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Electronic Filing in the Superior Court of Pennsylvania, Live in 2015!

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After much anticipation, the Superior Court of Pennsylvania looks to finally implement electronic filing in 2015. The PACFile system, available at https://ujsportal.pacourts.us/attorneyservices.aspx through the United Judicial System of Pennsylvania's (UJS) web portal, went online in 2012, and has been utilized by both the Supreme Court and Commonwealth Court for the past year. The Superior Court's utilization of the system now makes it standard for appellate filings statewide.

Overall, the PACFile system is seen by most as being both user-friendly and effective, and compares favorably with other state systems and the Circuit Courts' ECF systems. Of particular note in utilizing PACFile are the following:

- An individualized user name and password is required. To create an account, go to https://ujsportal.pacourts.us/Login.aspx.

- For purposes of timeliness, filing is complete upon uploading the brief and reproduced record; hard

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copies are then due within seven days. In practical terms, this means an end to scrambling to hand-file the hard copies with the Court or having it post-marked under Pa. R.A.P. 121 and 2185.

- The 70-page limit on briefs has been removed. All principle briefs must contain no more than 14,000 words (7,000 for reply briefs), with 14-point as the new font size required. Although the Superior Court has yet to strictly enforce the new font size requirement, it has been one of the biggest reasons for deficiency brief letters being sent out by the Commonwealth Court.

The Superior Court's implementation of the PACFile system is unlikely to drastically reduce the number of hard copies for either briefs or reproduced records. The required number of copies for the reproduced record was reduced from seven to four in October 2010. The number of briefs could see a slight reduction – to four or five – but is likely to remain steady after that. Though judges and justices are increasingly willing to read and work off of electronic versions of briefs, they – like people, in general – still prefer to have a hard copy on hand to read, highlight and mark up as they see fit.

All electronic filings, comprised of e-Briefs that are hyperlinked to the reproduced record, statutes and case law, remain an elusive goal at this time.

Please feel free to contact me directly with any questions regarding this article and/or preparing and filing any appeal. Counsel Press provides a full spectrum of appellate services. My colleagues and I at our Philadelphia office specialize in rule-compliant appellate filings in the United States Court of Appeals for the First, Third and Fifth Circuits, Superior Court of Pennsylvania, Supreme Court of Pennsylvania, Commonwealth Court of Pennsylvania, the Massachusetts Appeals Court and the United States Supreme Court.

Practical Guidelines for Masterful Brief Writing: Five Briefs to Avoid

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Legal writing, or any writing for that matter, is a mentally demanding and complex activity requiring sustained effort and attention. Lawyers often face difficulty in providing that effort and attention within court-imposed deadlines for multiple reasons. Solo practitioners or small-firm lawyers have to wear many hats each day and have multiple administrative tasks that divert their attention from their caseload. Similarly, attorneys that practice in multiple areas are often required to mentally "shift gears" to entirely different subject matters as they move from file-to-file in a given day or project-to-project in their practice, preventing the kind of structured focus needed to write well. Many attorneys

are deadline-driven, and, when competing deadlines overlap, it becomes difficult to juggle them all. Whatever the reason, the inability to devote full attention to legal writing causes the writing to suffer.

This is especially so with appellate brief writing, which is a special type of advocacy that most attorneys do not specialize in or have a great deal of experience in preparing. When an attorney inevitably finds himself or herself against a deadline to file a brief, the rush to get the job done often has adverse consequences. Here, at CP Legal Research Group, we have assisted thousands of attorneys with their briefs. We frequently see the results of a looming deadline and inadequate time to provide the required focus on the brief. Below are five briefs to avoid, even when faced with a filing deadline:

1. The See-What-Sticks Brief:

This brief usually appears when the attorney has not taken the time to properly review the record and do some preliminary research on the potential issues to narrow down those issues with a moderate chance of success from the hopeless ones. Therefore, the attorney feels compelled to "throw everything against the wall and see what sticks." The results are almost always dismal, and the brief reflects the lack of focus and direction.

Too many issues make a bad brief. An appeal is not a law school examination, where extra points are given for spotting and discussing every legal question buried in the case. Make sure that you properly evaluate the issues in your case and don't waste time and valuable real estate discussing esoteric points of law that have little chance of obtaining the desired result.

2. The Remix Brief:

This brief appears when an attorney procrastinates to the point that the filing deadline is imminent, and decides to just convert trial memoranda into a brief. Besides the obvious observation that merely recycling already rejected arguments is generally poor strategy, this tactic ignores the differences between appellate and trial advocacy. The way arguments are presented to a trial court differs from the way they are presented to an appellate court. This is especially so of "jury arguments," which are generally ineffective on an appeal. Good legal writing considers the audience and tailors the presentation to that audience. The same way that reading an appellate brief as a closing argument would be a terrible choice, so, too, is repackaging trial arguments to an appellate panel and hoping they fair better the second go-around. Make sure you take the time to do more than just rehash your trial

arguments, and carefully tailor the contentions to your new audience.

3. The Frankenstein Brief:

This monster raises its head when an attorney attempts to cobble together a brief by cutting and pasting from various other documents, including PDF files. The result is a stitched-together document that lacks cohesion and structure. Numerous "cut and paste" errors appear, such as subject-verb agreement, misidentified courts, inconsistent naming conventions for parties and formatting problems. Indeed, attorneys often unwittingly manufacture formatting problems in their document when some code or electronic command is inadvertently picked up and copied into the new document. These hard-to-correct formatting errors transform what was intended as a timesaving shortcut into hours of struggling to properly format the new document. This causes numerous distracting errors that divert the reader's attention from the arguments.

Whenever you cut and paste, you need to ensure that sufficient time remains to carefully review the brief and eliminate these pitfalls.

4. The Too-Many-Cooks Brief:

This brief appears when multiple lawyers collaborate on a brief, with each attorney responsible for one or more sections. Division of labor is a great way to tackle a difficult multi-issue appeal and to maximize the

time you have by preparing multiple sections at once. The only caveat is that you need to leave sufficient time to harmonize all of the sections into one coherent document. Otherwise, you end up with parties and other players being identified by different names in different sections of the brief, crude transitions from section-to-section because writing styles clash, a lack of uniform citation because the same cases cited in different sections revert back-and-forth from short form to full form and other integration problems. In cases of too many cooks, you must have a master chef to unify the various sections and ensure that theme, style and naming conventions remain consistent.

5. The Un-Brief:

The "un-brief" results from the failure to leave sufficient time to edit out unnecessary verbiage and focus and sharpen the arguments. The result is a wordy, rambling document that lacks focus and clarity and is filled with run-on sentences. The length and lack of focus makes the "un-brief" hard to read and distracts the reader from the arguments.

It is called a "brief" for a reason! Take the time to be concise and avoid repetition. Appellate judges dislike unnecessarily long briefs!

(This article was published on July 30, 2014 in *The Recorder,* California's leading legal news and analysis publication.)

Pennsylvania Rules of Appellate Procedure: Did You Appeal From a Final Order?

By: Michael Cantwell | Sr. Appellate Consultant | Counsel Press | mcantwell@counselpress.com

Proceedings in appellate courts are very different from those in trial courts and each one of the appellate courts has their own set of rules and internal operating procedures. If you do not follow the rules carefully, you may lose the chance to have your appeal considered. The role of Counsel Press' appellate counsel and consultants is to advise and shield our clients from all potential pitfalls.

A common problem arises when, after filing a Notice of Appeal, you receive a Rule to Show Cause notice from the Superior Court asking if the Order appealed was final. This notice usually arrives after the court reviews the docketing statement. There are some steps to take on how to avoid this extra task.

Before filing a Notice of Appeal:
Make sure the Order disposes of all claims and parties. Orders must be reduced to judgment or final decree before they are final and entered on the docket. If there are issues still pending, your only other option is to file for permission to appeal under Pa. R.A.P. 311 which covers interlocutory appeals. There's another way to look at it -- is there anything else that you can file at the trial court? If the answer is yes, then, by definition, a final, appealable Order has not yet been issued.

Here is a sample Rule to Show Cause notice sent by the Pennsylvania Superior Court:
"Review of this matter indicates that judgment has not been entered on the trial court docket as required by Pa. R.A.P. 301." Appellant is directed to *praecipe* the trial court prothonotary to enter judgment and file with the prothonotary of the Superior Court within 10 days of certified copy of the trial court docket reflecting the entry of judgment. "Upon compliance of Rule 301, the Notice of Appeal previously filed will be treated as filed after the entry of judgment." Failure to do so will result in the appeal being dismissed.

This is usually fixed by filing a *praecipe* with the trial court prothonotary to enter judgment on the docket. Once proof is shown, the appeal is allowed to proceed.

Here is another example:
"Judgment has not been entered on the award of attorney's fees; therefore, this filed appeal is interlocutory. Appellant had 14 days to provide proof that the Order for attorney's fees was entered on the docket."

Proof was provided and the appeal was allowed to proceed.

In both these instances, this extra step could have been avoided by making sure there were no open claims pending before judgment was entered, including a pending Motion for Reconsideration. Note: If you do not respond, the Court usually dismisses the appeal and you need to start over, incurring additional costs.

Important rules to follow:
-R.A.P. 301, Appealable Orders
-R.A.P. 311, Interlocutory Appeals as of Right
-R.A.P. 341, Final Orders.

Pennsylvania Rules of Appellate Procedure: What is the Purpose of the Docketing Statement?

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A common question arising with Superior Court appeals is the purpose of the docketing statement. This is a form document sent by the Superior Court after a notice of appeal is filed, and is required to be completed and returned within 10 days. Under Pa. R.A.P. 3517, the stated purpose is to enable the Court to "more efficiently and expeditiously administer the scheduling of argument and submission of cases on appeal." Pa. R.A.P. 3517. What does that mean? In short, it is a general information worksheet designed to help the Superior Court answer the following:

- Is jurisdiction proper? Was the notice of appeal taken from a final, appealable order under Pa. R.A.P. 301? Was it taken from a collateral order under Rule 313? Is the appeal interlocutory, either by right under Rule 311 or permission? The answer to this question greatly helps the Court determine whether the appeal should either proceed or be quashed.

- Was the transcript duly-ordered (and paid for)?

- Are there any related cases? This informs the Court if the case is a cross-appeal under Pa. R.A.P. 2136, or if two or more cases could eventually be consolidated.

- A brief description of the issues raised on appeal. This enables the Superior Court to determine whether the case is ripe for mediation.

- Is the case caption and parties of record, as entered on the docket, proper? This relates to issues that arise often among appellants. In assigning the docket number for a new case on appeal, the Superior Court obtains all information from the notice of appeal (case caption, parties, attorneys of record and the date of the order appealed from). When filing their opening brief and reproduced record, appellants are sometimes forced to serve unnecessary parties (*i.e.*, parties to the lower court action that have nothing to do with the appeal), because they were over-inclusive in listing parties in their notice of appeal. Similarly, the case caption is sometimes not accurately conveyed to the notice of appeal. The docketing statement provides an easy way to remedy such mistakes soon after they are made.

In short, though the docketing statement may seem like redundant paperwork, it serves an important purpose for the Superior Court's administration of your appeal.

"Web Links to Nowhere" in SCOTUS Decisions: How to Ensure that Cited Material Remains Available for Years to Come

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According to a recent article in *The New York Times*[1], half of the hyperlinks in Supreme Court opinions no longer link to the information originally cited. Even at this level, creating a link directly to a website can be risky business. Websites expire or change owners, while web pages are relocated or archived. The question arises, how do you take control of slippery online material when citing to a web source directly?

In an ideal world, it would be easiest to copy a web path directly into your link command, but what happens five years from now? What happens in ten years when that website is no longer valid or even in existence? It's important to understand that you have no control over that pinpoint material. Therefore, you are at the website's mercy and the one at risk when referencing online material.

Counsel Press' eBrief team has extensive experience and deep expertise in hyperlink technology. We have assisted thousands of attorneys with enhancing their briefs, from basic hyperlinking to conversion of video and audio exhibits. Over the years, we have developed a number of techniques for combating website link rot, and we wanted to share a few of these in this article.

The easiest and most reliable way to prevent link rot is to do a simple conversion: create an image file of the website you are viewing. By converting a web page to a PDF, you have locked that web page material down as an image, permanently. You can then link directly to that image file. Whether you choose to link externally, internally or as an attachment file, it is up to you and a subject best left for another article.

...creating a link directly to a website can be risky business... how do you take control of slippery online material when citing to a web source directly?

Video files are especially tricky. *The New York Times* article notes one hyperlink in

1. The article titled "In Supreme Court Opinions, Web Links to Nowhere", written by Adam Liptak, published September 23, 2013.

opinion about violent video games by Justice Samuel A. Alito, Jr. The hyperlink takes users to an error page that reads: "Aren't you glad you didn't cite to this Web page?" So, how do you avoid the video link rot in your legal document?

It's always best to try to utilize the exhibit material that you have available directly to you, *e.g.*, deposition, surveillance, animations, etc. If you have to use an online video, I would ask for permission to use it directly from the source. Once you have the video files in place, you will need to check the size. If the size is large, the best solution is converting video files into a standard file format, *e.g.*, mpeg, mp4, etc. This will ensure that all operating systems are able to (dis)play the video file. If the file size is more manageable, *embedding* video files directly into PDF can be another nice option. For example, at Counsel Press, we have uploaded many appellate filings into the PACER/ECF database that contain video material embedded directly into the brief and/or record.

When linking to citation material online, like statutes and case law in LexisNexis and Westlaw, you also have the capacity to create links that *search* for the relevant material rather than simply directing the command to that web page. In other words, the link will find the specified document rather than look for a web page directly.

Sometimes, the answer can be a combination of things. What about two links? One link might lead directly to the web page and the other to an *image* of the web page. However you decide to proceed, if you *do* have to reference something directly online, make sure that it's from a reputable source. Avoid URL shorteners as they are prone to rot. One last thing: check your links often!

There is no easy answer for linking directly to web sources, but, with a few techniques, you can ensure that your cited material will remain available and relevant for years to come.