

**From:** Les Bennett <lrb@leslierbennettllc.com>  
**Sent:** Thursday, September 03, 2015 9:53 PM  
**To:** rulecomments  
**Subject:** Proposed Commercial Division Rule re Bookmarking

I have been a litigator for forty-two years, in varied settings: as a law clerk to a federal appellate judge; as an associate in a major Wall Street firm; as an Assistant United States Attorney in the SDNY; as an associate and partner at the largest firm on Long Island; as a partner-in-charge of a 10-attorney litigation group in a medium-sized firm; and now as a solo practitioner. Thus, my comments are based on my experience as a litigator in these multiple venues.

I have reviewed the proposed rule and the basis therefor and have discussed the requirement with my computer expert. There is no doubt that the proposed bookmark requirement may be useful for judges and their clerks. Moreover, like any computer feature, it is likely that the bookmarking technique can be learned (and relearned each time) for each memorandum of law and/or affidavit to which it may be applied fairly readily.

However, what the proposed rule and the recommendations for its adoption fail to recognize is the plain fact that the bookmarking requirement will add a further burden on litigators in creating and finalizing documents for service and filing. This, in turn, will no doubt add to the cost of each such document for the litigators' clients. Most importantly, this burden is fundamentally and unavoidably labor intensive.

Additionally, this labor-intensive and expensive burden will fall most heavily on solo practitioners. Lawyers in large and medium-sized firm can shift the responsibility to paralegals or young associates, but solos will have no such option. They could ask their secretaries to prepare such bookmarking, but in that instance, it will be an added cost that cannot be passed on to the client, and I suspect that most practitioners will still have to review the bookmarking, which no doubt will then be charged to the client.

Thus, bookmarking will be nice for judges and clerks but time-consuming and costly for litigators. If the courts believe they need the assistance for moving through documents, this end can be achieved with much less of a burden and cost by requiring creation of a Table of Contents for memoranda and lengthy affidavits. Lawyers have routinely provided such tools for judges, and there is no reason why this cannot be imposed without much ado. If Commercial Division judges like the bookmarking feature, they can ask their own clerks to stylize the document. However, adding this new burden and cost on litigators is truly unnecessary and inappropriate.

Respectfully,

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