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BEYOND THE FONT WARS

**Word Processing Tips for
Formatting Appellate Briefs**

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1. Introduction: Why Formatting Matters

It's tempting to think of formatting a brief as putting either lipstick on a pig or a tuxedo on James Bond: useless to improve bad content and needless to improve the best. This temptation is stronger if you think of formatting as nothing more than *document design*. And in many ways, it's true: No one ever won an appeal just because they had the prettiest brief.

But formatting is more than just design. It's about complying with the rules. It's about efficiency for both the writer and the reader. It's about allowing you (the writer) to spend more time on research, analysis, and writing. It's about allowing the court (the reader) to spend more time concentrating on the substance of your arguments. In short, it's about signaling competence and making everyone's life easier.

This paper will address three aspects of formatting:

- 1) what you must do;
- 2) what you should do; and
- 3) how to do it.

Most attorneys know what you must do, because what you must do is in the rules.¹ Many² attorneys know what you should do, because

¹ See, e.g., Tex. R. App. P. 9.4 (Documents—Form), 38 (Requisites of Briefs); Fed. R. App. P. 28 (Briefs), 32 (Form of Briefs, Appendices, and Other Papers).

² This may be an aspirational claim, but I hope it is true among lawyers who attend conferences on criminal appeals.

what you should do is in countless books on legal writing and document design.³

Far fewer attorneys know *how* to do it. *How* do you make sure your brief has “appropriate headings”?⁴ *How* do you make sure your Table of Contents has correct page references or that it “indicate(s) the subject matter of each issue”?⁵ *How* do you create an “Index of Authorities” that is alphabetically arranged and has correct page references?⁶ *How* do you create useful white space? This paper aims to answer those questions.⁷

But first, fonts.

³ “The writing of books is endless, and excessive study is wearying to the body.” Ecclesiastes 12:12 (NASB). Nevertheless, I recommend the following resources, which I have relied upon in writing this paper: Bryan A. Garner, *The Redbook: A Manual on Legal Style*, 2nd ed. (Thomson West, 2006); Garner, *The Winning Brief*, 3rd ed. (Oxford University Press, 2014); Matthew Butterick, *Typography for Lawyers*, 2nd ed. (O’Connor’s, 2015); George Gopen, *The Sense of Structure: Writing from the Reader’s Perspective* (Pearson, 2004); Wayne Schiess, *Legal Writing Nerd: Be One* (2018); Schiess, *Legal Writing for the Screen Reader* (UTCLE Presentation, 2015); Kevin DuBose, *Evolving Brief-Writing Techniques for the 21st Century: Rethinking What You May Have Been Taught in Law School About Effective Written Advocacy* (UTCLE Presentation, 2015); Robert Bringhurst, *The Elements of Typographic Style*, 2nd ed. (Hartley and Marks, 1997).

⁴ Tex. R. App. P. 38.1; Fed. R. App. P. 28(a).

⁵ Tex. R. App. P. 38.1(b); Fed. R. App. P. 28(a)(2).

⁶ Tex. R. App. P. 38.1(c); Fed. R. App. P. 28(a)(3).

⁷ I would like to thank the following colleagues for their valuable contributions to this paper: Mark Bennett, Michael Falkenberg, Kristin Brown, Josh Vanderslice, Justin Johnson, and Brian Higginbotham. All mistakes or omissions are my own.

2. Fonts

There are two kinds of appellate lawyers: those who admit they have strong opinions about fonts, and liars. But there are also only two real rules for choosing a typeface:

- 1) follow the rules in your jurisdiction; and
- 2) pick a font (or two) that you like and stick with it (or them).

2.1. Rules

Both the Texas and Federal Rules of Appellate Procedure contain general rules regarding typeface. In Texas, briefs should almost always use a “conventional” typeface:

- (e) *Typeface*. A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

Tex. R. App. P. 9.4(e).

In federal court, briefs may use either proportionally spaced or monospaced typeface, with certain restrictions:

- (5) *Typeface*. Either a proportionally spaced or a monospaced face may be used.
 - (A) A proportionally spaced face must include serifs, but sans-serif type may be used in

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