary Judgment Order, Appendix B—Court of Appeals' Opinion, etc.

[Click here](#) to watch a free online tutorial on creating bookmarks in Adobe Acrobat.

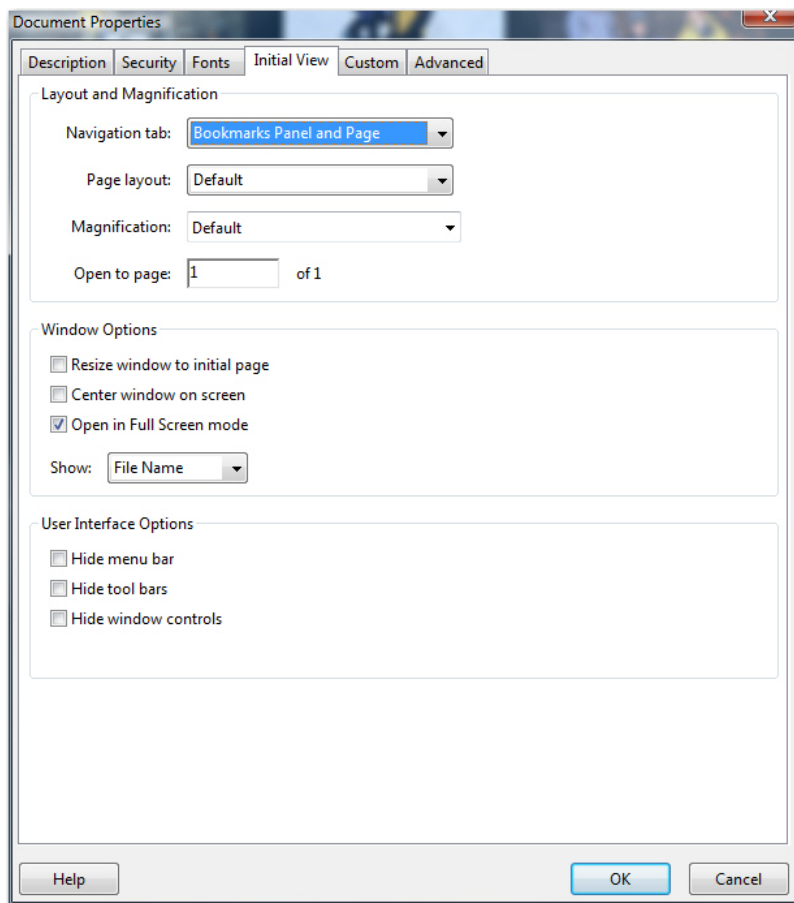
#### **5. Set the initial view of your PDF to show the bookmarks you created.**

Once you have created bookmarks, you will want to be sure that the reader knows that there are bookmarks available to help navigate through the document. In Adobe Acrobat, you can set the Initial View options for the document so that the Bookmarks Panel displays automatically when the document is opened.<sup>14</sup> To set the Initial View options to display the bookmarks, follow these steps:

1. Choose File > Document Properties.
2. Click on the Initial View tab at the top.
3. In the Document Options section choose Bookmarks Panel and Page from the Navigation tab list.
4. Click OK.

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<sup>14</sup> Setting the Initial View to show bookmarks works the same way in Apple's "Preview" PDF viewer. When you open the PDF, the bookmarks appear as a list in the sidebar.



Notice too that you can set other Initial View options: you can set the document to open at a particular zoom and on a given page. For an appellate brief, you probably do not want to change the default settings.


## 6. Create hyperlinks to internet resources.

Creating hyperlinks to cases or other resources relied upon in your brief can be of great convenience to the Justices and their staff. Instead of having to look the materials up themselves, you can provide the cited source to them with a click of the mouse. The steps for creating hyperlinks vary slightly depending on whether you are creating the hyperlink in Word, WordPerfect, or Adobe Acrobat.


When creating hyperlinks to resources on the web, remember that these resources may not be permanently located at the internet address you are using to create the hyperlink—so you may want to consider saving the legal resource as a PDF document and including it with your appendix. Adobe Acrobat should have installed a PDFMaker utility into your web browser to allow you to easily convert a web page into a PDF. You can then use Adobe Acrobat to create a hyperlink to the PDF document in your appendix from the text of your brief (see the instructions below). Of course as long as there are paper filing requirements you will have to include a copy in your paper filing.

You should also keep in mind the rules for citing internet resources, which require the inclusion of the URL in the citation. But URLs are often such eyesores that you might consider putting the URL in a footnote and creating a hyperlink from the text in the body of the brief.

#### To create a hyperlink in Word 2007:

1. Left click and highlight the text in your brief where you want to create the hyperlink (e.g. if you want to create a hyperlink from a case citation, left click and highlight the case citation).
2. Once the text is highlighted, place your cursor over the highlighted text.
3. Right click on the highlighted text.
4. Select Hyperlink. 
5. The Insert Hyperlink dialog box appears.
6. Copy and paste or type the web address into the space labeled Address and then click OKAY.

OR:

1. Left click and highlight the text in your brief where you want to create the hyperlink.
2. Choose Insert from the menu bar and click Hyperlink  to bring up the Insert Hyperlink dialog box.
3. Copy and paste or type the web address into the space labeled Address and then click OKAY.

When you use Adobe Acrobat to convert the Word document to a PDF, your hyperlinks will be preserved. But always be sure to check hyperlinks to make sure they are working.

#### To create a hyperlink in WordPerfect X3:

1. Left click and highlight the text in your brief where you want to create the hyperlink (e.g. if you want to create a hyperlink from a case citation, left click and highlight the case citation).
2. Select Tools in the toolbar menu.
3. Select Hyperlink. The “Create a Hyperlink” dialog box will open.
4. Add a hyperlink to a website by typing in the full website address in the “Document/Macro” text box. Select OK. Or select “Browse Web...” to launch your internet browser, navigate to the web page you want to hyperlink to, and then copy and paste the website address into the “Document/Macro” textbox. Select OK.

If you use hyperlinks in WordPerfect documents, be sure to read the U.S Court of Appeals for the Fifth Circuit’s instructions on how to publish your WordPerfect document to PDF (as opposed to printing to PDF). Publishing the document to PDF will preserve your hyperlinks. But printing the document to PDF will not preserve your hyperlinks.

#### To create a hyperlink in Adobe Acrobat:

1. Select the text or graphic element, such as a photo, with the Select tool (the arrow in the toolbar).
2. Right click (Windows) or CTRL-click (Apple), and then choose Create Link from the menu. The Create Link dialog box appears.
3. In the Link Appearance area of the Create Link dialog box, click on the Link Type drop-down arrow and choose one of the following: (1) Visible Rectangle (creates a link with a visible rectangle); (2) Invisible Rectangle (creates a link that isn’t visible).
4. If you choose to make your hyperlink visible, click on the Line Thickness drop-down arrow and choose, Thin, Medium, or Thick. This option defines the thickness of the hyperlink border.
5. Click the Line Style drop-down arrow and choose, Solid, Dashed, or Underline. This option defines the style of the line indicating the presence of a hyperlink. Most people choose Underline.
6. Click the Color Swatch and choose the color of your line. Most people choose a light blue.
7. Choose one of the following of the following from the Link Action area to specify the action that is taken when the hyperlinked is clicked:
  - If you are creating link to a web page, choose “Open a Web Page”. The Edit URL dialog box appears, enabling you to enter URL of the web page that opens when the hyperlink is clicked.
  - If you are creating a link to a page in your PDF file (e.g. you combined your petition and appendix together as one file and you want to add a hyperlink in your petition to a page in your appendix), choose “Go to a Page View”. This allows you to specify which page will appear and at what zoom level when the hyperlink is clicked.
  - If you are creating a CD containing your brief and the materials cited in your brief, choose “Open a File.” This will load the file when the hyperlink is clicked. The files you are linking to must be on the same CD as the brief and the file paths must remain the same.

## 7. Use Pictures to Illustrate Your Point

In the right case, a picture can be worth a thousand words. For example, in [\*Timpte Industries, Inc. v. Gish\*](#) a worker sued the manufacturer of a grain-hopper trailer alleging the trailer was defectively designed after a sudden gust of wind blew him off of the trailer. The trial court rendered a take-nothing summary judgment under Rule 166a after Timpte challenged the existence of evidence supporting Gish's defective-design product-liability claim. But the appellate court reversed and remanded on the grounds that there was "some evidence upon which reasonable factfinders could disagree as to whether the trailer's design was both unreasonably dangerous and a cause of Gish's fall." At the Supreme Court of Texas, Timpte inserted color photographs into its [petition](#) for review illustrating the different components of the trailer that were allegedly defective. The Supreme of Texas granted review and reversed and rendered a judgment in favor of Timpte. The Court issued the [opinion](#) in less than three months from the date of oral argument.

Gary Bellair, the attorney for Timpte, agrees that in this case pictures were worth a thousand words. According to Mr. Bellair, describing the design of the grain-hopper trailer using just words would not have been as clear as using pictures.

In [\*Whirlpool Corporation v. Camacho\*](#) a jury determined that a Whirlpool manufactured electric clothes dryer caused a fire that resulted in the death of the plaintiffs' son, Joab Camacho. The jury awarded the Camachos \$14 million in actual damages. The court of appeals affirmed the verdict. At the Supreme Court of Texas, Whirlpool submitted a [hyperlinked petition for review](#) on a CD containing all the record and the legal authorities.<sup>15</sup> The petition also used many of the techniques discussed above for creating better electronic briefs, including extensive use of bookmarks and setting the initial view of the document to show the bookmarks. The CD also included an Adobe Flash interactive diagram of Whirlpool's dryer. The interactive diagram illustrated the different parts of the dryer and the air-flow through the dryer.<sup>16</sup> The Supreme Court of Texas granted review and reversed and rendered judgment in favor of Whirlpool. The Court issued the opinion nine months after it heard oral argument. The [opinion](#) included a diagram of the relevant parts of the dryer taken from the CD.

Lynne Liberato, the attorney for Whirlpool at the Supreme Court of Texas, says that she thinks the interactive diagram of the dryer was particularly helpful in explaining to the Court how the dryer worked. And she thinks that the cost of preparing hyperlinked appellate briefs, such as the one she filed in the Whirlpool case, will continue to

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<sup>15</sup> The links in the petition posted online do not work. The links are to the materials contained on the CD—not to internet resources or documents contained within a combined PDF file.

<sup>16</sup> The electronic brief was created by ThemeVision, LLC ([www.themevision.com](http://www.themevision.com)).

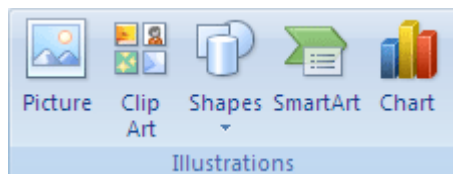
decline—making them much more common, if not standard practice, in appellate cases in the future.

Of course pictures and videos are not helpful in every case. But in products liability cases like *Timpte* and *Whirlpool*, pictures and videos may be particularly effective in illustrating the design and function of the products at issue. Real estate cases involving disputes over metes and bounds might benefit from a map or diagram of the property. And many tort cases that depend upon a particular set of facts to prove or disprove liability may be particularly well-suited for the use of photos, videos, or other illustrations.

Inserting pictures or photos into Word or WordPerfect documents is relatively easy to do. And wrapping text around the pictures to give the brief a professional appearance is also easy to do.

#### How to Insert a Picture in Word 2007:

1. Click where you want to insert the picture.
2. On the **Insert** tab, in the **Illustrations** group, click

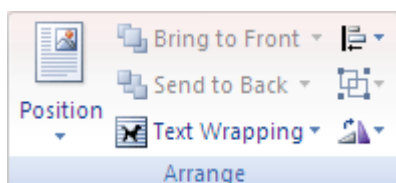


**Picture.**

3. Locate the picture you want to insert.
4. Double-click the picture you want to insert.

#### How to Wrap Text Around a Picture in Word 2007:

1. Select the picture.
2. Under the **Picture Tools**, on the **Format** tab, in the **Arrange** group, click **Position.**



3. Click on **Text Wrapping** and choose your preferred layout.

OR:

1. Right click on the picture.
2. Choose **Text Wrapping** and select your preferred layout.



### How to Insert a Picture in WordPerfect X3:

1. In WordPerfect X3, click where you want to insert the picture.
2. Choose **Insert > Graphics > From File**.
3. In the **Insert Image** dialog box, locate the picture you want to insert and click **Insert**.
4. If necessary, you can adjust the size of the inserted picture by clicking to select the picture, and then dragging one of the corner handles.

### How to Wrap Text Around a Picture in WordPerfect X3:

1. **Right-click** the image, then select **Wrap** from the menu.
2. You can then select one of the following options in the Wrapping Type section:
  - **Square** wraps the text around the edges of the graphics box
  - **Contour** wraps the text around the outline of the image
  - **Neither Side** wraps the text above and below the image but leaves the space either side of the image blank
  - **Behind Text** places the image behind the text and runs the text over the image
  - **In Front Of Text** places the image on top of the text and runs the text behind the image

If you choose square or contour then you will also need to select one of the following options in the **Wrap Text Around** section:

- **Largest Side** wraps the text along the side of the image with the longest dimension
  - **Left Side** wraps the text along the left side of the image
  - **Right Side** wraps the text along the right side of the image
  - **Both Sides** wraps the text along both sides of the image
3. Once you have made your selection click on the **OK** button to apply your wrap selections to the graphic.

## Creating Better Electronic Briefs: Create Your Own Hyperlinked Electronic Brief

If you have Adobe Acrobat or similar software and you can master the skills discussed above (combining PDF files, creating Bookmarks, and creating Links) you can create your own professional quality hyperlinked electronic brief that includes links and bookmarks to all of the sources cited in your brief—much like the commercial vendors that offer this service. All you have to do is follow these steps:

1. Write your brief.

2. Download the cases you cited from Westlaw or Lexis in electronic format.
3. Get an electronic copy of the clerk's record and/or the court reporter's record.
4. Combine these files into a single PDF.
5. Create bookmarks as appropriate.
6. Create hyperlinks to your citations using the steps discussed above.

If all this sounds easier said than done, then watch a [video](#) from the [Adobe Acrobat for Legal Professionals Blog](#) about creating hyperlinked electronic briefs and see for yourself how easy it is.

Of course you do not have to hyperlink all of your sources. And you may not feel like creating that many hyperlinks.

If you do want to include everything, but the file would be too big to e-mail, then consider putting all of the cases and record citations on a CD, along with your brief, and create hyperlinks to files as explained above. Remember, if you move the files around on your CD after you have created the hyperlinks, you may break the hyperlinks. Be sure to test everything out before you submit it.

One important consideration is that the Supreme Court of Texas' order regarding electronic copies also states “[e]lectronic copies must be substantively identical to the original filed with the Clerk of the Court.” The way the rule is currently written, if you include all of the cited cases in your electronic copy, you will have to include them in your paper copy as well. Therefore, you may want to just choose the most important cases and record citations to include in your hyperlinked brief in order to reduce the cost of creating a paper copy and the amount of work involved in creating hyperlinks. An alternative is to file a motion seeking permission to file an electronic brief that includes all the record and legal citations without the need to provide a paper appendix that includes all of these sources.<sup>17</sup> But you may want to get this permission before you start hyperlinking.

If this all still overwhelming, but you are determined to submit a hyperlinked brief and have the resources to hire someone to turn your brief into a hyperlinked brief, check the list of companies included in the list of resources for creating better electronic briefs below. One way to reduce the costs of preparing a hyperlinked CD containing the record and the legal citations is for the parties to share the costs of preparing the electronic briefs and to submit a single CD containing all the briefs. That's what Jennifer Tillison of Alexander Dubose & Townsend LLP did in an appeal to the Amarillo Court of Appeals, No. 07-07-00073-CV, *Golden Spread Electric Cooperative, Inc. v. Denver City Energy Assocs., L.P.* All citations in all the briefs were hyperlinked to the appropriate place in the record or to the cited authority. And the briefs were thoroughly bookmarked and internal hyperlinks were created (for example, from the brief's table of contents to the appropriate page).

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<sup>17</sup> Whirlpool filed a similar motion in *Whirlpool v. Camacho* (Supreme Court of Texas, Cause No. 08-0175, Unopposed Motion to File Corresponding Petition for Review on Compact Disc, 4-28-2008). The Court granted the motion the day after it was filed.

## Best Practices for Using Hyperlinks in Electronic Briefs

Ideally, every citation that appears in your brief should be complete enough for a researcher to follow — without clicking on your hyperlink. With case law, the traditional citation is adequate. For true internet sources, including a typed-out version of the URL seems essential. In the middle ground, you have to use your judgment. But, in general, you should not want to trap your reader into clicking the link. It should be an option available to them — not the only way to reach the information.

That will help you avoid these two problems:

- **Broken links.** The obvious fear is that the link will break if someone takes down or moves the webpage. You should use some care in picking resources unlikely to change. Where possible, use a good citation format plus a hyperlink; don't put all your trust in the hyperlink.

If you do not have a good citation to a readily available paper version, then by all means you should download and attach a PDF version of the webpage.

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

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

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

If in doubt, don't put an external hyperlink. There is no requirement (yet) that you link to everything that your brief mentions; use some judgment and avoid the headaches of having these things break, change, or cause concern.

### Avoid Using URL Shorteners (For Now)

One of the fears that court systems have of using hyperlinks is that the court's activities will somehow be monitored. URL shortener services present a special concern.

URL shortener services take a long URL that might be difficult to wedge into a citation sentence without awkward formatting (such as <http://www.supreme.courts.state.tx.us/historical/2010/may/080465.htm>) and shortens it dramatically (like <http://bit.ly/b2ZsrV>). There are many of these services, and they are very convenient.

The typical URL shortener, however, tracks when people click on these shortened URLs *and reports that back to the person who created the link*. Some, such as bit.ly, share that information with the world. Just attach a + to the end of a bit.ly URL to see analytics: <http://bit.ly/b2ZsrV+>.

For now, you should probably avoid these services for electronic briefs. There is potentially great value in having a dedicated URL shortener for legal citations. But until someone creates one with appropriate privacy assurances, these services create justifiable suspicion.

The better practice is to use the full URL, no matter how ugly it may be (although you might want to consider inserting them into a footnote)

# What the Future Might Hold for Appellate Briefs, and What You Can Do Now

## The recent past and the near future

The early history of electronic briefs has been driven by at least three distinct groups. The challenge is how to create an electronic brief that can satisfy the needs of each of these constituencies.

- **Self-Expression of Attorneys and Clients.** The first phase of electronic briefing used CD-ROMs as a way for attorneys to make a particular point. The first CD-ROM was filed in the U.S. Supreme Court in 1995. An amicus filed the second in 1997 in the *ACLU v. Reno* case to help the Court see that the internet had many things beyond smut.<sup>18</sup> The CD-ROM included “color pages of the *amici* Websites and a hyperlink function that allows the user to go online to link to current amici Web pages.”<sup>19</sup> As simple as that sounds today, this early CD-ROM brief was making a point about the medium of the internet itself.

As the idea moved into the lower courts, the briefs tended to be filed in large complex cases. Eventually, some courts adopted rules expressly permitting litigants to file a CD-ROM brief with the Court. A number of publishers help large firms prepare these CD-ROM e-Briefs, which remain expensive. The CD-ROM briefs are still, 15 years later, filed as CD-ROMs, even though many reading devices (including smaller laptops) don’t have drives for that media.<sup>20</sup> As courts and the public now rely on electronic docket systems, CD-ROM electronic briefs remain trapped in the court’s physical filing cabinets rather than a form that can be uploaded to the internet.

- **Administrative Convenience of the Courts.** The second phase started at roughly the same time as the first, but has been driven by different concerns. In 1995-1996, the Northern District of Ohio implemented an electronic filing system to handle its asbestos docket.<sup>21</sup> This grew into the federal CM/ECF system.<sup>22</sup>

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<sup>18</sup> A more contemporaneous account is available in the piece *Electronic Briefs in Trial and Appellate Courts* by Bradley J. Hillis, available at <http://jurist.law.pitt.edu/courttech3.htm> (dated April 20, 2000).

<sup>19</sup> Press Release, “ACLU Sends Supreme Court Passionate Defense Of Free Speech in Cyberspace”, available at <http://www.aclu.org/technology-and-liberty/aclu-sends-supreme-court-passionate-defense-free-speech-cyberspace> (dated Feb. 20, 1997).

<sup>20</sup> If this trend continues, then the vendors may shift to USB sticks. But these USB sticks would still have the other limitations and advantages as CD-ROMs.

<sup>21</sup> Press Release, “Technology Increases Public Access to Federal Courts” (Jul. 24, 1996), available at [http://www.uscourts.gov/News/NewsView/96-07-24/Technology\\_Increases\\_Public\\_Access\\_to\\_Federal\\_Courts.aspx](http://www.uscourts.gov/News/NewsView/96-07-24/Technology_Increases_Public_Access_to_Federal_Courts.aspx).

As clerk's offices have shifted toward requiring electronic filing of briefs as PDFs, they reduced the hassle of dealing with physical briefs. Court staff can now readily consult PDF copies instead of visiting a central filing system. Members of the public can consult those PDFs, as well, reducing inconvenience to court staff while creating a lucrative profit center (at least for the federal CM/ECF system, which makes hundreds of millions of dollars per year selling PDFs by the page).

But because the focus was simply on corralling paper, these systems did not generally require the PDFs being filed to be word-searchable. The focus was on the files — receiving briefs, putting them into a predictable location in the system, and letting people retrieve them. The federal CM/ECF goal was fidelity to paper, not improving upon it.

- **The Consumers of Briefs: Judges and Law Clerks.** In the third phase, the ultimate consumers of appellate briefs are starting to influence how electronic briefs are made, based on their own knowledge of how these briefs fit into the decision process of the court. Ideally, electronic briefing should make the job of the court easier. As judges change how they use electronic briefs, their preferences will start to drive briefing requirements. And as litigants demonstrate that a particular technique can be helpful, judges can start to encourage that sort of filing by others.

A related but very significant change is in *how* judges read electronic documents. While the federal CM/ECF documents were well suited to be printed onto paper, an increasing number of judges now consume PDF briefs natively on a screen — whether a laptop, a desktop, or a portable e-reader. A judge may also want to work at home using files from the Court's server, rather than being limited to the court's physical files. The result is a premium placed on the ability to remotely access the electronic version — making a simpler PDF potentially more useful than a richer CD-ROM.

### Online Sources: The Billion-Dollar Question

To really use a legal brief, the reader must be able to shift focus from the brief text to various pages from the appellate record, to other briefs filed in the same case, and to precedents from other courts, and to legislative materials.

You can think of legal citations as hyperlinks that expect the reader to do the work. When the cite says "123 S.W.3d 456," that is a recipe for the reader to go to a particular shelf, grab a particular volume, and turn to a particular page. Even electronic sources (such as Westlaw or Lexis) may save walking down the hall, but they still place some

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<sup>22</sup> *Wikipedia*, "CM/ECF," available at <http://en.wikipedia.org/w/index.php?title=CM/ECF&oldid=332380514> (visited May 24, 2010); *see also* Press Release, "Electronic Case Filing in Federal Courts Reaches Milestone" (Nov. 21, 2005) available at [http://www.uscourts.gov/News/NewsView/05-11-21/Electronic Case Filing in Federal Courts Reaches Milestone.aspx](http://www.uscourts.gov/News/NewsView/05-11-21/Electronic%20Case%20Filing%20in%20Federal%20Courts%20Reaches%20Milestone.aspx).

degree of burden on the reader to open a browser, log into the service, and type the citation into a form.

Electronic hyperlinks, however, shift this work to the computer (and to the brief author). By connecting the reader directly to the raw legal authority, a hyperlinked brief can save the reader significant effort — and make it easier for them to evaluate the merits of the brief.

Unfortunately, due to publishing restrictions, it is hard to create electronic hyperlinks to online sources of legal authority. Many primary legal materials are only available through commercial research websites that restrict access. Even the free services rarely make it easy to create this kind of link.

Thus, instead of doing the natural thing — drawing simple links from our briefs out to these materials — we often have to create PDF “printouts” of these pages and submit them to the court. The result is clumsy and inconvenient. Even so, it’s often easier than making the judge open a new browser window, log into a research service, and type in the citation themselves.

Electronic briefing would look dramatically different if there were free, respected online repositories of information. They don’t have to be the single most authoritative source of the information; courts just need to accept them as good enough for this purpose.

Will a viable free option for primary case law emerge? If projects such as Law.gov (<http://resource.org/law.gov/>) result in the creation of good repositories for federal cases and statutes, will courts start to accept hyperlinks to those repositories as suitable for electronic briefs? Will innovative states decide to publish their own case law electronically and expressly encourage litigants to use hyperlinks to those official state websites?

### What the Future Might Hold

Projecting the future is imperfect, but some patterns can be extrapolated from changes happening now. One trend is that more and more raw materials are going online. As courts obtain, for example, an electronic copy of the appellate record, it may be possible for briefs to hyperlink directly to that record rather than attaching fragments. If briefs can hyperlink to reliable versions of the appellate record, the primary authorities, and other briefs, the task of making electronic briefs will be greatly simplified.

Another route to simplicity would be better software for the readers of electronic briefs. Instead of using off-the-shelf PDF readers, legal readers may end up with specialized tools (perhaps developed by their legal research provider of choice) that can interpret

citations in a standard PDF and convert them to electronic hyperlinks. With that tool at their disposal, courts would not need for counsel to expend the energy creating each of these links by hand, printing the cases to PDF, and assembling them onto a CD-ROM. Instead, this very mechanical task would be done (as it perhaps should) by the software.

Another trend is the growing popularity of portable reading devices, such as Kindles, iPads, iPhones, and the like. The iPad is already an excellent PDF viewing screen, if the 9.7-inch screen size is comfortable for you. In a few years, we may have even more natural form factors for reading briefs (whether a flexible screen e-ink or just an iPad or competing slate device large enough to be paper-sized).

Other possible futures would be truly novel. For example, rich electronic briefs could start to absorb more elements of oral argument. A particularly adventurous court may offer counsel the chance to substitute a very short embedded video summarizing their petition in place of a written summary of argument. This could offer a very different perspective than offered by a traditional summary, and it might allay public concern that appellate courts cannot hear a formal oral argument in every case.

A different reshuffling of the relationship between briefs and oral argument would let courts pose their questions of counsel as comments on the published briefs in the case. During a certain part of its decision process, the Court might attach a series of questions to the briefs, some keyed to specific passages. Counsel for each side would be able to respond electronically, with their comments folded into the brief structure for the Court's reference. This, again, would not replicate the Socratic discovery that can happen at oral argument. But for the sort of case that might not likely have been chosen for argument, this could be a low-commitment way for the Court to gain the information it needs to make a just decision.

Another preconception that might change is the idea that a brief is made up of discrete letter-sized pieces of paper rather than a continuous flow of text. As briefs move toward being true electronic documents — when there may not be a paper version at all — the rationale for breaking them into page-sized chunks is less compelling. Instead, briefs may look more like web pages or the various formats being developed for electronic books, such as the ePub standard (also by Adobe). With an ePub brief, the reader can choose the font, can readily adjust the font size, and can reflow the text onto whatever screen size they are using at the time. That flexibility would be a vast improvement over the technical rules we now follow about fonts, margins, font sizes, and spacing.

A more radical change might move electronic briefs away from being neatly formatted, novella-length published works. Instead, it might be possible to present an interactive brief that acts as a kind of decision tree. A reader might work through the brief step by step, with each choice affecting what arguments and evidence is presented next. The reader would, of course, be able to reveal the whole structure. But by default the brief



would help the judge focus on just the parts most relevant based on how the judge was leaning on the threshold issues.

### How To (Safely) Innovate Now

You have some latitude to be creative under the existing briefing rules. If you can work within those constraints to produce something that tells your story in a particularly effective way, then no one will complain. But if you find yourself unable to do what you'd like within the rules, then take a page from attorneys that have filed CD-ROMs — file a motion asking for permission. If you explain what you want to do and how it will assist the Court, you may find the clerk's office very receptive to your request.

By all means, don't break the rules. If you want to bend the rules to try something innovative, file a motion requesting permission to do so. When the Court is impressed by what you have done, you may find that the rules themselves start to shift to permit future briefs to follow your lead.

### Let advocacy drive your electronic briefs, not just fascination with new toys—but don't be afraid to innovate in the right case

The first few times someone includes an image, a multimedia file, or an animation, the very fact will draw some attention from the Court. But that advantage is rapidly lost. If everyone includes multimedia without a particular reason, then briefs may start to feel like the Flash landing pages on restaurant websites.

Readers already skip block quotes, often without realizing it. A brief that included numerous clips of trial testimony as audio files, or that included diagrams on every page, is just begging to be skimmed instead of analyzed. The mind can only absorb so much at a time, and the reader can only shift gears so many times.

On the other hand, a well-placed diagram, photograph, or map could crystallize a key point for the Court. Sometimes a picture is worth far more than 1000 words. The right image can be the purest expression of the writing maxim "show, don't tell." If nothing else, an image has an authenticity that it is hard to achieve just with a written description.

Audio and video is more difficult. When the U.S. Supreme Court decided a case that turned on the reasonableness of a police chase that happened to have been captured by

the police dashboard camera video, it posted the full video online with its opinion.<sup>23</sup> But few cases turn on audio or video evidence about the material facts — or even have audio or video of the original facts.

Most often, litigants have access to audio or video just of the litigation proceedings, which in the typical case are less likely to be useful to the Court. They might even have the same soporific qualities as playing lengthy deposition excerpts at trial. But your case may turn on how a key piece of testimony unfolded. The context is what matters, and that’s an advocacy decision.

If you do choose to include multimedia files — items that cannot be represented in your printed, signed brief — you may be placing yourself at odds with the briefing rules. One approach is to type out a hyperlink to the multimedia file rather than embedding it. The video might be hosted in a permanent place on your firm website or on a commercial service. And using a hyperlink (rather than embedding) avoids the potentially messy question of how to count a fifteen-minute video within a fifteen-page limit.

Whatever your approach, you want to avoid letting multimedia files create an improper tone in your brief. If you wouldn’t consider making an emotional jury argument to an appellate bench, you might not want to lead with an emotional photograph of the deceased plaintiff.

## Conclusion

What you get out of electronic briefing will depend on what you put into it. If you want minimal compliance with court rules, you will stay with the pack. But with just a little effort beyond that minimum, you can make a significant difference in how helpful your briefing is to the court through bookmarks or simple hyperlinking. Those counsel who invest the creative energy to push the boundaries even further might be helping to shape the electronic briefing rules — and the day-to-day realities of appellate practice — in the decades to come.

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<sup>23</sup> The case was *Scott v. Harris*, 550 U.S. 372 (2007). The Supreme Court published the video at a page titled “Audio/Video Resources” (<http://www.supremecourt.gov/media/media.aspx>), which today only hosts two videos.

## RESOURCES FOR CREATING BETTER ELECTRONIC BRIEFS

### Blogs and Websites:

Adobe Acrobat for Legal Professionals : <http://blogs.adobe.com/acrolaw/>

PDF For Lawyers : <http://www.pdfforallawyers.com/>

Typography for Lawyers : <http://www.typographyforallawyers.com/>

Rocky Mountain Training blog : <http://blog.rockymountaintraining.com/?tag=adobe-acrobat>

The Supreme Court of Texas Blog : <http://www.scotxblog.com/>

Adobe : [www.adobe.com](http://www.adobe.com)

### Books:

[How to Do Everything: Adobe Acrobat 9](#) by Doug Sahlin

[Adobe Acrobat 9 Classroom in a Book](#) by Adobe Creative Team

[Adobe Acrobat 9 PDF Bible](#) by Ted Padova

[Adobe Acrobat 9 How-Tos: 125 Essential Techniques](#) by Donna L. Baker

### Companies Providing E-Brief Services:

**You should do your own research before hiring any of these companies!**

Animators at Law (Virginia): <http://www.animators.com/>

Best Evidence (Florida): <http://www.bestevidence.com/>

CAP Digisoft Solutions, Inc. (Texas) : <http://www.capdigisoft.com/litigation-suppot/ebrief-hyperlinking-service.php>

CDBrief, LLC (Washington): <http://cdbrief.com/>

Counsel Press (New York and elsewhere): <http://www.counselpress.com/>

eTrial/Brief-Lynx (Colorado) : <http://www.etrailinc.com/brief-lynx.html>

HyperBrief (Pennsylvania): <http://hyperbrief.com/>

National Data Support (California): <http://nationaldatasupport.com/> (created a CD for an appeal to the Amarillo Court of Appeals, No. 07-00073-CV, *Golden Spread Electric Cooperative, Inc. v. Denver City Energy Assocs., L.P.* for Alexander Dubose & Townsend LLP)

Paradocs (New York): <http://www.paradocsonline.com/>

Record Press (New York): <http://www.recordpress.com/>

TGL Media (Georgia) : <http://www.tglmedia.com/Pages/whatwedo.html>

Theme Vision LLC (Indiana): [www.themevision.com](http://www.themevision.com) (produced the CD in *Whirlpool v. Camacho*)

# **Converting Word Processing Documents to Portable Document Format (PDF)**

Originally developed by USCA4

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## Introduction

Documents filed in CM/ECF must be filed in PDF (Portable Document Format) rather than a word processing format such as WordPerfect or Word. This format is used because, among other things, PDF documents retain the pagination, formatting, and fonts of the original document; in other words, the document will look the same no matter what type of computer is used to view it and what printer is used to print it.

## Using and Creating PDF Documents

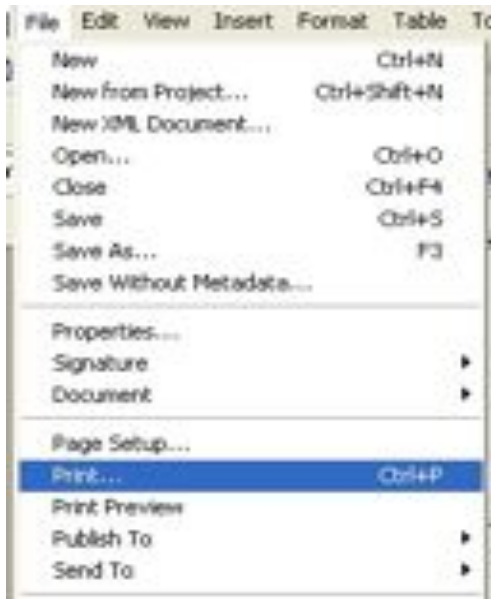
PDF is what is known as an “open standard” (i.e., its computer code is not proprietary). Viewing or printing a PDF document is accomplished through any PDF reader program. [Adobe Acrobat Reader](#), a popular program, is downloadable free of charge from the Internet. Creating, editing, or manipulating a PDF file, however, requires a PDF writer program, which usually must be purchased through a commercial vendor. A well-known one is Adobe Acrobat Writer. Adobe Acrobat is available from [www.adobe.com](http://www.adobe.com).

Documents converted directly from word processing are known as PDF text documents. PDF documents can also be created by imaging (or scanning) paper documents. These are sometimes known as PDF image documents. PDF text documents are word-searchable; PDF image documents generally are not. PDF image documents are also generally larger electronic files than PDF text documents.

## Converting a WordPerfect File to PDF using Print Feature

**Note:** This option must **not** be used if the document contains hyperlinks. To preserve the hyperlinks, you must use the **Publish to > PDF...** option (described later in this document).

1. Open the WordPerfect document to be converted to PDF.
2. Select **File** in the main menu bar.
3. From the **File** menu select **Print**.



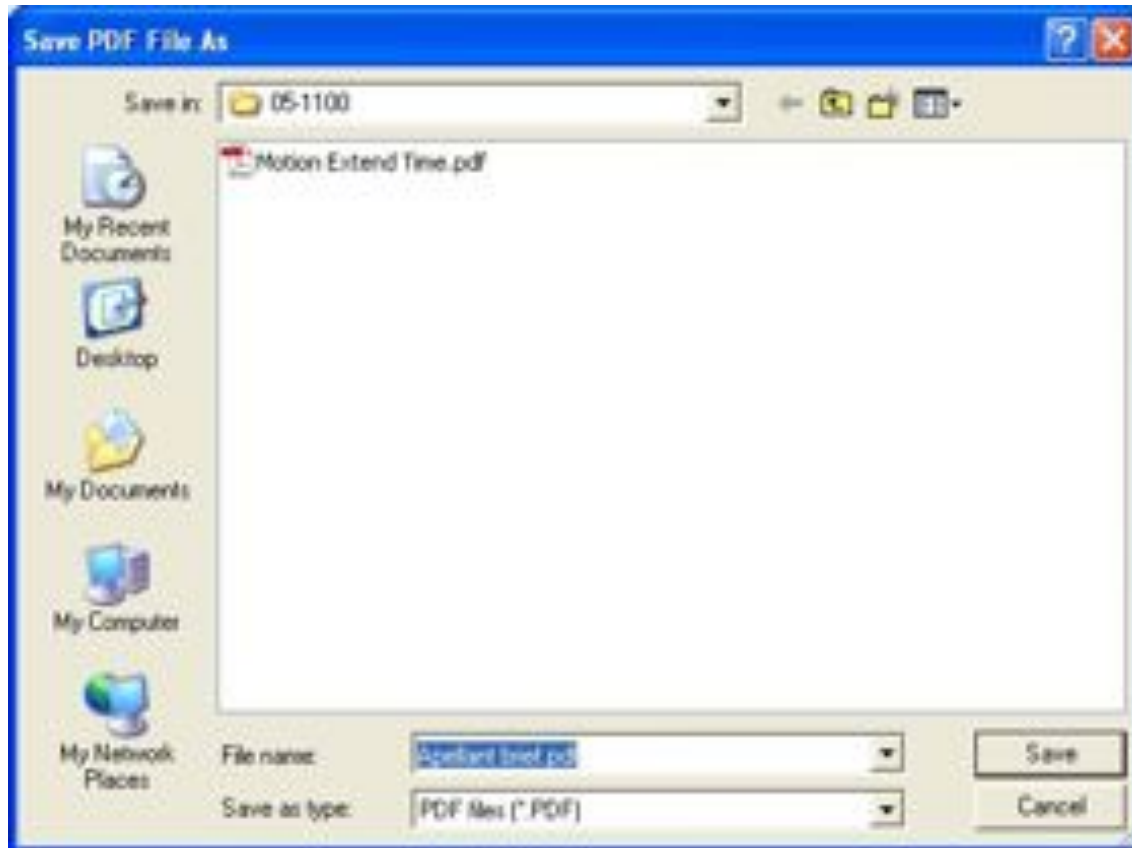
4. Select **Adobe PDF** (or Adobe PDF Writer or Adobe Distiller) as the printer name.





5. Click **Print**.

**Note:** The file will not print to paper; instead the **Save PDF File As** dialog box will appear.



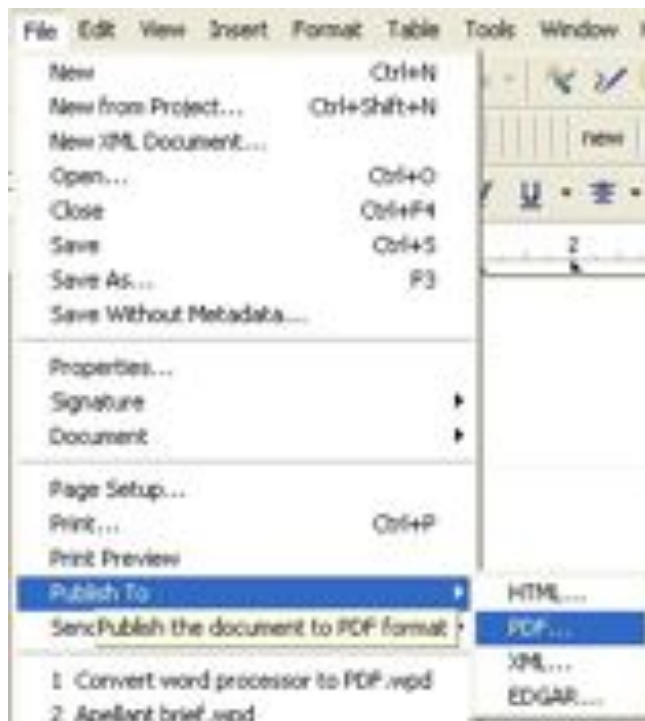
6. In the **Save PDF File As** dialog box navigate to the appropriate location to save the file.
7. Specify the name of the file in the **File name** field.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*
8. Click **Save**.

**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension.

## Converting a WordPerfect File to PDF using Publish to PDF (WordPerfect 9 or higher)

**Note:** In order to preserve hyperlinks, if any, this option **must** be used.

1. Open the WordPerfect document to be converted to PDF.
2. Select **File** in the main menu bar.
3. From the **File** menu select **Publish To > PDF...**



4. In the **Publish To PDF** dialog box choose a file location and file name.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*



5. Click **OK**.

**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension.

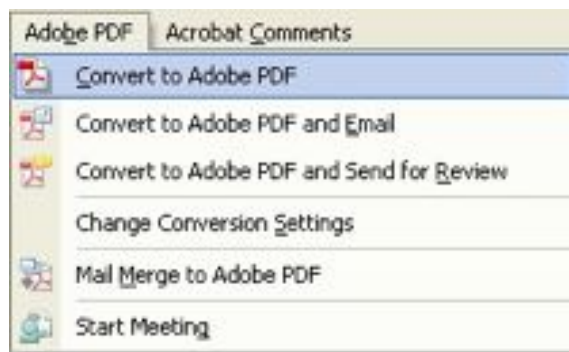
## Converting a Word File to PDF using Word 2002/2003 Adobe PDF Menu

1. Open the Word document to be converted to PDF.
2. If you are using a version of Word that has an **Adobe PDF** menu select it.

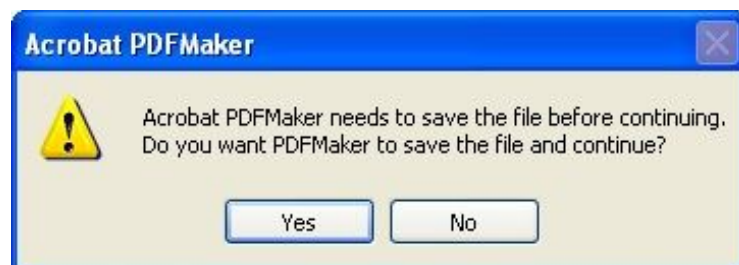


If not, skip to next section, **Converting using Adobe Acrobat.**

3. From the **Adobe PDF** menu select **Convert to Adobe PDF.**



4. If the **Acrobat PDFMaker** dialog box displays, select **Yes** to *save the file in Word first and then continue* with the conversion.

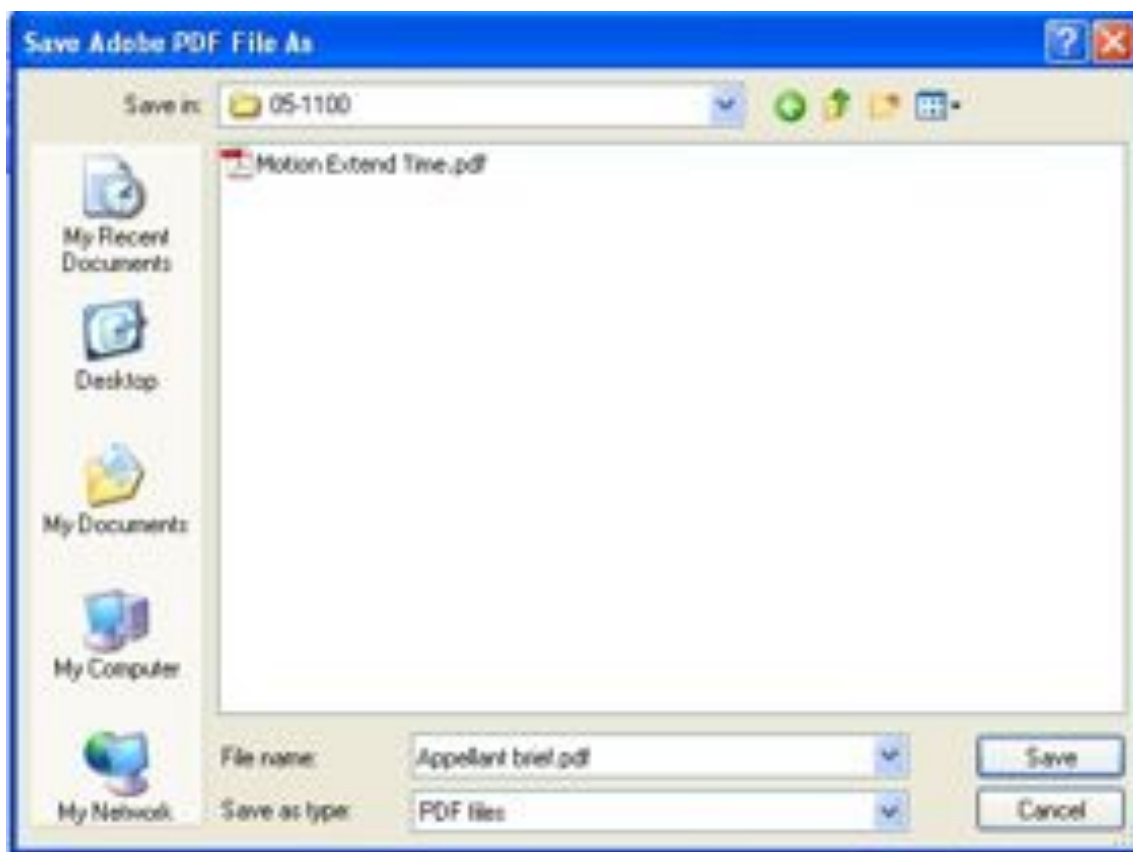


If the **Acrobat PDFMaker** dialog box does not display, skip to step 7.

5. The document is saved in *Word* before it is converted to PDF. In the **Save As** window, navigate to the appropriate location to save the file.



6. Click **Save**.
7. The **Save Adobe PDF File As** window opens. If necessary, navigate to the appropriate location to save the file.



8. Specify the name of the file in the **File name** field.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*
9. Click **Save**.

**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension. The PDF file will be opened for previewing.

## Converting a Word File to PDF using Word 2007 Save As

**Note:** This option assumes that the *Microsoft Save as PDF or XPS Add-In* has been installed on your computer.

1. Open the Word document to be converted to PDF.

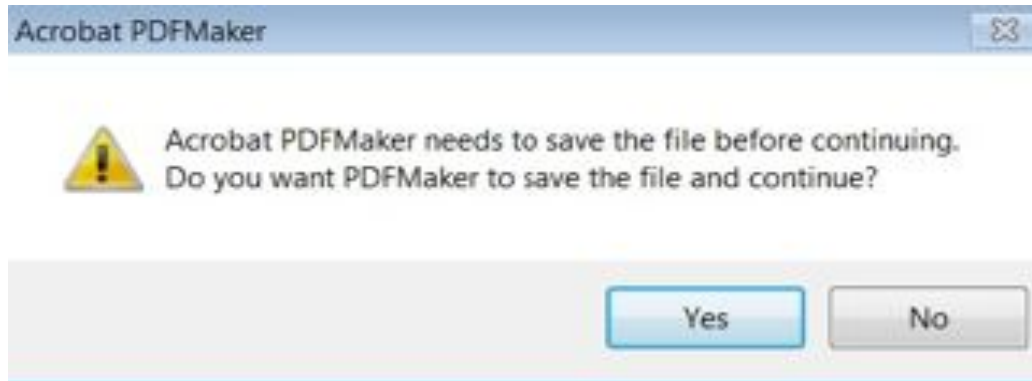
2. Click the **Microsoft Office Button**



3. From the list, *point* (do not click) to **Save As >**, then click **Adobe PDF**.



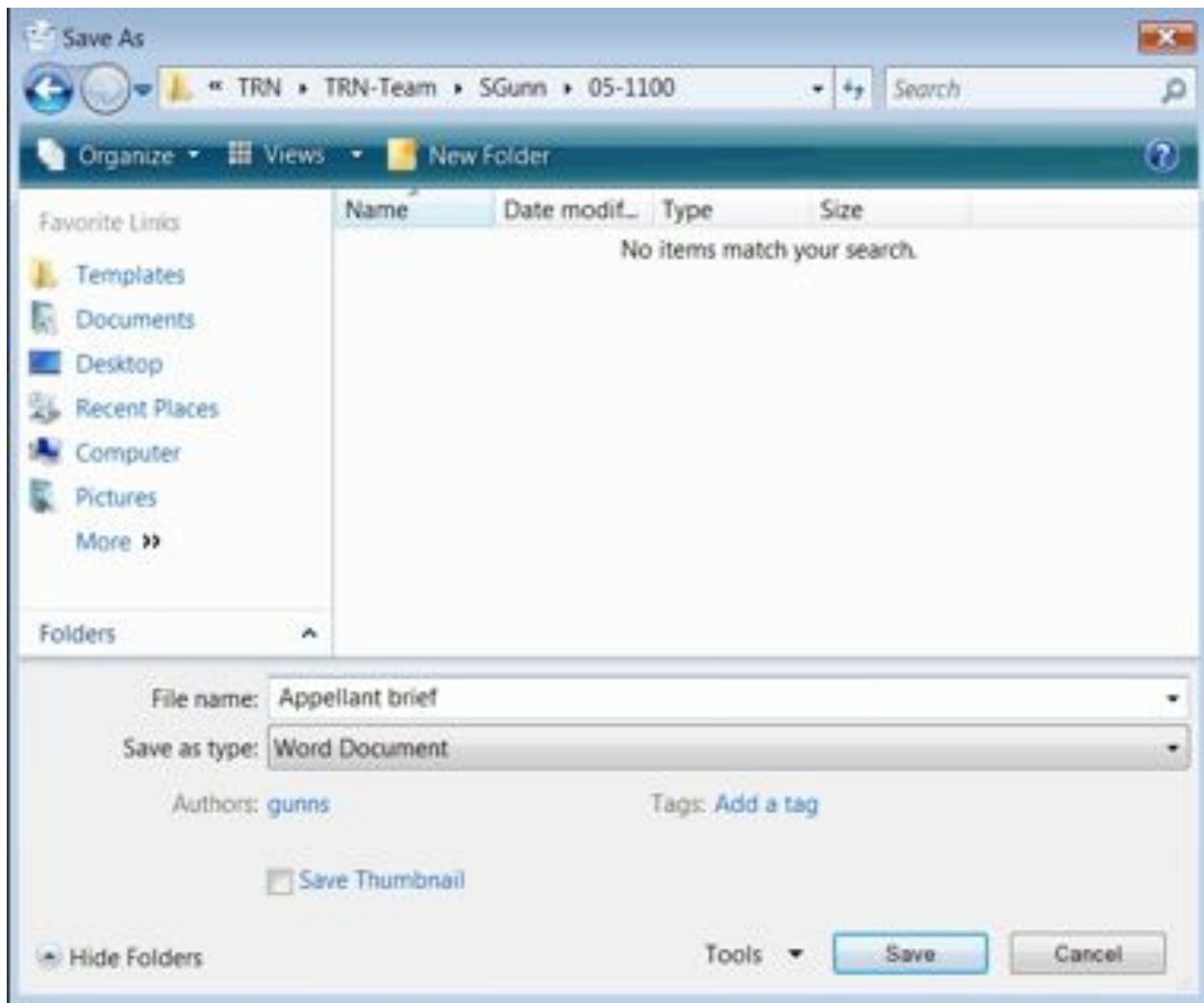
4. If the **Acrobat PDFMaker** dialog box displays, select **Yes** to save *the file in Word first and then continue* with the conversion.



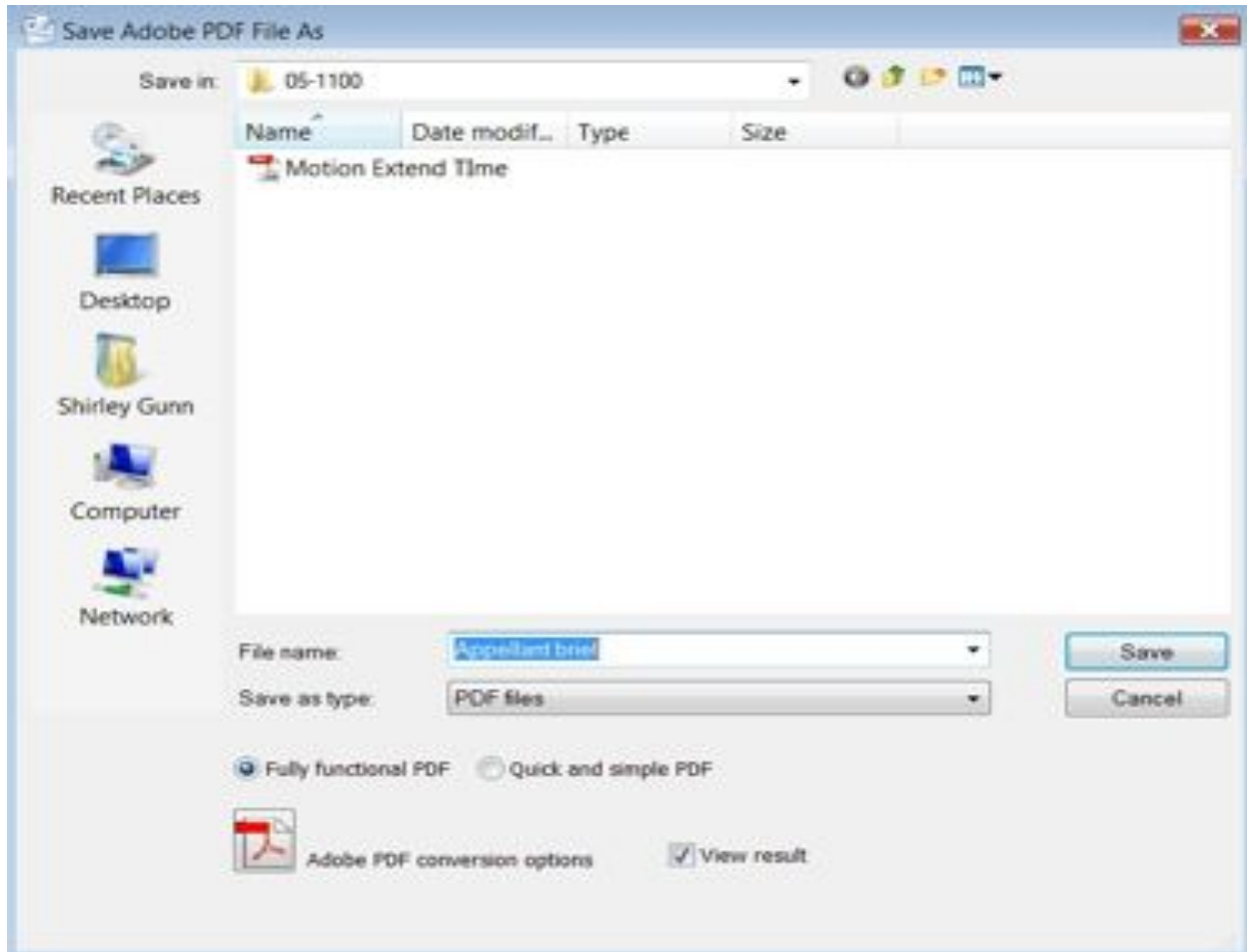
If the **Acrobat PDFMaker** dialog box does not display, skip to step 7.

5. The document is saved in *Word* before it is converted to PDF. In the **Save As** window, navigate to the appropriate location to save the file.





6. Click **Save**.
7. The **Save Adobe PDF File As** window opens. If necessary, navigate to the appropriate location to save the file.



8. Specify the name of the file in the **File name** field.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*
9. Make sure the **Fully functional PDF** radio button is checked. If you want to view the PDF file after it has been converted, make sure the **View result** box is checked.
10. Click **Save**.

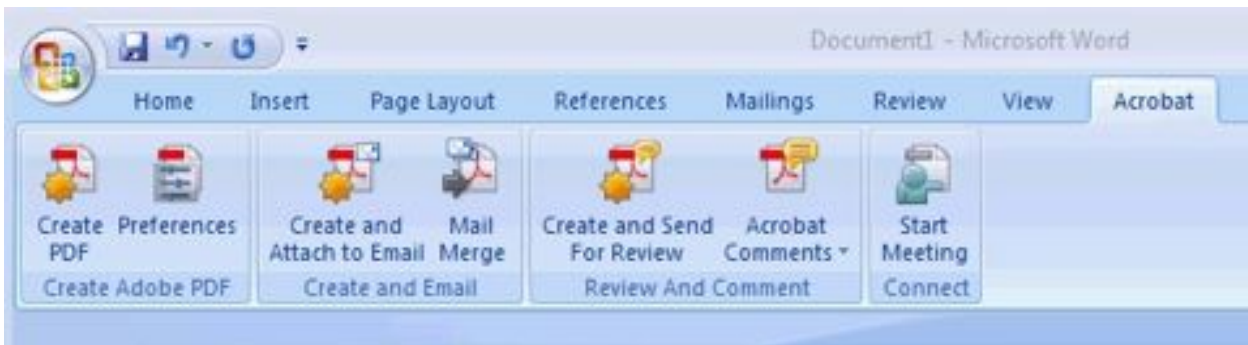
**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension.

## Converting a Word File to PDF using Word 2007 Acrobat Menu

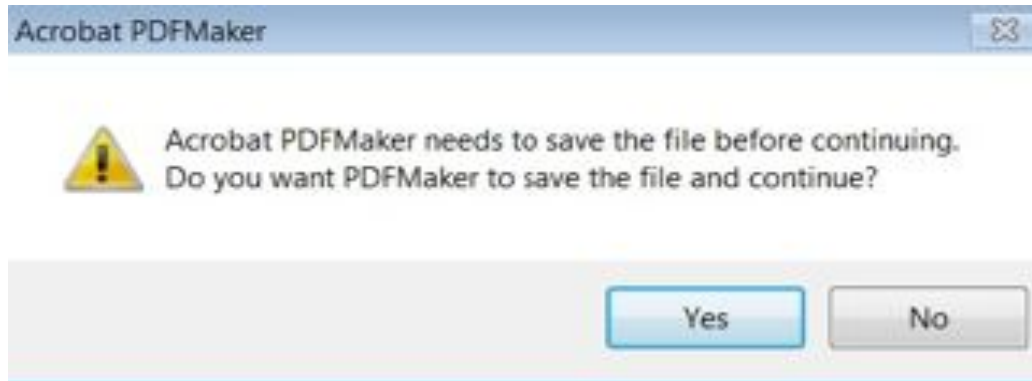
1. Open the Word document to be converted to PDF.
2. Select **Acrobat** from the main menu bar.



3. From the **Acrobat** menu select the **Create PDF** icon.

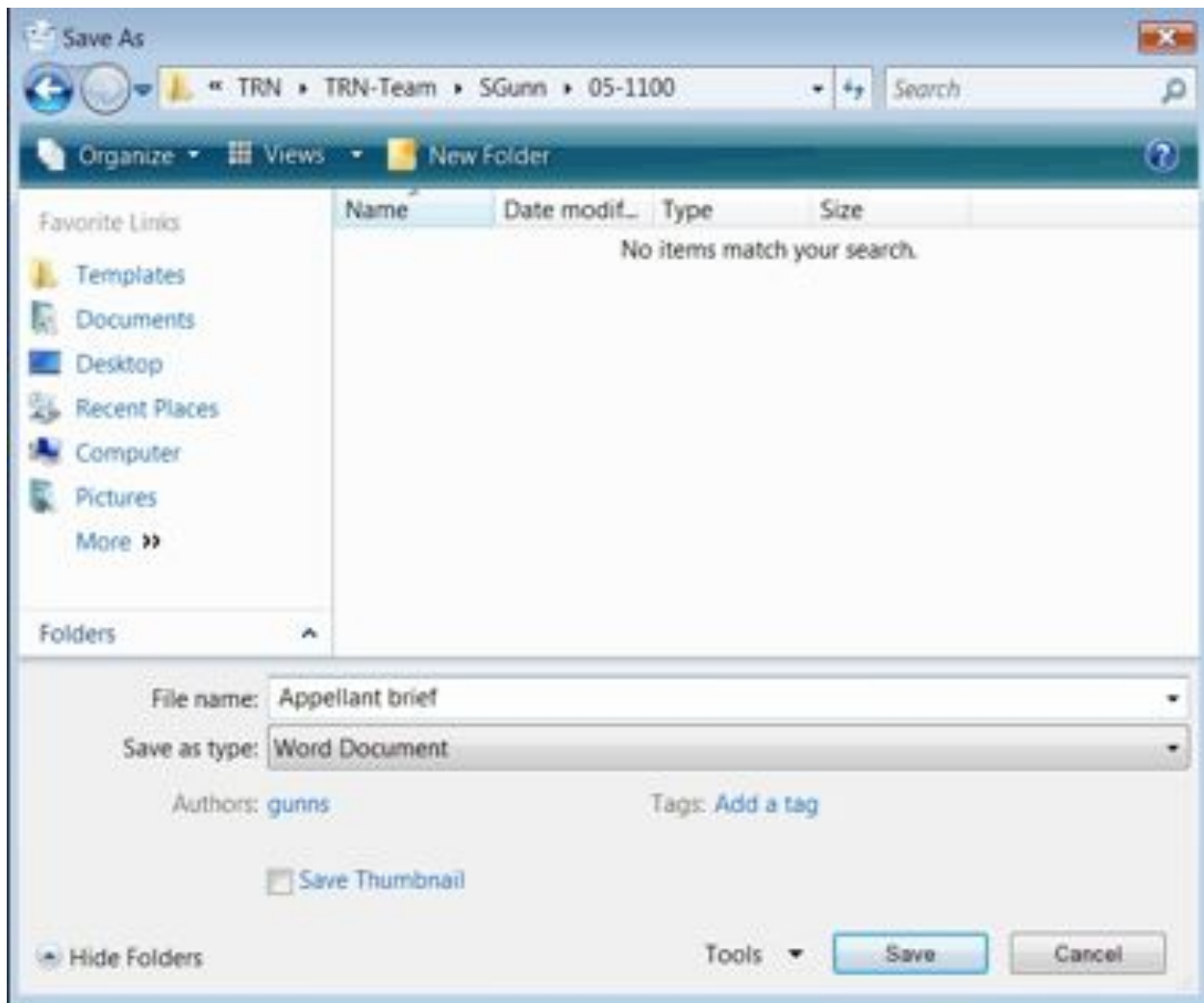


4. If the **Acrobat PDFMaker** dialog box displays, select **Yes** to *save the file in Word first and then continue* with the conversion.

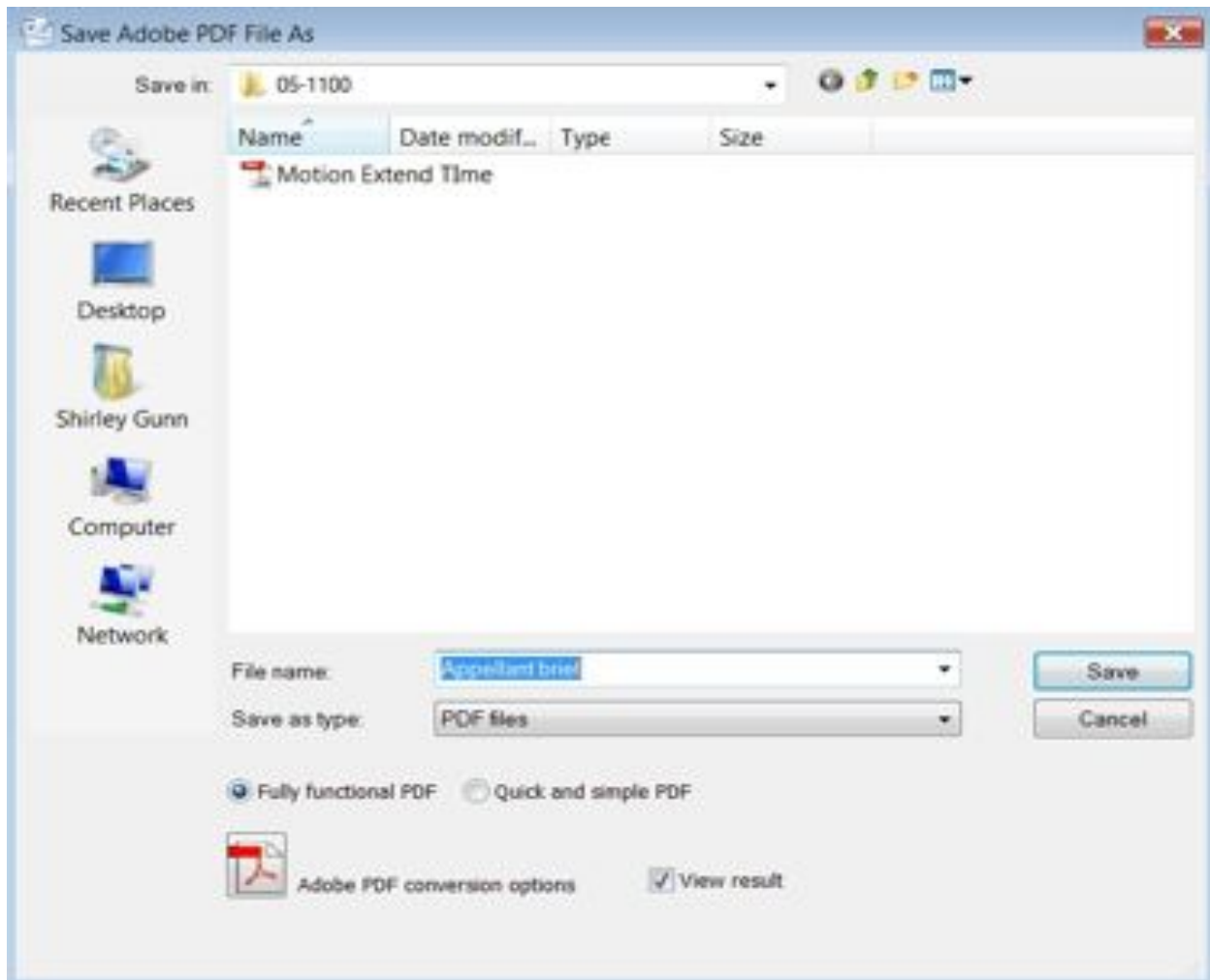


If the **Acrobat PDFMaker** dialog box does not display, skip to step 7.

5. The document is saved in *Word* before it is converted to PDF. In the **Save As** window, navigate to the appropriate location to save the file.



6. Click **Save**.
7. The **Save Adobe PDF File As** window opens. If necessary, navigate to the appropriate location to save the file.



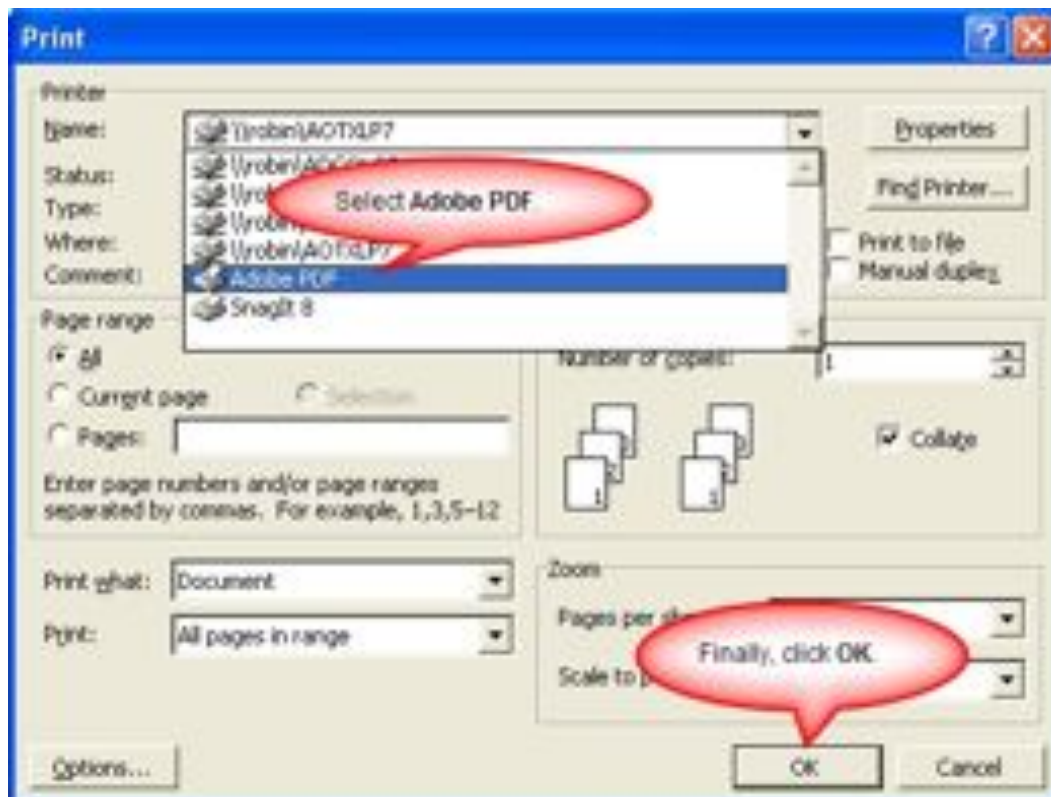
8. Specify the name of the file in the **File name** field.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*
9. Make sure the **Fully functional PDF** radio button is checked. If you want to view the PDF file after it has been converted, make sure the **View result** box is checked.
10. Click **Save**.

**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension.

## Converting a Word File to PDF using Print Feature

**Note:** This option must **not** be used if the document contains hyperlinks. To preserve the hyperlinks, you must use the one of the Word options described earlier in this document.

1. Open the Word document to be converted to PDF.
2. Select **File** in the main menu bar.
3. From the **File** menu select **Print**.
4. Select **Adobe PDF** (or Adobe PDF Writer or Adobe Distiller) as the printer name.



5. Click **OK**.

**Note:** The file will not print to paper; instead the **Save PDF File As** dialog box will appear.



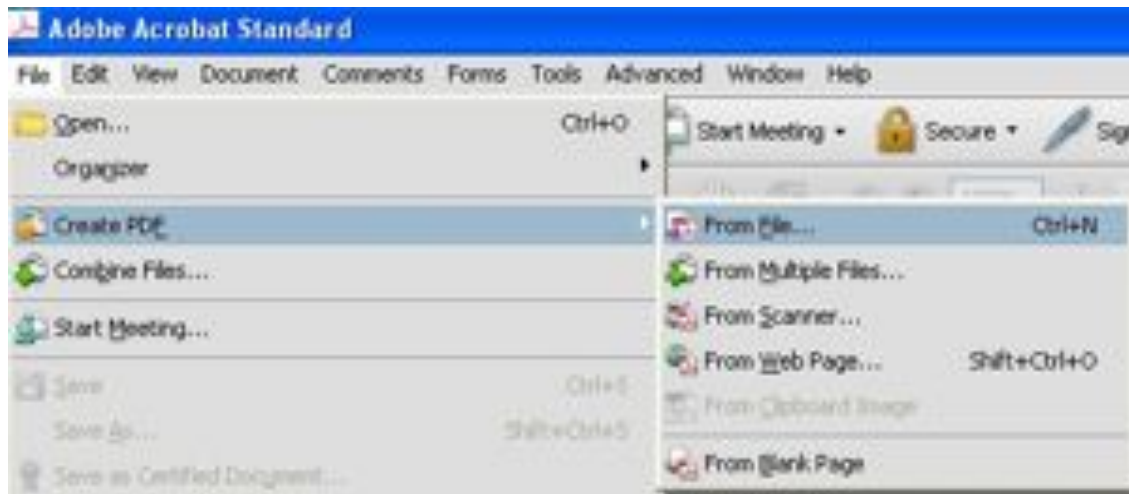
6. In the **Save PDF File As** dialog box navigate to the appropriate location to save the file.
7. Specify the name of the file in the **File name** field.  
*Remember the file location and name as you will need to browse to find this file when you electronically file the document in CM/ECF.*
8. Click **Save**.

**Note:** The file will be converted to PDF and the file name will contain the *.pdf* extension.

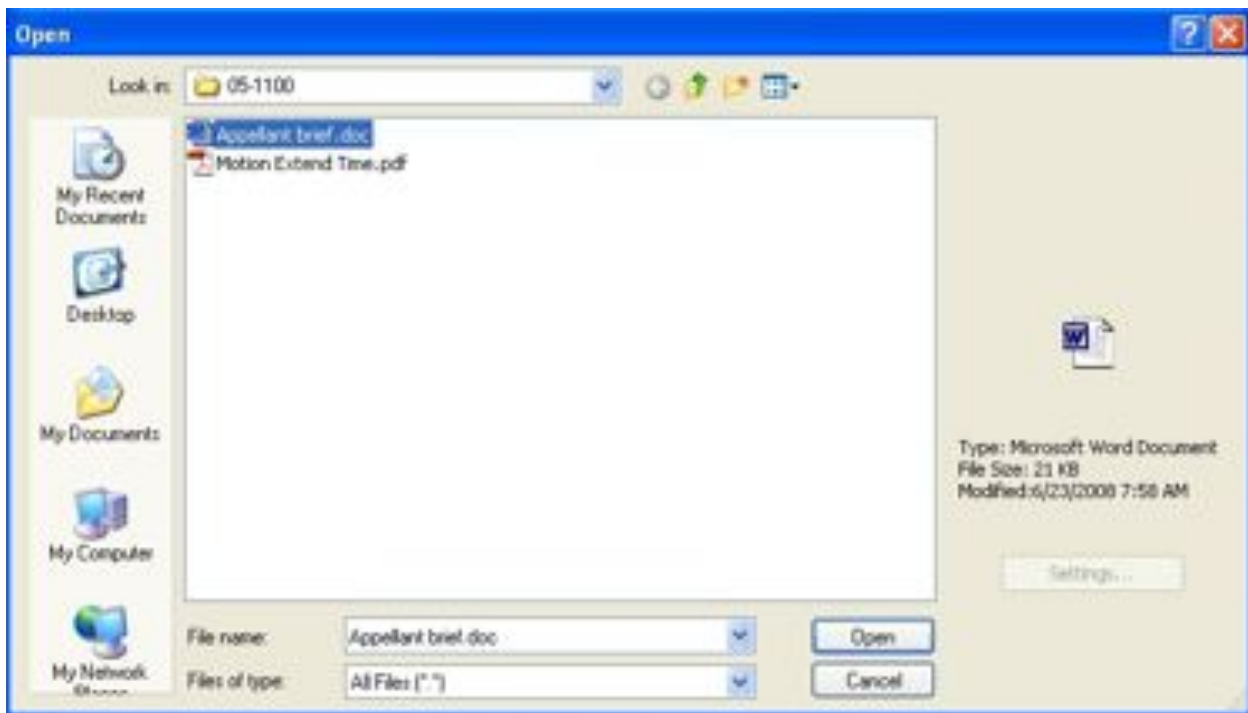


## Converting a Word File to PDF using the Adobe Acrobat Application

1. Open the **Adobe Acrobat** application.
2. From the **File** menu select **Create PDF > From File . . .**



3. Locate the Word document to be converted to PDF and click **Open**.



**Note:** The file will be automatically converted to PDF and the file name will contain the *.pdf* extension. The PDF file will be opened for previewing.



Adobe Acrobat 9 Standard

Adobe Acrobat 9 Pro

Adobe Acrobat 9 Pro Extended

	Reader 9	Acrobat 9 Standard	Acrobat 9 Pro	Acrobat 9 Pro Extended
View, print, and search PDF files, including PDF Portfolios and PDF maps	•	•	•	•
Author, store, and share documents, and share your screen, using Acrobat.com services	•	•	•	•
Experience richer content and greater interactivity with native support for Adobe® Flash® technology	•	•	•	•
Create PDF documents from any application that prints		•	•	•
Convert Microsoft Word, Excel, PowerPoint, Publisher, and Access files to PDF with one-button ease*		•	•	•
Capture web pages as rich, dynamic PDF files for review and archiving		•	•	•
Archive e-mail or e-mail folders from Microsoft Outlook or Lotus Notes*		•	•	•
Scan paper documents to PDF and automatically recognize text with optical character recognition (OCR)		•	•	•
Save PDF files as Microsoft Word documents, retaining the layout, fonts, formatting, and tables, to facilitate reuse of content		•	•	•
Help protect PDF documents with 256-bit encryption		•	•	•
Apply restrictions on printing, copying, and altering PDF documents		•	•	•
Examine documents for hidden information and delete as needed		•	•	•
Merge files from multiple applications into a single PDF document		•	•	•
Assemble a wide range of content types in a polished, organized PDF Portfolio		•	•	•
Review documents using familiar commenting tools such as sticky notes, highlighting, lines, shapes, and stamps	📄	•	•	•
Manage shared document reviews that allow review participants to see one another's comments		•	•	•
Enable real-time collaboration with synchronized document views and chat		•	•	•
Digitally sign PDF documents	📄	•	•	•
		•	•	•

Certify PDF documents using digital IDs		•	•	•
Easily create fillable PDF forms from paper or existing files using the Form Wizard		•	•	•
Distribute PDF forms to collect information and track their status†		•	•	•
Enable users of Adobe Reader® (version 8 or later) to fill in and save PDF forms locally		•	•	•
Convert documents to PDF/A for archiving with easy search and retrieval		•	•	•
Validate documents for conformance to ISO standards PDF/A, PDF/E, and PDF/X			•	•
Personalize a PDF Portfolio with customizable templates for navigation and branding			•	•
Permanently delete sensitive information, including specific text or illustrations, with redaction tools			•	•
Convert Autodesk® AutoCAD®, Microsoft Visio, and Microsoft Project files to PDF with one-button ease, preserving document layers in Visio and AutoCAD and object data in Visio*			•	•
Enable users of Adobe Reader (version 8 or later) to digitally sign PDF documents			•	•
Compare and highlight the differences between two versions of a PDF document			•	•
Create dynamic XML forms with Adobe LiveCycle® Designer ES (included)*			•	•
Preview, preflight, correct, and prepare PDF files for high-end print production and digital publishing			•	•
Create and validate accessible PDF documents			•	•
Insert FLV or H.264 video for direct playback in Adobe Acrobat® and Adobe Reader			•	•
Easily add audio, video, and quizzes to your PowerPoint slides and create rich, interactive presentations with Adobe Presenter (included)				•
Convert a variety of video formats to FLV for playback in PDF				•
Embed video in Microsoft Word or PowerPoint and convert to FLV in PDF				•
Convert 3D content to PDF for cross-platform sharing and collaboration				•
Combine multiple CAD formats in one assembly and save as PDF with Adobe 3D Reviewer (included)				•
Convert 2D and 3D designs from major CAD applications to PDF for use by extended teams without expensive CAD or viewer software				•
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No. 08-0175

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**In the Supreme Court of Texas**

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**WHIRLPOOL CORPORATION,**

**Petitioner,**

**v.**

**MARGARITA CAMACHO, ET AL.,**

**Respondents.**

---

**PETITIONER'S UNOPPOSED MOTION FOR LEAVE TO FILE A  
CORRESPONDING ELECTRONIC VERSION OF ITS  
PETITION FOR REVIEW ON COMPACT DISC**

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TO THE HONORABLE THE SUPREME COURT OF TEXAS:

Petitioner Whirlpool Corporation file this unopposed motion for leave to file a corresponding electronic version of its Petition for Review on compact disc.

**ARGUMENT**

On April 3, 2008, Whirlpool filed its Petition for Review, which is 15 pages in length and includes more than 50 citations to various cases, statutes, rules and secondary authorities, as well as 109 record cites. Whirlpool now moves for leave to file a corresponding electronic version of its Petition on the enclosed CD-ROMs (compact disc-read only memory), which is identical in content to its paper brief.

The electronic version will assist the Court in reviewing the merits of the arguments. It contains hypertext links to all materials cited in the brief, including cases, statutes, record citations, and secondary authority. These hyperlinks will enable the Court instantly to access the cited authority and the referenced portions of the record without the hard copy of the 15-volume reporters' record or the exhibits. The reader of the electronic brief will be able, among other things, to conduct word searches of the entire document and move instantaneously from the table of contents to the corresponding section of the brief. The reader can view the electronic brief with standard computer equipment, a CD-ROM reader and Adobe Acrobat/Reader software. Attached to the enclosed CD-ROM is a document that explains how to open the e-brief and navigate within it. The same document can be found when a reviewer opens the CD-ROM folder (Microsoft Word document entitled "How To Use E-Petition.doc") and, after one opens the e-brief itself, in the bookmark pane of the e-brief.

Electronic briefs on CD-ROM are becoming more prevalent and have been filed in several cases before this Court and other Texas appellate courts, including: *Neeley v. West Orange-Cove C.I.S.D.*, 176 S.W.3d 746 (Tex. 2005) (No. 04-1144); *Northern County Mut. Ins. Co. v. Davalos*, 140 S.W.3d 685 (Tex. 2004) (No. 02-1007); *Tanox, Inc. v. Akin, Gump, Strauss, Hauer & Feld, L.L.P.*, 105 S.W.3d 244 (Tex. App.—Houston [14th Dist.] 2002) (No. 14-00-00765-CV); and *Honda of Am. Mfg., Inc. v. Norman*, 104 S.W.3d 600 (Tex. App.—Houston [1st Dist.] 2003) (No. 01-00-01263-CV).

## **CONCLUSION AND PRAYER**

Whirlpool asks this Court to grant leave to file a corresponding electronic version of its Petition for Review on compact disc.

Respectfully submitted,

HAYNES AND BOONE, LLP

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ATTORNEYS FOR PETITIONER,  
WHIRLPOOL CORPORATION



**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with counsel for Respondents, Mr. Kevin Dubose, and that he does not oppose the relief requested in this motion.

\_\_\_\_\_  
Alene Levy

**CERTIFICATE OF SERVICE**

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that a true and correct copy of the foregoing instrument has been sent to the following counsel of record on this 25th day of April, 2008:

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