

Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
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November 13, 2015

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Dear Clerks and Appeals Court,

This is in response to your letter dated 11/2/2015 (6:01pm via email). A 10 day response would then be due on 11/13/2015, per the TRCP and TRAP Rules cited below.

This letter mainly addresses the timely filing issue dispute with the Appeals Clerk. It was NOT filed late. The due date was miscomputed by us AND the Appeals Clerk apparently, per the rules and discussion below.

It was with shock that a Motion requesting a simple bug be fixed so that document format rules would be followed by the Travis County District Clerk's Office, was rejected for not following format "length" rules for Appeals Court Motions. The reason the length was exceeded was because an all-out effort was made to make the Motion as easily readable as possible for the Judges, with referenced court orders/rules screenshots attached for easier reference. It was the attaching of these "easy reference exhibits", that also made us supposedly "late" at 13 minutes past midnight on a Friday night, Oct 30, becoming Oct 31 at midnight, electronically speaking. This technically becomes Nov 2, if the clerk/court wishes to give no 13 minute courteous leeway to an elderly, sick man, who with his wife's help, ran late due to technical problems while attempting to make an easier document for the court to read. But technically, the due date was Nov 2 as the discussion below explains in detail. It was submitted 3 days early it appears.

As for the length issue, we will gladly modify the length of the Motion to comply with Tex. R. App. P. 9.4(i)(3), as requested. We will also submit the requested "word count" certification, but will require time to figure out how to produce one, as the technical requirements far from simple, even for a software engineer with 35 years experience such as the Appellant's wife. Appellant's wife has had her own medical problems this week and has been at the doctor (see attached bill-Exhibit C), and has not been able to assist husband. This letter was started and intended to be submitted on Nov 6th, but medical issues took precedence. This is about to become a civil rights case for the disabled and elderly. It does not appear ADA is being followed by the courts.

As well, while we are fixing our cited format violation, we expect the Clerk's Record to be similarly rejected for format violations (descriptive bookmarks in multi-file pdf), with a 10 day deadline to be fixed. Prejudicial application of rules and court orders will be cited otherwise.

The Appeals Court "may" or "may not" tell the Appeals Clerk what the Supreme Court has ordered the Appeals Clerk "must" do. That does not change what the Appeals Clerk "MUST" do. The Appeals Clerk will be added to the Motion for Contempt/Writ of Mandamus if necessary.

Let it be noted, that using pdf bookmarks allows "speed-reading" of documents, making document length less of a problem issue. Note Appellant has been asked to navigate a 1200 page

document without descriptive bookmarks, not the meager 57 pages of the En Banc Motion, which includes bookmarks for the convenience of the court and other parties.

To make clear that the request is not just a frivolous application of rules, we have attached the “How to use pdf Bookmarks” tutorial (Exhibit A) from the rejected Motion for reference. Please make sure you are in Adobe Acrobat while reading this document, in order to utilize the provided descriptive bookmarks to assist in reading this document, the importance of the rule requiring them, and why the Texas Supreme Court said “**must**”:

TRAP RULES-2015 Appendices (see Authorities for links)

APPENDIX C

CLERK’S RECORD 1.1. Preparation of Electronic or Paper Clerk’s Record.

(i) If the clerk’s record is filed in electronic form, the clerk **must** use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins

3 Clerk’s issues addressed:

This letter addresses the following 3 issues brought up in the Appeal Clerk letter to Appellant dated 11/2/2015:

1) (a)	the due date of the En Banc Motion	(11/2),
1) (b)	when it was filed	(10/31 at 12:13am-Friday night at midnight (see Exhibit B-GreenFiling receipt), plus 13 minutes, = Nov 2 nd , Monday)
1) (c)	whether it was filed late	(No).

2) the rejection/format/length errors of Appellant’s En Banc Motion with Contempt Motion (2 motions split in half will mostly solve length violation per Motion)

3) Appeal’s Clerk has said Appellant must abide by format rules and yet ironically, has not similarly rejected the Clerk’s Record for format violations.

En Banc Motion timely filed

We had expected to file the Motion of 10/30/2015, and missed it only by 13 minutes due to technical difficulties, thereby receiving an electronic filing date of 10/31/2015.

Luckily, we miscomputed the due date specified on page 5 of the 10/31/2015 En Banc Motion, as follows, due to the Appeals Courts after 5pm email notice on 10/15/2015, gaining an extra day and then the weekend to 11/2/2015, per the authorities cited below:

1) Appeals Court Opinion received on Thursday, Oct 15 at 6:03pm.

By TRCP 501.4 (a) (4) service by email after 5pm recipient time is deemed received the next day. (see Authorities below). That makes the date of service, Friday, Oct 16.

Per TRAP 4.1, (quoted below), the date of service is not included in the time period allotted.

So counting the 15 days, we have:

- 1) 10/17-Sat, 2) 10/18-Sun, 3) 10/19-Mon, 4) 10/20-Tues, 5) 10/21-Wed,
- 6) 10/22-Thurs, 7) 10/23-Fri, 8) 10/24-Sat, 9) 10/25-Sun,
- 10) 10/26-Mon, 11) 10/27-Tues, 12) 10/28-Wed, 13) 10/29-Thurs,
- 14) 10/30-Fri, 15) 10/31-Sat, next business day, 11/1-Sun, 11/2-Mon.

En Banc 15 days in Table form:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
				10/15- email to recipient timestamped after 5pm	10/16- service default date- not counted in allotted time period	10/17-time period days begin counting-day 1
10/18 day2	10/19 day3	10/20 day4	10/21 day5	10/22 day6	10/23 day7	10/24 day8
10/25 day9	10/26 day10	10/27 day11	10/28 day12	10/29 day13	10/30 day14	10/31 day15-last day falls on Saturday-moves to next business day
11/1 Sunday	11/2 En Banc due date					

Per TRAP 4.1, if time period ends on a Sat, Sun or Holiday then time period is extended to the next day business day, which would be 11/2, Monday. We thought we would be filing the Motion on 10/30, so we did not inquire into the specific rules, and indeed filed it at 13 minutes past midnight, on 10/31 technically, which then defaults to an 11/2, Monday, which is when it was actually due per the rules cited above and pasted below.

In Summary,

1) (TRCP 501.4 (a) (4)) - email service after 5pm defaults to the next day which then becomes the day of service Oct 15th. after 5pm becomes Oct 16th.

2) (TRAP 4.1) - day of service or default day of service does not count in allotted time period. Counting starts on next day, Oct 17th.

3) (TRAP 4.1) If last day ends on Sat, Sun or Holiday, extends to next business day. 15 days ends on Sat, 10/31, and so becomes Mon, 11/2.

4) En Banc Motion filed electronically on 10/31, at 13 minutes after midnight, which becomes 11/2, Mon.

5) Appellant's En Banc Motion was timely filed.

If the Appeals Clerk does not agree, please outline how you have arrived at a different conclusion.

En Banc Motion format violation-length error requested to be fixed

It was the irony of ironies, to receive a letter stating that we had a format error while asking once again for a format fix to the Clerk's Record for which we paid \$1200.

The rule cited by the Appeal's Clerk, Tex. R. App. P. 9.4(i)(3), is ironically one column over from the rules we asked have been asking the Travis County District Clerk's Office to follow, Tex. R. App. P. 9.4(j)(2) and Tex. R. App. P. 9.4(j)(5). Indeed, is the next letter in the same rule. We will comply with format rule (i) and expect Appeals Clerk to enforce (j) on same page for Clerk's record format, with a 10 day deadline to fix, as we have been told to abide by.

For Appellant (entire length rule cited in Authorities):

TRAP 9.4 (i)

(3) Certificate of Compliance. A computer- generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

For Travis County District Clerk:

TRAP 9.4 (j)

Electronically Filed Documents. An electronically filed document must:

(2) be directly converted to PDF rather than scanned, if possible;

(5) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

One reason our motion went over the length limit is we attached the rules for easy reference/convenience of court and clerk. The second reason is that the two motions were

included as one, also for the ease of use. Ease of use was the reason for the request for the pdf descriptive bookmarks fix. We shall separate the two motions in order to comply with the length rules per Motion, with certificates of compliance. We will remove any easy reference attachments to comply with length requirements, if necessary.

We will work on the length error-format problem and the certificate of compliance. The compliance of the Travis County District Clerk's office would make this Motion completely unnecessary, and yet an elderly man is abused just to get what he paid for. If the Appeal's Clerk chooses to waste the court and parties time due to their own non-compliance, we hope there are employment consequences for the good of the court system.

Rule (i) is complicated as to what gets counted in the final word count, and how one gets Microsoft Word to count some things and not others, and then producing a certification of that distribution of words. Difficult for a software engineer with 35 years experience to figure out, between migraines, much less, an elderly sick man. This is not a Brief or response, but a Motion for Contempt in order to get the court clerks to do their jobs. We will also look into length requirements for a "Writ of Mandamas", a request for an order for a public servant to do their job.

Clerk's Record format violation-bookmark errors must also be fixed

The format violations in the Clerk's Record, have been documented in detail, in the 8/10/2015 Motion, 10/7/2015 letter, and 10/31/2015 En Banc/Contempt Motion. Our Contempt Motion for violation of format rules, has just been rejected for violation of format rules. We hope this means you have now decided to enforce format rules on all equally, and will be cc-ing us on the rejection of the Clerk's Record.

Rejecting defective Clerk's Records are listed as a duty of the Appeals Clerk (TRAP Rules 37.2, 34.4 and 34.5(d)). If the Appeals Clerk does not reject the defective Clerk's Record, we will be adding the Appeals Clerk to the Motion for Contempt and we are considering a Writ of Mandamus as well (an order for a government employee to perform their duties).

Please see attached tutorial on how to use pdf bookmarks and why they are important. If you are NOT reading THIS letter in Acrobat, please open in Acrobat and click Navigation menu at left to see the bookmarks of THIS document. The bookmarks are used by Microsoft Word to automatically build the Table of Contents with descriptive-bookmark-links, included in this letter, and are converted to pdf without error, unlike the Clerk's Record non-descriptive-bookmark-links/Table of Contents, a simple bug to fix.

Why has this bug fix not been requested? Once the bug is fixed, no one believe they ever lived without it. It is NOT a trivial issue: it is not possible to navigate the document quickly, and with a 1200 page document, speed reading and editing becomes crucial. Even this short letter is

easier and more organized with the few bookmarks provided, as you can see if you have open this document and the bookmarks tab on the left in Adobe Acrobat Reader for pdfs.

Authorities

For the convenience of the court and clerk, cited rules are pasted below:

Time Rules:

Court Rule reference links:

<http://www.txcourts.gov/rules-forms/rules-standards.aspx>

<http://www.txcourts.gov/media/1055394/trcp-20150901.pdf>

<http://www.txcourts.gov/media/514722/texas-rules-of-appellate-procedure-updated-with-amendments-effective-9115-w-appendices.pdf>

TRCP RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION

501.4 (a) *Method of Service.*

(4) Email. A copy may be sent to an email address expressly provided by the receiving party, if the party has consented to email service in writing. **Service by email after 5:00 p.m. local time of the recipient will be deemed to have been served on the following day.**

TRAP Rule 4. Time and Notice Provisions

4.1. Computing Time

(a) *In General.* **The day of an act, event, or default after which a designated period begins to run is not included when computing a period prescribed or allowed by these rules, by court order, or by statute. The last day of the period is included, but if that day is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday.**

Format Rules:

TRAP Rule 37. Duties of the Appellate Clerk on Receiving the Notice of Appeal and Record

37.2. On Receiving the Record

On receiving the clerk's record or the reporter's record, the **appellate clerk must determine whether each complies with the Supreme Court's and Court of Criminal Appeals' order on preparation of the record.** If so, the clerk must endorse on each the date of receipt, file it, and notify the parties of the filing and the date. **If not, the clerk must endorse on the clerk's record or reporter's record — whichever is defective — the date of receipt and return it to the official responsible for filing it. The appellate court clerk must specify the defects and instruct the official to correct the defects and return the record to the appellate court by a specified date.** In a criminal case, the record must not be posted on the Internet.

TRAP 34.4. Form.

The Supreme Court and Court of Criminal Appeals will prescribe the form of the appellate record.

TRAP 34.5. Clerk's Record

TRAP 34.5 (d) Defects or Inaccuracies. If the clerk's record is defective or inaccurate, the appellate clerk **must** inform the trial court clerk of the defect or inaccuracy and instruct the clerk to make the correction.

Requested Compliance Rules

For Appellant:

TRAP 9.4 (i)

(i) *Length.*

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

For Travis County District Clerk:

TRAP 9.4 (j)

Electronically Filed Documents. An electronically filed document must:

(2) be directly converted to PDF rather than scanned, if possible;

(5) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

TRAP RULES-2015 Appendices

APPENDIX C

CLERK'S RECORD 1.1. Preparation of Electronic or Paper Clerk's Record.

(i) If the clerk's record is filed in electronic form, the clerk **must** use bookmarks to link each document description in the table of contents, except descriptions of sealed documents, to the page on which each document begins

Summary

As with this letter, we have tried very hard with formatting, bookmarks, the Table of Contents, and attachments, to make this document as easy and quick to read and understand as we can. In the Motion just rejected because of length, we attached, for the convenience of the court and clerk, for easier reference, copies of the relevant orders/rules/laws. It will be unfortunate if the length requirements require us to remove what we took the time to include, for the convenience of the court.

As it is approaching the midnight electronic filing deadline (per TRAP 9.2(c)(4)-electronic timely filing), we do not have any more time to make this a better document, and we certainly won't risk 13 minutes past midnight this time. Studying the length rule some more while pasting it into this document, it appears as though many parts of the document, including the Authorities and "appendix", do not count in the total length, so it may be that we are compliant. We will look on the web for a "legal word compliance" program to assist us with this determination.

If we do not receive notification that the Clerk's Record has been rejected for its format violations as well, with a 10 day due date for re-submission, we will be adding the Appeals Clerk to the Motion for Contempt, as well, as an inquiry of prejudice by the Appeals Clerk with regard to equal application of TRAP rules.

Regardless of whether the Appeals Court MAY or MAY NOT tell the Appeal Clerk what they MUST do, the Appeal Clerk MUST still do what the Supreme Court has already ordered them to do.

Sincerely,



Alan L. Hamilton, Appellant, Pro Se

cc:

Appellee's Attorney:

Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
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cc:

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Appendix/Exhibits

Appendices:

Exhibit List:

Exhibit A – Tutorial: “How to use pdf bookmarks and why they are important”

Exhibit B – Greenfiling receipt on 10/31/2015

Exhibit C – Appellant’s wife doctor’s appt receipt. Appellant health and hand conditions requires assistance with court documents, which wife provides as possible, when not dealing with own medical issues.

Exhibit A

Part 3: Description of Problem

If you are not familiar with Acrobat bookmarks and how they enable speed reading and editing in a long document, read on. Though this may sound trivial, once you fall in love with bookmark speed reading/editing, you will know why the Texas Supreme Court said "**must**", not "may".

How to use bookmarks and why they are important

Let us first make sure we are on the same page, so to speak. If you are looking at this document in anything other than Adobe Acrobat Reader, please quit now, and open this document in Adobe Acrobat Reader. The reason it's called "Acrobat", is because you can do "mental acrobatics with documents", namely "bookmarks". Most people are familiar with Internet Browser "bookmarks" and cannot live without them, but bookmarks as a concept started with "books", and are also available in Microsoft Word "doc" and Adobe Acrobat "pdf" documents. In Microsoft Word, the bookmarks are shown in the "Navigation Pane", opened from the "View" menu, aptly reminding you of the "Navigation Pain" without the bookmark view. (Called a "Document Map" in previous versions of Word.) These bookmarks readily convert to Adobe Acrobat pdf bookmarks.

In order to fully appreciate an Adobe Acrobat document, herein called a "pdf" (Portable Document Format), one must use the "bookmarks" feature. Please do the following with this document you are now reading:

1) Open doc in Adobe Acrobat

Make sure you are NOT in your Internet Browser, viewing this "Motion for Contempt" pdf document. Download and open this document in Adobe Acrobat Reader, which will display the bookmarks stored in the pdf document. Internet Browser pdf displays do not yet have this capability.

2) Click on bookmarks icon

Hover your cursor over the icons in the left upper corner of the document, to see descriptions of the button-icon functions, and click on the bookmarks icon, usually the second one down (looks like a real book bookmark, a rectangle with a triangle cut out of the bottom). A Table of Contents should now be displayed on the left side of the document, that contains hyperlinks to the different content "destinations". These are called "bookmarks", to assist you in getting around the document, or around multi-file documents. Click on the "Table of Contents" bookmark link in the left column. You should now be looking at something that looks like **Exhibit A (screenshot of correct bookmarks example: document description "bookmarks" match "Table of Content" descriptions)**.

3) "Speed Read" to "Speed Edit" with bookmarks

Glancing and scrolling thru the bookmarks, allows a quick SPEED READ of the documents contents, while allowing pinpoint travel thru the document at will, zooming into the document details you are looking for with ease and speed. "Speed Editing" with bookmarks follows quickly after "Speed Reading".

4) Document Armageddon

Now click on the bookmarks icon again and see the bookmarks disappear. Now ponder life without them. This is why the Texas Supreme Court Ordered that there "MUST" be bookmarks.

Solution easy, not fixing hard

These bookmarks, including the ones in this document, are created AUTOMATICALLY, by Microsoft Word or Adobe Acrobat, created from the filename or header description, which tell you where you are going, before you travel there.

Bug fix for "Appeal Creator"

At the root of the problem is the in-house program "Appeal Creator", which creates the bookmark/Table of Contents problem not seen in documents created by Microsoft Word or Adobe Acrobat. This is not an "unfixable bug". Indeed, the fix is as simple as fixing a global typo of someone's name in a document. To fix the bug, all that needs to be done is:

- 1) Search for "document description" field name
- 2) Replace with "additional info" field name

As well, programmers could opt to fix the Clerk's Office database, to move the "additional info" content into the "document description" field, thereby not needing to fix the "Appeal Creator" program at all. But then you must fix/re-train the Court Clerks and get them to not input the "document description" in the wrong field.

Exhibit B



Promote e-filing and e-service in Texas by inviting a colleague to join Green Filing ... [send invite](#)

- Dashboard
- File New Case
- Create New Filing
- Create Serve-Only
- Filing Status** 1 2 1
- Notifications 5

Recent Cases

- 13-15-00307-CV: [No ...
- D-1-GN-12-002777: AL...
- D-1-GN-13-001230: HA...
- 03-15-00357-CV: [No ...

[View All](#) | [Add A Case](#)

Filing Status

Filter Filings:

Filtered View (Status: Pending) - Click Filing ID link to view receipt, or click document link to view the document.

1-1 of 1

Filing Id	Status	Last Changed	Case	Env. Number	Lead Document
2003635	Processing	10/31/2015 12:13 AM CDT	13-15-00307-CV		Motion: 13COA En Banc Contempt Motions fix Clerks Rec.pdf

Exhibit C

Transaction Successful

Transaction Receipt	
Merchant:	Victory Medical - (Austin, TX)
Date/Time:	11/10/2015 1:56:59 PM CST
Transaction ID:	2881437892
Transaction Type:	Card Sale
Entry Method:	Swiped
Amount:	30.00
Credit Card Information	
CC Type:	Visa
CC Number:	*****1371
Auth. Code:	175972
Processor:	MainAccount
Billing Information	Shipping Information
MARJORIE C MILLER	
Order Information	
Order ID:	MARJORIE MILLER TH
Description:	COPAY NP
Cardholder Authorization	
I agree to pay the above total amount according to card issuer agreement.	
----- Customer Signature	