



Writing in the Digital Age



Based on ABA Counsel of Appellate Lawyers E-Briefs Project Report

Panelists



Hon. Samuel A. Thumma,
Vice Chief Judge, Arizona Court of Appeals, Division One
(Moderator)



Hon. Barbara Jackson,
Supreme Court
of North Carolina



Hon. Erick Magnuson,
Former Chief Justice,
Supreme Court
of Minnesota (ret.)



Robyn Ridler Aoyagi, Esq.,
Tonkon Torp LLP,
Portland, Oregon

Outline

1. Introduction

- a. Terminology
- b. Why you should care about this issue

2. File formatting

- a. Searchable PDF (official court record)
- b. Non-fixed format file (optional secondary filing)
- c. Visual images embedded in briefs

Outline

3. Text density, fonts and readability

- a. Text density (line spacing, margins and alignment)
- b. Font and font size
- c. Emphasis

4. Internal navigation

- a. Page or paragraph numbering
- b. Bookmarks and internal hyperlinks

Outline

5. Hyperlinks to legal authorities, record materials and the Internet

- a. Global solution (legal and record citations)
- b. Hyperlinking to specific types of sources

6. Best practices for implementation

- a. Rulemaking
- b. Interim rules, administrative orders, public announcements and phased introduction
- c. Training and education

Introduction



1988



1996



2015



cloud computing
ohnosecond
Ethernet
cache
BIG DATA
mobile compatibility
hot topics and trends
Windows RT
tablet computer
Wi-Fi
VIRTUAL
USB
BROADBAND
wares
STRINGY FLOPPY
Linux
buzzword
64-bit computing
Android
how to spoof your technical friend
server
smart
Web 2.0
iPhone 6
open source
BlackBerry 10
STANDARDS

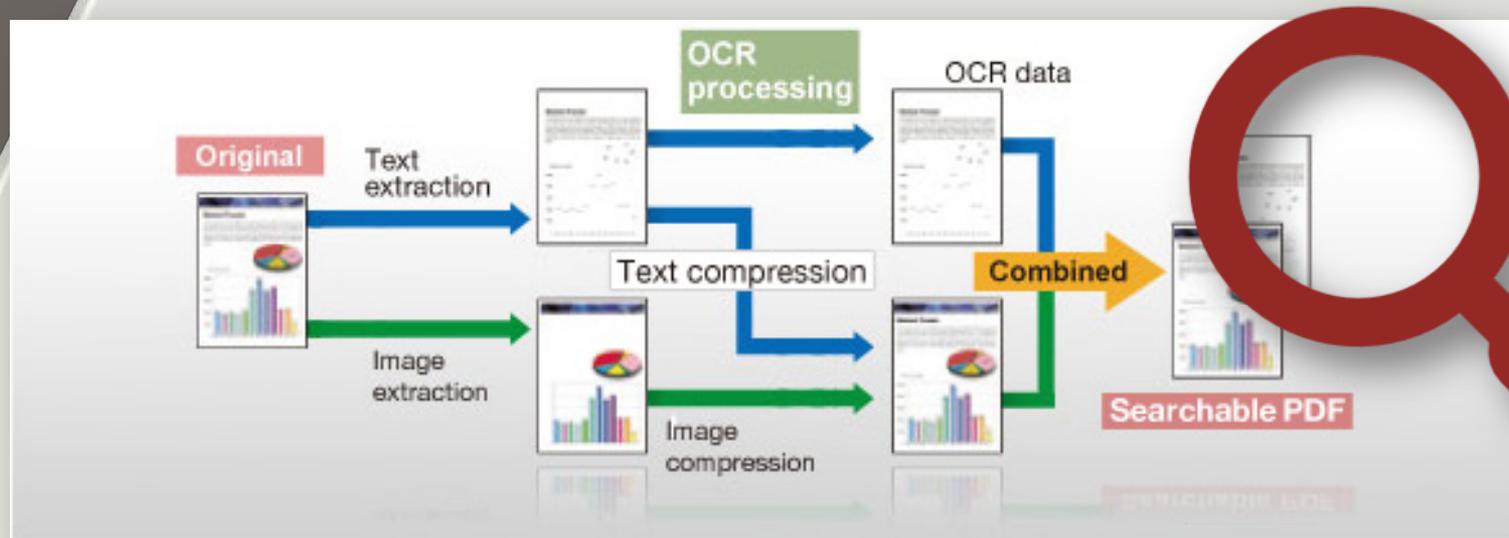
Terminology



Why You Should Care

File Formatting





Searchable PDF



Non-fixed Format File



Visual images



Emoji's

Don't Believe Us?

Smile High Court judge - X

www.telegraph.co.uk/news/2016/09/14/smile-high-court-judge-uses-emoji-in-official-ruling/

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News

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News

Smile: High Court judge uses emoji in official ruling

share




Mr Justice Peter Jackson used a smiley face emoji in a ruling

By **John Bingham**, SOCIAL AFFAIRS EDITOR
14 SEPTEMBER 2016 - 4:46PM

It is the kind of document in which one might expect to find daunting legal terminology, interspersed with Latin phrases or even a smattering of Norman French.

But one High Court judge has gone to previously unheard-of lengths to make a judgment in a family court case as much accessible as possible for

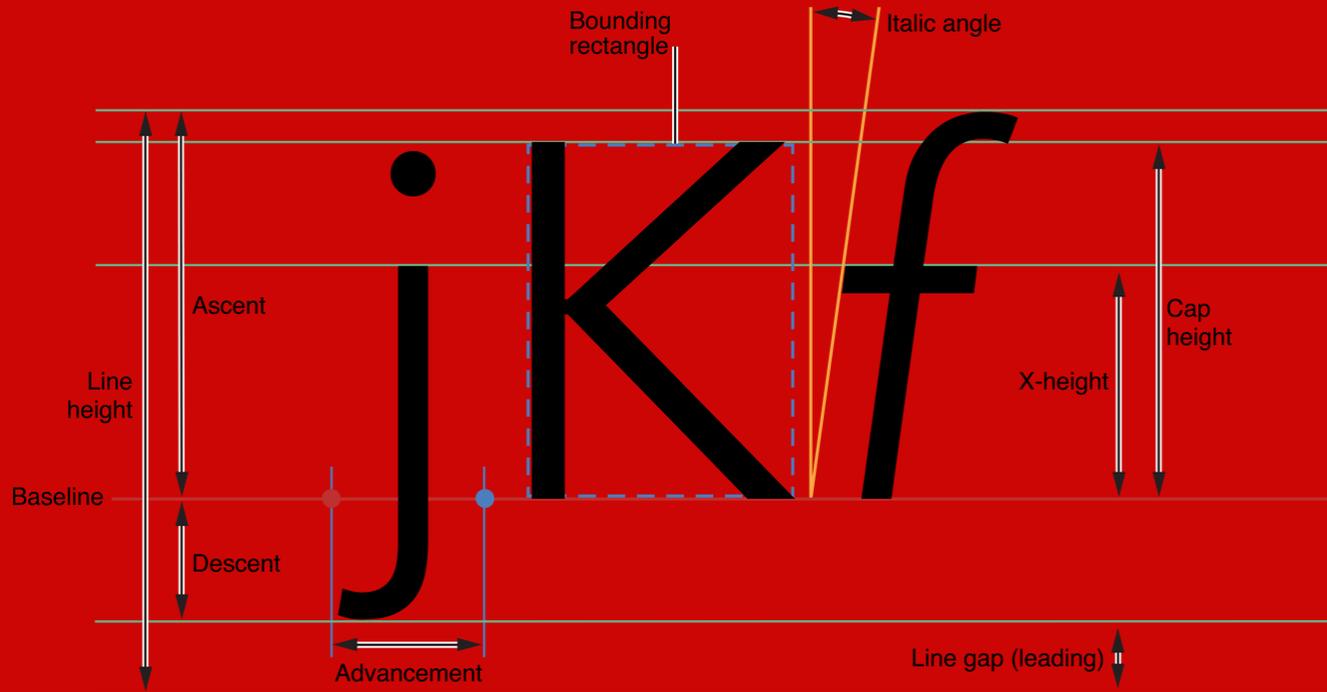
News

Smile: High Court judge uses emoji in official ruling

sage in the caravan for the father's sis
 ner how to look after the family's pets.
 ould be back on 3 August. It has a 😊 be
 the police searched the caravan. Th
 t the 😊 is winking, meaning that the
 ing back. I don't agree that the 😊 is
 are wrong about that, and anyhow th

Emojis

Text





Welcome to **Red Apples** Online!



If **red apples** are what you're looking for, then you are definitely in the right place to buy **red apples**. When it comes to **red apples**, you won't find a higher quality selection of **red apples** anywhere! Our **red apples** experts know how to pick only the best, most savory **red apples** from the bunch, and we sell these premium **red apples** right here for you to enjoy (**red apples**). Seriously, go to another **red apples** website and try their **red apples**. We guarantee you'll come crawling back to buy our **red apples**, buddy.



Text Density



Font and Font Size

Emphasis

Italic

Bold

Underline

Color

Emphasis

Internal Navigation

« Previous

1

2

3

4

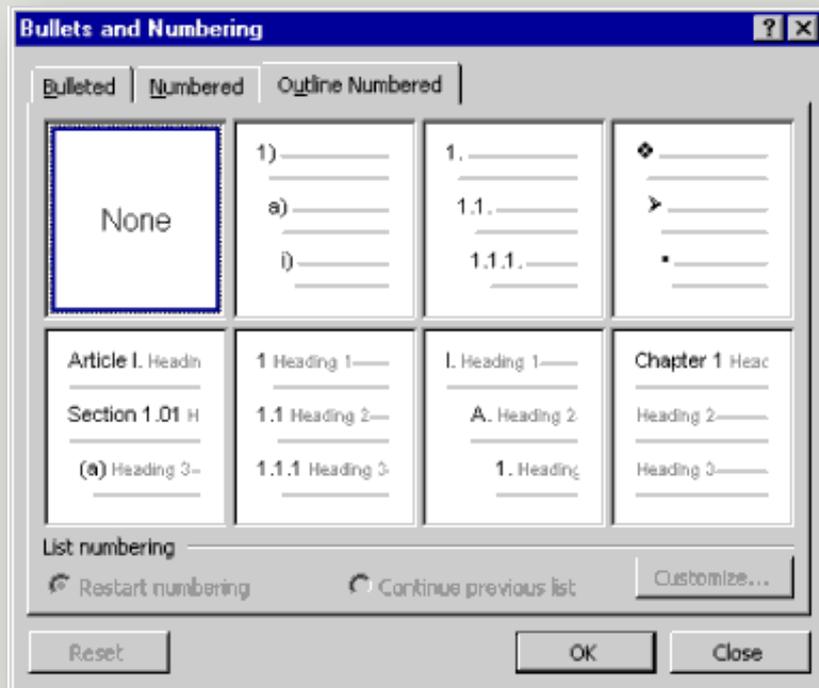
5

...

18

Next »





Page or Paragraph Numbering

¶6 After a twelve-day trial, the case was submitted to the jury. The jury returned a verdict for the City on Rollings's claims. (R.268-274.) The superior court entered judgment for the City on May 22, 2006. (R.303.) Rollings moved for judgment as a matter of law (R.304), but the court denied the motion on August 16, 2006 (R.310). Rollings timely filed their notice of appeal on September 12, 2006. (R.311.) This Court has jurisdiction of Rollings's appeal from the superior court's final judgment under A.R.S. § 12-2101(B).

STATEMENT OF FACTS

A. The Historic Adobes

¶7 The historic adobes at the heart of this case consist of around thirty buildings in Barrio Viejo in Tucson, south of the Tucson Convention Center. Fifteen of those properties have been damaged by water leaking from the City's water system. The buildings, which were built between 1860 and 1911, are located within the Barrio Historico Historic District and are included on the National Historic Register. In 1971, the University of Arizona College of Architecture studied the area and ranked the majority of Rollings's buildings as "architecturally irreplaceable" or "architecturally and contextually valuable." (3 Tr. 38-39, 41.)

¶8 The preservation of these adobe buildings is a matter of local, state, and federal public policy. For example, the City of Tucson created the Historic District in 1975 to encourage the preservation of historic sites and structures located within historic zones, encourage the retention of early structures, keep them in active use in their original appearance, setting, and placement and preserve property values, provide for future development, and promote an awareness of the

Paragraph numbering is easily accomplished by creating a Word style with paragraph numbering that is used only for the text paragraphs that should be numbered.

¶6

¶7

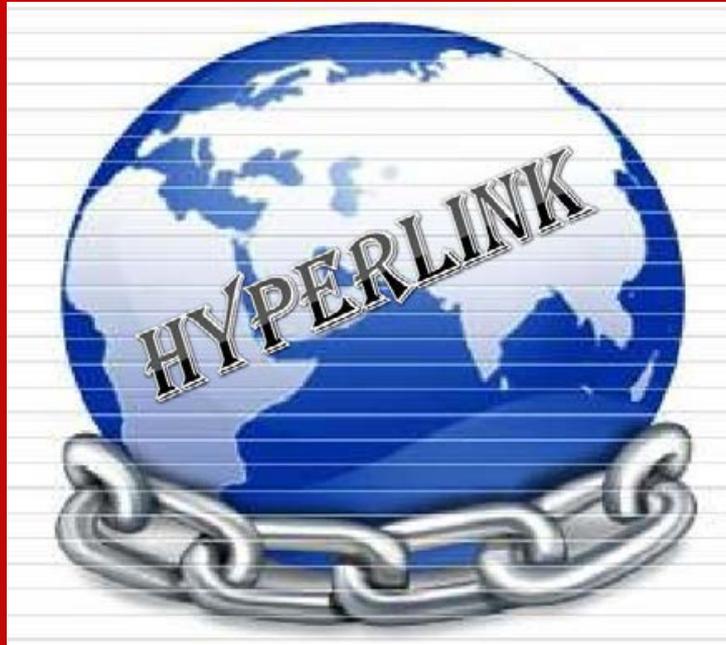
¶8

Paragraph Numbering



Bookmarks and Internal Hyperlinks

Hyperlinks





Global Solution

tried in 2015. The court submitted all three counterclaims to the jury, which returned verdicts in favor of BHMI on each claim for \$43,806,362.70. The court then granted BHMI's application for \$2,732,962.50 in fees and \$7,657.93 in costs and denied ACI's various post-judgment motions.

C. Standard of review

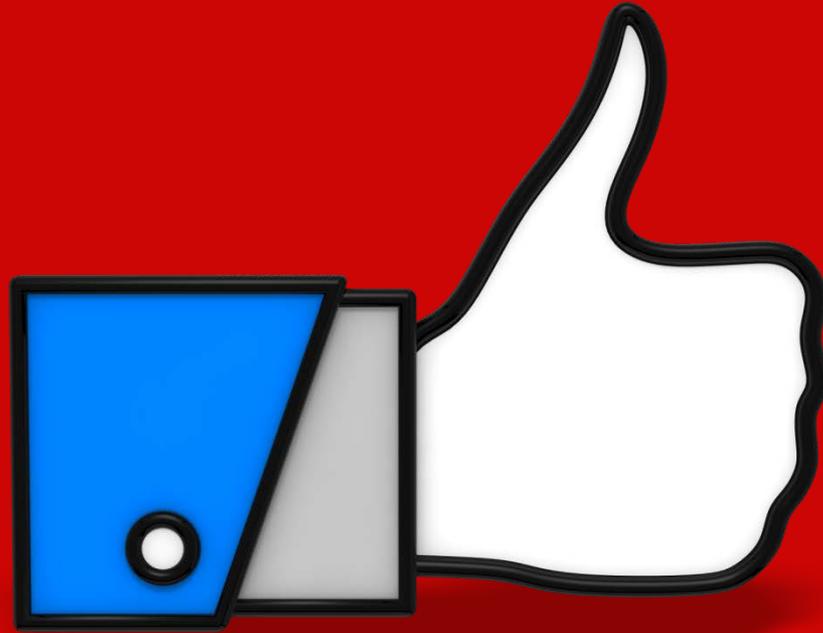
The scope of review in a civil appeal is limited to errors properly preserved, assigned, and discussed in an appellant's brief and this Court may, at its option, notice a plain error not assigned. Neb. Ct. R. App. P. § 2-109(D)(1)(e)(2009); [Ashby v. First Data Resources](#), 242 Neb. 529, 497 N.W.2d 330 (1993). The application of the *Noerr-Pennington* doctrine to BHMI's counterclaims and the application of the unambiguous language of the NDA present questions of law subject to independent review. [Petit v. Neb. Dep't of Corr. Servs.](#), 291 Neb. 513, 518 867 N.W.2d 553, 557 (2015). The amount of an award of attorney fees is reviewed for an abuse of discretion. [Labenz v. Labenz](#), 291 Neb. 455, 458, 866 N.W.2d 88, 91 (2015).

1. Denial of directed verdict and judgment notwithstanding the verdict.

"In every jury trial, before the case is submitted there is a preliminary question for the court to decide, when properly raised, not whether there is literally no evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed." [Raff v. Farm Bureau Ins. Co.](#), 181 Neb. 444, 450, 149 N.W.2d 52, 56 (1967). A verdict should and will be overturned if there is insufficient evidence to support it. See e.g. [First Express Servs. Group, Inc. v. Easter](#), 286 Neb. 912, 930-31, 840 N.W.2d 477-78 (2013). When reviewing a district court's denial of a directed verdict or judgment notwithstanding the verdict issues of law are reviewed *de novo*. [Neb. Dep't of Health & Human Servs. v. Zachary D. \(In re Zachary D.\)](#), 289 Neb. 763, 767, 857 N.W.2d 323, 328 (2015).

Hyperlinking

Best Practices

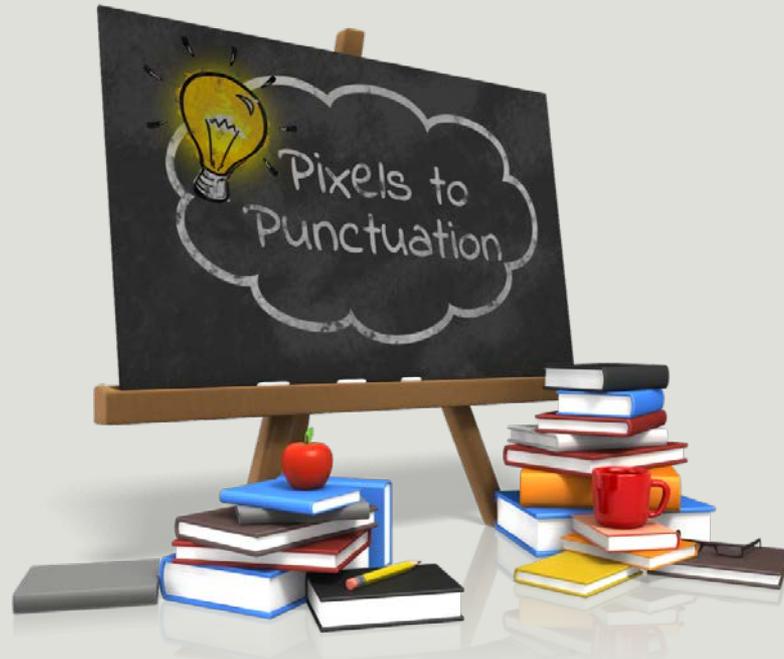




Rulemaking



Interim Rules



Training and Education

Additional Resources

- Council of Appellate Lawyers “Recommendation for Appellate Courts to Improve the Readability and Functionality of E-Briefs” (Nov. 2016) (attached)
- Friend, Joe. “Why Did Microsoft Change The Default Font To Calibri?” *Forbes.com* (18 Dec. 2013).
- Requirements and Suggestions for Typography in Briefs and Other Papers. In *Practitioner’s Handbook for Appeals*. 2014 ed. Chapter XXIII, pp. 128-134 United States Court of Appeals for the Seventh Circuit (2014).
- Pernice, Kara, Whitenton, Kathryn and Nielsen, Jakob. “How People Read on the Web – The Eyetracking Evidence.” Nielsen Norman Group (2014)
- Nielsen, Jakob. “F-Shaped Pattern for Reading Web Content.” *NNGroup.com* (17 Apr. 2006).
- Nielsen, Jakob. “Banner Blindness: Old and New Findings.” *NNGroup.com* (20 Aug. 2007).

Additional Resources

- Scarinci, Donald. "Can iPads Improve Efficiency in the Courtroom?" *NJ.com*. (11 Nov. 2014).
- Ward, Raymond P. "How U.S. 5th Circuit Judges Read Briefs." *Louisiana Civil Appeals* (08 Oct. 2013).
- Butterick, Matthew and Garner, Bryan A. *Typography for Lawyers*. Houston, TX: Jones McClure, 2010.
- Bringhurst, Robert. *The Elements of Typographic Style*. 4th ed. (Version 4.0) Point Roberts, WA: Hartley & Marks, 2004.
- Kenny, Brendan. "Hey Hey, Ho Ho, 19th Century Fonts Have Got to Go." *Lawerist.com* (15 Aug. 2016).
- *The Chicago Manual of Style*, 16th ed. Chicago, IL: Univ. of Chicago, 2003.
- Felici, James. *The Complete Manual of Typography: A Guide to Setting Perfect Type*, Berkeley, CA: Peachpit, 2003.
- Garner, Bryan A. *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Court*. 2d ed. New York: Oxford UP, 2004.

Additional Resources

- Magnuson, Eric J. and Thumma, Samuel A. "Prospects and Problems Associated with Technological Change in Appellate Courts: Envisioning the Appeal of the Future." *15 J. App. Practice and Process* (Spring 2014).
- Sansone, Gina M. and Reissner, Howard J. "ABA Requires Lawyers to Understand Technology." *CorporateCounsel.law.com* (23 July 2013).
- Perlman, Andrew. "The Twenty-First Century Lawyer's Evolving Duty of Competence." *The Professional Lawyer*. Vol. 22.4. *ABA.org*. (2014).