

Michigan Appellate Assigned Counsel System

MAACS Fall Training

October 15, 2015

Materials

Michigan Appellate Assigned Counsel System (MAACS)
200 N. Washington Sq. Suite 250 Lansing, Michigan, 48933 (517) 334-1200

**This training event is supported through a generous grant from the
Michigan Commission on Law Enforcement Standards**

Thursday, October 15, 2015 – Training Day

- 8:30 – 9:00 a.m. Registration
- 9:00 – 9:15 a.m. Opening Remarks and Welcome
- 9:15 – 10:45 a.m. Plea and Trial Based Appeals – Meeting the Minimum Standards
Mitch Foster and Mary Owens, MAACS Roster Attorneys
- 10:45 – 11:00 a.m. Break
- 11:00 – 12:00 p.m. Resentencings: Mitigating, Litigating, and Getting Results
Marilena David-Martin, SADO
- 12:00 – 1:00 p.m. Lunch
- 1:00 – 2:00 p.m. Getting Back Into the Trial Court: Developing IAC Claims, Logistics of Evidentiary Hearings, and Effective and Practical Use of Experts and Investigators
Katherine Marcuz, SADO and Valerie Newman, SADO
- 2:00 – 2:15 p.m. Break
- 2:15 – 3:15 p.m. Moving MAACS Forward – Updates, Changes and Progress
Brad Hall, MAACS
- 3:15– 4:15 p.m. Maintaining Professionalism: Client Management and Your Duties on Appeal
Panel: Michael Mittlestat, SADO, Brad Hall, MAACS, Kenneth Mogill, Mogill, Posner & Cohen, Laurel Kelly Young, MAACS Roster Attorney
- 4:15 – 4:30 p.m. Break
- 4:30 – 5:00 p.m. E-Filing: Creating Appendices, Bookmarking, Filing
Randy Davidson, SADO

Michigan Appellate Assigned Counsel System

Fall Training

October 15, 2015

**Resentencings:
Mitigating, Litigating, and Getting Results**

Marilena David-Martin
State Appellate Defender Office
mdavid@sado.org

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Resentencings: Mitigating, Litigating and Getting Results

(Or How to be the Most Prepared Person in the Courtroom)

By: Marilena David-Martin
State Appellate Defender Office
mdavid@sado.org | 313-256-9833 x 2926

STEP 1: BE CAREFUL WHAT YOU ASK FOR – DETERMINE RISK

- ☐ Determine if there is any obvious risk in going forward with the resentencing
 - There is obvious *Lockridge* risk if: ⁱ
 - The judge went to the very top of the guidelines
 - The judge has an obvious disdain for your client or the offense (re-read the sentencing transcript)
 - It's a CSC case, or particularly violent or heinous crime
 - You have insider knowledge of the judge's new habit to "upward depart" post-*Lockridge*.
 - Regardless of *Lockridge*, there is always risk if:
 - Client committed a new offense while incarcerated
 - Client has serious and recent misconducts in prison
 - Offense variables or prior record variables that should have been scored at the original sentencing, were not scored, and now they might be. ⁱⁱ (You should have analyzed this already prior to filing for resentencing in the first place, but it happens).
 - If you determine there is risk, consult with your client first about the possibility of waiving the resentencing. A defendant should always be able to waive his right to any relief granted.

STEP 2: NOTIFICATIONS AND DELEGATION OF TASKS

- ☐ Notify your client via letter or phone call that resentencing will take place and that you will be following up with him soon.
- ☐ Schedule a resentencing date with the trial court (ask for a date several months out so that you have time to prepare; unless, of course, you need to move quick). Be sure to schedule your resentencing in front of the original sentencing judge, even if the judge moved to the civil bench. ⁱⁱⁱ (See attachment page 2, sample letter to court invoking defendant's right to same sentencing judge).
- ☐ Find out if the judge wants an updated PSR.

- If the judge does want one, but no one thought to order it, you will show up at the resentencing hearing only to have it adjourned. That's a waste of time and resources and no one wants that.
- If the judge does want one, find out who is ordering it (you, the judge or the prosecutor) and follow through if needed.
- Ask the court clerk who will prepare the writ to have your client transported to court for the resentencing.^{iv}
 - See attachment, pp. 5-4, sample Writ and cover letter.
 - If the court or the prosecutor is to prepare the writ, put a reminder in your calendar two weeks before the resentencing hearing is scheduled so that you can follow up with the court/prosecutor/MDOC to ensure that the writ has been processed. Again, the point here is so that you do not show up to court only to have it adjourned because your client isn't there.
- Notify the probation department of the upcoming resentencing^v

STEP 3: MITIGATE

- Request your client's MDOC file (See attachment, p. 6, MDOC file request).
 - For faster processing, call the Records department and get the fax number. Fax your request, confirm it was received, and follow up two weeks later if nothing yet received.
- Schedule subsequent phone call, video visit, or in-person visit with your client. Purpose of this visit is to develop mitigation, inform client of strategy, and find out if any risk in going forward.
 - Misconducts/tickets?^{vi}
 - Working? Programs completed? Prison accomplishments?
 - Community Support?
 - Prepare for probation agent interview
 - Prepare for allocution (See attachment, p. 7, "Guide for Writing Letter of Remorse and Responsibility").
 - Re-entry plan?^{vii}
- Make phone calls to client's community support contacts
 - Ask them to write a letter in support and give them guidance (See attachment, pp. 8-9, "Assistance for Writing Letter in Support" + cover letter).
 - Ask them to come to the resentencing and maybe even speak.
 - Keep track of who you've called and who is assisting with what. (See attachment, p. 10, Support Tracker).

- Put a reminder on your calendar at least 3 weeks before the resentencing to follow up with these contacts for their letters.
- Memorialize your conversations with them with a follow-up letter containing the court address, date and time of the resentencing, and the name of the judge.

STEP 4: LITIGATE

- Determine your ask (while maintaining credibility).
 - Tip: You can't get what you don't ask for. Make a good, solid ask for a particular sentence and explain *why* that sentence is deserved.
 - Time served? Minimum of the guidelines? An intermediate sanction?
- Write your Sentencing Memo using the following outline:
 - Always include the following:
 - Why you're there for the resentencing
 - What the sentence was originally
 - What the guidelines are now
 - What sentence you are asking for now
 - And why? This is the mitigation part.^{viii}
 - Should you address client's misconducts?
 - This is a strategy call and I almost always lean towards, no. You can address them at resentencing if necessary, but no need to address them here.
 - See attachment, pp. 11-22, Sentencing Memo.
 - Also include any objections you have to any of the other variable. As previously mentioned, all variables are before the judge anew, so now's your time to begin objecting to erroneous scores.
- Inform MDOC Time Computation Unit
 - If there is any possibility that your client will get time served, you can arrange their immediate release with MDOC time comp. At least two weeks prior to the resentencing, inform time comp that there is a possibility that your client will be resentenced to time served. (See attachment, p. 23, sample email to time comp). They will look at the file and will let you know if they can attempt to arrange immediate release from the circuit court. Your individual time comp representative will literally be on stand-by on the date and time of your resentencing waiting to get a faxed copy of the amended JOS indicating a new sentence of time served. MDOC time comp will communicate with the transportation officers who will leave your client at the county jail. (See attachment, p. 24, Time Computation contacts by facility). You then need to follow up with the jail to ensure an expedient release.

- ☐ File your Sentencing Memorandum
 - The importance of filing a sentencing memo cannot be overstated. This should be a mandatory and regular practice prior to any resentencing.
 - Be sure the judge has it at least one week prior to the resentencing.
- ☐ Call the court 2 days before the resentencing and ask for a copy of the PSR to be faxed to you. Very unlikely, but it's worth a try.

STEP 5: GET RESULTS

- ☐ Get to court early to talk with your client in holding prior to resentencing
- ☐ Review the updated PSR with your client if one has been prepared
- ☐ Object to any errors in the PSR or any errors in the scoring of the guidelines
- ☐ Highlight the important parts of your sentencing memo. Your job is to ensure that the judge knows everything you want him to know prior to imposing sentence on your client.
- ☐ Be sure that court costs/attorney fees/restitution and other costs are consistent with original sentencing.
- ☐ Properly calculate jail credit. (Date of original arrest to date of sentencing + date of sentencing to date of resentencing). (Date Calculator provided separately in materials).
- ☐ After sentencing, ensure your client signs a notice of appeal and request for appointment of counsel.

STEP 6: FINISH THE JOB

- ☐ Follow up with court to ensure that amended judgment of sentence is produced and is accurate. (See attachment, p. 25, letter to court following resentencing).
- ☐ If the client received a reduction in court costs/fines/fees, or restitution, extra follow up may be needed.^{ix}
- ☐ Also ensure PSR was updated and transmitted to MDOC and client if applicable.

- ❑ If applicable, notify the parole board if the client has now served his minimum or more than his new minimum so that they can expediently initiate the review process.
- ❑ Two weeks after sentencing, be sure that the MDOC has received the amended judgment of sentence by contacting Time Comp.
- ❑ Provide your client with copies of the amended judgment of sentence, orders, PSR, etc.
- ❑ If you got a time cut, let us know for inclusion in SADO's Criminal Defense Newsletter. Either post your story on the SADO Forum or email me your results.

Good Luck! Please contact me if I can be of any assistance at all.

Endnotes

ⁱ Consult SADO's "Guide for Defendants Following *Lockridge*," http://www.sado.org/content/pub/10514_SADO-Lockridge-Guide-for-Defendants.pdf, and "FAQ for Practitioners Following Lockridge," http://www.sado.org/content/pub/10514_SADO-Lockridge-Guide-for-Defendants.pdf, for additional information.

ⁱⁱ Resentencing puts the case at pre-sentence posture and every aspect is before the judge de novo. *People v. Davis*, 300 Mich. App. 502 (2013).

ⁱⁱⁱ You want the same sentencing judge because there is no presumption of vindictiveness if a defendant gets resentenced to a higher sentence by a different judge at resentencing. But, the presumption of vindictiveness does apply if the original sentencing judge gives the defendant a higher sentence at the time of resentencing. *People v. Mazzie*, 429 Mich. 29 (1987).

^{iv} A defendant has an absolute right to be physically present at sentencing or resentencing for a felony. MCR 6.006(A). A defendant can waive that right, but that waiver should not be taken lightly.

^v If your client has no misconducts and is doing well in prison, there is usually no harm in notifying probation of the upcoming resentencing. This is your chance to

tell probation why you got the resentencing and what you are hoping for and what you need from them. (See attachment, p. 5, letter to probation). On the other hand, if you think probation might just make things worse for you (i.e., they seem to have a disdain for your client), you might want to give them as little notice as possible.

vi Not all misconducts are created equal. Be prepared to explain what they are for.

vii Use SADO's re-entry service provider database:

<http://www.sado.org/locate/reentry>

viii If you don't get any letters from the community, but you have personally spoken to them, you can put in your memo who you have talked to and what they had to say about your client. Hearsay doesn't apply here.

ix If you are successful in getting court costs, fines or fees vacated or reduced in a case, the MDOC needs an Amended Order to Remit Prisoner Funds (or an Order Rescinding the Order to Remit) from the court in order for those reductions to be processed by the MDOC. Merely having the reduced or vacated costs, fines or fees listed on an Amended Judgment of Sentence is not sufficient. If there is no Amended Order to Remit issued with the reduced amounts, then the MDOC will continue to collect up to the amount listed on the original Order. Note that you do not want to ask the trial court for an Amended Order to Remit Prisoner Funds if the court never imposed such an order in the first place!

The MDOC relies on the Judgment of Sentence to collect restitution, which is not included as part of an Order to Remit, so if restitution is reduced, an AJOS is sufficient for the MDOC to process that reduction. Amended Orders to Remit can be sent to the MDOC by mail at 4000 Cooper Street, Jackson, MI 49201, by fax at 517-780-6093, or to Carla Badger, Manager of the Court Orders Unit of Prisoner Accounting, badger@michigan.gov. Amended Judgments of Sentences can be sent to Time Comp.

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(Or How to be the Most Prepared Person in the Courtroom)

By: Marilena David-Martin
State Appellate Defender Office
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STATE APPELLATE DEFENDER OFFICE

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March 20, 2014

Honorable David J. Reader

Re: **People v Defendant**
Circuit Court No. 12-xxxxx

Dear Judge Reader:

The parties have agreed that Ms. Defendant must be resentenced in the above case.

I understand from speaking with your clerk that this case has been administratively transferred to the Honorable Miriam Cavanaugh. However, because Ms. Defendant has a right to be sentenced by the same judge who presided at her original plea and sentencing absent that judge's disability, *People v Robinson*, 203 Mich App 196, 197 (1993); *People v Humble*, 146 Mich App 198, 200 (1985); MCR 2.630, we object to the transfer of this case to Judge Cavanaugh and respectfully evoke Ms. Defendant's right to be resentenced by Your Honor.

I have enclosed three copies of a stipulated order for your signature. Please return one signed original to me in the enclosed self-addressed stamped envelope and provide one signed original to the prosecution. Upon receiving the signed order, I will contact your clerk to set up a resentencing date, which we will request be set for some time in late May or early June.

Thank you and please feel free to contact me at 313-256-9833 x 2926.

Sincerely,

Assistant Defender

Enclosure

cc: , William M. Worden
Ms. Defendant (w/o enclosure)

STATE APPELLATE DEFENDER OFFICE

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101 N. WASHINGTON, 14TH FLOOR

May 28, 2015

Hon.
Judge,

Re: **People v Defendant**
Lower Court No.

Dear Judge :

I am scheduled to appear in your court on , at with Defendant to present a . In order to secure Defendant's presence for the hearing, it is necessary for you to authorize a Writ of Habeas Corpus. Therefore, I have enclosed the original and two (2) copies of a writ which I ask that you sign, have countersigned by the Clerk, and forward to the County Sheriff for execution. If you have any questions regarding the writ or the hearing, please feel free to contact me.

Sincerely,

Assistant Defender

Enclosures

cc: File

STATE OF MICHIGAN

IN THE

IN THE MATTER of the Petition)	PLACE OF INCARCERATION: Parnall Correctional
of)	Facility
)	
for the STATE APPELLATE)	COURT:
DEFENDER OFFICE)	
for a WRIT OF HABEAS CORPUS,)	DATE & TIME NEEDED:
IN RE:)	at
)	
DEFENDANT'S NAME)	CHARGE:
Docket No.)	
)	PURPOSE:
)	

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

NOW COMES _____ of the STATE APPELLATE DEFENDER OFFICE and petitions that a Writ of Habeas Corpus issue for the above named DEFENDANT to appear in the above captioned Court on the above DATE NEEDED for the PURPOSE indicated above.

BY: _____

Assistant Defender

Dated: _____

WRIT OF HABEAS CORPUS

WHEREAS, it has been made to appear to this Court by the foregoing Petition that the above named DEFENDANT'S NAME, No. XXXXXX, is now confined in the above named PLACE OF INCARCERATION, and that _____ presence will be necessary in this Court on the DATE NEEDED indicated above. That said DEFENDANT'S NAME will be in the custody and control of the County Sheriff's Department at the County Jail, Kalamazoo, Michigan, until all proceedings in connection with said PURPOSE have been concluded.

NOW, THEREFORE, in the name of the People of the State of Michigan, WE COMMAND the Warden, Superintendent, or Custodian of the above named PLACE OF INCARCERATION to have the body of said PRISONER in the _____ in the City of Kalamazoo, Michigan, on the DATE NEEDED indicated above, for the PURPOSE above stated, to be returned to said institution at the conclusion thereof.

I HEREBY CERTIFY that the foregoing Writ of Habeas Corpus was duly allowed by me on the above date, on petition of the Defense Counsel.

HON.

COUNTERSIGNED:

Deputy Clerk

Dated: _____

STATE APPELLATE DEFENDER OFFICE

Detroit

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September 9, 2013

Supervisor
Allegan County Circuit Court Probation
113 Chestnut St.
Allegan, MI 49010

Re: *People v Defendant*
Circuit Court No. 12-xxxxx-FH

Dear Supervisor:

I am writing to notify you that the Court of Appeals recently granted our request for resentencing in the above case. The resentencing hearing has been scheduled for December X, 2013 at 9:00 a.m. before the Honorable Margaret Zuzich Bakker. I am enclosing a copy of the court order and the notice of the resentencing hearing.

We won the resentencing based on a challenge to the scoring of OV 1 and OV 2. The Court of Appeals agreed that it was error to score points for OVs 1 and 2 as there was no evidence that methamphetamine was used as a weapon. The new guidelines range is 19 to 38 months.

Will you please prepare an updated presentence report for the resentencing hearing? Ms. Defendnat is currently housed at the Huron Valley Women's Complex in Ypsilanti and will likely be transferred to Allegan County right before the resentencing date.

If you have any questions, please feel free to contact me.

Sincerely,

Marilena David-Martin
Assistant Defender

Enc.

STATE APPELLATE DEFENDER OFFICE

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July 24, 2015

FOIA Officer

West Shoreline Correctional Facility
2500 S Sheridan Drive
Muskegon Heights, MI 49444

RE: Defendant's Name
No.

Dear FOIA Officer:

I am writing to request a copy of Mr. Butler's complete institutional file from October 2013 to present. Specifically, I am requesting copies of all certificates or achievements in progress toward recommendations, educational records, work/block and program reports, documentation of any tickets and any other documents that are in Mr. Butler's file. Please treat this as our formal request that you provide the aforementioned records.

On August 13, 2015, the Honorable Charles T. Lasata appointed this office as appellate counsel in the above-entitled cause. Since Defendant is indigent and we are court-appointed to represent him, we typically do not pay costs.

If you have any questions, or I can be of any further assistance, please contact me at hwaara@sado.org or (313) 256-9833 ext. 2917. Thank you for your attention to this matter.

Sincerely,

Heather Waara
Legal Assistant

STATE APPELLATE DEFENDER OFFICE

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Guide for Writing Letter of “Remorse and Responsibility and Future Plans”

- Address the letter, “To Whom It May Concern”
- Specifically apologize to each victim for committing the crimes. Do not need to go into details of the offense, but do need to address victim’s by name.
- Do not shift the responsibility.
- Detail how you penance/seek apology for your current position—do you pray, do volunteer work, think of the victims and their families, wish you could turn back time so that you would never have gotten in this position.
- Describe your plans for when you get out of prison but be specific!
- The letter should be between 1 and 2 pages. Be concise, genuine and apologetic.

February 12, 2009

NAME
ADDRESS

Dear Ms. X,

It was nice speaking with you this morning about your cousin Defendant. You indicated that you would be willing to write a letter of support to the Court on Mr. Defendant's behalf and to contact other family members to ask them to do the same. As I mentioned, I have enclosed a couple of copies of a document providing some guidance for the letters of support.

Mr. Defendant's resentencing is scheduled for April X, 2009, so please make an effort to have your letter, and any others you are able to collect, sent to me by the end of March.

If you have any questions, I can be reached at 313-256-9833 x 242 or by email at mdavid@sado.org. Thank you for your help.

Sincerely,

YOUR NAME

Enclosures
Cc: File

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Assistance for Writing Letters of Support

You have been asked to write a letter of support on Defendant's behalf for a Resentencing scheduled in April before Judge X. Below is a list of information that it would be helpful for you to include in your support letter. This is only a guide. You are not required to include any specific information in your letter.

- Identify yourself, where you are employed and list any organizational and/or religious affiliations you may have (i.e. member of specific local parish).
- State your relationship to Mr. Defendant. How did you come to know him? How long have you known him?
- Indicate whether you maintain contact with Mr. Defendant, whether through visiting, telephone calls or letters. How often do you speak with Mr. Defendant?
- Refrain from criticizing the justice system or the outcome of Mr. Defendant's case. Instead, indicate that you are confident that once Mr. Defendant is out of prison he, would be a benefit to you personally, or the community in general. Describe how Mr. Defendant would benefit you and/or the community.
- State what role you would have in Mr. Defendant's support network once released from prison.
- State whether you would offer any home placement, employment, financial assistance, mentoring or any other assistance if Mr. Defendant were released. (Would you make regular calls, visit, send letters or emails to check in?)
- Describe your feelings for Mr. Defendant as a person. Describe a significant event or experience you had with Mr. Defendant that made a difference in your life.
- Describe any positive accomplishments that Mr. Defendant has had that you may recall.
- List your contact information at the end of the letter and indicate that you would be available if there were any questions.
- Keep the letters in a positive tone.
- **Write** all letters to the attention of Judge X. (You do not need to put an address for the Judge). **Send** all letters to me, Marilena David at: State Appellate Defender Office, 645 Griswold, Suite 3300, Detroit, MI 48226. The letters will be attached to the Sentencing Memorandum that we prepare for the Judge before Resentencing. Do not send any letters directly to the Judge.
- Please contact me at 313-256-9833 if you have any questions or if I can help you in any way.
- If you know anyone else who would be willing to write a letter on Mr. Defendant's behalf, please give them a copy of this document and have them contact me as well.

Resentencing Support Tracker
Defendant's Name

CONTACTS	PHONE #	WHAT WE'RE GETTING	Notes
Richard and Joe, Sons		Letters of Support	T/T 10/1. Sent guidelines on 10/1; confirmed receipt 10/3. Received their letters on 10/22.
Ruth, Sister and Willie, Brother in law		Will be in court for resentencing.	Sent directions on 10/3. Confirmed receipt on 10/7. They'll be there.
Dorothy, Sister			Called and left message 10/1. Need to follow up.
Adrena, Niece		Letter of support	Sent guidelines on 10/1. Received letter on 10/5.

STATE OF MICHIGAN

IN THE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court Nos. 12-3762 FC,

Honorable

-VS-

Defendant-Appellant.

Attorney for Plaintiff-Appellee

MARILENA DAVID-MARTIN (P73175)
Attorney for Defendant-Appellant

SENTENCING MEMORANDUM

STATE APPELLATE DEFENDER OFFICE

BY: MARILENA DAVID-MARTIN
Assistant Defender
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

STATE OF MICHIGAN

IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

**Lower Court Nos. 12-3762-FC &
12-3378-FC**

-VS-

Honorable Mary A. Chrzanowski

LARRY TERRELL ROOSEVELT

Defendant-Appellant.

SENTENCING MEMORANDUM

NOW COMES Defendant , by and through attorney, the **STATE APPELLATE DEFENDER OFFICE**, by **MARILENA DAVID-MARTIN (P73175)**, and submits the following sentencing memorandum:

1. Defendant Larry Terrell Roosevelt will be resentenced before Your Honor on November 15, 2013 pursuant to this Court's grant of Mr. Roosevelt's Motion for Resentencing on October 7, 2013.

2. On October 7, 2013, the parties stipulated that Offense Variables 8 and 10 in case 12-3378 should be scored at zero points instead of 15 points, which would reduce the guideline range to 171 to 285 months, down from 225 to 375 months as calculated at the time of sentencing. Mr. Roosevelt was originally sentenced by this Court on February 27, 2013 to 375 months to 60 years in case 12-3378 for armed robbery offenses and a five-year consecutive term for a felony-firearm second-offense.

3. In case 12-3762, Mr. Roosevelt's guideline range was 135 to 225 months and he was sentenced to 225 months to 60 years for armed robbery offenses and a five-year consecutive term

for felony-firearm second-offense convictions. The guideline range in case 12-3762 remains unchanged at resentencing.

4. Mr. Roosevelt requests that he be resentenced in both cases to a minimum term of 180 months (15 years), plus a mandatory minimum five-year consecutive term for the felony-firearm second-offenses for a cumulative minimum term of 20 years imprisonment.

SENTENCE RECOMMENDATION

5. A cumulative minimum term of 20 years is fair and appropriate in this case for numerous reasons.

6. At the time of the plea, the prosecutor stated on the record that the guideline range had been calculated at 135 to 225 months, that defense counsel would be making a recommendation at the time of sentencing, and that the prosecutor would not object to that sentence.

7. Mr. Roosevelt was advised by his attorney that he would request a 12 ½ year sentence for the robbery offenses, and that the prosecutor would not object to that sentence. *Affidavit of Larry T. Roosevelt, Appendix A.* He was also advised by his attorney and the Court that the felony-firearm would require an additional two-year sentence to be served consecutively.

8. At sentencing, the range in case 12-3378 had been increased to 225 to 375 months. The parties also realized for the first time at sentencing that Mr. Roosevelt had to be sentenced to a five-year consecutive term for the felony-firearm offenses in both cases given that it was his second offense. Defense counsel said nothing about the increased guideline range or mandatory minimum and made no sentencing recommendation to the Court.

9. Mr. Roosevelt received no bargain for pleading guilty as charged and was sentenced to the high end of the guidelines in both cases.

10. Twenty years is a fair sentence because it is a sentence that falls within the guideline range in place at the time of the plea as well as the new guideline range that will be in place at the time of resentencing, because it was a sentence that Mr. Roosevelt theoretically would have known was in the realm of possibilities at the time that he entered the plea, and because the complainant requested such a sentence.

11. Under the guideline range in place at the time of the plea, the highest sentence within the guidelines that Mr. Roosevelt could have received would have been 225 months, or 18 $\frac{3}{4}$ years. Had he received that sentence plus an additional two-year consecutive term for the felony-firearm second-offense as he was advised, his cumulative minimum term would have been 20 $\frac{3}{4}$ years.

12. Additionally, 15 years, or 180 months, is exactly the middle of the 135 to 225 month guideline range, and is also within the 171 to 285 month guideline range that will be in place on the date of resentencing. The mandatory five-year consecutive term would place the cumulative minimum sentence at 20 years.

13. Lastly, all of the complainants were given the opportunity to address sentencing during the Presentence Report interview. Many of them stated that they had no opinion or were “unsure” of what sentence Mr. Roosevelt deserved. However, one complainant, Kandy Wagner, believed that “20 years incarceration would be fair.” *Presentence Report, page 4.*

INVALIDITY OF HIS GUILTY PLEAS AND SENTENCES

14. The prosecution agrees that Mr. Roosevelt’s pleas and sentences are invalid.

a. The record is unequivocal that Mr. Roosevelt was advised that he would be sentenced to a two-year consecutive term of imprisonment for the felony-firearm offenses, but instead was sentenced to a mandatory five-year consecutive term given that the felony-firearm was

a second-offense. Although there were other significant problems with the plea, this error alone invalidates the plea and entitles Mr. Roosevelt to plea withdrawal. *People v Brown*, 492 Mich 684 (2012).

b. At the motion for resentencing hearing on October 7, 2013, the prosecution agreed that the sentencing guidelines in case 12-3378 should be reduced to 171 to 285 months. Mr. Roosevelt's minimum sentence of 375 months (31 years, 3 months) is outside of that range and entitles him to resentencing. *People v Francisco*, 474 Mich 82 (2006).

15. Additionally, Mr. Roosevelt pled guilty in this case, as charged and with no bargain, with the understanding that he would be receiving a minimum sentence of 12 ½ years (150 months), plus two years consecutive for the felony firearm offenses for a cumulative minimum term of 14 ½ years. *Affidavit, Appendix A*. Instead, he received a 31 year, 3 month minimum sentence plus a five-year consecutive term for the felony firearm offenses for a cumulative minimum term of 36 years, 3 months. This sentence is nowhere near what he was led to believe he would receive if he pled guilty as charged.

16. Mr. Roosevelt's belief that he would receive a sentence significantly less than what he received is substantiated by the record.

a. As an initial matter, at the time of the plea, the prosecutor indicated that the parties understood the guideline range to be 135 to 225 months (11 ¼ years to 18 ¾ years). The Court advised him that he would receive an additional two-year consecutive term for the felony-firearm. Under those circumstances, the highest sentence Mr. Roosevelt could have received if the Court stayed within the guidelines would have been 20 ¾ years.

b. Additionally, that Mr. Roosevelt believed he would receive a much lower sentence in exchange for pleading guilty as charged is confirmed by outside sources. John H.

Holmes, Jr., is an attorney who represented Mr. Roosevelt in an Oakland County case that was pending at the same time as this case. Attorney Holmes confirms that Mr. Roosevelt believed he would be receiving a significantly lower sentence than what he received, and recalled that Mr. Roosevelt believed he would receive a 10 ½ year sentence for the robbery offenses plus two-years consecutive for the gun charge. *Affidavit of John H. Holmes, Jr., Appendix B.*

c. Similarly, Mr. Roosevelt's parents, Theatrice Roosevelt and Rita Hall, recalled conversations with Mr. Roosevelt's Macomb County attorney, Daniel Garon, in which Attorney Garon informed them that Mr. Roosevelt could expect a 12 ½ year sentence plus a two-year consecutive term for the gun charges. *Affidavit of Theatrice L. Roosevelt, Appendix C; Affidavit of Rita Hall, Appendix D.* Mr. Roosevelt relied on that information in pleading guilty. *Appendices A, C & D.*

d. Mr. Roosevelt's misguided belief that he would receive 12 ½ years for the robbery offenses (150 months) is consistent with the guideline range that he believed was in place at the time of the plea, 135 months to 225 months. Had he received that sentence, plus the two-year consecutive term for the felony-firearm second-offenses as he was advised, then his cumulative minimum would have amounted to 14 ½ years.

17. Taking all of these factors into consideration—that Mr. Roosevelt was mis-advised as to the mandatory minimum sentence for the felony-firearm second offense, that his sentencing guideline range was miscalculated, that he pled guilty as charged, received no bargain, and was misled about his sentencing risk to the tune of 22 years—it is true that a cumulative 20 year sentence is more than fair in this case.

ADDITIONAL MITIGATING CIRCUMSTANCES

18. This Court should also take into consideration the following positive attributes that prove Mr. Roosevelt is worthy of a 20 year minimum sentence.

(A) Responsibility and Remorse

19. Mr. Roosevelt has consistently accepted full responsibility for the offense and has expressed sincere remorse for his actions.

a. In his interview with the probation agent prior to sentencing, Mr. Roosevelt made no excuses and admitted to being in need of incarceration:

I feel very bad about doing wrong. I am disappointed in myself, I upset myself, if it wasn't for my drug habit I would have done nothing and I feel bad about everything and hope for forgiveness from the victims. I know I should [] go back to prison for my actions which I can only ask for compassion from the court in my sentencing. [Presentence Report, page 5].

b. At sentencing, Mr. Roosevelt again took full responsibility for his actions, recognized that he was in need of help, and expressed genuine remorse for the way he made the victims feel:

I want to say that there is no, no excuse for (inaudible). You know, it's totally selfish and it was a cowardly act, foolish and I truly apologize to the Court and the victims at this time for my actions. I got into a deep depression around the same time and in order to escape the reality of my depression I started doing drugs and indulging (inaudible). And in order to pay for these addictions I ended up going out there and committing these (inaudible) and, like I said, there is no excuse for (inaudible).

Likewise, my intentions was to never harm anyone. That's why I, no one was ever harmed and I truly apologize just for the fear that I put in them. You know, I know that have [sic] affected not only them and their families, as well as mine as just, you know, and I just asked that I be judged not as a bad person today because I'm truly not a bad person, but as a person that made some wrong decisions and choices in this addiction that I had (inaudible) drugs. [ST 5-6].

c. Mr. Roosevelt was arrested for these offenses in September 2013 and he pled guilty as charged in November 2013. He has never wasted the court's time or resources and was fully cooperative in working toward a resolution of this case as expediently as possible.

(B) Nature of the Offense

20. Armed robbery is inherently an assaultive offense, but the circumstances surrounding the offenses in this case were not violent or shocking and did not result in any physical injuries.

21. In fact, in the offenses stemming from case 12-3762, the complainants reported that Mr. Roosevelt kept repeating, "I'm not going to hurt you," and that he held the gun "to his belly to the side." *Presentence Report, page 3.*

22. In case 12-3378, the complainants reported that Mr. Roosevelt pointed the gun at them while announcing a robbery, but there are no other violent descriptors outside of the actions necessary to commit the armed robbery.

23. No one was touched with a weapon or physically hurt during these offenses and Mr. Roosevelt stated at sentencing that that was never his intention.

(C) Sentence of Co-Defendant Curtis Felton

24. Co-Defendant Curtis Felton was charged with one count of robbery and one count of conspiracy to commit armed robbery for his involvement in case 12-3378.¹ He pled no contest to those offenses with a *Cobb's*² agreement to the low end of the guidelines. *Dockets, Appendix E.* He later moved to withdraw the plea and his plea was set aside and the case was set for trial. His plea

¹ The case number for Curtis Felton's case is 12-3359-FC.

² 443 Mich 276 (1993).

was later reinstated and this Court sentenced Mr. Felton to 10 years, 6 months to 20 years. *Appendix E.*

25. While Mr. Roosevelt is unaware of Mr. Felton's prior criminal history and realizes that sentences must be individualized to each defendant, he asserts that his sentence, which was nearly 26 years higher than that of his equally culpable co-defendant, is a factor this Court should take into consideration.

(D) Prior Record

26. In looking at Mr. Roosevelt's prior record, this Court should take into account that 8 of his 9 prior felony offenses occurred when he was 23 years old and took place within days of each other. *Presentence Report, pages 6-10.*

27. In March 2001, Mr. Roosevelt committed a number of armed robberies during an apparent crime spree. He pled guilty in each case and was convicted of 7 armed robberies and one felony-firearm offense arising out of 3 separate incidents.

28. He was sentenced to 10 to 20 years imprisonment and to 9 to 20 years imprisonment plus a consecutive two-year term, and was paroled on his earliest release date after serving 11 years in prison.

29. The additional felony conviction occurred in 2000 and was for fleeing and eluding third-degree, a low-severity public safety offense.

30. In 1998, Mr. Roosevelt pled guilty to a misdemeanor offense of domestic violence.

31. Mr. Roosevelt's prior record is weighty, but this Court should consider (a) his young age at the time he committed the offenses, (b) that he pled guilty to each offense,³ taking full

³ The presentence report indicates that Mr. Roosevelt was convicted of the fleeing and eluding third-degree offense by bench trial, but the docket entries show that he pled guilty. *Appendix F.*

responsibility, and (c) that the majority of the offenses were committed within days of each other, indicating that there may have been a similar triggering event as what took place in this case.

(E) Prison Conduct

32. Since Mr. Roosevelt has been incarcerated in the Michigan Department of Corrections for this offense, he has had no incidents of behavioral problems and has received no tickets or major or minor misconducts.

33. During his prior period of incarceration, Mr. Roosevelt obtained his GED and successfully completed the program “Thinking for a Change.” *Appendix G; Presentence Report, page 1.*

34. Mr. Roosevelt is currently awaiting placement in a variety of programs and work-assignments. *Appendix G.*

(F) Supportive Family

35. Mr. Roosevelt has the support of his father, Theatrice Roosevelt, with whom he was living while on parole, and of his mother, Rita Hall, who lives in Florida. Theatrice Roosevelt and Rita Hall remain in regular contact with Mr. Roosevelt.

**IMPACT OF CONCURRENT SENTENCES IN
OAKLAND AND WAYNE COUNTIES**

36. Shortly after pleading guilty in this case, Mr. Roosevelt pled guilty to armed robbery offenses in Oakland and Wayne Counties. The State Appellate Defender Office also represents Mr. Roosevelt on appeal of those convictions.⁴

⁴ Mr. Roosevelt pled guilty in this Macomb case on November 5, 2012; he pled guilty in Oakland County on February 13, 2103; he was sentenced in this Macomb case on February 27, 2013; he was sentenced in Oakland County on March 22, 2013; he pled guilty in his Wayne County case on March 26, 2013 and was sentenced in that case on April 10, 2013.

37. It is clear from the record in both his Oakland and Wayne County cases that both trial courts relied on his Macomb County sentence in imposing sentences.

38. Before imposing sentence in Oakland County, the trial court asked, “What did he receive in Macomb?” His trial attorney answered “375” months and requested that the court not exceed that sentence. The Court went on to sentence Mr. Roosevelt to a minimum term of 360 months (30 years) to 60 years. Mr. Roosevelt is currently appealing the validity of the plea and sentence in his Oakland case, given that the trial court hopefully will have relied on inaccurate information in imposing sentence if this Court reduces the sentence at resentencing.

39. In Wayne County, all parties relied on Mr. Roosevelt’s Macomb County sentence in determining that a *Killebrew*⁵ agreement, which was the basis of the plea, no longer mattered nor was in need of being honored. The *Killebrew* agreement in the Wayne case was for a sentence within the calculated guideline range of 135 to 225 months. At the time of sentencing, the guideline range had been increased and calculated at 225 to 375 months. Mr. Roosevelt was never given the opportunity to withdraw his plea because his attorney informed the court that the increase in guidelines “doesn’t matter” given the sentences he received in Macomb and Oakland Counties. The trial court asked, “What is he currently serving?” After being advised that Mr. Roosevelt was serving a 375 month minimum in Macomb County, and after the prosecutor broke the terms of the *Killebrew* agreement and requested a sentence of 375 months, the court went on to sentence Mr. Roosevelt to 375 months (31 years, 3 months) to 60 years plus a five-year consecutive term. Mr. Roosevelt is currently challenging the validity of the plea and sentence in that case, in part based on the resentencing in this case.

⁵ 416 Mich 189 (1982).

40. It is true that a lower sentence in this case may be moot if Mr. Roosevelt does not receive any sentencing relief in the Oakland and Wayne County cases; however, given the significant plea and sentencing errors that the prosecutor concedes occurred in this case, Mr. Roosevelt is entitled to sentencing relief.

WHEREFORE, Mr. Roosevelt respectfully requests that this Honorable Court consider (1) the numerous problems with the validity of his plea and sentence, some of which have been acknowledged by the prosecutor, (2) that he pled guilty as charged, expediently, and with no bargain, (3) that he has consistently taken complete responsibility and continues to express genuine remorse for his actions, (4) that no one was injured during the offenses, (5) the circumstance surrounding his prior record, (6) his positive prison behavior, (7) his supportive family network, (8) the complainant's satisfaction with a 20 year sentence, (9) the concurrent sentences he is serving in other jurisdictions, and (10) the lesser sentence of his equally culpable co-defendant, and respectfully requests a sentence in both cases to 180 months (15 years) plus an additional five-year consecutive term.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: _____
MARILENA DAVID-MARTIN (P73175)
Assistant Defender
3300 Penobscot Building
645 Griswold
Detroit, Michigan 48226
(313) 256-9833

Date: October 31, 2013

From: Trevino, Connie (MDOC) [<mailto:TrevinoC1@michigan.gov>]
Sent: Friday, April 11, 2014 10:02 AM
To: Marilena David-Martin
Subject: RE: [DEFENDANT NAME AND MDOC NO.] @ Ojibway

Thanks for the heads up. I'll look at the case close the week of 4/21, and we'll look at getting any preliminary reviews done in advance, so we can possibly release from court (if the Judge so orders).

Connie M. Trevino, Records Audit Specialist
Central Time Computation Unit
Michigan Department of Corrections
4000 Cooper Street
Jackson, MI 49201

PHONE: 517-780-6576
FAX: 517-780-6871

Email: trevinoc1@michigan.gov

From: Marilena David-Martin [<mailto:MDavid@sado.org>]
Sent: Wednesday, April 09, 2014 4:28 PM
To: Trevino, Connie (MDOC)
Subject: [DEFENDANT NAME AND MDOC NO.]@ Ojibway

Hi Connie,

Mr. Defendant is scheduled for resentencing on April X, 2014 in the Saginaw County Circuit Court. There is a possibility that he will be resentenced to a jail term, or to a community sanction.

I wanted to give you a heads up on this situation and to ask for your help in coordinating so that if the judge does resentence him to jail or probation, he would not have to return back to the MDOC for processing.

Please let me know what I need to do on my end.

Thank you,
Marilena David-Martin

Assistant Defender
State Appellate Defender Office
645 Griswold, Suite 3300
Detroit, MI 48226
313-256-9833
mdavid@sado.org

MDOC SENTENCING SPECIALIST ASSIGNMENT

Kim Thelen & Connie Trevino are the Sentencing Specialists for CTCU. They are responsible for specifically-assigned facilities, as indicated below. They would be your primary contact for:

**Unanticipated Release Processing
Missing Judgment of Sentences
Habeas Protocol Processing
Sentencing Issues**

KIM THELEN thelenk13@michigan.gov 517-780-6575	CONNIE TREVINO trevinoc1@michigan.gov 517-780-6576
ARF – Gus Harrison Correctional	AMF - Baraga Maximum Correctional
DRF- Carson City Correctional	ECF – Oaks Correctional
IBC – Bellamy Creek Correctional	KCF – Kinross Correctional
ICF – Ionia Maximum Correctional	LMF – Alger Correctional
JCF – Robert Cotton Correctional	MBP – Marquette Branch Prison
JCS – Cooper Street Correctional	MPF – Pugsley Correctional
LCF – Lakeland Correctional	MRF – Macomb Correctional
LRF – Brooks Correctional	NCF – Newberry Correctional
MCF – Muskegon Correctional	OCF – Ojibway Correctional
MTF – West Shoreline Correctional	RRF – Ryan Correctional
MTU – Richard Handlon Correctional	SRF – Saginaw Correctional
RMI – Michigan Reformatory	TCF – Thumb Correctional ***
SLF – St. Louis Correctional	URF – Chippewa Correctional
SMT – Parnall Correctional	WCC – Woodland Center (Maxey)
STF – Central Michigan Correctional	WHV – Women’s Huron Valley **
ZLI/IRM – SAI & IRM (MPRI) – Males	ZLW/IRF – SAI & IRF (MPRI) – Females

RGC – Charles Egeler Reception Center (shared by both Specialists)

As RGC is the male reception center and the volume is so great, any referrals for these prisoners are shared by both Specialists.

**** WHV** – is the female reception center, in addition to being the only female prison. Issues with regard to new intake are reviewed by either Specialist. All other referrals that occur on WHV prisoners (after the new commitment) should be forwarded to Connie.

***** TCF** - has a stable population but also has the “HYTA” prisoners assigned there. Any new HYTAs or Amended HYTAs that are received are reviewed by either Specialist. All other TCF issues for regular prisoners should be forwarded to Connie.

Updated 9/3/13

STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK
DIRECTOR

JONATHAN SACKS
DEPUTY DIRECTOR

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Client calls: 313.256.9822



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Phone: 517.334.6069 • Fax: 517.334.6987

August 12, 2014

The Honorable Thomas C. Cameron
Frank Murphy Hall of Justice
1441 St. Antoine St.
Detroit, MI 48226

Re: People v Defendant
Circuit Court Nos. 12-XXXX & 12-XXXX

Dear Judge Cameron:

I am writing to follow up on the resentencing that took place on August X, 2014 in the above case.

I am writing to request a copy of the Amended Judgments of Sentence and the Amended Orders to Remit pursuant to the new sentences.

In both cases, Mr. Defendant was resentenced to 225 months to 60 years imprisonment for count 1 and a 5 year consecutive term for count 8 with credit for 478 days applied to count 8. Court costs were not imposed in either case. \$400 in attorney fees was assessed in case 12-XXXX only. A \$136 state costs fee and \$130 crime victim's rights fee were assessed in both cases as well as restitution.

An Amended Order to Remit is also necessary to reflect the reduction of court-ordered costs. In case 12-XXXX, the amended amount listed on the Order should be \$266 to reflect the \$136 in state costs and \$130 crime victim's rights fee. In case 12-XXXX, the amended amount listed on the Order should be \$666 to reflect the same as well as the \$400 in attorney fees.

Please forward a copy of the Amended Judgments and the Amended Orders to Remit to the MDOC and to myself by mail or email at mdavid@sado.org or fax at 313-965-0372.

Thank you.

Sincerely,

Marilena David-Martin
Assistant Defender

CC: Wayne County Prosecutor
Defendant

Michigan Appellate Assigned Counsel System

Fall Training

October 15, 2015

Getting Back Into the Trial Court: Developing IAC Claims, Logistics of Evidentiary Hearings, and Effective and Practical Use of Experts and Investigators

Katherine Marcuz

**State Appellate Defender Office
kmarcuz@sado.org**

and Valerie Newman

**State Appellate Defender Office
vnewman@sado.org**

**Michigan Appellate Assigned Counsel System (MAACS)
200 N. Washington Sq. Suite 250 Lansing, Michigan, 48933 (517) 334-1200**

**This training event is supported through a generous grant from the
Michigan Commission on Law Enforcement Standards**

**Getting Back Into the Trial Court:
Developing IAC Claims, Logistics of Evidentiary Hearings, and Effective and Practical Use
of Experts and Investigators**

Katherine Marcuz and Valerie Newman, State Appellate Defender Office

I. Getting Back Into the Trial Court: Mechanics and Timing

- a. MCR 7.208(B)(1): “No later than 56 days after the commencement of the time for filing the defendant-appellant’s brief as provided by MCR 7.212(A)(1)(a)(iii), the defendant may file in the trial court a motion for new trial, for judgment of acquittal, to withdraw a plea, or to correct an invalid sentence.”
- b. MCR 7.211(C)(1)(a); “Within the time provided for filing the appellant’s brief, the appellant may move to remand to the trial court.”
 - i. The Court of Appeals may order remand for an evidentiary hearing at any time. MCR 7.216(A)(5); *see also People v LaPlaunt*, 217 Mich App 733 (1996); *People v James Edward Walker*, Docket No. 289323, Order of December 22, 2009; *People v Krogol*, 419 Mich 900 (1984); *People v Mayes*, 433 Mich 894 (1989).
- c. Motions to Remand must be supported by an affidavit or other offer of proof regarding the facts to be established at the hearing. MCR 7.211(C)(1)(a)
 - If you say trial counsel should have consulted /contacted/interviewed someone, you need to consult/contact/interview that person and provide an offer of proof summarizing his or her potential testimony
 - If you can’t get an affidavit from the potential witness, you can provide an affidavit summarizing the results of your investigation including your communications with an expert, trial counsel, client, or a witness.
 - a. How much detail to provide in an affidavit?
 - When trial counsel will not respond . . .
 - a. Document all attempts
 - b. “To the extent that trial counsel failed to respond to the defendant’s request for an affidavit on appeal, the defendant cannot be faulted for failing to overcome the presumption that counsel acted unreasonably.” *People v McKeever*, __ Mich __; 863 NW2d 330 (2015).

II. Developing IAC Claims

- a. Client Communication and Investigation
 - i. Meet with client early — ideally with time to file a 56 day motion if appropriate
 - ii. Request discovery and exhibits
 - iii. Request other records when necessary
 - District court transcripts
 - MDOC or jail records

- FOIA police department file
 - Other: DHS, co-defendant's transcripts, etc
- iv. Talk to trial counsel

b. The *Strickland* standard

- i. The Sixth Amendment guarantees the right to counsel “in order to protect the fundamental right to a fair trial.” *Strickland v Washington*, 466 US 668, 685 (1984). To show that he was denied the effective assistance of counsel, a defendant must demonstrate that, considering all of the circumstances, (1) counsel's performance fell below the objective standard of reasonableness and (2) so prejudiced the defendant that he was denied a fair trial and a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland, supra*; *People v Pickens*, 446 Mich 298 (1994); *People v Carbin*, 463 Mich 590 (2011). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 US at 694.

Generally, “[d]ecisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy.” *People v Rockey*, 237 Mich App 74, 76 (1999). Though counsel's strategic decisions are entitled to deference, counsel's strategy must be based on reasonable investigative decisions. *Strickland*, 466 US at 691; *People v Grant*, 470 Mich 477, 486 (2004). *People v Trakhtenberg*, 493 Mich 38, 51-52 (2012).

c. Main categories of IAC claims that require development of a factual record and useful case law

i. Failure to call a witness

- “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 US at 690-691; *People v Grant*, 470 Mich 477, 485 (2004).
- “This duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence.” *Towns v Smith*, 395 F3d 251, 258 (CA 6, 2005).
- Trial counsel “is responsible for preparing, investigating, and presenting all substantial defenses.” *People v Chapo*, 283 Mich App 360, 371 (2009). Counsel's performance may be constitutionally deficient where counsel decides to forgo particular investigations relevant to the defense. *Trakhtenberg*, 493 Mich at 51-52. Examples of such investigations include, identifying the factual predicate of all charges, failing to consult or interview key witnesses who would have revealed weaknesses of the

prosecution's case, and failing to sufficiently develop the defense presented at trial. *Id.* at 53-54.

- An attorney's failure to call a witness constitutes ineffective assistance when it deprives a defendant of a substantial defense. *People v Payne*, 285 Mich App 181, 190 (2009). A substantial defense is one that might have made a difference in the trial's outcome. *Chapo*, 283 Mich App at 371.

ii. Failure to consult or call an expert

- Another way an attorney can fail to meet his duties is by failing to consult with and call an expert when an expert's assistance would be critical to the defense. *Harrington v Richter*, 562 US 86, 106 (2011) ("criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both"); *See, e.g., People v Dixon*, 263 Mich App 393, 398 (2004); *People v Kelly*, 186 Mich App 524, 526-527 (1990).
- "While an attorney's selection of an expert witness may be a "paradigmatic example" of trial strategy, that is so only when it is made "after thorough investigation of [the] law and facts" in a case." *People v Ackley*, 497 Mich 381 (2015), citing *Hinton v. Alabama*, — U.S. —; 134 S. Ct 1081, 1088 (2014).
- *See Trakhtenberg*, 493 Mich at 54 n 9 (noting that "a defense attorney may be deemed ineffective, in part, for failing to consult an expert when counsel had neither the education nor the experience necessary to evaluate the evidence and make for himself a *reasonable, informed determination* as to whether an expert should be consulted or called to the stand").

iii. Failure to impeach a witness for the prosecution

- Impeachment evidence is important. *See, e.g., People v Grissom*, 492 Mich 296 (2012); *People v Trakhtenberg*, 493 Mich 38 (2012); *People v Armstrong*, 490 Mich 281 (2011).
- Where impeachment evidence would have provided proof that a witness lied to the jury regarding his or her actions with regard to that very case, the fact that the witness' credibility had previously been attacked does not preclude a finding of prejudice. *See Armstrong*, 490 Mich at 292. On the contrary, there is a greater possibility that the additional attack "would have tipped the scales in favor of finding a reasonable doubt about defendant's guilt." *Id.*; *see also Trakhtenberg*, 493 Mich at 56 ("where there is relatively little evidence to support a guilty verdict to begin with (e.g., the uncorroborated testimony of a single witness), the magnitude of errors necessary for a finding of prejudice will be less than where there is greater evidence of guilt.") (internal quotation omitted).

- iv. Other useful case law
 - *People v Ackley*, 497 Mich 381 (2015), “[A] single, serious error may support a claim of ineffective assistance of counsel.” *Ackley*, slip op at 4, citing *Kimmelman v Morrison*, 477 US 365, 383 (1986).

III. Logistics of Evidentiary Hearings

- a. Preparation/Organization for the day of the hearing
 - i. Create a master sheet for yourself with all your witnesses’ contact information
 - ii. Create information sheets for your witnesses providing them with directions to the court, your contact information, etc. For lay witnesses include general advice such as how to dress, to allow time to get through security, leave phone in car, etc
 - iii. Check client’s writ in advance of hearing
 - Who is responsible for preparing the writ? Court, prosecutor, defense counsel?
 - iv. Have any documents you intend to enter into the record prepared
 - Run by the prosecutor in advance
 - Seek stipulations when possible
 - Mark in advance if that is the court’s practice
 - Have extra copies ready
 - v. Recruit a second chair if possible
 - vi. Know your audience.
- b. Witness and Client Prep
 - i. Meet with your witnesses and go through their potential testimony step by step
 - ii. Prepare witnesses for cross-examination
 - iii. Talk to your client about how to behave during the hearing
- c. Scope and Extent of Waiver of Attorney Client Privilege
 - i. The filing of a claim of ineffective assistance of counsel does not operate as a *complete* waiver of the attorney client privilege. Rather, the waiver is narrowly applied and is limited to the extent that Attorney has to defend himself against such a claim. See MRPC 1.6.
- d. Supplemental Briefing
 - i. When to request?
 - High publicity case?
 - Did the hearing raise more questions than it answered?
 - Multiple or complex issues?
 - ii. Writing for the trial court vs. the Court of Appeals
- e. Think about the Record

IV. Effective and Practical Use of Experts and Investigators

- a. Know what you want from your expert
 - i. Educate yourself
 - What is your theory and how do you think an expert can help you?
 - ii. Consult with expert
 - iii. Prepare the relevant materials for your expert — don't dump all the transcripts and records for the expert to sort through
- b. When consulting with an investigator
 - i. Know what you need to prove your case and what is missing from your record
 - ii. Keep an open mind
 - iii. Supervise/ongoing communication

Michigan Appellate Assigned Counsel System

Fall Training

October 15, 2015

**E-Filing: Creating Appendices,
Bookmarking, Filing**

Randy Davidson

State Appellate Defender Office

randy@sado.org

Michigan Appellate Assigned Counsel System (MAACS)
200 N. Washington Sq. Suite 250 Lansing, Michigan, 48933 (517) 334-1200

**This training event is supported through a generous grant from the
Michigan Commission on Law Enforcement Standards**

Order

**Michigan Supreme Court
Lansing, Michigan**

November 26, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2002-37

Michael F. Cavanagh
Stephen J. Markman

Administrative Order No. 2014-23

Mary Beth Kelly

Brian K. Zahra

E-filing System for the
Michigan Supreme Court and
the Michigan Court of Appeals

Bridget M. McCormack

David F. Viviano,
Justices

On order of the Court, effective immediately, the Michigan Supreme Court (MSC) and the Michigan Court of Appeals (COA) are authorized to implement an electronic filing and electronic service system.

Although the Court of Appeals has had an e-filing system available for several years, this new system by ImageSoft, Inc., called TrueFiling, will enable filers to e-file documents with either the MSC or COA. The TrueFiling system allows for initiating a new case or e-filing a document into an existing case. The system is designed to maximize ease of its use and promote utility for e-filers, whether they are attorneys or self-represented litigants.

Under this system, e-filing will initially be voluntary for filers in all case types, but the Court anticipates that e-filing will eventually become mandatory in both courts. The experience gained from this voluntary program will help determine the future parameters of an expected mandatory program.

Although this order sets out the manner in which e-filed documents are submitted to the courts or served on other parties to an action, it does not change the time periods required for taking action under the Michigan Court Rules, except as explicitly provided.

I. Definitions

For purposes of this order:

- (A) “Authorized user” means a party, a party’s attorney, or court staff who is registered in the TrueFiling system (www.truefiling.com) and who has satisfied the requirements imposed by the courts relating to electronic filing and service procedures. A court may revoke user authorization for good cause as determined

by the court, including but not limited to a security breach or failure to comply with system requirements. An authorized user must notify the court and ImageSoft, Inc., of any change in the authorized user's firm name, delivery address, telephone number, fax number, e-mail address, or other required registration information. This notice must occur as soon as practicable but no later than 7 days after the effective date of the change.

- (B) "Electronic filing" or "e-filing" means the completed electronic transmission of documents or information to the court.
- (C) "Electronic notice/notification" or "e-notice/notification" means the electronic transmission of documents or information from the court.
- (D) "Electronic service" or "e-service" means the electronic transmission of documents or information to a party, a party's attorney, or a party's representative.

II. Scope

- (A) Consistent with the Michigan Court Rules and the provisions of this order, the MSC and the COA may:
 - (1) accept electronic filing and permit electronic service of documents from authorized users, except as provided in subsection (B) below;
 - (2) issue electronic filing guidelines consistent with this order. The guidelines must be posted prominently on the courts' electronic filing website; or
 - (3) electronically issue, file, and serve notices, orders, opinions, and other documents, subject to the provisions of this order.

Filers need not provide hard copies to the courts, as otherwise required by the court rules, of documents that are electronically filed.

- (B) Registered users agree to accept e-service through the TrueFiling system unless and until the user's registration is terminated. Service on nonregistered users must be accomplished in a manner allowed under the court rules, such as by first-class mail, hand delivery, or e-mail under MCR 2.107(C)(4).

III. Signatures

- (A) A document electronically filed or electronically served under this order shall be deemed to have been signed by the party, the party's attorney, or the declarant for all purposes provided in the Michigan Court Rules. A statutory or court rule

requirement for an original signature in a document is satisfied by inserting a typed signature with “/s/ [Name]” or a graphic image of a handwritten signature, including an actual signature on a scanned document. A digital signature that authenticates digital information through computer cryptography may not be used.

- (B) A document containing the signature of a third party (e.g., affidavits, stipulations) may also be filed electronically by indicating that the signed original is maintained by the filing party. Signed copies shall be provided to the parties or court upon request.

IV. Retention of Documents

Unless otherwise ordered by the court, copies of all documents electronically filed or served shall be maintained by the party filing those documents and shall be made available, upon reasonable notice, for inspection or copying. Parties shall retain such copies until final disposition of the case and the expiration of all appeal opportunities.

V. Official Case Record

The electronically filed documents maintained on the courts’ servers are the official record of the court.

VI. Payment of Filing Fees and Costs

- (A) A filing fee is due and payable at the time of the transmission of the electronic document unless:
 - (1) the document type does not require a fee;
 - (2) the filing is accompanied by a motion to waive fees;
 - (3) the fee is waived by the court pursuant to statute or court rule; or
 - (4) payment is deferred pending an interagency transfer of funds.

Failure to timely pay a filing fee may result in the filing being rejected by the court.

- (B) Fees and costs are paid electronically through the TrueFiling system.

VII. Transmission Failures and System Outages

- (A) In the event of a transmission failure of an electronically filed document, a party may file a motion requesting that the court enter an order permitting a document to be deemed filed *nunc pro tunc* on the date of the unsuccessful transmission. The moving party must prove to the court's satisfaction that:
 - (1) the transmission was attempted on the date and at the time asserted by the party;
 - (2) the transmission failed because of the failure of the TrueFiling system to process the electronic document or because of the court's computer system's failure to receive the document; and
 - (3) the transmission failure was not caused, in whole or in part, by the action or inaction of the party.
- (B) Scheduled system outages, such as for system maintenance, shall be posted on the court and TrueFiling websites and will be scheduled before 9:00 a.m. or after midnight on business days whenever feasible.
- (C) Notice will be provided on the court and TrueFiling websites if the TrueFiling system becomes unavailable for an extended or uncertain period. The notice shall indicate whether filers are responsible for filing the documents conventionally in order to meet the deadlines imposed by statute or court rule.

VIII. Filing Completion

- (A) A document filed electronically shall be considered filed with the court when the transmission to the TrueFiling system is complete and the system reflects a "Filed" status.
- (B) If the court rejects an e-filed document pursuant to court rule, the court shall notify the filer of the rejection and the document shall not become part of the official court record.
- (C) Upon completion of an e-filing transmission to the TrueFiling system, the system shall issue to the filer and to the court a notification that includes the date and time of the transmission.

IX. Time for Filing

Filings may be transmitted to the TrueFiling system twenty-four hours a day, seven days a week (with the exception of the system's downtime required for periodic maintenance). However, a document electronically filed or served after 11:59 p.m. Eastern Time, or on

a Saturday, Sunday, or court holiday (see MCR 8.110[D][2]) shall be deemed to have been filed or served on the next business day. See MCR 1.108.

X. Format of Documents

The TrueFiling system accepts the following file types for e-filed documents: Microsoft Word (DOC and DOCX), PDF, text files (TXT), images such as a TIFF, PNG or JPG. The courts strongly prefer that original pleadings be submitted as Word documents, text files, or searchable PDFs. Nonoriginal documents may be scanned into PDF as nonsearchable images.

Staff Comment: Administrative Order No. 2014-23 authorizes implementation and sets out the basic requirements for voluntary e-filing in the Michigan Supreme Court and Michigan Court of Appeals.

The staff comment is not an authoritative construction by the Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

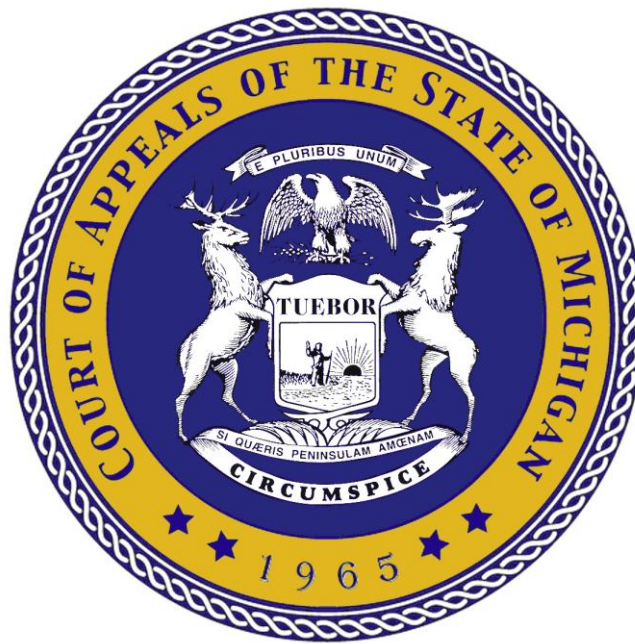
November 26, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

Michigan Court of Appeals

Preparing a PDF Document For Electronic Filing



April 2013

Preparing a PDF Document for Electronic Filing at the Michigan Court of Appeals

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*The following instructions offer guidelines for PDF best practices to assist you
in creating documents that are both acceptable and useful
at the Michigan Court of Appeals.*

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Note About Word Processing and PDF Creation Software

We have created these general instructions using Word 2007/2010 and Adobe Acrobat 9.0. All screenshots are from these environments. While the concepts are applicable across word processors and PDF conversion software, you may need to adapt the directions for your particular word processor and the version of Acrobat or other PDF conversion software that you are using. In that case, the name and location of menu options referenced herein may not be accurate. In addition to Adobe, many other vendors provide software to create PDF documents. Please note that the Court does not endorse or recommend any specific PDF software. Because there are so many different applications, and we could not depict instructions for all, we have chosen to depict our instructions with reference to Adobe Acrobat.

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Thank you for your PDF document preparation efforts. We are confident that incorporating these essential steps into your regular habits will help you create useful PDF documents that will greatly benefit Court of Appeals judges and staff attorneys, as well as others who receive your electronically served documents. It is likely that you will also find these techniques of value in your day-to-day work processes.

What is a Court-Friendly PDF Document?

Documents created for the Court must be converted to Portable Document Format (PDF) prior to filing electronically with the Court. If you attempt to submit a non-PDF file through the e-filing system, you will receive an error message and the document will be rejected. PDF format is required because PDF documents retain the pagination, layout, formatting, graphics and fonts of the original document. The document will look the same no matter what type of computer is used to view it or what printer is used to print it.

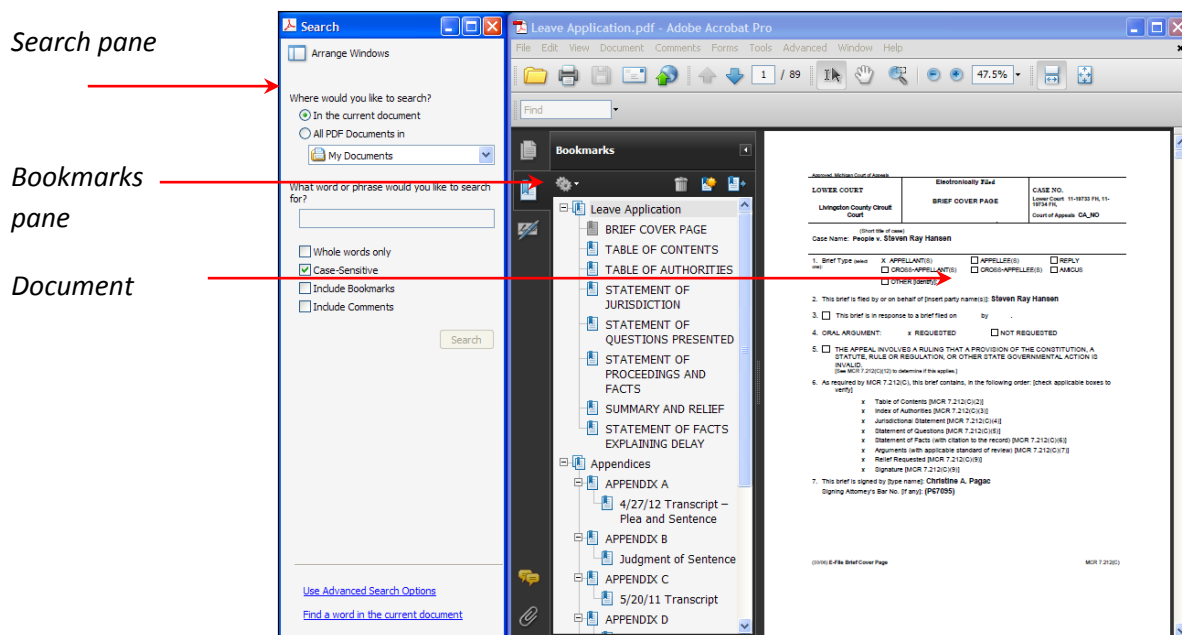
As we transition to a world with less printed paper and more online viewing of documents at the Court of Appeals, we offer the following suggestions for formatting your documents to make them more useful to our Judges, law clerks, and research attorneys.

Create a Searchable Document

The Court prefers to receive documents in searchable PDF format when they are original appeal pleadings. PDF documents that are created from electronic files, such as word-processing documents, automatically include searchable text. On the other hand, scanning a printed document into PDF format often creates only a graphic image of the document, which is not searchable. (This depends on the equipment and settings used to scan.) Appendices to pleadings will often be scanned images.

Create a Document that is Easy to Navigate

Use Bookmarks. The Court requests that PDF files include bookmarks to serve as a navigational aid. Bookmarks provide a table of contents and usually represent the major sections in a document. When you create bookmarks in a document, they appear in the navigation panel. Anyone viewing the file can click a bookmark to navigate to the specified location within the PDF document.



Use Hyperlinks. Hyperlinks are another feature that can make it easier to navigate in documents. *Internal* hyperlinks, which point to other places within the same document, are permissible. However, *external* links, which point to other documents, websites or legal sources, must be avoided in documents submitted through the e-filing system. Use of *external* links can result in format errors that prevent your document from being accepted by the system.

Create an Optimized Document

Optimizing means to create the best quality document at the most efficient file size. Reducing the file size of PDF documents improves their performance. PDF optimization is an important step when creating PDF files. Each of these concepts is discussed in detail below.

An Overview PDF Document Types

Filers or their support staff will prepare required pleadings, forms, or appendices as detailed in the Court Rules. You may use existing document templates and forms for this process. There are three different types of PDF documents – text-based, form-based, and image-based.

Text-Based PDF

Documents converted directly from word processing are *text-based* documents. Creating a PDF file in this manner requires that your word processor enables you to save to PDF format, or else requires a PDF conversion program. Adobe Acrobat is one example of PDF conversion program; however, it is not your only option. There are many programs that enable you to create a PDF document from your word processor.

COA Request: When preparing your PDF documents, convert all original word-processed documents directly to PDF. The Court's strong preference is that documents filed through the e-filing system are text-based PDF files, so that text is searchable and selectable.



COA Caution: At this time, the Court is able to receive documents created with many versions of Adobe Acrobat. However, the PDF document that you submit must be compatible, at a minimum, with Acrobat 7.0 or later. If you limit compatibility to Acrobat 9.0 or later, we may not be able to open the file and you will likely receive a format error and need to re-submit the document. For further details, see [notes on document compatibility](#) later in this document.

Form-Based PDF

You may submit interactive fillable PDF forms. This type of form contains fields that you can select or fill in and save. A set of **E-Filing Forms** is available on the Court of Appeals E-Filing Forms website page [<http://courts.mi.gov/Courts/COA/forms/Pages/EFiling.aspx>].

The forms can include a typed signature and can be saved in PDF. Therefore, the form does not need to be printed, signed, and scanned before it is filed.

In order to save a filled-in E-Filing form, you must have either Adobe Acrobat (rather than the free Adobe Reader which is useful for viewing forms) or other PDF conversion software.

You are not required to use the E-Filing forms to work with the e-filing system; the forms are optional and available for the convenience of those who have the software mentioned above. The alternative is to use your existing forms and then save or convert these documents to PDF format.

Approved: Michigan Court of Appeals
LOWER COURT: _____
E-Filed: _____
CASE NO.: _____
BRIEF COVER PAGE
Lower Court: _____
Court of Appeals: _____
Case Name: (Short title of case) _____
1. Brief Type (check one):
☐ APPELLANT(S) ☐ APPELLEE(S) ☐ REPLY
☐ CROSS-APPELLANT(S) ☐ CROSS-APPELLEE(S) ☐ MISCELLANEOUS
☐ OTHER (specify): _____
2. This brief is filed by or on behalf of (insert party name(s)): _____
3. ☐ This brief is in response to a brief filed on _____ by _____
4. ORAL ARGUMENT: ☐ REQUESTED ☐ NOT REQUESTED
5. ☐ THE APPEAL INVOLVED A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.
(See MCR 7.212(C)(1) to determine the rules.)
6. As required by MCR 7.212(C), this brief contains, in the following order: (check applicable boxes to verify)
☐ Table of Contents (MCR 7.212(C)(2))
☐ Index of Authorities (MCR 7.212(C)(3))
☐ Jurisdictional Statement (MCR 7.212(C)(4))
☐ Statement of Questions (MCR 7.212(C)(5))
☐ Statement of Facts (with citation to the record) (MCR 7.212(C)(6))
☐ Arguments (with applicable standards of review) (MCR 7.212(C)(7))
☐ Matter Requested (MCR 7.212(C)(8))
☐ Signature (MCR 7.212(C)(9))
7. This brief is signed by (type name): (s/ _____)
Signing Attorney's Bar No. (if any): _____
(9/10) E-File Brief Cover Page MCR 7.212(C)

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COA Request: When creating a PDF document, use descriptive filenames and avoid special symbols. The names should be reasonably concise and provide some idea about the file contents. It is acceptable to include upper- and lower-case letters, spaces and hyphens in your filename; avoid using special characters (such as # / \$ & %) as they may cause problems. Filenames that begin with “Attach” at the beginning of the filename can also cause problems.

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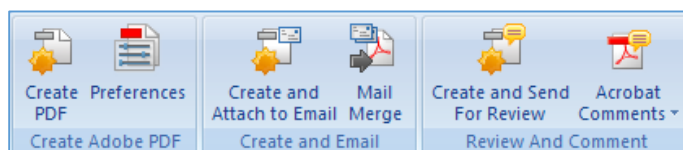
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2. From the **Adobe PDF** menu or ribbon tab, choose **Create PDF**.
3. In the Save Adobe PDF File As dialog box, enter a filename and location for the PDF, and click **Save**. A PDF file is created and saved in the appropriate location. The filename contains the .pdf extension.

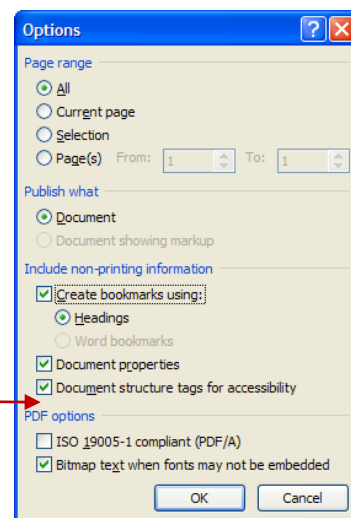
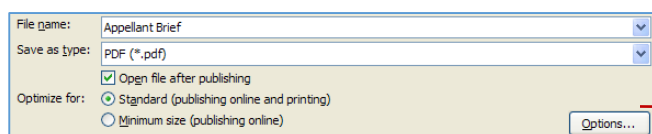


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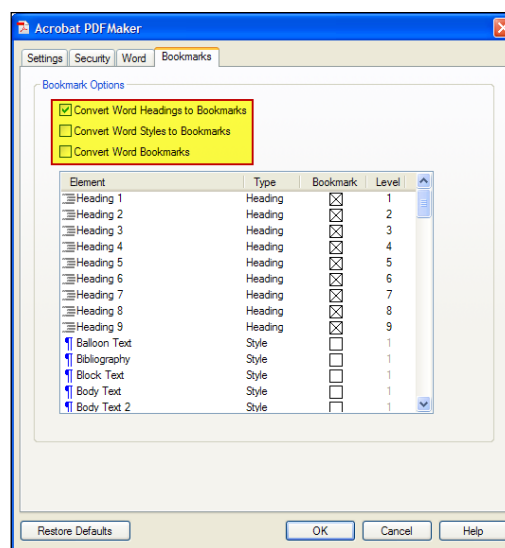
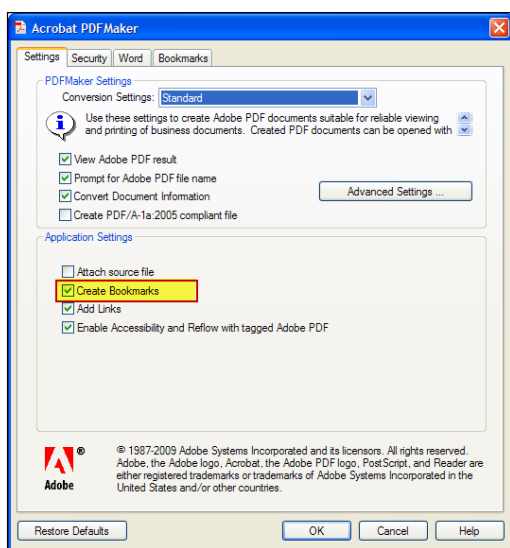
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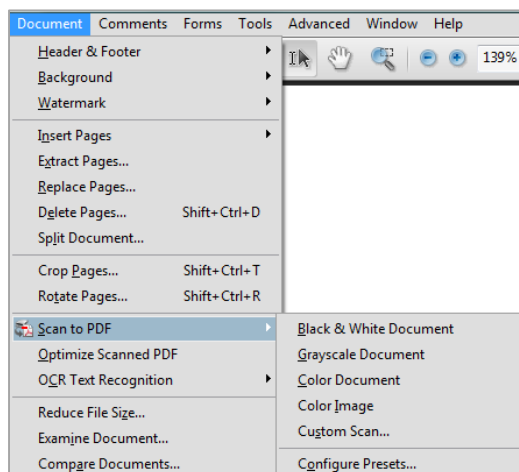
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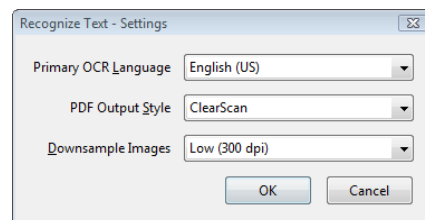
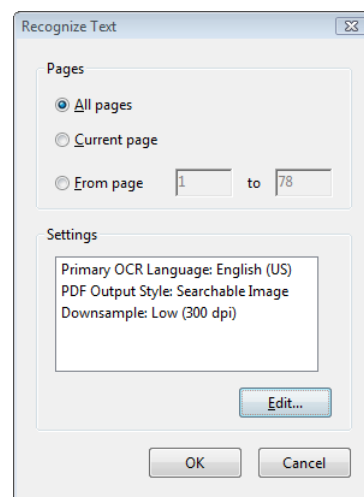
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Consider changing the PDF Output Style to ClearScan. ClearScan OCR is not the default in Acrobat 9, so you will need to change a setting to use it. In the Recognize Text dialog box, click the **Edit** button to select the **ClearScan** PDF Output Style and click **OK**. The setting sticks for future sessions.



Prepare Documents for File & Serve

Court Guidelines for Submitting PDF Documents

Although there is no file size restriction on submitting documents through the e-filing system, there are practical limits to the size of an electronic document that judges and staff can quickly and easily retrieve and read within our case management system.

While it is possible to combine a number of separate PDF documents – such as appendices and exhibits – into a single PDF document, the Court has established guidelines with regard to what items should be bundled together. Any departure from these guidelines may cause your filing to be rejected by the Court.

COA Request: A distinct document – one that will be docketed separately – should be in its own separate PDF file. A **brief** or a **motion** is an example of a document that should be in one PDF file. Other documents that should be filed as separate attachments include **appendices**, **transcripts** and **PSIRs**.

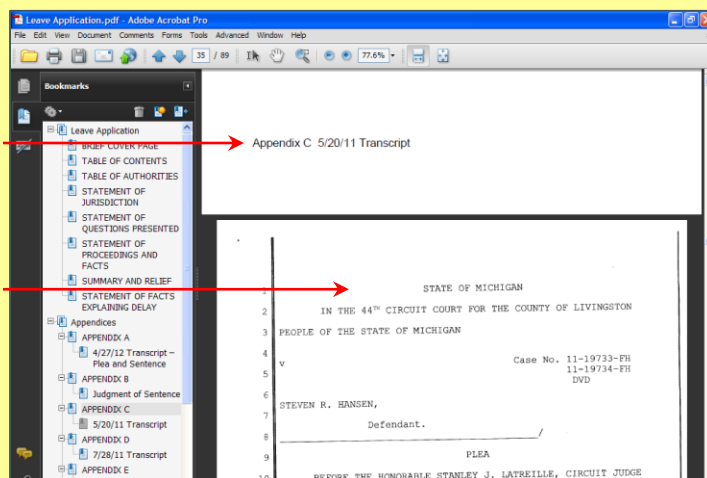
In general, individual attachments should be manageable, in terms of the time it takes to download or open the file. For example, if you are filing an application for leave to appeal and you need to submit the trial transcripts, each day of trial should be a separate attachment to the application, rather than combining several transcript volumes in a single attachment.

All **PSIRs** must be filed as separate attachments so that they can be handled in a confidential manner when received by the Court. It should NEVER be included with other items as part of a larger appendix.

When combining multiple items into an appendix, be sure to include a **cover page** to identify the position of each individual appendix. Ideally, the cover page should have Appendix XX toward the bottom of the page so when a bookmark is clicked to that page, it will actually display the beginning of the appendix on the next page.

*Bookmark text
should be placed in
the lower-left corner
of the cover sheet....*

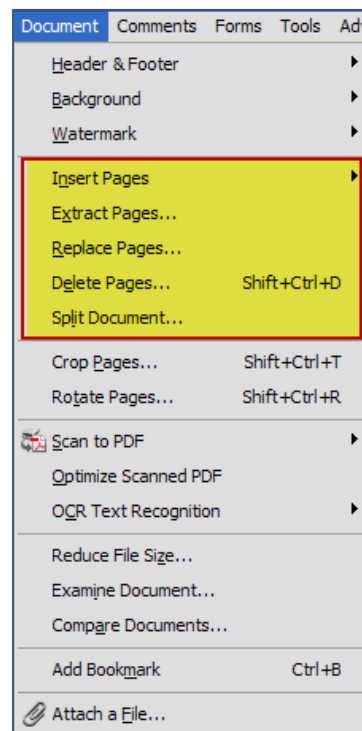
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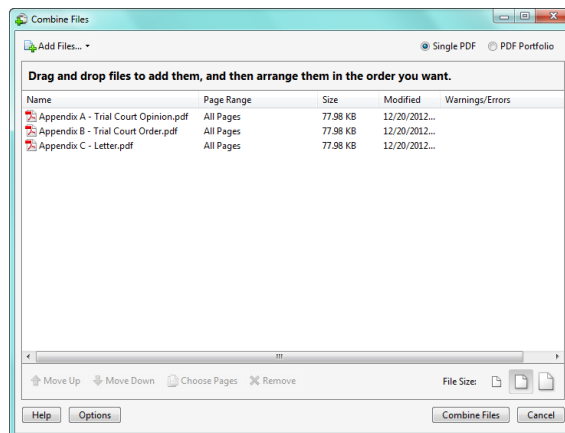


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2. Click **Add Files** and select the files you want to add.
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4. When finished arranging the files, click **Combine Files**.
5. Select **File, Save As, PDF**.
6. Name your PDF file and click **Save**.



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COA Request: When preparing your PDF documents, use bookmarks to denote the primary sections of the pleading.

Bookmark text should accurately reflect the contents of the bookmark. Viewers will rely on the bookmark title to get an idea of what they can expect to find when they click the bookmark. (For instance, ***APPENDIX J Order and Memorandum Denying Motion for Relief from Judgment*** is preferable to ***APPENDIX J.***)

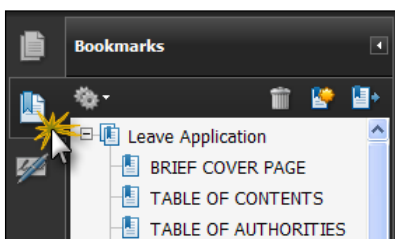
If you choose not to use bookmarks in your PDF document, the Court requires that you include a table of contents at the beginning of the document.

View Bookmarks

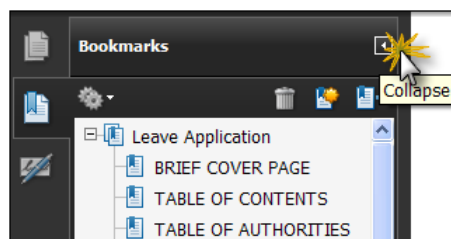
Open or Close Bookmarks

You can easily open or close the Bookmarks panel.

One way to open or close the Bookmarks panel is by clicking the [Bookmarks](#) button on the left side of the document window.



You can also close the panel by clicking the [Collapse](#) box in the navigation panel.



Expand or Collapse Bookmarks

Some bookmarks contain subtopics. If a bookmark contains subtopics, click the [plus sign](#) or the [minus sign](#) next to it to expand or collapse the list of subtopics.

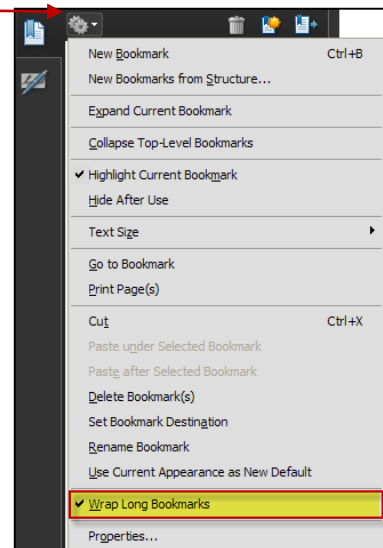
Wrap Long Bookmarks

If the bookmark text is truncated, you can click the **Options** button and select the **Wrap Long Bookmarks** option. All of the text will display, regardless of the width of the navigation pane.

Be Specific with Bookmark Destinations

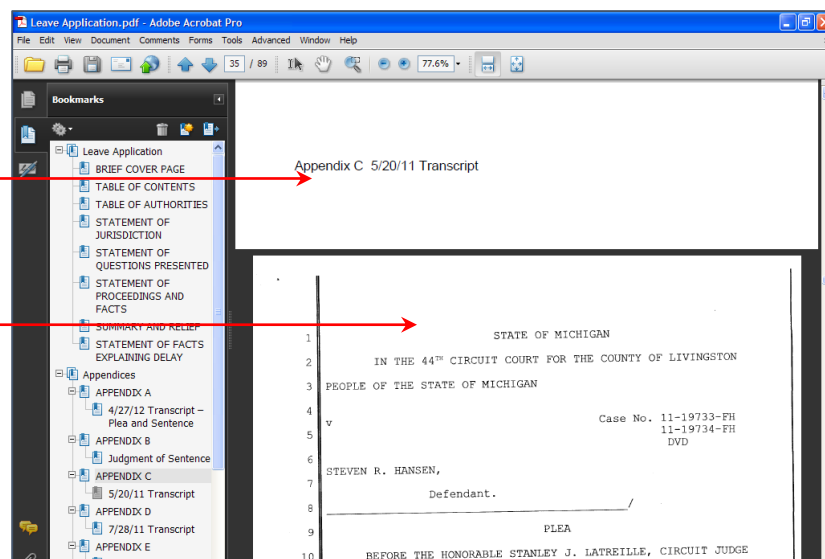
When combining multiple items into an appendix, be sure to include a cover page to identify the position of each individual appendix.

Ideally, the cover page should have Appendix XX toward the bottom of the page so when a bookmark is clicked to that page, it will actually display the beginning of the appendix on the next page.



Bookmark text should be placed in the lower-left corner of the cover sheet....

so that text displays here.

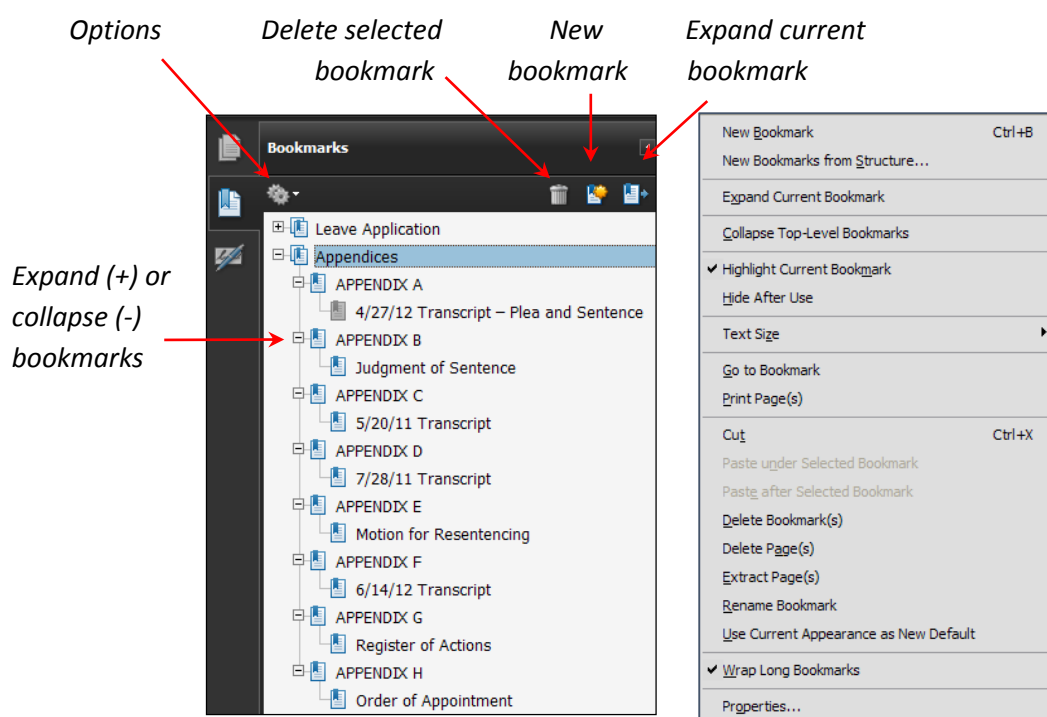


Modify a Bookmark

Creating bookmarks in a PDF file is easiest if you use Word's built-in heading styles or your own set of custom styles that you select in the conversion settings. However, after you have created a PDF document, you can also create new or additional bookmarks to draw the reader's attention to specific sections. When you create or edit bookmarks, use the Bookmarks toolbar to streamline your work.

Use Options to Manipulate Bookmarks

The Bookmark Options menu enables you to edit a bookmark by changing the bookmark destination, renaming a bookmark, or deleting a bookmark. Select the bookmark and then choose the appropriate option. In the Bookmark panel, you can also click and drag a bookmark to arrange it differently.



Create a Bookmark Manually

1. **Select text** in the PDF document.
2. In the Bookmarks panel, choose **Options**, **New Bookmark** or click the **New Bookmark** icon at the top of the Bookmarks panel. (Or, press [Ctrl] + B, which is the shortcut key for creating a bookmark.)
3. The new bookmark appears below the bookmark you selected when you clicked the icon. The bookmark name is highlighted. If necessary, **edit the name** of the new bookmark, and press **Enter**.

Tip: At your discretion, you can select a bookmark and then choose **Options**, **Properties** (or right-click the bookmark and choose Properties) to specify a text style and color for the bookmark.

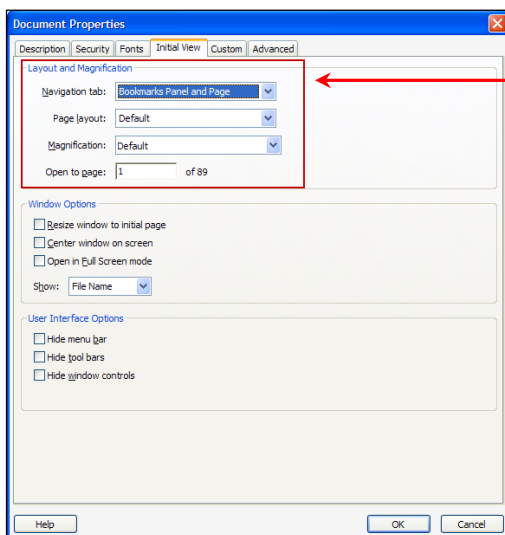
Define an Initial View that Includes Bookmarks

When a reader opens your PDF document, they see the initial view of the PDF. You can set the initial view to display the pages in the way that you want. Please take the time to specify an initial view that shows the Bookmarks Panel.

COA Request: When preparing your PDF documents, specify an initial view that displays the Bookmarks Panel. (While it is very easy to toggle the bookmarks on or off to suit individual preference, the initial display will alert our internal users that the bookmarks exist and serve as a point of reference while working with the PDF file.)

1. **Open** the PDF document in Acrobat.
2. Choose **File, Document Properties** (Ctrl + D).
3. In the Document Properties dialog box, select the **Initial View** tab.
4. In the Navigation tab field, select **Bookmarks Panel and Page**.
5. Click **OK**.
6. **Save** and reopen the file to confirm the initial view display.

Tip: This option should always be set for each file you submit so that users are immediately aware of the document navigation available through the Bookmarks panel.



Under the Initial View tab, you can set which panels are displayed in the navigation panel.

The other Layout and Magnification options do not need to be changed unless there is a special need for the PDF document.

Final Document Preparation

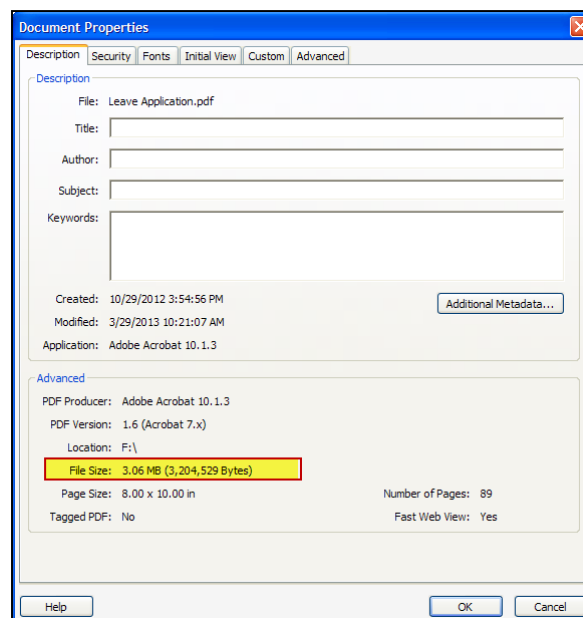
Determine the Size of a PDF Document

From within Acrobat, you can check the size of a file by choosing **File, Document Properties**. On the **Description** tab, the file size is listed toward the bottom.

Large files take a long time to download. Optimizing PDF files can significantly shrink their size and boost display speed.

Currently, 80% of the files we receive via e-filing at the Court are less than 1 MB (1,000 KB). An additional 17% are between 1 MB and 5 MB (1,000 KB and 5,000 KB). The Court prefers to receive files in this size range for manageability.

There are several ways to reduce the file size and results will vary with each file. You can try each of these techniques with a PDF document and compare the results to see which method produces the smallest file.



COA Request: When preparing your PDF documents, perform the necessary steps to reduce the file size and optimize the PDF for the best performance possible. These optimization methods are easy to use and essential to consider when you are preparing your PDF files prior to electronically filing with the Court.

Note: In the Document Properties dialog box, the **Description** tab also lists information about your document. By default, some of the options, such as Title and Author, may be automatically populated by your word-processing application. Text included in these fields is visible to anyone who opens the document. As a safeguard, you may want to consider the information that is included in the Document Properties **Description** fields, in light of your business processes, and make necessary adjustments.

Optimize PDF Files and Reduce File Size

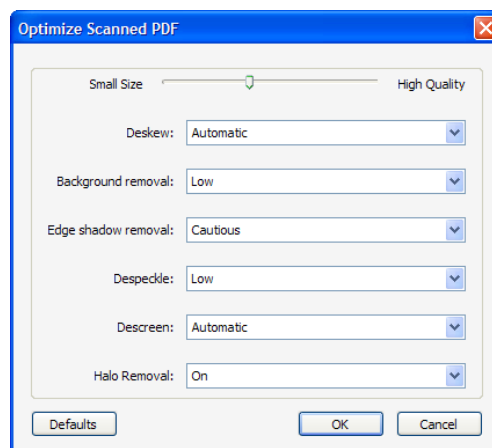
Use the File, Save As command

You can sometimes reduce the file size of a PDF simply by using the Save As command (rather than repeatedly using the Save command). Once you are done making changes to your PDF document, choose **File, Save As**. When prompted, save the document with the same name to overwrite the original with your changes. When you use the Save As command, Acrobat rewrites the entire PDF document as efficiently as possible.

Use the Document, Optimize Scanned PDF command

1. With the PDF document open, choose **Document, Optimize Scanned PDF**.
2. Click **OK**.
3. **Save** the optimized version of the document.
(You can overwrite the original file or you can save the optimized version separate from the original file. This might be a good idea until you verify the results since you cannot undo or de-optimize the file.)

After optimizing, it is a good idea to double-check the overall quality and readability of the document. Note that this option is only available in Acrobat 9 and later.

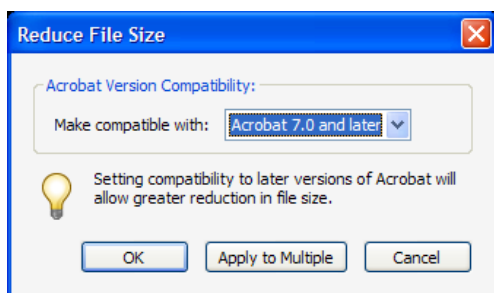


Use the Document, Reduce File Size command

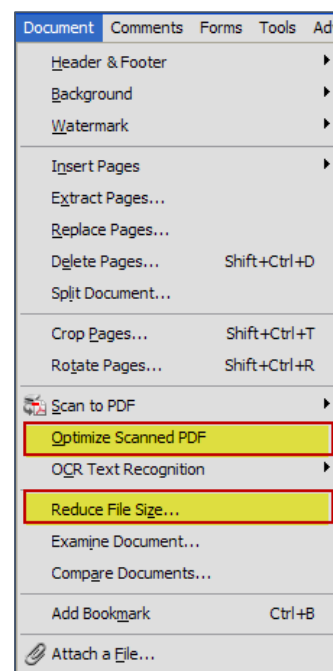
Another option is to use the Reduce File Size command on the Document menu, and set the compatibility to an appropriate version of Acrobat. The Reduce File Size command recompresses images, compresses document structure, and cleans up elements such as invalid bookmarks.

To reduce the file size in this way:

1. With the PDF document open, choose **File, Reduce File Size**.
2. Set the PDF Compatibility to **Acrobat 7.0 and later**.



3. Click **OK**.
4. When prompted, specify a name and location to save the file.

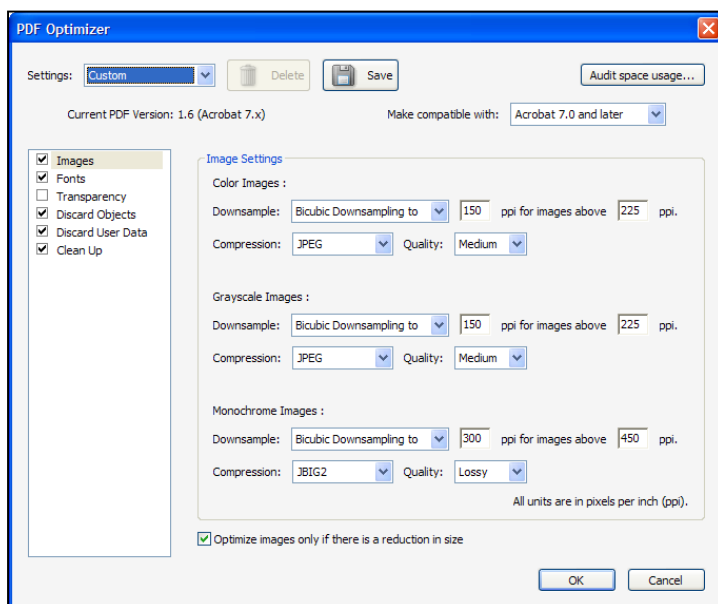


Use PDF Optimizer

In addition to PDF version, other factors in creating a small PDF file include image type and resolution, fonts and how they are embedded, and the level of compression. Using the PDF Optimizer you can select and carry out multiple operations or manipulate a single setting.

To reduce file size using the PDF Optimizer:

1. Choose **Advanced, PDF Optimizer...**
2. Set the PDF Compatibility to **Acrobat 7.0 and later**. If you are uncertain what the remaining options are for, just accept the default settings.
3. Click **OK**.



Important Note about Document Compatibility

The Tyler File & Serve system may not accept PDF documents created with Adobe Acrobat 9.x or later. PDF documents created using Acrobat 9.x (or later) sometimes fail to process through the File & Serve system. However, sometimes the documents do successfully process. To reduce the risk of failure, we recommend that you save your documents to an earlier version of Acrobat. Overall, the e-filing system supports documents that are compatible with Acrobat 7.0 and later. At this time, the recommendation is to set the PDF compatibility to Acrobat 7.0 and later to ensure successful e-filing.

In order to change the PDF version to make your PDF document compatible with an earlier version of Acrobat, review the instructions above for using the Reduce File Size command or the PDF Optimizer feature. When you save the file in this manner, your PDF document should be ready to submit through the system.



Frequently Asked Questions (FAQs)

BASICS

How do I access TrueFiling?

Go to the following website: <https://www.truefiling.com> and follow the prompts on the screen to either signup or logon to TrueFiling.

Is TrueFiling a mandatory or voluntary system?

TrueFiling is a voluntary system at this time. The Courts expect that it will be mandatory in the future, at least as to some filers and case types.

Can the TrueFiling system be used to initiate cases and to file into existing cases?

Yes, TrueFiling can be used to initiate cases or file into existing cases.

May I use TrueFiling to e-file in cases that were initiated through the prior e-filing system at the Court of Appeals or by paper filing?

Yes, you may submit filings through TrueFiling for all open cases in the Court of Appeals regardless of how they were initiated.

Can TrueFiling be used to file emergencies?

Yes, TrueFiling can be used to file emergencies. Filers are encouraged to call the Clerk's Office during business hours **before** submitting an emergency e-filing. Clerk's Office staff will not be available after 5:00 p.m. or on weekends to process emergencies. **A printed copy of the filing(s) must be served by traditional means (personal or mail) unless opposing counsel has registered with TrueFiling.**

By what time does a document need to be e-filed to be considered filed that day?

A filing received by 11:59 pm on a business day is considered filed that business day under MCR 7.202(2). A filing received on a weekend or holiday is considered received on the next business day.

Is technical support available?

For any technical support issues, you should contact TrueFiling Support at 855-959-8868 or by emailing support@truefiling.com. Technical Support is available Monday through Friday, from 8:00 am to 9:00 pm ET except on US holidays.

E-FILING DOCUMENTS AND E-SERVICE

Does TrueFiling accept only PDF documents?

In addition to accepting PDF documents, TrueFiling also accepts primary and connected documents (attachments) in these file formats:

- Microsoft Word (DOC and DOCX)
- Adobe PDF (PDF)
- Plain Text (TXT)
- Scanned Images (TIFF, JPG, and PNG)

However, the Courts prefer that documents be submitted in searchable PDF.

What is the maximum file size that can be electronically submitted?

10 MB is the maximum file size for each document (primary or connected) within a bundle. There is no maximum size limitation for a bundle.

Are hyperlinks permissible in PDF documents?

Internal links, which point to other places within the same document, are permissible. External links, which point to other documents, websites or legal sources, are discouraged as they may break over time.

Can I file multiple pleadings – such as a brief and motion – in one transaction?

Yes, provided the filings are all for the same case. TrueFiling looks at a transaction as a “bundle.” A “bundle” can hold multiple primary documents and each primary document can have multiple attachments referred to as connected documents.

What distinguishes a primary document from a connected document?

There are different “Filing Types” for primary and connected documents. The “Filing Types” for primary documents include applications, claims of appeal, briefs, motions, answers, stipulations, etc. The “Filing Types” for connected documents are more limited and include attachments and exhibits. Any filing that requires payment of a statutory fee must be filed as a primary document. A presentence investigation report may be submitted as either a primary or a connected document; however, it should always be submitted as a separate document because it contains confidential information.

If I have several documents to submit, should I create a single file that combines these documents, or would the Court prefer that I put each document in a separate file?

Each primary document such as a brief, motion, or answer, should be a separate file. To facilitate internal handling of appendices and exhibits, the Court prefers that they be combined into a single, separate file (provided the file size doesn't exceed 10 MB) and submitted as a connected document to the primary document. However, a confidential document such as a presentence investigation report should be submitted as a separate primary or connected document, i.e., not combined with other appendices or exhibits.

When I file a pleading, I typically include a cover letter and proof of service. Should I continue to do that in this system?

No, those documents are not necessary. TrueFiling creates a cover sheet for the Court that identifies the case name, docket number, filer information and the titles of the filings included in the bundle. An electronic proof of service is automatically generated by the system and is served on all e-service recipients. There is no need to include additional paperwork. You may print the electronic proof of service for delivery to any recipients that you do not electronically serve via TrueFiling so that the parties and the Court are in possession of the same documentation. As to a cover letter, if you believe that such a letter has a purpose in a specific case, please submit it as a separate filing within the bundle so that the Court's electronic copy of the primary document does not have a cover letter as page one.

Is it necessary to add a service recipient who is being served by mail, to the TrueFiling bundle, if that information is contained in a separate proof of service?

No. If a separate proof of service is drafted and e-filed along with the primary document, the filer does not need to add the person being served by first class mail as an additional service recipient in TrueFiling.

How do I e-file a proof of service that I drafted and mailed to opposing counsel with my primary filing?

The proof of service may be submitted in TrueFiling as the last page of the primary document, as a connected document, or as a separate primary document.

What if I need to withdraw an e-filing in TrueFiling?

If a bundle is in progress and has not yet been submitted in TrueFiling, it can be deleted by clicking on Delete Bundle on the Bundle Details page. Once a filing has been submitted, it cannot be withdrawn through TrueFiling.

Will I have access to the documents that I file in the system?

Yes, you may access your previously filed documents in an individual case from the Case Details page. Alternatively, your filings for all cases may be accessed by clicking on "History" in the main menu.

Note: You cannot view e-filings submitted by other parties on the case. However, parties who are electronically served through TrueFiling will receive an email notice that includes a link to the electronic document. You may wish to open and save the served document so that you continue to have access to it.

Can I access a time-stamped copy of an e-filing through TrueFiling?

Yes. The time-stamped copy is available only to the filer after the document is accepted by the Clerk. The time-stamped copy may be accessed through either the Case Details page or the filing History link. Click on the Filing Name and then click on the paperclip icon at the beginning of the line where the Status is Filed.

When is a filing considered “Filed” with the Court?

A filing is considered “Filed” once it has been accepted by the Court. Following acceptance, you will receive an email notification if you enable that notification type in TrueFiling.

How do I know if an attorney is registered with TrueFiling?

From the Case Details page, click on the Add Opposing Counsel link. In the *Search Attorney Name, Attorney Number, Email Address, or Firm Name* field, enter opposing counsel's 5-digit numeric bar number, and click the Search button. If opposing counsel is registered, their name and email address for e-service will be displayed in the Search Results. Opposing counsel can be linked to the case by clicking on the Add Selected button at the bottom of the page.

If opposing counsel's name does not appear in the Search Results, they are not registered with TrueFiling and have not agreed to e-service through TrueFiling. Attorneys who are not registered with TrueFiling should be served through traditional means (by mail or in person).

Filers should not rely on the list of approved e-service addresses previously published on the Court of Appeals website. This list applied to filers registered with the Tyler Odyssey File & Serve system and does not apply to the TrueFiling system.

If an attorney is not registered with TrueFiling, but has previously consented to e-service, is it acceptable to add them as an additional service recipient on a bundle, include a statement that they have agreed to e-service, and e-serve them through TrueFiling?

A statement that opposing counsel has previously agreed to e-service is insufficient. Agreement to e-service is part of the registration process with TrueFiling. A filer should not attempt to e-serve an unregistered attorney. Instead, they should either (1) serve opposing counsel through traditional means (i.e., by mail or in person), or (2) encourage opposing counsel to register with TrueFiling and then wait to e-serve counsel until he or she has completed the registration process.

Is it possible for multiple people from the same firm (attorneys and staff) to receive e-service and notification on filings in an individual case?

Yes, it is possible to add multiple attorneys and staff members from the same firm to a case. To do so, go to the Case Detail screen, scroll down to Firm Contacts and click on Add Attorney and/or Add Contact to add additional staff from your firm to the case.

How do I serve a copy of an appellate filing on a trial court that requires e-service?

The filer should submit a copy of the appellate filing to the trial court through the trial court's e-filing system and draft a separate proof of service for filing with the appellate court that reflects the manner of service on the trial court.

FEES

How do I request a fee waiver or submit a filing with an associated statutory fee when fees have been waived?

The Supreme Court and Court of Appeals handle fee waivers differently. Filers should review the options available for each Court by clicking on the Request Fee Waiver button on the Bundle Details page. Note, if you are filing a motion to waive fees in the Court of Appeals, it should be uploaded from the Request Fee Waiver screen.

If I am court-appointed counsel, do I need a credit card on file to submit filings?

No, you do not need to have a credit card on file when making filings as appointed counsel. But you will need to select the appropriate fee waiver option when you submit the bundle for filing.

Are there transaction, service, or convenience fees for submitting a filing?

At this time, there are no service or processing fees of any type when using TrueFiling to submit e-filings to the Supreme Court or Court of Appeals.

How do I access my payment activity in TrueFiling?

From the main menu, click Payment Accounts, then click the View Payment Information link and follow the onscreen directions.

How do I view payment receipt for an individual filing?

The payment receipt for an individual filing may be accessed through either the Case Details page or the filing History link. Click on the Filing Name and then click on the paperclip icon at the beginning of the line where the Status is Paid.

ADMINISTRATOR

What is the role of the Firm Administrator?

Every firm needs to designate a person to administrate the TrueFiling system. Even if there is only one user, there must be a designated Firm Administrator. The Administrator will initially register the firm with the system and will have administrative rights to set up and maintain all user and credit card data.

Do the passwords expire? What if I forget my password?

Passwords do not expire so you will not be required to periodically change your password. You may, however, change your password at any time through the My Settings link in the main menu. If you cannot remember your password, you should click the reset password link on the TrueFiling logon page.

Michigan Supreme Court and Court of Appeals

TrueFiling – Registration

Overview of TrueFiling Registration



A. Every user of TrueFiling must be:

- a. associated with a Firm.
- b. registered with a unique email address; and

*Note to self-represented filers, when you register, you will create a “Firm” for purposes of TrueFiling that is simply your first and last name.

B. The ONLY way to register with an existing TrueFiling Firm is by responding to an invitation email generated by TrueFiling when the Firm adds you as a Log-in User.

***Note: Do not go to truefiling.com and sign up (instead of responding to an email invitation from your TrueFiling Firm) as you will inadvertently create a new Firm.**

1. Choose a Firm Administrator.

The Firm Administrator will:

- a. create the firm, including setting up Payment Accounts and selecting Favorite Courts;
- b. add Attorneys and Contacts to the Firm; and
- c. maintain settings for the Firm, including Attorneys and Contacts (e.g., when people join or leave the Firm), and Payment Accounts (e.g., updating credit card(s) before they expire).

2. Firm Administrator enters truefiling.com in a web browser; creates their own account and Firm.

3. Firm Administrator clicks on **Firm Settings** page to select and save Firm settings.

*Note to Firms that have previously used a generic email address for e-service:

TrueFiling does not allow the use of generic email addresses for e-service. In TrueFiling, when opposing counsel selects an attorney in your Firm for e-service, the filing will be e-served to that attorney’s unique email address. If you wish, on the Firm Settings page, in the Servicing Email field, you may enter an email address to receive a courtesy copy of servicing notifications. You may similarly enter an email address to receive a courtesy copy of all email notifications.

4. Firm Administrator clicks on **Payment Accounts** page to set up credit cards for the Firm.

5. Firm Administrator clicks on **Case Search** page, then on the “Court Lookup” button, to select Favorite Court(s) for the Firm, i.e., the court(s) available in TrueFiling into which the members of the Firm may e-file.
6. Firm Administrator clicks on **Contacts & Attorneys** page to add Attorneys and Contacts (non-attorney Firm staff) to the Firm.
 - a. Check the “Allow this person to login and submit filings” box for each Attorney and Contact added who may want to log in to TrueFiling to check the status of a filing or to submit filings. TrueFiling automatically sends an invitation email to each Attorney and Contact for whom this box is checked. They complete their registration as Log-in Users by responding to the email.
 - b. It is recommended to check the “Allow this person to be a firm administrator” box for at least one other Attorney or Contact in your firm to handle issues requiring a Firm Administrator when you are unavailable.
7. Firm Administrator clicks on **My Settings** page to select their Default Page and Email Notifications preferences; and instructs Attorneys and Contacts who are Log-In Users to do so for themselves.

For technical assistance using TrueFiling, call ImageSoft Technical Support at (855) 959-8868 or send an email to support@truefiling.com.



1. Log in to [TrueFiling.com](https://www.truefiling.com).
2. Click the **eFile** link in the left navigation frame.
3. Select "Search for an existing case."
4. Select the "Court" in which you want to submit a filing.
5. In "Case Search," enter the docket number (full or partial) or the last name of a party and click the "Search" button.
6. From the Search Results, click on the Case Number into which you want to submit a filing.

*Note: If you expect to e-file additional documents in the case, you may want to add it as a Favorite for future filings by clicking on the Add to Favorites link in the upper-right corner of the Case Details page. The case will appear on your Favorites page, which is accessed by clicking the link in the left navigation frame.

7. On the **Case Details** page, review the "Case Contacts" listed on the middle of the page.
 - a. If the filing attorney is not listed as a Case Contact, click the "Add Attorney" link and select from the list of registered attorneys in your firm to add the filing attorney to the case.
 - b. Confirm that everyone to be e-served is listed as a Case Contact.
 - i. If opposing counsel is not listed, click the "Add Opposing Counsel" link to search for attorneys who have registered with TrueFiling. From the Search Results, select the checkboxes of the attorneys who are to be added as Case Contacts in the case.
 - ii. If you do not find opposing counsel using the "Add Opposing Counsel" link, you must serve them by mail or in person. You will have an opportunity to record mail or personal service by using the "Add Service Recipient" link in step 8 below.
 - c. Click the "Create New Bundle" button.
8. On the Create New Bundle page, confirm that the Service Recipient information is correct. To include a record of mail or personal service on the TrueFiling-generated proof of service, click the Add Service Recipient link and enter the required information. Otherwise, you must upload a proof of service regarding service by mail or in person. See "Overview of Service on TrueFiling," below, for more information on service.

9. On the **Bundle Details** page:
 - a. label and attach your primary filing.
 - b. select the "Add Connected Documents" link at the bottom of the screen to add connected document(s) such as exhibits;
 - b. review/update the payment information, as necessary; and
 - c. click the "Submit" button to submit the bundle.
-

Overview of Service in TrueFiling

- A. Case contacts are the only means for e-service via TrueFiling. When a filer submits a bundle in a case, all existing Case Contacts for that case are listed as Service Recipients who may be e-served.

Case Contacts are attorneys, support staff, and self-represented filers who have been added to a case.

An attorney may be added to a case as a Case Contact:

- a. by the attorney;
 - b. by a contact or attorney from the attorney's firm; or
 - c. by a filer using the "Add Opposing Counsel" search of attorneys registered in TrueFiling.
- B. An attorney or self-represented filer who has not yet registered in TrueFiling (and therefore cannot be added as a Case Contact) cannot be e-served via TrueFiling. A filer must serve such attorneys or self-represented filers by mail or in person. The filer may record mail or personal service by using the "Add Service Recipient" link. This results in the TrueFiling-generated Proof of Service showing both those who were e-served via TrueFiling and those who were served by mail or in person. Alternatively, the filer may upload a proof of service regarding service by mail or in person.

For technical assistance using TrueFiling, call ImageSoft Technical Support at (855) 959-8868 or send an email to support@truefiling.com.

Michigan Supreme Court and Court of Appeals

TrueFiling –Initiating a Case



1. Log in to [TrueFiling.com](https://www.truefiling.com).
2. Click the **eFile** link in the left navigation frame.
3. Select "Initiate a new case."
4. On the resulting page, select the appropriate court, form of initiation and filing attorney and click the "Create" button.
5. A page will open corresponding to the specific type of case initiation selected.
 - a. Enter information in all the required fields, and browse for and attach the case initiating document.
 - b. Click the "Finish" button to upload the document.
6. On the **Bundle Details** page:
 - a. select the "Add Connected Documents" link at the bottom of the screen to add connected document(s) such as exhibits;
 - b. click on the Case Number ("TEMP-") to open the Case Details page.

Bundle Details

Case Initiation for TEMP-BYMR8W3M

Case Title	PEOPLE OF MI V CRAIG HAMILTON
Case Number	TEMP-BYMR8W3M
Court	MI Test Court of Appeals
Filing Attorney	Kathy Donovan (88888)
Client Matter Number	(none)

7. On the **Case Details** page, add Case Contacts:
 - a. add any additional attorneys or contacts from the filer's firm;
 - b. click the "Add Opposing Counsel" link to search for opposing counsel who have registered with TrueFiling. If opposing counsel's name does not appear in the search results, you must serve them by mail or in person. You will need to indicate mail or personal service by using the "Add Service Recipient" link in step 8 below.
 - c. click on "Case Initiation for TEMP-" to return to the Bundle Details page.

PEOPLE OF MI V CRAIG HAMILTON

TEMP-BYMR8W3M
MI Test Court of Appeals

Information: The following bundles have not been submitted to the court yet.

Case Initiation for TEMP-BYMR8W3M	Kathy Donovan (88888)	Not Submitted	
Application	Application	In Progress	\$375.00

8. Click the "Edit Service Recipients / Bundle Properties" link and confirm that all information is correct. To include a record of mail or personal service on the TrueFiling-generated proof of service, click the Add Service Recipient link and enter the required information. Otherwise, you must upload a proof of service regarding service by mail or in person. See "Overview of Service on TrueFiling," below, for more information on service.
 9. On the **Bundle Details** page:
 - a. review/update the payment information, as necessary;
 - b. click the "Submit" button to submit the bundle.
-

Overview of Service in TrueFiling

- A. Case Contacts are the only means for e-service via TrueFiling. When a filer submits a bundle in a case, all existing Case Contacts for that case are listed as Service Recipients who may be e-served.

Case Contacts are attorneys, contacts, and self-represented filers who have been added to a case.

An attorney may be added to a case as a Case Contact:

- a. by the attorney;
 - b. by a contact or attorney from the attorney's firm; or
 - c. by a filer using the "Add Opposing Counsel" search of attorneys registered in TrueFiling.
- B. An attorney or self-represented filer who has not yet registered in TrueFiling (and therefore cannot be added as a Case Contact) cannot be e-served via TrueFiling. A filer must serve such attorneys or self-represented filers by mail or in person. The filer may record mail or personal service by using the "Add Service Recipient" link. This results in the TrueFiling-generated Proof of Service showing both those who were e-served via TrueFiling and those who were served by mail or in person. Alternatively, the filer may upload a proof of service regarding service by mail or in person.

For technical assistance using TrueFiling, call ImageSoft Technical Support at (855) 959-8868 or send an email to support@truefiling.com.