

10 Tips to Make Your Conventional Briefing Format Appropriate for E-Briefing

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I. WHY?

Why do we need to care about how our document is formatted?

- A. Paper-less: Even lawyers don't generate as much paper as they used to. Nearly everything we write and read is now electronic. Many of our words are never reduced to paper.
- B. This includes judges: One federal appellate court estimates that 70% of its judges read briefs on screens, not paper. They experience the same screen-reading phenomena the rest of us do.
 - o Numerous courts issue iPads
- C. The unknown medium: Beyond knowing one's audience, lawyers ideally would know the medium that the audience uses to read their submissions. But legal writers can't even guess at their readers' visual medium of choice – paper? 19" monitor? tablet? smartphone? The variable-sized screens usually require compromises – like using fonts and typefaces that properly display on all media, that are more broadly installed, and that still follow court rules (e.g., serifs) that were designed for paper.
- D. Studies conclude that screen reading takes longer and negatively affects comprehension. Experts point to several potential reasons:
 1. Reading on low-resolution screens is more cognitively demanding – perhaps attributed to lower dot pitch (pixel density per inch) – increasing fatigue and stress.

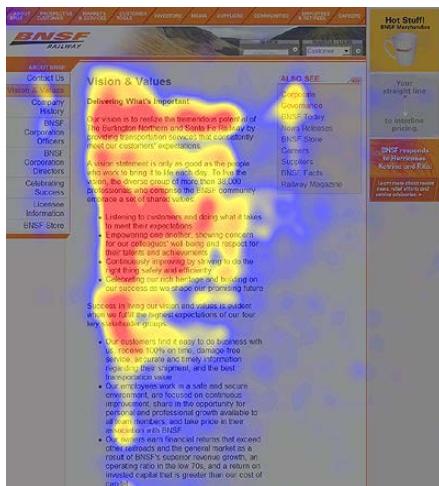
Screen Resolution vs. Paper Resolution

CRT Monitors	60 ppi
LCD Monitors	110 ppi
iPad and Nexus displays	~326 ppi
Paper	300–600 ppi

2. Many readers, perhaps subconsciously, view screen reading as less serious than reading on paper. Justified or not, screen readers read more quickly and less carefully.
3. With paper, readers can more-easily orient their page location; on scrollable screens, readers lose track.

E. Internet users may have simply formed poor habits. To cope with e-avalanches, readers quickly scan e-mail and webpages to discern authors' intent. Screen readers skim. This may explain why many people prefer to proofread final drafts on paper. Errors skimmed on screen often materialize on paper.

Internet habits also affect how eyes physically move across text. Eye-tracking studies show that screen readers' eyes skim in an "F" pattern (decreasing comprehension while progressing down a page) – relying upon authors to aid comprehension by providing visual variety and structure.



The sought-after visual landmarks include headings, summaries, images, and typographic emphasis (e.g., bold, italics, color). Screen readers' eyes seek variety, and those elements are what I will share with you.

II. 10 Tips to Format Your E-Brief

A. The type you use...

TIP 1: RETHINK YOUR FONT STYLE (TRASH TIMES NEW ROMAN)

- Serif vs. Sans Serif fonts



- Many court rules require use of serif fonts. *See, e.g.*, Fed. R. App. P. 32(a)(5) (“A proportionally spaced [type]face must include serifs, but sans-serif type may be used in headings and captions.”)
- Serifs –

Studies show that long passages of serif type are easier to read and comprehend than sans serif. *See* Practitioner’s Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit at 140 (2017 edition) (available at <http://www.ca7.uscourts.gov/forms/handbook.pdf>) (attached).

- For legal writing (whether electronically submitted or not!) do not use Times New Roman. This was designed for newspapers to use in very narrow columns. (The only reason this font is popular is because Microsoft made it the default in 1992.)
- Since 2007 the default in Microsoft is Calibri, but this is a Sans Serif font that is inconsistent with most court rules.
- Since you need to change your font from Microsoft’s default of Calibri anyway, choose a typeface designed for

books. The U.S. Supreme Court and the Solicitor General use Century. Professional typographers use, among others: New Baskerville, Book Antiqua, Calisto, Century, Century Schoolbook, Bookman Old Style. *See* 7th Circuit Handbook at 143.

- The 7th Circuit states that “faces in the Bookman and Century families are preferable to faces in the Garamond and Times families.” *Id.* at 144.
- Robins Kaplan LLP appellate group generally uses Book Antiqua.
- In many court rules, Sans Serif fonts are permitted for Headings. *See, e.g.*, Fed. R. App. P. 32(a)(5) (sans-serif type may be used in headings and captions).
- Robins Kaplan uses sans serif fonts for all of its headings, specifically Franklin Gothic.

TIP 2: INCREASE YOUR FONT SIZE

- “Size doesn’t matter” – for the document itself; but size does matter for the font:
 - Most rules measure by word count, not by page count, so increasing the type size doesn’t matter
 - Many courts are requiring increased font size anyway: “at least 13-point” for the Minnesota appellate courts, Minn.R.Civ.App.P. 132.01, subd. 1; and 14-point in the federal appellate courts, Fed.R.App.P. 32(a)(5)(A).
 - Remember that: some of the devices being used can be quite small; a number of judges are elderly and can have poor eyesight; and the average age to need bifocals is the early 40s! So bigger is better.
- Increase the size of the headings from the body text

- Robins Kaplan generally uses 13-point for body text and 14-point for headings

B. The look of your page...

TIP 3: INCREASE THE SIDE MARGINS

- Because of the need for white space on the “page” of the device, which you can’t always control up and down due to scrolling, make sure you increase that 1-inch side margin.
- Robins Kaplan generally uses side margins of 1.3 inches.

TIP 4: ELIMINATE (mostly) FOOTNOTES

- Footnotes are a big problem for screen readers. Some lawyers and judges find them merely annoying on paper, but they’re nearly impossible to navigate on a smaller iPad screen (pinch, scroll, re-orient). As such, lawyers who use footnotes may want to reconsider. On screens, footnotes get lost.

C. Breaking up the text...

TIP 5: CREATE EXTRA WHITE SPACE

- Consider larger than regular “double space” above headings.
 - Robins Kaplan generally places 24 pt before a heading.
- Consider larger than regular “double space” between ordinary paragraphs.
 - Robins Kaplan generally uses 6 pt before and after body text paragraphs.

TIP 6: WRITE HEADINGS, SUB-HEADINGS AND SUB-SUB-HEADINGS

- These keep readers oriented by providing visual landmarks. Headings make points in easily digestible chunks.

- Numerous headings and sub-headings make it easier for the e-reader who is scrolling through the document to keep track of where they are in the document.
- The more detailed headings have the added benefit of allowing for a better table of contents, which can be one of the first parts of your document a judge looks to.

TIP 7: USE BULLETS AND LISTS

- These provide alternative structures that give readers visual cues about the content relationships.
- AND, they provide the eye a needed break from the ordinary block of text in full paragraph form.

TIP 8: BE SHORT. BE SHORT. DID I SAY BE SHORT?

- Keep sentences short and paragraphs shorter. Provide clear, simple syntax. If you avoid long, dense text, you give readers a visual break, permitting pause and reflection.

TIP 9: USE GRAPHICS

- Images provide visual variety and structure, providing respite from occasionally dense text. They also provide clarity without increasing word counts.

TIP 10: FOLLOW THE RULES!!!

- These are only guidelines based on research suggesting best practices for a most readable electronic document. First and foremost, one must always know and follow the rules – or the preferences – of whatever jurisdiction in which one is filing.
 - *See, e.g.,* Board of Immigration Appeals Practice Manual 3.3(c)(vii) (“Times New Roman 12-point font is preferred.”). Of course, this is for paper/conventional filing because the BIA doesn’t yet have electronic filing!

III. Summary

The courts think the look of the brief makes a difference:

A. Seventh Circuit: 7th Circuit Handbook

- “This section of the handbook also includes some suggestions to help you make your submissions more legible—and thus more likely to be grasped and retained.” Page 139
- The court chooses in its handbook to give “advice, offered for mutual benefit of counsel seeking to make persuasive presentations and judges who want the most legible briefs so that they can absorb what counsel has to offer.” The handbook notes, however, that nothing in the “advice” section is mandatory. Page 142. As part of that advice, the handbook states:
 - “You can improve your chances by making your briefs typographically superior. It won’t make your arguments better, but it will ensure that judges grasp and retain your points with less struggle. That’s a valuable advantage, which you should seize.” Page 142

B. Eighth Circuit: 7th Circuit Handbook

- On the 8th Circuit’s Rules & Procedures page, <http://www.ca8.uscourts.gov/rules-procedures>, the court provides a link to the 7th Circuit’s handbook.

(The link currently is still to the prior edition of the handbook. The current, 2017 edition, is provided here and also available directly from the 7th Circuit’s website.)

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PRACTITIONER'S HANDBOOK FOR APPEALS



TO THE
**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

2017 EDITION

<http://www.ca7.uscourts.gov/forms/handbook.pdf>

XXIII. REQUIREMENTS AND SUGGESTIONS FOR TYPOGRAPHY IN BRIEFS AND OTHER PAPERS

Federal Rule of Appellate Procedure 32 contains detailed requirements for the production of briefs, motions, appendices, and other papers that will be presented to the judges. Rule 32 is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of a brief. The following information may help you better understand Rule 32 and associated local rules. The Committee Note to Rule 32 provides additional helpful information.

This section of the handbook also includes some suggestions to help you make your submissions more legible — and thus more likely to be grasped and retained. In days gone past lawyers would send their work to printers, who knew the tricks of that trade. Now composition is in-house, done by people with no education in printing. Some tricks of that trade are simple to master, however, if you think about them. Subsection 5, below, contains these hints.

1. Rule 32(a)(1)(B) requires text to be reproduced with “a clarity that equals or exceeds the output of a laser printer.” The resolution of a laser printer is expressed in dots per inch. First generation laser printers broke each inch into 300 dots vertically and horizontally, creating characters from this 90,000-dot matrix. Second generation laser printers use 600 or 1200 dots per inch in each direction and thus produce a sharper, more easily readable output; commercial typesetters use 2400 dots per inch.

Any means of producing text that yields 300 dots per inch or more is acceptable. Daisy-wheel, typewriter, commercial printing, and many ink-jet printers meet this standard, as do photocopies of originals produced by these methods. Dot matrix printers and fax machines use lower resolution, and their output is unacceptable. Although Rule 32(a) applies only to briefs and motions, we urge counsel to maintain this standard of clarity in appendices. A faxed copy of the district court’s opinion, or text from Lexis or Westlaw printed by a dot-matrix printer, is needlessly hard to read. Use photocopies of the district court’s original opinion and other documents in the record.

2. Rule 32(a)(5) distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. Most of this handbook is in proportionally spaced type. A monospaced face, by contrast, uses the same width for each character. Most typewriters produce monospaced

type, and most computers also can do so using fonts with names such as “Courier,” “Courier New,” or “Andale Mono.” The rule leaves to each lawyer the choice between proportional and monospaced type.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. The next line shows two characters enlarged for detail. The first has serifs, the second does not.



Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of submissions to serif type, although sans-serif type may be used in headings and captions. This is the same approach magazines, newspapers, and commercial printers take. Look at a professionally printed brief; you will find sans-serif type confined to captions if it is used at all.

This sentence is in Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, Georgia, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial, Eurostile, Trebuchet, Univers, and Verdana are other common sans-serif faces.

Variations of these names imply similar type designs.

Type must be large enough to read comfortably. For a monospaced face, this means type approximating the old “pica” standard used by typewriters, 10 characters per horizontal inch, rather than the old “elite” standard of 12 characters per inch. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, Rule 32(a)(5)(B) allows up to 10% per inch, or 72 characters (including punctuation and spaces) per line of type.

Proportionally spaced characters vary in width, so a limit of characters per line is not practical. Instead the rules require a minimum of 12-point type. Circuit Rule 32 permits the use of 12-point type in text and 11-point type in footnotes; Fed. R. App. P. 32(a)(5)(A) standing alone would have required you to use 14-point type throughout.

“Point” is a printing term for the height of a character. There are 72 points to the inch, so capital letters of 12-point type are a sixth of an inch tall. This advice is in 12-point type. Your type may be larger than 12 points, but it cannot be smaller. *See* Circuit Rule 32(b). Word processing and page layout programs can expand or condense the type using tracking controls, or you may have access to a condensed version of the face (such as Garamond Narrow). Do not use these. Condensed type is prohibited by Rule 32(a)(6). It offers no benefit to counsel under an approach that measures the length of briefs in words rather than pages, and it is to your advantage to make the brief as legible as possible.

This is a 9-point type.

This is a 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

3. Rule 32(a)(6) provides that the principal type must be a plain, roman style. In other words, the main body of the document cannot be bold, italic, capitalized, underlined, narrow, or condensed. This helps to keep the brief or motion legible. Italics or underlining may be used only for case names or occasional emphasis. Boldface and all-caps text should be used sparingly.

4. Circuit Rule 32(c) determines the maximum length of a brief. It permits you to present as much argument as a 50-page printed brief. The variability of proportionally spaced type makes it necessary to express this length in words rather than pages. Other rules extend this approach to other documents. For example, Fed. R. App. P. 29(a)(5) provides that an *amicus* brief may be no more than half the length allowed for a party’s principal brief.

Lawyers who choose monospaced type may avoid word counts by counting lines of type. Unless the brief employs a lot of block quotes or footnotes it will be enough to count pages and multiply by the number of lines per page. (Fifty pages at 26 lines per page is 1,300 lines.) The line-count option is not available when the brief uses proportional type.

Principal briefs of 30 pages or less, and reply briefs of 15 pages or less, need not be accompanied by a word or line count. Think of Rule 32(a)(7)(A) as a safe harbor. Lawyers who need more should use Circuit Rule 32(c). A brief that meets the type volume limitations of Circuit Rule 32(c) is acceptable without regard to the number of pages it contains.

5. What has gone before has been a description of requirements in Fed. R. App. P. 32 and Circuit Rule 32. Now we turn to advice, offered for mutual benefit of counsel seeking to make persuasive presentations and judges who want the most legible briefs so that they can absorb what counsel has to offer. Nothing in what follows is mandatory.

Typographic decisions should be made for a purpose. *The Times of London* uses Times New Roman to serve an audience looking for a quick read. Lawyers don't want their audience to read fast and throw the document away; they want to maximize retention. Achieving that goal requires a different approach – different typefaces, different column widths, different writing conventions. Briefs are like books rather than newspapers. The most important piece of advice we can offer is this: read some good books and try to make your briefs more like them.

This requires planning and care. Any business consultant seeking to persuade a client prepares a detailed, full-color presentation using the best available tools. Any architect presenting a design idea to a client comes with physical models, presentations in software, and other tools of persuasion. Law is no different. Choosing the best type won't guarantee success, but it is worthwhile to invest some time in improving the quality of the briefs appearance and legibility.

Judges of this court hear six cases on most argument days and nine cases on others. The briefs, opinions of the district courts, essential parts of the appendices, and other required reading add up to about 1,000 pages per argument session. Reading that much is a chore; remembering it is even harder. You can improve your chances by making your briefs typographically superior. It won't make your arguments better, but it will ensure that judges grasp and retain your points with less struggle. That's a valuable advantage, which you should seize.

Two short books by Robin Williams can help lawyers and their staffs produce more attractive briefs. *The PC is not a Typewriter* (1990), and *Beyond the PC is not a Typewriter* (1996), contain almost all any law firm needs to know about type. These books have counterparts for the Mac OS: *The Mac is not a Typewriter* and *Beyond the Mac is not a Typewriter*. Larger law firms may want to designate someone to learn even more about type. For this purpose, curling up with Robert Bringhurst, *The Elements of Typographic Style*, has much the same value for a brief's layout and type as Strunk & White's *The Elements of Style* and Bryan A. Garner's *The Elements of Legal Style* do for its content.

Another way to improve the attractiveness and readability of your brief or motion is to emulate high-quality legal typography. The opinions of the Supreme Court, and the briefs of the Solicitor General, are excellent models of type usage. The United States Reports are available online in Acrobat versions that retain all of their original typography. You can find them at <<http://www.supremecourtus.gov/opinions/boundvolumes.html>>. Briefs of the Solicitor General also are available online in Acrobat versions. Go to <<http://www.usdoj.gov/osg/briefs/search.html>>. The Supreme Court's opinions and the SG's briefs follow all of the conventions mentioned below, as do the printed opinions of the Seventh Circuit.

Here are some suggestions for making your briefs more readable.

- Use proportionally spaced type. Monospaced type was created for typewriters to cope with mechanical limitations that do not effect type set by computers. With electronic type it is no longer necessary to accept the reduction in comprehension that goes with monospaced letters. When every character is the same width, the eye loses valuable clues that help it distinguish one letter from another. For this reason, no book or magazine is set in monospaced type. If you admire the typewriter look nonetheless, choose a slab-serif face with proportional widths. Caecilia, Lucida, Officina, Serif, Rockwell, and Serbia are in this category.
- Use typefaces that are designed for books. Both the Supreme Court and the Solicitor General use Century. Professional typographers set books in New Baskerville, Book Antiqua, Calisto, Century, Century Schoolbook, Bookman Old Style and many other proportionally spaced serif faces. Any face with the word "book" in its name is likely to be good for legal work. Baskerville, Bembo, Caslon, Deepdene, Galliard, Jenson, Minion, Palatino, Pontifex, Stone Serif, Trump Mediäval, and Utopia are among other faces designed for use in books and thus suitable for brief-length presentations.

- Use the most legible face available to you. Experiment with several, then choose the one you find easiest to read. Type with a larger “x-height” (that is, in which the letter x is taller in relation to a capital letter) tends to be more legible. For this reason faces in the Bookman and Century families are preferable to faces in the Garamond and Times families. You also should shun type designed for display. Bodoni and other faces with exaggerated stroke widths are effective in headlines but hard to read in long passages.

Professional typographers avoid using Times New Roman for book-length (or brief-length) documents. This face was designed for newspapers, which are printed in narrow columns, and has a small x-height in order to squeeze extra characters into the narrow space. Type with small x-height functions well in columns that contain just a few words, but not when columns are wide (as in briefs and other legal papers). In the days before Rule 32, when briefs had page limits rather than word limits, a typeface such as Times New Roman enabled lawyers to shoehorn more argument into a brief. Now that only words count, however, everyone gains from a more legible typeface, even if that means extra pages. Experiment with your own briefs to see the difference between Times and one of the other faces we have mentioned.

- Use italics, *not* underlining, for case names and emphasis. You don’t see case names underlined in the United States Reports, the Solicitor General’s briefs, or law reviews; for good reason. Underlining masks the descenders (the bottom strokes of characters such as g, j, p, q and y). This interferes with reading, because we recognize characters by shape. An underscore makes characters look more alike, which not only slows reading but also impairs comprehension.
- Use real typographic quotes (“and”) and real apostrophes (’), not foot and inch marks. Reserve straight ticks for feet and inches.
- Put only one space after punctuation. The typewriter convention of two spaces is for monospaced type only. When used with proportionally spaced type, the extra spaces lead to what typographers call “rivers”—wide, meandering areas of white space up and down a page. Rivers interfere with the eyes moving from one word to the next.
- Do not justify your text unless you hyphenate it too. If you fully justify unhyphenated text, rivers result as the word processing or page layout program adds white space between words so that the margins line up.
- Do not justify monospaced type. Justification is incompatible with equal character widths, the defining feature of a monospaced face. If you want

variable spacing, choose proportionally spaced face to start with. Your computer *can* justify a monospaced face, but it does so by inserting spaces that make for big gaps between (and sometimes within) words. The effects of these spaces can be worse than rivers in proportionally spaced type.

- Indent the first line of each paragraph $\frac{1}{4}$ inch or less. Big indents disrupt the flow of text. The half-inch indent comes from the tab key on a typewriter and is never used in professionally set type.
- Cut down on long footnotes and long block quotes. Because block quotes and footnotes count toward the type volume limit, these devices do not affect the length of the allowable presentation. A brief with 10% text and 90% footnotes complies with Rule 32, but it will not be as persuasive as a brief with the opposite ratio.
- Avoid bold type. It is hard to read and almost never necessary. Use italics instead. Bold italic type looks like you are screaming at the reader.
- Avoid setting text in all caps. The convention in some state courts of setting the parties' names in capitals is counterproductive. All-caps text attracts the eye (so does boldface) and makes it harder to read what is in between — yet what lies between the parties' names is exactly what you want the judge to read. All-caps text in outlines and section captions also is hard to read, even worse than underlining. Capitals all have one same rectangular shape, so the reader cannot use shapes (including ascenders and descenders) as cues. Underlined, all-caps, boldface text is almost illegible.

One common use of all-caps text in briefs is argument headings. Please be judicious. Headings can span multiple lines, and when they are set in all-caps text are very hard to follow. It is possible to make heading attractive without using capitals. Try this form:

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. Perkins had actual knowledge of the contamination more than six years before filing suit

This form is harder to read:

ARGUMENT

I. THE SUIT IS BARRED BY THE STATUTE OF LIMITATIONS

A. Perkins had actual knowledge of the contamination more than six years before filing suit

If you believe that italics and underscores are important to getting your idea across, try something like this (replacing underlining with a rule line beneath the text):

ARGUMENT

I. The Suit is Barred by the Statute of Limitations

A. Perkins had actual knowledge of the contamination more than six years before filing suit
