Writing for screen readers in the wake of Indiana's e-filing initiative

In November, the Indiana Supreme Court took a major step in implementing an electronic filing system for Indiana's courts by starting a pilot program of electronic filing for cases in the Supreme Court and the Court of Appeals.¹ Hamilton County courts have been accepting documents through e-filing since July, and more courts in the state will soon join this e-filing system as the Supreme Court aims for a state-wide system by 2018.²

In light of this move to e-filing, lawyers should recognize that, in the near future, the documents they submit to Indiana's courts probably will be read by judges on screen rather than on paper. Indeed, in other jurisdictions where e-filings are accepted,³ many judges prefer to use electronic devices – particularly electronic tablets such as iPads – to read documents.⁴

Of course, this shift by judges to screen reading is important for the efficiency it will give them. They will be able to conveniently store, carry and read many documents on a single, portable device when those documents were once stored and carried in cumbersome physical files.

But the courts' shift to screen reading is also significant because it will require lawyers to change how they convey information to judges in the documents submitted to them. This "how" includes not only a document's substantive content but also the document's appearance on screen – in other words, the document's design. This change is necessary because skillful writers tailor documents to their readers' needs and preferences. And research indicates that readers read on-screen documents differently from the way they read paper documents.

This article will provide a basic discussion of why and how you, as a lawyer, may effectively design electronically filed documents to meet the needs of the screen-reader judge.

1. The attributes of judges as readers

To understand why you should write e-documents in a particular way, let's first consider the general attributes of judges as readers before we get to screen readers' specific attributes.

As readers, judges have three primary attributes. First, judges are busy in part because voluminous reading is a major component of their jobs.⁵ Second, like other readers, judges have limited attention spans, so they will lose interest in a document if it's difficult to read.⁶ Third, because judges are decision-makers, they read documents submitted to them with a critical eye.⁷

2. The attributes of screen readers

Further, readers read on-screen documents differently from the way they read paper documents in three significant ways. First, screen readers have a harder time keeping track of their place in an e-document than they do in a print document.⁸ This occurs because, unlike a paper document, which gives readers the ability to see "where they are" in a document from tangible cues such as physical pages, a document on screen essentially appears as "one long page" to a reader.⁹

Second, screen readers may be easily distracted, which may cause them to lose their focus on the document's content.¹⁰ These distractions arise not because the reader is lazy; rather, they arise from avenues available to readers that allow for

easy navigation away from the document, such as Internet hyperlinks embedded in the document, and from other applications on the readers' devices, like email.¹¹ For instance, the reader may hear an email alert while reading a document on her computer and must then consider whether to move from the document to her email application so she may read the new email.¹²

Third, screen readers tend to browse a document rather than linearly read it, as they would read a paper document.¹³ More specifically, screen readers tend to focus most of their attention at the top of the document and on the left side of the document (called "F-pattern" reading), looking for cues about the most important information in the document.¹⁴ In doing this, screen readers will often read "firsts" – the first paragraph of the document and the first sentence of each paragraph – and scroll through the rest of the document, skimming most of the text along the way.¹⁵

3. The needs of screen-reader judges and a lawyer's goals in writing for them

Skillful writers cater to their readers' needs. These needs stem from their readers' attributes. As noted above, judges are busy, impatient and critical readers. And judges may have three additional attributes when they read documents on screen:

- They may struggle to see how the document is organized and, thus, may easily lose their place in the document.

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- They may be easily distracted while reading the document.
- They may skim the document rather than read it linearly, looking for cues that lead to the most important information in the document.

All of these attributes produce one main need for judges as screen readers: a document that is easy to read.¹⁶ Put differently, your primary goal in writing an e-document for a judge should be clarity.¹⁷ A clearly written and designed document, in turn, will enhance your ability to persuade the judge.¹⁸

The goal of clarity can be broken down into three subsidiary goals related to the document's design:

- The document should permit the judge to easily navigate through it and to see the document's organization without difficulty.

- The document should keep the judge focused on the document's substantive content.
- The document should clearly lead the judge to key information.

4. Document-design suggestions for lawyers who write for screen-reader judges

When writing documents for e-filing with a court, you certainly should comply with any formatting and document-design requirements under the court's rules.¹⁹ But to the extent that the court's rules allow you to do so, consider using the following techniques to enhance a document's readability – and, thus, its clarity – on the screen.

4.1 Make headings a central feature of the document

A judge may skim documents she reads on screen, looking for important information.²⁰ Further,

the judge may have difficulty keeping track of where she is in the document because an e-document usually comes across as a single page to a screen reader.²¹ To allow the judge to easily find what she is looking for, and to help her more readily find her place in the document, consider frequently using headings in the document.²² And when crafting these headings, consider the following practices:

4.1.1 Use scientific enumeration to label headings

When reading headings in a document, judges are accustomed to seeing those headings labeled with hierarchical enumeration (that is, I.A, I.B, II.A, II.B, etc.).²³ However, because a document on screen may appear to the reader as a single document,²⁴ a heading labeled with hierarchical enumeration may not clearly indicate the heading's location in the document. For instance, the judge may see a subheading in a brief's argument section labeled with a "B" and not immediately know whether the heading is for the second subsection of part I of the argument or if the heading is for the second subsection of part II of the argument.

Thus, consider using the enumeration typically employed in scientific documents to label headings – 1.1, 1.2, 2.1, 2.2, etc., which is the system used to label the headings in this article – instead of hierarchical enumeration.²⁵ This kind of labeling may make it easier for the judge to be aware of the heading's location in the document.²⁶

4.1.2 Use left-aligned, substantive point headings in briefs

Because a judge may skim a brief and focus primarily on the left side of the brief as she skims, place point headings at the left margin

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of the page in the brief to facilitate these reading preferences.²⁷

Moreover, each point heading should be substantive in that it should summarize the conclusion to be reached in the section of the brief that follows the heading, and it should summarize the reasons why the judge should reach that conclusion.²⁸

For example, point headings in the argument section of an appellate brief might look like this:

1. Jones constructively possessed the cocaine discovered in his apartment because he intended to control the cocaine and because he was capable of controlling it.

[Text of argument]

1.1 Jones intended to control the cocaine because several items discovered in his apartment, including plastic baggies and twist ties, showed that he knew the cocaine was present.

[Text of argument]

1.2 Jones was capable of controlling the cocaine because his apartment was his residence, which showed that he was able to control any personal property in his apartment.

[Text of argument]

4.2 Use hyperlinks, but don't overuse them

A "hyperlink" is highlighted text in an e-document that a reader can click on to navigate to another portion of the same document, to another document or to a website.²⁹ In an e-document, hyperlinks can be quite useful to the reader. To cite a few examples, a link to a case cited in a brief can allow a judge to get more information about the law with a single click.³⁰ A link to the record of proceedings in the same brief can allow the judge to verify swiftly the lawyer's statement of facts in the brief.³¹ And hyperlinks in the brief's table of contents can allow the judge to move easily to particular sections of the brief.³²

However, too many hyperlinks in a document may impair a judge's focus on the document's substance.³³ As a result, legal-writing experts recommend that hyperlinks be used with care.³⁴ Links to sources outside of the document should be used sparingly to prevent the continual temptation to navigate away from the document.³⁵

For example, links to the authorities cited in a brief might be provided only in the brief's table of authorities rather than throughout the brief's body.³⁶ And links that permit navigation within the document probably should be left in a single section of the document, such as the table of contents.³⁷

4.3 Use bookmarks

Documents submitted in Portable Document Format (PDF) permit the author to insert bookmarks in the document.³⁸ This bookmarking system allows a reader to display a table of contents along the side of the screen in a separate pane while the document is simultaneously visible on the screen.³⁹ The reader may click on items listed in the table-of-contents pane to immediately navigate to each section of the document.⁴⁰ This tool will help a judge easily move through the document and see its organizational scheme.⁴¹ Therefore, consider using bookmarks when electronically filing documents in PDF.

4.4 Be concise

Because judges are busy, impatient readers, they have long admonished attorneys to be concise in their filings.⁴² And because screen readers tend to be more easily distracted than print readers,⁴³ concision in an e-document is even more important. Therefore, carefully edit documents intended for screen reading to promote concision. Be as brief as possible without sacrificing necessary content.⁴⁴

4.5 Use consistent terminology in the document to facilitate searching within the document

Because screen readers tend to skim e-documents for the most important information, they may use the search function of their e-reading application to find key

terms in a document.⁴⁵ Therefore, try to use the same terms for the same things discussed in an e-document, particularly for any words or phrases that are relevant to the legal claims you're discussing in the document.⁴⁶ For example, if you're writing a brief about a negligence claim involving a driver who fell asleep behind the wheel, you might refer to the driver's activity only as "sleep" or as "slumber" rather than alternating between two terms throughout the brief.

4.6 Use clear, informative introductions and topic sentences

Because judges are busy and impatient readers, they prefer to see important information at the beginning of each section of a document.⁴⁷ This preference may be stronger in a screen-reading judge because screen readers tend to focus primarily on "firsts" in a document – in other words, the first paragraph in the document and the first sentence of each paragraph.⁴⁸ Hence, each section in an e-document should begin with an introduction that briefly summarizes for the judge the content of that section.⁴⁹ Similarly, each paragraph should begin with a sentence or two that clearly and succinctly tells the judge what the paragraph will be about.⁵⁰

4.7 Use lists

To create eye-catching cues about the location of important information, consider using bulletted or enumerated lists in the document's text.⁵¹ For instance, you might place in a list the elements of a rule you're applying in the argument section of a brief:

To prevail on a negligence claim, the plaintiff must show the following:

- (1) the defendant owed the plaintiff a duty of care;
- (2) the defendant breached that duty by allowing his or her conduct to fall

below the applicable standard of care; and

(3) the plaintiff suffered a compensable injury that was proximately caused by the defendant's breach of duty.⁵²

4.8 Use reader-friendly pagination

Finally, to help the judge keep track of where he or she is in the document, consider paginating the document differently from how you might paginate a print document. For example, you might use "Page 1 of 12" instead of "1" for the first page of the document.⁵³

Conclusion

Now you possess the basic tools for effectively designing a document for the screen-reader judge. For a more detailed discussion of many of the design principles discussed in this article, consult Robert Dubose's book, *Legal Writing for the Rewired Brain*,⁵⁴ and Prof. Mary Beth Beazley's article, "Writing (and Reading) Appellate Briefs in the Digital Age."⁵⁵ Further, effective document-design principles for paper documents –

such as using a readable font and using effective vertical spacing in the document – certainly apply to e-documents as well, and I recommend that they be used in e-documents. I summarized those principles in an article in *Res Gestae*'s May 2014 edition.⁵⁶ That article is a good place to begin delving into them if you're so inclined. 🍷

1. Order Initiating Electronic Filing in Indiana Supreme Court & Court of Appeals, <http://www.in.gov/judiciary/files/order-other-2015-94S00-1511-MS-640.pdf> (Ind. Nov. 6, 2015) (No. 94S00-1511-MS-640).
2. Judicial Branch of Indiana, *E-filing Implementation Schedule*, courts.IN.gov, <http://www.in.gov/judiciary/4329.htm> (last visited Dec. 2, 2015); Judicial Branch of Indiana, *Statewide E-filing*, courts.IN.gov, <http://www.in.gov/judiciary/4267.htm> (last visited Dec. 2, 2015).
3. For a summary of e-filing systems in other jurisdictions, see R. Lainie Wilson Harris, "Ready or Not Here We E-Come: Remaining Persuasive Amidst the Shift Towards Electronic Filing," 12 *Legal Comm. & Rhetoric* 83, 90-107 (2015).
4. *Id.* at 107-08; Ellie Margolis, "Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century," 12 *Legal Comm. & Rhetoric* 1, 11-12 (2015).
5. See Seventh Circuit, *Requirements & Suggestions for Typography in Briefs & Other Papers*, <http://www.ca7.uscourts.gov/rules/type.pdf>, at 4 (last visited Nov. 30, 2015) (noting that the judges read up to about 1,000

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- pages per argument session); Linda H. Edwards, *Legal Writing & Analysis* 74 (4th ed. 2015).
6. Matthew Butterick, *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* 22-23 (2010); Edwards, *supra* n. 5, at 74.
7. See *id.* at 75-76.
8. Mary Beth Beazley, "Writing (and Reading) Appellate Briefs in the Digital Age," 15 *J. App. Prac. & Process* 47, 49-50 (2014); Harris, *supra* n. 3, at 109.
9. Beazley, *supra* n. 8, at 49-50; Harris, *supra* n. 3, at 109.
10. Beazley, *supra* n. 8, at 53-54.
11. *Id.* at 53.
12. *Id.*
13. *Id.* at 56; Margolis, *supra* n. 4, at 13.
14. Harris, *supra* n. 3, at 110; Margolis, *supra* n. 4, at 13, 17.
15. Harris, *supra* n. 3, at 110.
16. Beazley, *supra* n. 8, at 61.
17. Harris, *supra* n. 3, at 85.
18. *Id.* at 108.
19. See, e.g., Interim Ind. Appellate Rule 43(H) (requiring briefs filed electronically to contain "a header that lists the name of the party(ies) filing the document and the document name.")
20. Beazley, *supra* n. 8, at 56; Margolis, *supra* n. 4, at 13.
21. Beazley, *supra* n. 8, at 49-50; Harris, *supra* n. 3, at 109.
22. *Id.* at 113; Wayne Schiess, "Writing for Screen Readers," *Austin Lawyer*, Dec. 2012/Jan. 2013, at 11.
23. Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* 219 (4th ed. 2014).
24. Beazley, *supra* n. 8, at 49-50; Harris, *supra* n. 3, at 109.
25. Beazley, *supra* n. 8, at 63-64; Margolis, *supra* n. 4, at 19.
26. Beazley, *supra* n. 23, at 219; Margolis, *supra* n. 4, at 19.
27. Schiess, *supra* n. 22, at 11.
28. Beazley, *supra* n. 8, at 66-67.
29. Merriam-Webster, *merriam-webster.com*, <http://www.merriam-webster.com/dictionary/hyperlink> (last visited Dec 2, 2015).
30. Margolis, *supra* n. 4, at 21.
31. *Id.*
32. Beazley, *supra* n. 8, at 64; Harris, *supra* n. 3, at 112.
33. Beazley, *supra* n. 8, at 52.
34. *Id.* at 64; Harris, *supra* n. 3, at 113.
35. *Id.* at 112-13.
36. Beazley, *supra* n. 8, at 64.
37. *Id.*
38. Margolis, *supra* n. 4, at 20.
39. Harris, *supra* n. 3, at 112; Margolis, *supra* n. 4, at 20.
40. Harris, *supra* n. 3, at 112; Margolis, *supra* n. 4, at 20.
41. *Id.*
42. Antonin Scalia & Bryan Garner, *Making Your Case: The Art of Persuading Judges* 24-25 (2008).
43. Beazley, *supra* n. 8, at 53-54.
44. Schiess, *supra* n. 22, at 11.
45. Beazley, *supra* n. 8, at 63.
46. *Id.* at 62.
47. Edwards, *supra* n. 5, at 74.
48. Harris, *supra* n. 3, at 110.
49. Beazley, *supra* n. 8, at 70; Schiess, *supra* n. 22, at 11.
50. Beazley, *supra* n. 8, at 70; Harris, *supra* n. 3, at 113.
51. Margolis, *supra* n. 4, at 18.
52. *Ford Motor Co. v. Rushford*, 868 N.E.2d 806, 810 (Ind. 2007).
53. Beazley, *supra* n. 8, at 63.
54. Robert Dubose, *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World* (2010).
55. Mary Beth Beazley, "Writing (and Reading) Appellate Briefs in the Digital Age," 15 *J. App. Prac. & Process* 47 (2014).
56. James D. Dimitri, "Best Practices in Document Design," *Res Gestae*, May 2014, at 24.

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