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Underused additions to the trial attorney's toolbox

FOUR REASONS HYPERLINKS AND PDFS ARE INVALUABLE TO YOUR LITIGATION PRACTICE

The legal profession is notoriously slow in keeping up with advances in technology. Although information is more accessible than ever, some practitioners stubbornly cling to outdated methods of managing information. Some attorneys continue to use hard copies because they don't trust technology, or they find that it complicates their work. For others, it's the burden of learning a new digital system that doesn't feel worth the time or money.

There are no legitimate reasons not to accept using technology in legal work. As technology advances it also becomes more user-friendly. How amazing is it that technological tools designed to make our jobs easier are also designed to become easier to use over time? As our tools advance, so does our productivity. Technology does not have to be a burden. Rather, it is here to serve you as a useful and reliable resource.

Although technology has many applications in the law, this article addresses two basic yet underused tools in the legal toolbox: hyperlinks and PDFs. Together, they can bring a new level of persuasiveness to any attorney's work.

What are PDFs and hyperlinks?

To understand how hyperlinks are used in legal work, one must first have a clear understanding of PDFs. Developed by Adobe Systems, PDF stands for "portable document format" and it certainly lives up to its name, as PDFs can be shared across different operating systems and platforms.

Text-based versus image-based

Text-based PDFs are created automatically by saving your document as a PDF directly from your word processing program. An image-based PDF is created by optical scanning and does not have recognizable text. It should be noted that the text-search function is usually only available for a text-based PDF, not an image-based PDF. However, the proper program can equip an image-based PDF with a text-search function as well. Text-based PDFs that are converted by a word processing program are the preferred option because they tend to have better image quality and are easier to search. This is why the federal courts require that court documents be converted to PDF rather than scanned whenever possible.

Searchable text is the hallmark of all digital documents. When the search function is available, it allows you to type in a word or phrase, which your computer will then instantly identify and highlight in your document. A searchable PDF will save you hours of careful scrolling and squinting for the text you're looking for. A search bar can be summoned on both a PC and a Mac by pressing the "Control" + "F" keys at once.

Single versus multiple

A PDF is a file that consists of one or more pages. It can also be a compilation of multiple PDFs combined into a single, multi-page PDF document. It can also be a compilation, called a "portfolio" in Adobe Acrobat, of multiple PDFs combined into a single PDF, but consisting of multiple discrete PDFs. PDFs can be fillable (e.g., Judicial Council forms), edited and printed and/or saved, or protected from modification, at the option of the creator.

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What is a hyperlink?

A hyperlink is digital text that has been linked to an internal or external piece of information. Linked information can be instantly summoned by clicking the hyperlink. To insert a hyperlink in Microsoft Word, simply right click on a highlighted word or phrase, select "hyperlink" and paste the URL of the external page you wish to link to into the address box.

There are three common uses for hyperlinks in legal work.

Internal links

The most basic use of hyperlinks in legal work is to create electronic bookmarks in a PDF document. By using hyperlinks in your table of contents, your main sections and headings are digitally connected to the location where they are discussed. This is incredibly beneficial for the navigability of documents, especially if they are lengthy.

For step-by-step instructions on how to add bookmarks using Microsoft Word or Adobe Acrobat, see https://www.onelegal.com/blog/how-to-add-electronic-bookmarks-to-a-pdf/.

Filed attachments and exhibits

Hyperlinks can also be used to connect information in a document to exhibits or attachments. Make sure to file these exhibits or attachments together with the leading document if you are using them as evidence, either in a PDF compilation or in a file folder.

Links to rules

Linking to local rules is an example of using hyperlinks to connect your work to external information on the web. Using hyperlinks to cite to external information in this way is effective for adding extra authority when you need it. Hyperlinks are especially helpful in this way if you are discussing an obscure rule that needs further context. Make sure that if you link to external information in this way that you link to websites or online documents that are freely available to the public. Not all courts at the state level have access to private sources like LexisNexis or Westlaw. Therefore, many courts prohibit submitting documents with links to these sources.

Although the use of hyperlinks is quickly becoming commonplace, it is important to note that courts do not want them being used as substitutes for standard citations to authorities. Accordingly, rather than displaying the full URL to link to a case, the better practice is to provide the traditional, proper citation, and hyperlink it to the precise text you are referencing.

Electronic filing

Attorneys aren't the only ones adapting to changes in technology. Courts are now requesting – even requiring – that briefs be filed electronically. Electronic briefs are essentially hyperlinked PDF documents. Therefore, it would be wise to get accustomed to using hyperlinks and PDFs, since they are inseparable from the electronic briefing process, which is quickly becoming commonplace in many courts.

In addition to the Rules of Court, most judges still request in their standing orders that your brief and supporting documents be submitted to the court in separate electronic files. Filing electronic documents in PDF format and embedding hyperlinks in legal briefs for instant access to evidence is quickly being adopted by federal judges in California as well as other states.

For example, in U.S. District Court Judge Yvonne Gonzalez Rogers' standing orders she strongly encourages parties to submit courtesy copies of briefs to chambers with hyperlinks to supporting evidence, especially if the evidence cited is voluminous. Judge Yvonne Gonzalez Rogers' standing orders can be found at [https://www.cand.uscourts.gov/ygrorders].

Similarly, in District Judge Claudia Wilken's standing orders, she requests that the parties hyperlink each proposed Finding of Fact to any supporting evidence. This request suggests how important and effective instantaneous references can be, especially when a judge requests it for quick reference to the evidence upon which the court will base its decision. This is because the benefit of instantaneous references offered by hyperlinks enhances efficiency, clarity and the overall flow of an argument.

Judge Claudia Wilken's standing orders can be viewed at [https://www.cand.uscourts.gov/cworders].

Magistrate Judge Gail J. Standfish goes further by explaining in her standing orders the efficiency of using hyperlinks in court filings. She refers to hyperlinks as the standard way of "drilling down" for more detailed or specific information, and how attorneys can use the immediate access that hyperlinks create to add another level of persuasion to their writing.

Judge Standfish knows, and makes it known to those who appear in her courtroom, that hyperlinks allow for easy review and verification by the court. For these reasons, their use is strongly encouraged by many judges. Hyperlinks also make it easy for the court to adopt the positions taken by an advocate, which is why it is especially in the attorney's best interest to use them.

The Honorable Steve Kim went so far as to attach to his standing orders detailed instructions on how attorneys can create hyperlinks in Microsoft Word. Although written in 2014, his guide is still valid, and proves that courts are increasingly adopting new technological ways of processing information. Judge Kim's instructions are found at [http://www.cacd.uscourts.gov/sites/default/files/documents/SK/AD/SK%20-%20Hyperlinking%20Attorneys%20in%20Microsoft %20Word.pdf] and his standing orders at [https://www.cacd.uscourts.gov/honorable-steve-kim]. See how easy that was?

Federal courts aren't the only courts adopting requirements to use hyperlinks in briefs. As of March 1, 2017, the SEC approved its own rules requiring hyperlinks to exhibits in required filings. Those rules can be found at [https://www.sec.gov/corpfin/secg-exhibit-hyperlinks-and-html-format]. Similarly, hyperlinks to exhibits are required in California Environmental Quality Act

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Proceedings. CA ST CIVIL RULES Rule 3.2227. Those rules can be found at [http:// www.courts.ca.gov/cms/ rules/index.cfm? title=three&linkid =rule3_2227].

How do I ensure that my recipient knows how to use my hyperlinks and PDFs?

What if you've embraced these new technological tools, and your adversary continues to use non-electronic methods of working? How do you make sure your work reaches its intended audience? One way is to provide a brief instruction on how to access and navigate the digital files along with the documents you serve.

Doing so will ensure your material is read and may well inspire others to adopt the same tools. Alternatively, you can just send them a link to this article (or a hardcopy).

How are these tools helpful in court documents?

As noted, briefs that use hyperlinks and PDFs deliver more persuasive arguments by providing instant references to supporting material.

What if I told you that your reader can open and view a video clip of the specific deposition testimony you are referring to in your brief as they're reading it? What if your elaborate animation of a re-created accident can instantly be opened the moment your reader has read your causation argument? What if, instead of flipping through a thick binder of paperwork, your reader could instantly summon supporting evidence by typing a page number or key phrase? All of these things are possible with the use of hyperlinks and PDFs.

A more accessible argument is a more persuasive argument

What makes enhanced accessibility so persuasive is that it keeps your reader immersed, uninterrupted, in your story. Diverted attention weakens any argument.

Hyperlinks act as the co-counsel who smoothly hands you your exhibit as you address the court. There is no interruption of your flow and the evidence is presented the moment it is needed: not a moment too soon and not a moment too late.

How are these tools helpful in mediation?

In addition to enhancing our legal writing, using hyperlinks and PDFs can also make us better negotiators. A tech-savvy attorney displays competence in conformity with the Model Rules of Professional Conduct. In 2012, the ABA Model Rules were modified to confirm that a lawyer's duty of competence requires keeping "abreast of changes in the law and its practice," which includes knowing "the benefits and risks associated with relevant technology." (Comment on Competence, Ann. Mod. Rules Prof. Cond. § 1.1.) Showing that you fulfill your ethical duties as an attorney communicates a firm understanding of fairness. Bringing that integrity to the participants in a mediation is invaluable to fair negotiation.

In mediation, being well versed in technology also communicates that you are aware of the current state of your profession and adapt to change when needed. These are social implications that should not be taken for granted because they can only serve to bolster your persuasiveness when negotiating with opposing counsel, even before you enter a courtroom.

Better negotiating with better tools

Negotiation skills play a lead role in mediation. PDFs and hyperlinks can enhance a negotiation by formatting the dispute in a navigable and clarifying way, so as to promote a mutual understanding of the operative issues in a case.

Retaining the reader's attention in this way should not be underestimated. The better each participant understands the relevant facts and issues of their opponent, the better they understand each other's strengths, and the greater the likelihood that a mediated settlement can be reached.

With printed documents, parties are less likely to fully grasp opposing arguments because of the time it takes to flip back and forth between voluminous papers and exhibits. Many of us will find ourselves thinking in the midst of those interruptions about anything but the material. We begin to plan how we will respond to our opposing counsel before we have finished reading their argument and have appreciated any weaknesses they revealed in our own case. The mind can only focus on one thing at a time; the attention of even the most competent lawyer will drift as they flip through paperwork. These distractions tend to encourage disingenuous negotiation, since they have a tendency to cloud our understanding of what a case is truly worth.

By bringing clarity to the dispute, an attorney using hyperlinks and PDFs becomes more comfortable with the mediation process, making it less cumbersome and more enjoyable for all parties. The attorney who presents his or her client's case with less paper, quick access to information and instant replays of critical deposition testimony and animated reconstructions is easily the more effective negotiator.

Cases with complex issues require exceptional clarity, and hyperlinks and PDFs can aid in streamlining that process. Often, complex issues are best presented through visuals, such as photographs, videos, charts and graphs. Hyperlinks and PDFs are indispensable for keeping demonstrative evidence close to the text they are intended to clarify, and within instant reach of the reader.

How are these tools helpful in arbitration?

The American Arbitration Association rules permit the use of electronic documentation and do not exclude their use the way some courts do. Because arbitration rules are more relaxed than court rules, arbitrators will be open to using the technological tools that enhance your law practice. This flexibility allows for an attorney to showcase

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their use of technology, enhancing their persuasiveness for reasons mentioned above.

In fact, arbitrators were the first to require electronic briefs, and often requested joint briefs with hyperlinks to the parties' supporting documents. Just three years ago, an electronic brief with hyperlinks was an expensive luxury, mostly because these technological tools were not commonly used in the legal community. Attorneys would hire a third party to put together an E-Brief and insert all the hyperlinks to their exhibits.

Today, creating one's own electronic brief with PDFs and hyperlinks is an inexpensive, reliable and increasingly common method of accomplishing what only paid experts could do just a short time ago. Moreover, these tools have become increasingly user-friendly over time; with minimal training your teenager could use them and even teach you how.

How are these tools helpful in settlement negotiations?

Using PDFs and hyperlinks makes demand letters easier to understand, making them more credible and persuasive. Arguments supported with readily accessible evidence assure the reader that the attorney making the demand has nothing to hide. Using these tools in negotiations demonstrates transparency and good faith, and signals confidence in the justification of the settlement amount asked for, allowing the negotiating parties to get straight to the heart of an issue.

Should I be concerned about confidentiality?

PDFs offer a secure form of documentation because they are not subject to easy alteration. Once paper documents are mailed to the wrong party, preserving confidentiality poses a much greater difficulty (good luck getting them not to read it). PDF documents, however, can be "locked" and password protected, to ensure that they are not altered or viewed by unauthorized parties. PDFs grant the file creator much more power over their document than paper or word processing (.doc) documents do. Besides the speed and efficiency of using PDF documents, the added security features make their use an invaluable tool for any practice.

Conclusion

As the courts attempt to keep pace with technological advances, attorneys are well advised to keep one step ahead and adapt quickly to the inevitable. The legal profession values brevity because brevity saves time; that we should embrace time-saving technologies is overwhelmingly clear. PDFs and hyperlinks are increasingly more accessible and effective, and they are truly awesome tools that bolster our ability to advocate for our clients.

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