

**CD-ROM: BRIEFING OF THE FUTURE**

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L.J., Winter 1999, at 375; *The New Federal Rules of Appellate Procedure*, THE APPELLATE  
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*Litigation Management Plans: Watch out, Something might be Gaining on You*  
(Texas Insurance, Seminar, Spring 2000)  
  
*Case Summary Update*, Houston Bar Association Appellate Practice Section  
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*Case Summary Update*, Houston Bar Association Appellate Practice Section  
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*Litigation Management Plans: Watch Out, Something Might Be Gaining on  
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## CD-ROM: BRIEFING OF THE FUTURE

### I. Introduction to CD-ROM Briefs

A CD-ROM brief is an electronic version of a paper brief stored on a compact disc with read only memory. The CD-ROM contains the briefs, authorities cited in the briefs, and the entire appellate record. It may be viewed without the necessity of any special programs or equipment other than standard computer equipment with a CD-ROM drive. A brief on CD-ROM will look identical to the original paper brief on the computer screen or if printed from the CD-ROM. Where the CD-ROM differs dramatically from the paper brief is the ability to hyperlink all the record and case citations, making the access to that information much easier.

Since the first CD-ROM brief filing in 1997, the use of CD-ROM briefs is becoming more pervasive and their use should continue to rise in the coming years. Recent high profile appeals using CD-ROM briefs include Microsoft's antitrust litigation in the United States Court of Appeals for the District of Columbia Circuit and the Oklahoma City bombing trial in the United States Court of Appeals for the Tenth Circuit. The United States Court of Appeals for the Eleventh Circuit has also used CD-ROM briefs in both the Bush Election Recount and the Elian Gonzalez cases. Additionally, advancements in technology have driven down the cost of preparing CD-ROM briefs. Therefore, even those cases where the damages in issue are relatively low are now good candidates for CD-ROM briefs, given the advantages CD-ROM briefs offer to the court and parties.

### II. Capabilities of CD-ROM Briefs

The CD-ROM brief contains hyperlinks throughout the brief that are connected to the complete record and the legal authorities. This allows the user of the CD-ROM to instantly jump to specific documents or authorities.

The use of hyperlinking eases access to the record and authorities. For example, the reader of the CD-ROM could read on the computer screen a proposition followed by case authority. To review the authority, the reader need only double-click on the citation with the mouse, which then pulls up that authority. The reader can review the authority or print it out. When finished reviewing the authority, the CD-ROM user can "backtrack" to the point in the brief where the reader first examined the proposition

and continue reviewing the brief.

A CD-ROM brief can also contain secondary links. Secondary links are additional hyperlinks contained within the cited material. For example, if the brief cites to testimony of a witness, the reader can hyperlink to the particular testimony. If within that testimony the witness is referring to an exhibit, a secondary link can be added to the exhibit so that the reader can click on the secondary link in the reporter's record testimony and go directly to the exhibit about which the witness is testifying.

Another capability of the CD-ROM brief is display of video and audio testimony. In a particular appeal, there might be critical testimony from a video deposition that was offered at trial. Rather than just reading what the deponent said, with a CD-ROM the user can click on the hyperlink and pull up the actual video of the individual. Further, a case might have a particularly relevant video as an exhibit, *e.g.*, video tape of the accident at issue in the case or a video tape created by an expert. The court would be able to watch the video without having to find a video player and television to watch the video tape.

Finally, the CD-ROM has a tool bar that has useful items to annotate the CD-ROM brief. For example, the reader can highlight portions of the electronic brief with a highlighter or add notes to portions of the CD-ROM brief. The reader has the ability to print and review just the highlights or notes or print a copy of the brief with the user's highlights or notes.

### III. Data Storage on a CD-ROM

The CD-ROM disc, with a four-inch diameter, has the capacity to store up to 80,000 images of non-electronic, *i.e.*, scanned, documents or 150,000 pages of electronic text, such as briefing and the reporter's record, if electronic. This storage capacity allows the briefs, tens of thousands of pages of the clerk's record, reporter's record, exhibits (including video or audio), and authorities cited in the briefs to be placed on a single CD-ROM disc.

To place the clerk's record and exhibits on a CD-ROM, the items are scanned and placed on the CD-ROM. The reporter's record will usually not have to be scanned in order to be placed on the CD-ROM. If the reporter provides the record on disc, the record can be electronically transferred to the CD-ROM. Finally, any video or audio exhibits would need to be electronically transferred to the CD-ROM.

These items are then hyperlinked to the brief where appropriate.

#### IV. Use of CD-ROM Briefs by Courts

The last few years have shown an increase in use of CD-ROM briefs, likely due to decreased expense in production combined with increased efficiency for the user. As a result, more courts are beginning to adopt rules and procedures relating to CD-ROM briefs.

##### A. Federal courts

Only four of the federal circuits have created specific rules for CD-ROM briefs.<sup>1</sup> The First, Seventh, Eleventh, and Federal Circuits have adopted local rules governing submission of CD-ROM briefs. (A summary of the rules is attached as Appendix A and the text of each rule is attached as Appendix B.) Additionally, although there are no formal rules, the United States Court of Appeals for the Second Circuit has released an administrative order that permits CD-ROM brief filings. (See Appendix B).

Each of these circuits requires that CD-ROM briefs be filed in addition to and not in lieu of paper briefs. The circuit rules also contain restrictions and requirements relating to the form and presentation of the CD-ROM brief including the number of copies to be submitted. See, e.g., 1ST CIR. R. 32.1. The content and viewing requirements of the CD-ROM are set forth in the rules.

Some courts, such as the Federal Circuit, have very specific timing requirements. For example, the Federal Circuit requires that "within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court a notice of intent to file a corresponding brief." FED. CIR. R. 32.1(c). As such, an appellate practitioner

that is contemplating filing a CD-ROM brief should make that decision as early as possible in the appeal. Once the decision is made, consult the local rules of that circuit to determine timing, deadlines, and requirements of the CD-ROM brief. Many other federal courts that do not have specific rules allowing the filing of CD-ROM briefs nevertheless accept CD-ROM briefs. Other courts that have accepted CD-ROM briefs are the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, the United States Court of Appeals for the Second Circuit, and the United States Court of Appeals for the District of Columbia Circuit.

##### B. State courts

Several state courts have or are considering rules allowing the filing of CD-ROM briefs. The New York Court of Appeals has already implemented detailed rules. See New York State Court of Appeals Official Court Rules § 500.1 (attached as Appendix B). In addition, the Washington Supreme Court is considering the adoption of a rule that would allow CD-ROM briefs. (The proposed rule for Washington is attached as Appendix C). Appellate courts in Texas as well as California, Delaware, Florida, and Wisconsin have also allowed the parties to file CD-ROM briefs even though no rules have been formally adopted. Indeed, one California appellate court has even invited the parties to file CD-ROM briefs. (A copy of the notice is attached as Appendix D).

The first CD-ROM brief filed in Texas was filed in the Fourth Court of Appeals in 1998. Joe Borders, *Groundbreaking CD-ROM Brief Illustrates Benefits and Pitfalls*, TEX. LAWYER, Mar. 30, 1998, at 4. Recently both the First Court of Appeals and Fourteenth Court of Appeals have each accepted a CD-ROM brief. Currently, all Texas courts of appeals have sufficient computer hardware to use CD-ROM briefs.

##### C. Filing CD-ROM briefs in courts that do not have rules for CD-ROM briefs

As a practical matter, a party wishing to submit a CD-ROM brief to a court that does not have a rule specifically allowing CD-ROM briefs should contact opposing counsel as early as possible to determine any objections to the filing. During this initial conference it is a good idea to address the issue of costs for preparing the CD-ROM briefs. Another

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<sup>1</sup> Rule 25(a)(3) of the Federal Rules of Appellate Procedure was revised in 1996 to allow the federal circuit courts of appeals to permit the filing of papers by electronic means. Since then, a number of circuits have adopted rules pertaining to electronic briefs. For example, the United States Court of Appeals for the Fifth Circuit requires parties to file copies of the original brief on diskette. See 5TH CIR. R. 31.1. This diskette is not permitted to contain any information other than a copy of the brief. *Id.*

issue to discuss with opposing counsel is the timing for filing.

The parties should file a motion for leave to file CD-ROM briefs. It is recommended that the parties choose one of the comprehensive rules concerning CD-ROM briefs, such as the United States Court of Appeals for the Federal Circuit rule, and then comply with that rule. (A form motion for leave to file a CD-ROM brief is attached as appendix E).

#### **D. Options if opposing counsel objects to the filing of a CD-ROM brief**

If one party wants to file a CD-ROM brief, but the other party contests the filing, the proponent of the CD-ROM brief has some choices to make. First, if filing of the brief is critical to the appeal and the other side is complaining of financial concerns associated with the creation of the CD-ROM briefs, the CD-ROM proponent can offer to pay the costs of preparing both parties' CD-ROM briefs. This is a rationale decision, especially if the two parties to the appeal are not on the same financial or sophistication level (*IBM v. Joe Smith*) and such a decision will help convince the court to grant the motion for leave.

If, however, the parties to the appeal are on the same financial footing, then the CD-ROM proponent might want to argue that the other side can forego having its brief placed on the CD-ROM if it wants to save the expense. Arguing that it is not fair for only one party to file a CD-ROM brief is not likely to succeed in preventing the submission to the court. In fact, the United States Court of Appeals for the Federal Circuit, addressing an almost identical argument, rejected complaints that having only one party's brief on CD-ROM would remove "procedural symmetry." *In re Berg*, 43 U.S.P.Q. 1703, 1703 (Fed. Cir. 1997). Commentators have recognized that the concern that filing an electronic brief creates an advantage is "unfounded because a CD-ROM brief contains no more than what has always been available to the appellate court." Joanne M. Snow, *CD-ROM Briefs: Must Today's High Tech Lawyers Wait Until the Playing Field is Level?*, 17 J. MARSHALL J. COMPUTER & INFO. L. 615, 632 (1999).<sup>2</sup>

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<sup>2</sup> There are few opinions concerning filing of CD-ROM briefs. However, there is some case law from courts that have examined the procedural aspects and equity concerns of filing a CD-ROM brief. *See Yukijo*,

#### **V. Advantages to Appellate Practitioners and the Courts**

The benefits of CD-ROM briefs to appellate practitioners and the courts are primarily related to the size of material that can be stored on a single CD-ROM. However, other advantages include help in preparing the brief, ability to search for specific arguments, and improving presentation of those arguments to the court.

#### **A. Convenient access to the record and authorities**

One obvious advantage of the CD-ROM brief is the amount of material that may be put on a single CD-ROM. The Washington Supreme Court recently commented on the usefulness of CD-ROM briefs in a large case:

The record in this case was vast, covering some 57,000 pages of Clerk's Papers and a Report of Proceedings of over 12,000 pages. The parties agreed to bear the cost of scanning the record into an electronic format. The parties also submitted their briefs in CD-ROM form with hyperlinks to the record and the cases cited. We express sincere appreciation to the parties for doing this, as it greatly enhanced our ability to handle this case. The savings to the Court in time-motion efforts alone enabled us to retrieve and examine relevant parts of the record with ease, and made the record far more accessible than it would have otherwise been. The materials in this case occupy about 50 banker's boxes. We note that there is no reason why parties in more routine appeals to this Court should not seriously consider submitting the record and briefs to us in a similar format.

*Aluminum Co. of Am. v. Aetna Cas. & Surety Co.*, 998 P.2d 856, 861 n.1 (Wash. 2000).

First, the reader has easy access to any portions of a large record. With the entire record on the CD-ROM, one can review arguments and then link to those portions of the record that correspond with that argument without having to physically locate the materials in the hard copy of the voluminous record.

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*Ltd. v. Shiro Watanabe*, 111 F.3d 883, 887 (Fed. Cir. 1997); *In re Berg*, 43 U.S.P.Q.2d 1703, 1703 (Fed. Cir. 1997).

This may be particularly helpful to judges who work on a case while out of the office, but who do not want to carry the record with them. This benefit also makes it very convenient to check the validity of the parties' citations to the record.

Second, the reader has easy access to large numbers of authorities. Lengthy or hard to find authorities are just a click away. If an authority is particularly helpful or persuasive, the reader can print that authority directly from the CD-ROM.

The primary beneficiary of easier access to the record and authorities may be the appellate courts. The court, when examining complex cases with large records, should be able to reduce the time in preparing for oral arguments and writing opinions. Having the record and authorities on CD-ROM also makes it quicker and easier for courts to verify the accuracy of citations.

### **B. Search capability**

The CD-ROM brief also contains search applications. It is possible to search for a word or phrase in the briefs, authorities, or record and have the search results appear on the screen in a list. The reader can then click on the list to review where this word or phrase was used.

### **C. Aid in presentation of arguments**

Another advantage of a CD-ROM brief is that it is a superior method of presentation to the court. With every reference hyperlinked, arguments may come across more clearly and powerfully. All of the supporting information for the arguments are instantly accessible.

The use of a CD-ROM brief may also allow the appellate practitioner to more easily intertwine arguments and supporting record and case law. The reader of an electronic brief can review a particular argument and then immediately access cases and record cites.

### **D. Help in drafting the briefs**

Another advantage to using a CD-ROM is in the preparation of the brief itself. As soon as it is prepared, the appellate record can be put on CD-ROM. This CD-ROM version of the record can then be used in preparing the brief. The search advantages and ease of accessing the record can then be used when preparing the brief. In a record of thousands of pages, the ability to search the record

and pull up very specific information could greatly reduce hours of reviewing testimony, exhibits, and pleadings. Similarly, the appellee, after reviewing the brief of appellant, can quickly check the veracity of the citations in the brief and more easily search the record for information that refutes the appellant's arguments.

## **VI. Costs of Preparing CD-ROM Briefs**

Due to the advancements in technology with respect to CD-ROM reproduction ("burning CDs") and scanning hardware, as well as ease of creating certain software and programs, the costs of creating CD-ROM briefs have decreased in the last five years. Currently, the options available to the appellate practitioner are to either use a professional CD-ROM publishing company or publish the CD-ROM in house. Either is a viable option with cost and quality being the two primary variables in deciding how to publish the CD-ROM brief.

### **A. CD-ROM briefs prepared by professional CD-ROM brief publishers**

The cost of electronic briefs varies depending primarily on the size of the project. For example, preparing a CD-ROM brief in a two-party appeal with a small appellate record and short briefs will be substantially less expensive than in a multi-party case with a large record and extensive briefing. One of the main costs when using a professional publisher to prepare the CD-ROM brief is the publishing fee. The publishing fee is the fee charged by the company in preparing the electronic brief itself and covers licensing fees for viewers programs and time incurred in setting up the program to create the hyperlinks.

The following is a list of factors that will affect the cost of a CD-ROM brief:

- Length of clerk's record
- Length of reporter's record
- Number and length of briefs
- Number of authorities cited in the briefs
- Number of hyperlinks in the brief
- Scheduling requirements
- Number of secondary links (from underlying document to underlying document)
- Number of color exhibits

The following are samples of costs associated with an electronic brief:

*Sample Large Appeal:*

Publishing fee for brief of appellant of 50 pages	\$ 8,000
Publishing fee for brief of appellee of 50 pages	8,000
Publishing fee for reply brief of appellant of 25 pages	5,000
Clerk's record of 5,000 pages at \$.25 per scan	1,250
150 cases, statutes, and other authorities at Westlaw rates estimated at \$7.50 per case	<u>1,125</u>
Estimated Total Project Cost	<u>\$23,375</u>

*Sample Small Appeal:*

Publishing fee for brief of appellant of 30 pages	\$ 4,500
Publishing fee for brief of appellee of 30 pages	4,500
Publishing fee for reply brief of appellant of 15 pages	1,000
Clerk's record of 400 pages at \$.25 per scan	100
40 cases, statutes, and other authorities at Westlaw rates estimated at \$7.50 per case	<u>300</u>
Estimated Total Project Cost	<u>\$10,400</u>

The above two samples are rough estimates of what it might cost to prepare a brief if a professional CD-ROM brief publishing company.

A party concerned with the costs for such a project should bear in mind that the estimated numbers are for the total project cost of preparing a CD-ROM containing all parties' briefs. In most cases, each party will pay for its own brief or briefs. There are many companies that prepare CD-ROM briefs, including RealLegal, Monarch Information Services, Trial Graphics, Special Counsel, Doar, and Record Press.

## **B. Preparing a CD-ROM brief in house**

It is also possible to prepare a CD-ROM brief without using a professional CD-ROM brief publisher. The primary hardware requirements for preparing a CD-ROM brief is a computer that has sufficient RAM (random access memory) and adequate programs or viewers to review the material that is linked within the brief. A Compact Disc Recordable (CD-R) drive, the device that records

information onto the CD, will also be needed to prepare a CD-ROM brief. Finally, document scanning equipment will be needed to scan the clerk's record and other hard-copy documents such as exhibits.

The process of converting a paper brief to a CD-ROM brief in house first requires converting the briefs to a portable document format (PDF) file from the word processing program. This is a relatively easy conversion. The clerk's record will also need to be scanned into a PDF file, which can be accomplished with standard scanning equipment. Finally, the reporter's record is electronically transferred to the CD-ROM.

Westlaw and Lexis documents can be similarly downloaded into a word processing program and then converted to a PDF file as well. Both Westlaw and Lexis allow their customers to download their cases when requested. Westlaw, however, requires a written request identifying the cases which are going to be downloaded.

The final step is to add the hyperlinks. This will require someone with proficient computer skills who has knowledge of linking documents in a PDF file. Once the initial CD-ROM is completed, the cost of making additional copies is nominal.

Aside from the hardware requirements and necessary programs, the biggest cost associated with the brief will be the manpower and skill level requisite to prepare the CD-ROM. The training involved in teaching someone in house to add the links and prepare such a brief is less than one might expect: "[B]eing able to produce a CD-ROM brief only requires basic word processing skills and as little as two weeks of training." See Joanne M. Snow, *CD-ROM Briefs: Must Today's High Tech Lawyers Wait Until the Playing Field is Level*, 17 J. MARSHALL COMPUTER & INFO. L. 615, 618 (1999).

## **VII. The Future of CD-ROM Briefing**

The future for CD-ROM briefs is bright given that lawyers always want to improve the persuasiveness of their arguments. CD-ROM briefs will permit more creativity in the presentation of arguments. As the courts (and appellate lawyers) become more familiar with CD-ROM briefs, it is likely that their use will increase. Decreases in the cost of CD-ROM brief preparation will also make it feasible to have CD-ROM briefs in almost any appeal.

The increased use of digital video disc (DVD) technology is the next logical improvement. DVD briefs will not only enhance the video and audio capabilities of current CD-ROM briefs, but also could greatly improve moving within documents. DVD also has greater storage capability. A DVD can store as much as seven times the amount of material (over a million pages of text) of a regular CD-ROM.

### **VIII. Conclusion**

With the proliferation of rules addressing CD-ROM submission of briefs to the courts, it seems clear that courts are ready to allow technology to increase judicial efficiency. This combination of ease of use and decreasing cost, along with the fact that CD-ROM briefs enhance appellate arguments, leaves one conclusion: CD-ROMs are the briefing of the future.

## APPENDIX A: CHART SUMMARIZING COURT RULES

The following chart summarizes the rules and requirements of those courts with rules allowing the filing of CD-ROM briefs:

	First Circuit	Seventh Circuit	Eleventh Circuit	Federal Circuit	New York
CD-ROM submission allowed as companion briefs	V	V	V	V	V
CD-ROM submission can be required					V
Motion required				V	
Motion denied only upon showing of substantial prejudice				V	
No prior notice of submission required if all parties represented by counsel, or if no counsel then	V		V		
by written consent of parties, or	V		V		V
by leave of court, or	V				
if submission contains briefs and appendices of all parties	V				
Time of filing CD-ROM brief					
At time of paper filing		V	V		
10 days after papers it accompanies	V				V
If joint filing, 14 days after final brief	V				
With joint appendix, 7 days after final brief				V	
File Format					
PDF	V	V	V		V
Other format approved by Clerk allowed			V		
HTML					

## APPENDIX B: RULES GOVERNING SUBMISSION OF ELECTRONIC BRIEFS

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

## Local Rule 32.1 CD-ROM Submission Allowed.

In addition to filing paper briefs and the disk, a party may file a companion CD-ROM, called a CD-ROM submission. Except as specifically noted, filing of a CD-ROM submission does not affect the other requirements of this Court's rules.

## (a) Conditions of Filing.

- (1) If all parties are represented by counsel, a party may file a CD-ROM submission without prior notice to other parties.
- (2) When a party is not represented by counsel, a CD-ROM submission may be filed
  - (A) by written consent of all parties;
  - (B) by leave of Court; or
  - (C) without leave or consent, if the submission includes all briefs and appendices filed by all parties to the appeal.

## (b) Joint Submission.

Any two or more parties may file a joint submission. Inasmuch as the Court will realize the greatest benefit by working from a single CD-ROM, adversarial as well as allied parties are encouraged to file jointly.

## (c) Time of Filing.

CD-ROM submissions shall be filed no later than ten days after the briefs or papers they accompany. Joint submissions by adversarial parties shall be filed no later than fourteen days after the final brief. Submissions under section (a)(2)(C) shall be filed no later than ten days after the final brief. This rule does not affect deadlines for paper briefs.

## (d) Form of Filing.

(1) Parties shall file exactly nine copies of each CD-ROM submission. For all en banc filings, including petitions for rehearing en banc, responses to such petitions, and any filings on the grant of en banc hearing, parties shall file exactly nineteen copies of each submission. Parties filing a joint submission need file only one set of nine or nineteen copies.

(2) Parties shall serve one copy of each submission on each party represented by separate counsel and on each pro se party, except for parties participating in the submission. Each submission shall be accompanied by a certificate indicating such service.

(3) Each copy of a submission shall be packaged in a standard CD-ROM container, commonly known as a "jewel box." If a submission comprises more than one CD-ROM, each copy shall be packaged in a jewel box that holds, as a unit, the number of CD-ROMs in the submission.

(4) Each submission shall be labeled with the short name of the case, the docket number on appeal, the date of filing, and the most recent papers filed with the submission (e.g., appellant's brief, appellee's brief, appellant's reply brief). Joint submissions shall be labeled with the foregoing information as well as with a list of the parties participating in the submission. This label shall appear on the top surface of the CD-ROM itself, on the outside front cover of the jewel box, and on the front and back spines of the jewel box. If it is impractical to include the full label, a location may include an abbreviated label, but shall in all circumstances include the docket number, short name, and date of filing.

(5) For submissions including more than one CD-ROM, the label on each CD-ROM shall also indicate the number of the CD-ROM and the total number of CD-ROMs in the submission, e.g., "CD-ROM 1 of 2."

(e) Contents of Submission.

(1) Each submission shall contain the following:

- (A) all briefs and motions filed in the current appeal by the party or parties to the submission, including addenda thereto;
- (B) the appendix or appendices to such briefs; and
- (C) any materials included in a prior submission that the filing party or parties made in the same appeal.

(2) Each submission may contain the following:

- (A) briefs and appendices of parties not participating in the submission;
- (B) briefs of amici curiae filing under FED. R. APP. P. 29;
- (C) the entire record on appeal or portions of the record;
- (D) materials cited by papers filed in the submission;
- (E) any documents included by any party in a prior submission.

(3) All documents contained in a submission shall be precise copies of the corresponding paper documents filed with the Court, including, but not limited to, identical pagination. To satisfy this requirement as well as that of section (f)(6), parties should convert their word-processing documents to PDF format before printing, from the PDF-format document, the final paper versions of their filings.

(4) Documents filed under section (e)(2)(D), for which there are no corresponding papers filed with this Court, shall include unambiguous notation of their pagination in appropriate publications.

(5) If the documents required by sections (e)(1)(A)-(e)(1)(B) do not exceed the capacity of a single CD-ROM, they shall be included on the first CD-ROM of any submission comprising multiple CD-ROMs.

(6) To comply with section (e)(1)(C), parties may use files copied from their own prior submissions; under section (e)(2)(E), parties may copy files from prior submissions made by other parties. All such copies shall be verbatim copies, shall have the same file names, and shall reside in the same directories as in the submissions from which they were copied.

(7) All papers requiring a signature shall be signed on paper and in the CD-ROM submission. Signatures may appear on a separate signature page, which shall not be included in the page limits required by these rules. Section (f)(6) does not apply to such signature pages.

(f) Format.

(1) CD-ROMs in a submission shall be formatted according to ISO-9660, Level 1. Official copies of ISO-9660 are available for purchase at <http://www.iso.ch/cate/d17505.html>.

(2) Files on the submission shall be in Adobe PDF format, version 1.2 or later. The current PDF specification is available for download under "Developer Resources" at <http://www.adobe.com/prodindex/acrobat/adobepdf.html>.

(3) Filenames shall end with a period, followed by "PDF".

(4) Except as required by section (e)(6), no file or directory in a submission shall have the same path as a file or directory in a prior submission.

(5) Except for the table of contents required by section (h), all files on the submission shall reside in directories other than the root directory.

(6) Whenever possible, documents shall be prepared through direct conversion from the word processor, not through scanning.

(7) Files shall be configured to allow selecting and printing. All fonts used in a file shall be embedded in that file. Files shall be optimized.

(g) Hyperlinks.

Parties may insert hyperlinks corresponding to citations made by papers contained in the submission. Each hyperlink shall link to the document and page referenced by the corresponding citation. Hyperlinks shall be platform-independent and shall use relative file specifications, as discussed in the PDF specification. Hyperlinks shall link only to documents on the same CD-ROM, and not to any other location, including, but not limited to, other CD-ROMs or the Internet.

(h) Table of Contents.

(1) Each CD-ROM shall contain a table of contents, which shall reside in its root directory. The table of contents shall be named "contents.pdf" unless this name has been used in a prior submission, in which case the end of "contents" shall be replaced with an incrementing number (e.g., "content1.PDF", "content2.PDF", "content14.PDF").

(2) The table of contents shall contain hyperlinks to the first page of each document on the CD-ROM, and may contain hyperlinks to pages within documents. The table of contents shall be well organized and each hyperlink within it shall clearly identify the document it references.

(i) Indication of filing.

Parties shall prominently indicate on their paper briefs their intention to file a CD-ROM submission. Papers to be included in a joint submission shall indicate the parties participating in the submission.

(j) Quotation of Copyrighted Materials.

Counsel are responsible for obtaining any permission needed to quote copyrighted materials. The text of opinions released by a court are not copyrighted materials; law review articles typically are.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## Circuit Rule 31. Filing of Briefs and Failure to Timely File Briefs

. . . .

## (e) Digital Versions.

(1) A digital version of each brief (including the appendix required by Circuit Rule 30(a) to (c)) must be furnished to the court at the time the paper brief is filed, unless counsel certifies that the material is not available electronically. The full contents of the brief (from cover through conclusion) must be furnished even if digital versions of some materials in the Rule 30 appendix are not available.

(2) The digital version must be furnished on floppy disk, on CD-ROM, or via the Internet. Detailed instructions appear on the court's web page [http:// www.ca7.uscourts.gov](http://www.ca7.uscourts.gov). The label of a disk, if one is used, must show the case name, docket number, and party on whose behalf the brief is presented.

(3) The electronic version must be in Portable Document Format (also known as PDF or Acrobat format). This format must be generated by printing to PDF from the original word processing file, so that the text of the digital brief may be searched and copied: PDF images created by scanning paper documents do not comply with this rule.

(4) One copy of the digital version must be furnished to each party separately represented by counsel.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT11th Cir. R. 31-5 Electronic Briefs.

In addition to and contemporaneous with the filing of any paper brief, any party or amicus curiae may provide the court with the same brief in electronic format provided there are no *pro se* parties in the appeal. In any appeal in which there are one or more *pro se* parties, electronic briefs are not authorized without the written consent of all parties. Unless otherwise approved in advance by the clerk in writing, all electronic briefs shall be in Adobe Acrobat® PDF file format. The time for serving and filing a brief is determined by service and filing of the paper brief, and is not affected in any way by providing electronic briefs. If corrections are required to be made to the paper brief, a party who has provided electronic briefs shall also provide corrected electronic briefs.

Electronic briefs may be provided in any of the following ways:

(a) IBM-formatted, 3½" floppy disk.

An electronic brief provided on floppy disk shall be enclosed in an appropriate holder and fastened securely to the last page of each copy of the paper brief filed with the court. Appendices need not be included in the electronic brief. Hypertext links to cases, statutes and other reference materials which are publicly available on the Internet are authorized. Each disk shall be labeled with the following information: appeal docket number, short style of the appeal, type of brief (e.g., appellant's, appellee's, appellant's reply, etc., with or without hypertext links), and the document format (PDF unless otherwise approved in advance by the clerk in writing). One copy of such disk shall also be served on counsel for each party separately represented as well as on each *pro se* party. The certificate of service shall indicate service of the brief in both paper and electronic formats.

(b) ISO Mode 1 (yellow book) CD-ROM.

An electronic brief provided on CD-ROM shall be enclosed in an appropriate holder and fastened securely to the last page of each copy of the paper brief filed with the court. Hypertext links to cases, statutes and other reference materials which are publicly available on the Internet are authorized. In addition, documents referenced by hypertext links also may be included in the CD-ROM itself provided the materials are in PDF format and there is no infringement of copyrighted works. Each CD-ROM shall be labeled with the following information: appeal docket number, short style of the appeal, type of brief (e.g., appellant's, appellee's, appellant's reply, etc., with or without hypertext links), and the document format (PDF unless otherwise approved in advance by the clerk in writing). One copy of such CD-ROM shall also be served on counsel for each party separately as well as on each *pro se* party. The certificate of service shall indicate service of the brief in both paper and electronic formats.

(c) Internet Upload.

An electronic brief may be provided by uploading the brief to the court's Web site at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). Prior to uploading the first brief, the uploading party shall obtain an upload account name and password from the clerk. This account name and password may be used for providing future electronic briefs only. [Filing of emergency motions electronically always requires advance permission from the clerk. See 11th Cir. R. 25-3.] Hypertext links to cases, statutes and other reference materials which are publicly available on the Internet are authorized. As part of the upload process, the uploading party must provide the appeal docket number, short style of the appeal, type of brief (e.g., appellant's, appellee's, appellant's reply, etc., with or without hypertext links), and the document format (PDF) unless otherwise approved in advance by the clerk in writing). Because the documents are publicly available on the Internet to all parties, the electronic brief need not be served on counsel or *pro se* parties in the appeal. The certificate of service shall indicate service of the brief in paper format and shall also indicate the date and time that the Internet upload was completed.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## Rule 32: Forms of Briefs, Appendices, and Other Papers

. . . .

## (e) Filing Corresponding Brief on Compact Disc.

In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc—read only memory (CD-ROM), subject to the following requirements.

## (1) Consent; Motion.

Within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court a notice of intent to file a corresponding brief. If any other party does not consent, the party seeking to file a corresponding brief must promptly file a motion for leave with the court. If no response is filed within 7 days, the clerk will grant the motion for leave to file a corresponding brief. The court will deny a motion for leave to file a corresponding brief only if an opposing party demonstrates substantial prejudice.

## (2) Content.

A corresponding brief must be identical in content to the paper brief. A corresponding brief may provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles, and similar authorities. A corresponding brief must be self-contained and static.

## (3) Statement Concerning Instructions and Viruses.

A corresponding brief must be accompanied by a statement, preferably within or attached to the packaging, that:

(A) sets forth the instructions for viewing the brief and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the brief is virus-free.

## (4) Time for Filing.

A corresponding brief, if any, must be filed no later than the time for filing the joint appendix.

## (5) Filing and Service.

Except for the time of filing, a corresponding brief must be filed and served in the same manner and the same number of copies as the paper brief.

## (6) Single CD-ROM.

All parties to an appeal who intend to file a corresponding CD-ROM brief are encouraged to cooperate in placing all such briefs on a single CD-ROM.

## (7) Table of Contents.

Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix under Federal Rule of Appellate Procedure 30 and Federal Circuit Rule 30 and to all other parts of the record contained on the corresponding brief.

## (8) Labeling.

A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM

NEW YORK STATE COURT OF APPEALS OFFICIAL COURT RULES

## NOTICE TO THE BAR

By orders dated June 28, 1999, effective July 21, 1999 or as soon thereafter as Judiciary Law § 52 is complied with, the Court of Appeals amended section 500.1 of its Rules of Practice and section 510.1 of its Rules in Capital Cases. The amendments permit, by stipulation of the parties, or require, by order granted on motion of a party or by the Court *sua sponte*, the filing and service of companion records, appendices and briefs on Compact Disk—Read Only Memory (CD-ROM), in addition to the required number of printed paper copies.

The text of the sections, as amended, is attached. The Court's Rules and other information may be obtained from the Court of Appeals Computerized Bulletin Board at (518) 426-2220 (modem line; set parameters to N-8-1), and from the United Court System web site at <http://www.courts.state.ny.us>.

## Amendment to Rules of Practice Section 500.1 Papers

500.1 Papers. (a) All records, briefs, appendices, motion papers and jurisdictional statements, whether printed, typewritten, or reproduced in other form (no carbon copies) shall be on white paper, 11 by 8½ inches, with margins conforming to CPLR 5529, and bound or securely stapled on the left edge. Pages shall be numbered consecutively and each document filed shall contain an index or table of contents. Any brief, motion papers or jurisdictional statement filed by or on behalf of a corporation shall list all parents, subsidiaries and affiliates of the corporation. Where New York authorities are cited in any paper, New York Official Law Report citations must be included.

## (b) Companion filings on interactive compact disk, read-only memory (CD-ROM).

(1) (a) The submission of briefs by parties and *amici curiae*, and of records or appendices, on interactive compact disk, read-only memo (CD-ROM) as companions to the requisite number of printed briefs, records and appendices filed and served in accordance with the Rules of Practice is allowed and encouraged provided that all parties have consented to the filing of the companion CD-ROM brief and record of appendix.

(b) The Court may, by order on motion of any party or *sua sponte*, require such filing.

(2) The companion CD-ROM brief, record or appendix must comply with the current technical specifications available from the clerk's office.

(3) The companion CD-ROM brief, record or appendix must be identical in content and format (including page numbering) to the printed version, except that each also may provide electronic links (hyperlinks) to the complete text of any authorities cited therein, and to any document or other material constituting the record on appeal.

(4) No fewer than 10 disks or sets of disks must be filed, with (a) proof of service of at least one disk or set on each other party and *amicus curiae* and (b) a copy of either the parties' stipulation or the Court's order permitting or requesting such filing.

(5) Appellant's filing and respondent's filing, or a joint filing by appellant and respondent, is due 10 days after the final due date for filing appellant's reply brief (see section 500.5[f] of this Part).

(6) Each *amicus curiae's* filing is due 10 days after the due date for filing the respective amicus brief.

## Amendment to Rules in Capital Cases Section 510.1 Papers

510.1 Papers. (a) All records, briefs, appendices, motion papers and other required submissions, whether printed, typewritten, or reproduced in other form (no carbon copies), shall be bound or securely fastened on the left edge, and shall have a fluorescent green sticker on the spine. Pages shall be consecutively numbered and each document filed shall contain an index or table of contents. Records and appendices shall be divided into volumes not to exceed two inches in thickness. Where New York authorities are cited in any paper, New York Official Law Report citations must be included.

(b) Companion filings on interactive compact disk, read-only memory (CD-ROM).

(1) (a) The submission of briefs by parties and *amici curiae*, and of records or appendices, on interactive compact disk, read-only memory (CD-ROM) as companions to the requisite number of printed briefs, records and appendices filed and served in accordance with the Rules of the Court of Appeals in Capital Cases is allowed and encouraged, provided that all parties have consented to the filing of the companion CD-ROM brief and record or appendix.

(b) The Court may, by order on motion of any party or *sua sponte*, require such filing.

(2) The companion CD-ROM brief, record or appendix must comply with the current technical specifications available from the clerk's office and must in a box or boxes with a green fluorescent sticker on the spine.

(3) The companion CD-ROM brief, record or appendix must be identical in content and format (including page numbering) to the printed version, except that each also may provide electronic links (hyperlinks) to the complete text of any authorities cited therein, and to any document or other material constituting the record on appeal.

(4) No fewer than 10 disks or sets of disks must be filed, with (a) proof of service of at least one disk or set on each other party and *amicus curiae* and (b) a copy of either the parties' stipulation or the Court's order permitting or requesting such filing.

(5) Appellant's filing and respondent's filing, or a joint filing by appellant and respondent, is due 10 days after the final due date for filing appellant's reply brief (see section 510.8[b] of this Part).

(6) Each *amicus curiae*'s filing is due 10 days after the due date for filing the respective amicus brief.

CD-ROM TECHNICAL GUIDELINES FOR SUBMISSION OF CD-ROM BRIEFS  
TO THE 2ND CIRCUIT COURT OF APPEALS

By Judicial Order, the 2nd Circuit Court of Appeals has authorized the Clerk's Office to begin accepting CD-ROM briefs.

In order to insure that the briefs are readable by the court, we ask that you follow the guidelines set forth below.

Format of Brief - Currently the Court will accept briefs that follow one of the following standards:

- HTML 3.0
- PDF - This is a format published by Adobe Acrobat. For technical information about this format please visit [www.adobe.com](http://www.adobe.com).

Web Browser - Netscape 3.x.

Graphics - All embedded graphics be either JPEG or GIF. Both are easily read by standard web browsers and are considered industry standards.

Video - Embedded video should be saved in the MPEG format.

Audio - All Audio files must be in the WAV format.

Target CD-ROM Speed - 2X.

CD-ROM Format - ISO 9660 Level 2. Joliet extensions permitted.

**IMPORTANT NOTES FOR CREATING THE CD-ROM:**

- While the court's browser is Netscape 3.x, the brief should be readable by all major web browsers should you use HTML.
- The electronic brief, other than the inclusion of hyperlinks, must be the same as the paper brief.
- Bootable CD-ROMS will not be accepted.
- Formats other than listed above will be rejected by the Court.

Glossary

Web Browser - This is a program designed to read HTML files and display them as text and graphics on your screen. Currently, the two most popular browsers are Netscape Navigator and Microsoft Internet Explorer. The court is currently licensed to use Netscape Navigator.

All pages that are displayed are read-only. A user can not modify the information on the screen.

Browser software can also be enhanced by the use of plug-ins. Plug-ins are small programs that are designed to display a certain type or format or may be used for a specialized purpose. Plug-ins run within the browser program.

HTML - HTML stands for Hypertext Markup Language. It is a simple programming language based on the use of tags to give attributes to embedded text and graphics. These tags are then read by a Browser program that interprets the tags and displays the result on the users screen. For instance if you wanted to bold a piece of text. you would use <B>insert text here </B>. The current revision of this language is 3.0. Each revision adds new functionality to the language such as tables, split screens and other formatting options. Browser programs are also updated to interpret newer revisions or HTML. In addition to the basic HTML 3.0 language, there are extensions to the language that are Browser specific. For instance, there may be a special tag that will only be read by Microsoft Internet Explorer but not by Netscape Navigator.

Hyperlinks - By clicking on a hyperlink the user is led to another document that is pertinent to the referencing page. For instance, when quoting a citation, the user can click on a hyperlink and be presented with the text

of the citation.

PDF - Portable Document Format. Allows a user to distribute a document electronically by keeping the look and feel of the original document. PDF files are compact and can be viewed by anyone with a free Acrobat Reader. These documents are also read-only in nature and can not be altered.

Graphics - JPEG, (pronounced "jay-peg"), stands for Joint Photographic Experts Group. JPEG was designed for compressing either full-color or gray-scale images of natural, real-world scenes. It works well on photographs, naturalistic artwork, and similar material but not so well on lettering, simple cartoons or line drawings. GIF, a format made popular by CompuServe is better suited to line drawings and lettering. Both formats are supported natively by web browsers and do not require additional software.

Video - MPEG, (pronounced "m-peg"), is a software compression and decompression standard for distributing full motion video. While it rhymes with JPEG, in actuality, the two have nothing in common. While there are several video standards available, MPEG is the most widely used and is supported by Windows 95.

Audio - The WAV format which was popularized by Creative Labs, the manufacturers of the SoundBlaster Audio card is considered an audio standard. WAV files are supported natively by Windows 95 and provide CD quality audio depending upon sound card capabilities. Much like the audio and graphics standards, the WAV standard provides a way to compress an audio signal deliver it to a target audience, with the assurance that it will decompress exactly as recorded.

CD-ROM Speed - CD-ROM speed governs the rate at which data can be transferred from the target disk to the computer. Each increment provides a step up in performance. The lowest speed that is currently used is 2X. Newer systems commonly come with 16X or greater drives. While CD-ROM drives are increasing in speed every couple of months. CD-ROM recorders are generally restricted to generating CD-ROM's reliability at speeds no greater than 4X. In order to facilitate stability and readability of briefs, CD-ROMS should be created at 2X speed.

CD-ROM Format - In the early days of CD-ROM publishing, each developer used a different, incompatible file format. The High Sierra Group, which was an ad hoc committee of CD-ROM developers, created the High Sierra Format which in turn became ISO 9660. ISO 9660 defines the logical file format for a published CD-ROM. The file format can be either subdivided into three levels. Level one requires that each file be recorded as a continuous stream of data with a naming convention similar to the DOS S.3 format. Level two retains the streaming requirements of level one but relaxes the naming conventions. Level three has no requirements and leaves it up to each individual vendor to implement a publishing convention.

In addition to the ISO 9660 specifications, the High Sierra Group created three extensions known as Joliet, Rock Ridge Interchange Protocol and Apple extensions. These extensions were created to deal with Microsoft Windows 95, Unix and its variants and the Apple Operating System.

#### CD-ROM Brief Security

The CD-ROM format lends itself to being very secure. CD-ROMs by nature are a read-only medium. Because of this, changes to the original document can not be saved to the CD-ROM. Since the ISO 9660 specification calls for a CD-ROM disk to create sequentially, the only way to alter a CD-ROM would be to publish a new one. In addition, the newly fabricated CD-ROM would have to replace the copy of the one submitted to the court in order to complete the alteration of the original document. Since we are also requiring the party to continue to submit a written brief, we still have a reference point in the event we suspect an alteration of the CD-ROM.

While nothing is 100% secure, it would require someone to go to great lengths to alter a brief and would probably require help from a court employee to make the switch.

APPENDIX: ADMINISTRATIVE ORDER DATED JANUARY 12, 1999 OF THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

## APPENDIX C: PROPOSED WASHINGTON STATE RULE

RULE OF APPELLATE PROCEDURE 10.9 [PROPOSED NEW RULE]  
CORRESPONDING BRIEFS ON CD-ROM

## (a) Filing Corresponding Briefs on Compact Disc.

The submission of briefs and appendices on compact disc read-only memory (CD-ROM), referred to in this rule as corresponding briefs, filed as companions to printed briefs is allowed and encouraged, provided that the Supreme Court and each Division of the Court of Appeals may by general order vary any of the conditions of this Rule, and may prohibit the filing of corresponding briefs.

## (b) Conditions of filing.

A party may file corresponding briefs upon 14 days notice to all other parties and the court, subject to the following requirements:

(1) *Content.* A CD-ROM with corresponding briefs must contain all appellate briefs filed by all parties. Corresponding briefs must be identical in content to the paper briefs. Corresponding briefs may provide hypertext links to the report of proceedings and clerks papers and to materials cited in the briefs such as cases, statutes, treatises, law review articles, and similar authorities. If any briefs are hyperlinked, all briefs must be similarly hyperlinked by the submitting party.

(2) *Format.* Corresponding briefs must come fully equipped with their own viewing program; or, if the disk does not contain its own viewing program, the briefs must be viewable within a version of a program such as Adobe Acrobat, Microsoft Word Viewer, or WordPerfect that is downloadable from the Internet at no cost to the user.

(3) *Statement Concerning Instructions and Viruses.* Corresponding briefs must be accompanied by a statement, preferably within or attached to the packaging, that

- (A) sets forth the instructions for viewing the briefs and the minimum equipment required for viewing; and
- (B) verifies the absence of computer viruses and lists the software used to ensure that the briefs are virus-free.

## (c) Joint Submission.

Upon receiving notice of intent to file corresponding briefs, within 14 days any other party may file notice of intent to join in the submission. When one or more parties join in the submission, the parties shall cooperate in preparing a joint submission. Absent agreement to the contrary, each party shall arrange for preparation of its own briefs for the joint submission and the party first giving notice shall create the CD-ROM.

## (d) Non-Joint Submission.

No party is required to prepare a corresponding brief. A party shall cooperate in good faith in the preparation of corresponding briefs by expeditiously providing the submitting party with the party's brief or briefs in electronic format, if available.

## (e) Time of Filing.

Corresponding briefs must be filed no later than 60 days after the final reply brief. This rule does not affect deadlines for paper briefs. Additional time may be granted for completion of the corresponding briefs.

## (f) Costs.

The costs incurred in preparing and filing corresponding briefs are not recoverable costs under Title 14 or as attorney fees under Title 18 of these Rules.

APPENDIX D: NOTICE FROM CALIFORNIA COURT OF APPEALS  
CALIFORNIA COURT OF APPEAL  
SECOND APPELLATE DISTRICT



INVITATION TO FILE ELECTRONIC RECORDS AND BRIEFS IN THE SECOND DISTRICT  
COURT OF APPEAL

The Second District Court of Appeal invites and encourages the voluntary filing of electronic records ("e-records") and electronic briefs ("e-briefs"). This new pilot program is designed to assist the Court in evaluating both the usefulness of electronic media and the appropriate procedures for their acceptance.

Ideally, the parties will file a single CD-ROM containing (a) the reporter's transcript (searchable), (b) a joint appendix in lieu of a clerk's transcript, including images of all exhibits (searchable), (c) copies of all cited authorities, and (d) all briefs, hyperlinked to each other, to the record, and to the full text of all cited authorities. So, for example, a citation to the record would be hyperlinked to the reporters' transcript or to the appendix-and thus would be only a mouse-click away from the person reviewing the brief on a computer screen.

Counsel who believe that an e-record or e-brief is appropriate for an appeal should confer as early as possible with opposing counsel and should cooperate in preparing the record or brief. E-records and e-briefs should be filed as early as possible, and in any event no later than 15 days after the last paper brief is filed.

If all parties agree, they must submit a written proposal describing what they propose to file to the Clerk's Office. The Court will review the proposal and respond immediately.

If it approves the proposal, the Court will set time frames and will work with counsel to minimize delay and maximize the effectiveness of the e-filing.

**PLEASE NOTE: E-FILINGS ARE IN ADDITION TO THE NORMAL PAPER COPIES AND *MUST MEET THE FOLLOWING REQUIREMENTS:***

- E-records and e-briefs must be contained on Windows-compatible CD ROMs.
- E-records and e-briefs must be identical in content to their paper counterparts.
- E-records and e-briefs must either come with their own viewing programs or be viewable using (a) a program such as Adobe Acrobat that is downloadable from the Internet at no cost to the user, (b) both Internet Explorer and Netscape Navigator or (c) Microsoft Word
- E-records and e-briefs must be free of computer viruses.
- E-records and e-briefs must be accompanied by a statement, preferably within or attached to the packaging, that (a) provides the instructions for viewing the record or brief and the minimum equipment required for doing so and (b) verifies the absence of computer viruses and describes the software used to ensure that they are virus-free.
- Five copies of each e-brief and e-record, all in the required form, must be filed.

Several commercial vendors prepare e-briefs, and they can provide exemplars and cost estimates. It is also possible to prepare e-briefs in-house using Adobe Acrobat, Word, WordPerfect, or other commercially available software.

For this pilot project, the Court will not require any particular structure or format for electronic records or briefs and will accept anything to which counsel stipulate as long as it meets the minimum requirements stated above-but counsel should recognize that the usefulness of e-records and e-briefs to the Court will depend heavily on their completeness and ease of use, and on how early they are filed.

The Court particularly encourages counsel to cooperate in filing a single CD-ROM containing all briefs and the entire record (including exhibits) and to agree to share the cost. Counsel should not assume that the cost of preparation will be recoverable.

APPENDIX E: MOTION FOR LEAVE TO FILE CORRESPONDING CD-ROM BRIEFS

NO. \_\_\_\_\_

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IN THE

COURT OF APPEALS FOR THE

\_\_\_\_\_ DISTRICT OF TEXAS

\_\_\_\_\_, TEXAS

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*Appellant,*

V.

*Appellee.*

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MOTION FOR LEAVE TO FILE  
CORRESPONDING CD-ROM BRIEFS

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Appellant files its Motion for Leave to File Corresponding Briefs on Compact Disc.

This is an appeal from a trial court's judgment [describe judgment]. The underlying case involves, inter alia, a dispute over [describe case].

The [trial/case/etc.] lasted for \_\_\_ weeks and consisted of approximately \_\_\_ days of testimony and \_\_\_ exhibits. As such, the clerk's record contains over \_\_\_ pages and the first supplemental clerk's record contains approximately \_\_\_ pages. Additionally, a second supplemental clerk's record is being prepared.

On \_\_\_\_\_, 2002, Appellant filed its brief citing to \_\_\_ different cases, statutes, and rules. On \_\_\_\_\_, 2002, Appellee filed its brief citing to \_\_\_ different cases, statutes, and other authorities. Each brief is 50 pages in length.

Appellant files this motion for leave to file corresponding electronic versions of its Brief of Appellant and Reply Brief in CD-ROM (compact disc-read only memory) format to assist the court in reviewing the merits of the arguments and to assist with the voluminous record, briefing, and case law. The corresponding electronic briefs will be identical in content to the paper briefs filed by Appellant and will be filed in addition to the paper briefs. The entire record on appeal, the Brief of Appellant, the Reply Brief, and all authorities cited will be contained on one CD-ROM. If Appellee so chooses, it could also include an electronic version of its Brief for Appellee and authorities on the same CD-ROM. Appellant agrees to cooperate with Appellee in placing its brief and Appellant's briefs on a single CD-ROM.

The corresponding electronic briefs will contain hypertext links to the complete record on appeal and to other materials cited in the brief such as cases, statutes, treatises, law review articles, and other authorities. Therefore, the electronic briefs will enable the court to instantly access the thousands of documents in the record without the need to access the hard copy of the 100-plus

volumes of record.

In addition to hypertext links, an electronic brief provides other powerful and beneficial tools that will enhance the court's review of this case. For example, the electronic brief will include a tool bar similar to the on-screen tool bars typical of standard word processing programs. Using the tool bar, the reader of the electronic brief will be able to, among other things, conduct word searches of the entire document and move from the table of contents to the corresponding section of the brief instantaneously.

The electronic brief will be able to be viewed without the necessity of any special programs or equipment other than standard computer equipment with a CD-ROM reader. The CD-ROM will contain a user's guide with instructions on how to access the briefs, record, and other documents on the disc. (A sample CD-ROM containing electronic briefs is included with the original of this motion.)

Because corresponding electronic briefs are becoming more prevalent, various state and federal courts are adopting rules governing the format and standard of electronic briefs. One of the most comprehensive of such rules is the one adopted by the United States Court of Appeals for the Federal Circuit, Federal Circuit Rule 32(e). (A copy of Rule 32(e) is attached as exhibit A.) Appellant's corresponding electronic briefs will comply with Federal Circuit Rule 32(e).

If leave is granted, the corresponding electronic briefs will be filed no later than thirty days after Appellant's Reply Brief is filed. Appellant will file the original and 5 copies of the CD-ROM containing the corresponding electronic briefs, record, and other materials.

#### PRAYER

For these reasons, Appellant prays that this court grant Appellant leave to file a corresponding electronic version of its Brief of Appellant and Reply Brief on compact disc.