

DOCUMENT MANAGEMENT IN LITIGATION

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INTRODUCTION

This is a guide to preparing and using documents collected in the course of litigation for use at trials or hearings, using two inexpensive programs to display and annotate those documents.

Many lawyers are familiar with high-powered products like Summation, which offer a very wide feature set that includes capabilities similar to those that we describe here. Summation is widely used by large, well-heeled law firms, and the cost of the product reflects it. Summation is sometimes characterized as “legal case management” software. The products described here are much more affordable for the average lawyer, and our attention is focused on the document management function.

In many cases, most of the documents that lawyers will work with are medical records, but the system described here is suitable for any document collection.

Throughout these pages, we will be making reference to a sample document collection. It contains no medical records and no confidential information. The collection comes from an actual case that we litigated in Federal court in about 2016, involving enforcement of a township's zoning ordinance. The benefit of using that collection and that document as a sample here is that the documents collected, and the zoning ordinance, a 181-page PDF file, are all public records.

The two programs that will be described here are:

- Scrivener, by Literature & Latte, about \$50. <https://www.literatureandlatte.com/>
- DevonThink Pro, by Devon Technologies, about \$199. <https://www.devontechnologies.com/>

As we proceed, other programs will be referenced from time to time as well.

Since we are proposing this system as one approach to a solution, it might be useful to begin by identifying what the problem is. Trial lawyers are regularly involved in managing, reviewing, and referencing many different types of documents in the course of the cases they are litigating, at several stages of the proceedings. As the case is being investigated by the lawyer and her staff, as the lawyer is discussing the case and its issues with her clients, she continues to receive, analyze, and report on documents that come in from numerous different sources.

Later in the life of the case, during depositions, motion hearings, and ADR conferences, the lawyers, their clients, various witnesses, and experts must be able to find and refer to the case documents, and use them to provide factual support to their arguments.

Consider the traditional way of introducing documents in evidence at trial. The lawyers come to court with multiple paper copies of each of the documents they intend to use. As a lawyer is questioning a witness, she will have each document in turn marked by the court reporter, hand it to the witness, hand a copy to each other attorney, ask the witness to identify it and authenticate it, offer it for admission, and allow the opposing attorney an opportunity to object. The process is repeated for each

of a number of other documents. There is, frankly, no excuse for following such a ponderous procedure now that we have the technology that can streamline the process and make it smoother for everyone.

To effectively use a system like this, it is helpful to have the entire collection of documents that will be used at trial identified and prepared well in advance, and shared with all attorneys and the court, before the trial begins. The precise details will vary by case and will have to be discussed between the attorneys, but the overall goal should be *advance and coordinated preparation* of the documents they expect to use as evidence. Very often the parties can agree on issues of authenticity and admissibility in advance. For those documents where either requirement is at issue, they can be directly found, identified and displayed for use in evidentiary hearings.

For depositions, ADR hearings, etc., many of the same considerations will apply, but the approach is generally more informal. It is still most useful to have the documents prepared ahead of time, with the same documents with the same page numbers available to all participants in the process. If there is a witness, it is useful to be able to provide the documents on a computer display or on printed pages, as the witness prefers, available for reference as he is answering questions.

STEPS 1 THROUGH 4 – PREPARING DOCUMENTS FOR THE SYSTEM

In order to be able to manage documents within any document manager, they will need to be prepared ahead of time. A versatile document management system can handle documents in many different formats. The vast majority of the documents that a user will receive from clients or opposing counsel, or will find online, will be in PDF format, so that is the focus of our efforts. You may find it helpful to convert Word documents to PDF before taking the steps we describe here, because there is no tool that can break a long Word file down to single-page files. A key point, for reasons that we will address momentarily, is that that step should be taken within the originating program like Word, using its Export or Convert feature, to ensure that the resulting PDF is a *text-based document*. Do not print the Word document to paper and then scan it to create a PDF file. That approach, which is unfortunately very common even at sophisticated law firms, is taking a major step backward.

Step 1 OCR
Step 2 Bates numbering

Two important steps should be taken, if necessary, to prepare a PDF document before it is imported into Scrivener. If it contains text but was scanned as an image-based PDF, it must be converted to machine-readable text via the use of an Optical Character Recognition (OCR) tool so that the text can be searched and so that it can be copied for use elsewhere. If there are no page numbers, they should be added – as an anachronism, this is still often called “Bates stamping.” (The classic Bates stamp was a device used to stamp an incrementally increasing number on a collection of documents on paper, page by page.)

These two steps can be handled under Acrobat, Nuance PDF, PDFPen (for the Mac) and many other familiar PDF editors. Outside tools are also available, including:

- OCR – FineReader by Abbyy Software (Windows and Mac)
- Page numbering – EasyBates (Mac), PDFText (Windows and Mac)



Theoretically, after they have been processed under steps 1 and 2, the PDF files can then be directly imported into the desired management program. The user can open a document, go to the desired location, and read the content. But there are serious limitations and drawbacks in trying to use multipage PDFs as a single document. It can take some time to find the desired location quickly. Unfortunately, some the navigational tools that are commonly used under Acrobat or any other PDF reader are not available under some of the management programs that are available. Bookmarks, thumbnails, and other navigation tools may not work. Most importantly, if our sample 181-page document is simply imported into a program for use, any notes or comments that the reviewer wants to add will apply only to the document as a whole, not to specific pages or entries it contains.

For the documents that we use in everyday practice, including medical records, we use a general rule of thumb. If it is smaller than 10-15 pages or so, including it as a single PDF file may be satisfactory. A document that is any larger than that, or which is of key importance, should be *unfolded* before it is added to a document manager.

Step 3 Unfolding

Unfolding means that (as an example) the 181-page PDF document named Zoning Ordinance 2013.pdf is split up into 181 separate PDF files which can then be imported into the desired management program. Using single-page PDFs allows for pinpoint referencing, reviewing, and annotation of the documents. Rather than trying to navigate to p. 74 of a PDF file within the window of a document manager, for example, we will be able to go directly to that page as document 74 within a folder. Particular items can then be renamed and grouped together. Further, using annotation tools, we can add comments and other annotations specifically for that page.

Most PDF editors offer a tool that can split the current file into any number of smaller PDFs. There is also a program called PDF Split and Merge that can split the 181-page document into 181 discrete PDF files. This program is available for both Windows and Mac at <https://pdfsam.org/>

PDFsam names the resulting files based on the name of the original file. After the split, the resulting files will show names like the following:

```
Zoning ordinance 2013 1.pdf  
Zoning ordinance 2013 2.pdf  
Zoning ordinance 2013 3.pdf          etc.
```

These files now need to be renamed.

Step 4 Renaming

Normally, the newly created files should be renamed to correspond to the page numbers that have been imprinted on the pages. That is a key point when we want to use the documents in the course of a deposition, a hearing, or a trial – the documents on the screen need to be coordinated with a printed, page-numbered copy of the document, and using the page number as the name of the file is a central component of the system.

There are several tools that can be used to rename electronic files. Path Finder and Forklift (on the Mac) and xplorer2 (under Windows) all have a "batch rename" command, giving the user the option of renaming the files by replacing text strings within the file names, or using sequential numbers. Under the Mac platform, there is also a standalone application called Renamer, which has a number of options for quickly renaming a series of files.

If the source file has page numbers that start with 1, doing a text string search is usually sufficient. The renamer can use a find and replace command to change

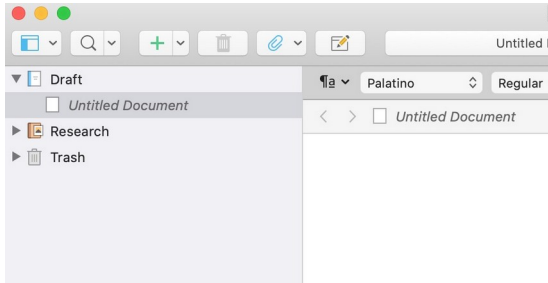
```
Zoning ordinance 2013 1.pdf to 1.pdf
Zoning ordinance 2013 2.pdf to 2.pdf etc.
```

But what if the document you just split begins with page 44? Simple text string replacement will not work. You will need to rename the files with sequential numbers, beginning with 44, in order to ensure that the name of the file matches the page number. Most of the full-capable renaming functions allow the digits to be displayed with a specified number of characters, allow an option to add a prefix, and numbering can start at any desired number.

The renaming function also allows the user to add a prefix when renaming the files. This is helpful for records found in separate volumes. A collection of 200 pages of records from the University of Michigan Hospital may, for example, be renamed to UM-245 to UM-444, to give the users a clue as to which record is being presented as well as the page number.

USING SCRIVENER FOR DOCUMENT MANAGEMENT

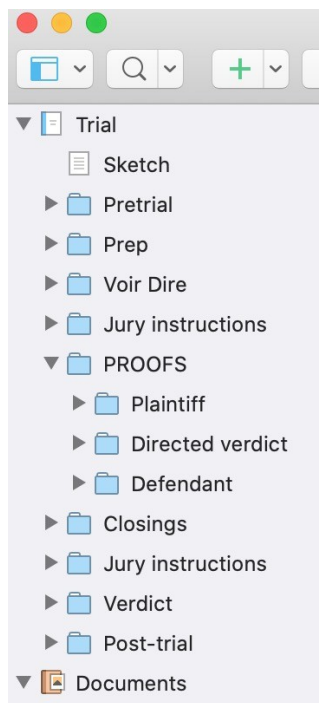
Scrivener (by Literature and Latte) is a product designed for and marketed to writers, but its document management and commenting capabilities make it very useful for document management for trial attorneys.



The basic Scrivener “project,” when first created, is divided into two sections: Draft and Research. The primary idea behind using Scrivener as a writing environment is that the user will begin writing the document in the Draft section, and will collect reference items – documents, clippings, or web sites – in the

Research section. Either of these two sections can be renamed, but cannot be deleted. Any number of new sections can be added as well. The primary difference between the two required sections is that PDF files cannot be imported into the Draft section.

This presentation addresses using the Research section for document management.



Both sections of the standard Scrivener file use the familiar tree-based organization scheme, with items and folders that can be nested in order to keep them organized. In the left panel, which is called the Binder, there are individual icons (called “nodes” in many similar programs) which can be nested to any number of levels, and can be expanded and collapsed as the user needs. The screenshot here shows the organization of the Draft section of a Trial template that we have created, renamed to “Trial,” as an example of one approach to organizing this section.

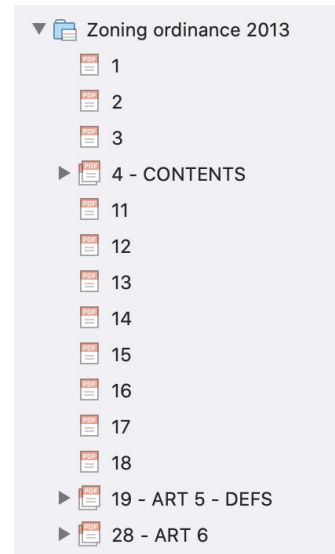
For the remainder of this presentation, which deals with managing documents in litigation, our focus will be on the Research section, where documents are stored and reviewed. We will remember, though, that we can enter notes and annotations in the Draft section whenever we like.

The screenshots used in the remainder of this section are taken from a case that we defended a few years ago on behalf of a township in the Upper Peninsula of Michigan. The benefit of using the documents from that case as our example is that they are all public documents, so there are no concerns of confidentiality. We could not use medical records in this manner.

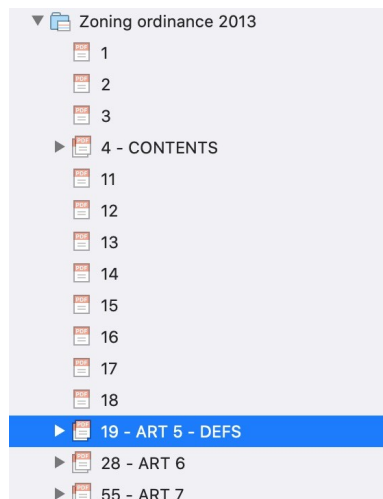
Importing documents to Scrivener

Once a collection of PDF files have been processed, as we described in the “Steps 1-4” section, they can be imported into Scrivener. Choose File | Import | Files, or drag the folder containing the individual pages from Windows Explorer or from the Finder (on a Mac) onto the Research folder.

From there, any of the documents can be further renamed to reflect what they contain. For reasons that we will address shortly, when renaming the files you should keep the original number, the page number which appears on the page itself. The result as it appears in the Binder is shown at right. (See the “Organizing the documents” topic below to learn what happened to pages 5-10.)



We can now go directly to the definitions at page 19. As we will see shortly, we can do more than read that page. We can organize it with other related pages to put it into its proper context. And we can *annotate* or *comment* on any individual page.



Page 19 as it displays

ARTICLE 5 DEFINITIONS

5.1 For the purpose of this Ordinance, words in the present tense include the future; words in the singular number include the plural number, the word “shall” is always mandatory and not discretionary. The term “Township” shall mean Clark Township in Mackinac County, Michigan. Any terms or word defined shall be defined by common or standard usage.

5.2 Definitions: For the purpose of these regulations, certain terms and words are defined as follows:

5.2.1 Accessory Building: Means a structure which is a supplementary building or structure on the same parcel as the main building, which is naturally and normally incidental, clearly subordinate, and devoted exclusively to the principal use on the same parcel. An accessory building may be erected on the parcel prior to the main building.

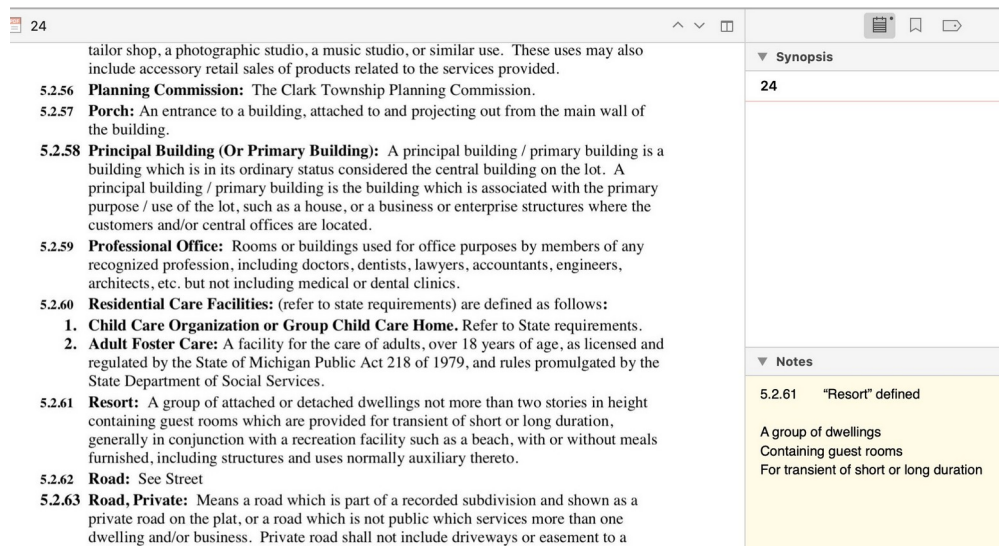


Annotations – At the upper right of the Scrivener window is an icon for a tool called the Inspector - an “I” within a circle. Choose it to open a new panel on the right of the screen. Making entries in these parts of the screen is optional but often very useful.

The two most important sections, displayed here, are:

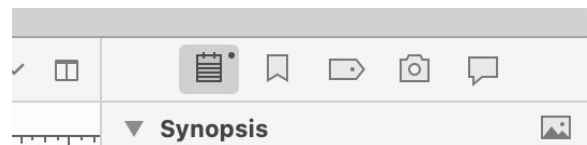
Synopsis – A window which displays the name of the document and allows the user to add a few words to describe what is found on the page. The document can also be renamed at this location.

Document notes – the user can add here any additional text, short or long, as a comment or abstract of the contents of the item being displayed.



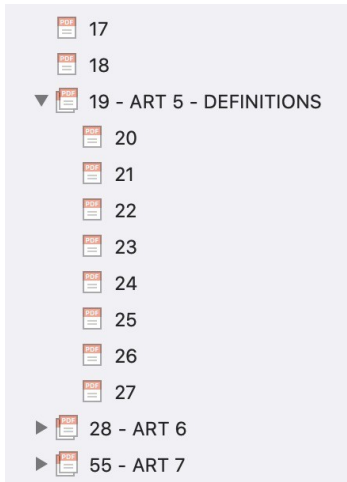
Either of these windows can be collapsed or expanded.

Above the synopsis window there is a collection of five icons to show several other panes that are also accessible using the Inspector.



The second icon brings up *bookmarks*, which are links to other parts of the Scrivener file. If the item you are currently reviewing is related to another, you can drag that other document to the list of bookmarks and immediately create a two-way link between the two.

The third icon brings up *metadata* and *keywords*. The default metadata are the date the file was created and the date it was modified. The next window down allows you to create your own custom metadata fields and assign values to them. The keyword panel allows you to add keywords and associate them with the document you are using.



The fourth and fifth icons are really of interest only if you are writing under Scrivener. These are the “snapshot” tool and a panel that displays the footnotes that you have created while writing.

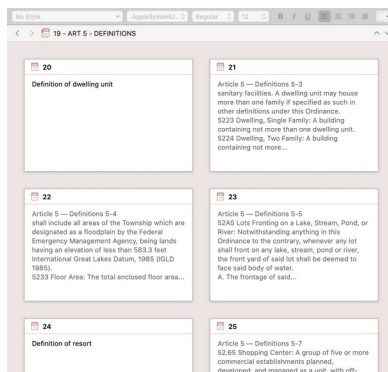
Organizing the documents

Here, we have renamed 19.pdf, giving it a name that reflects that this is the first page of Article 5 of the zoning ordinance, and we have moved the remaining eight pages of Article 5 below it.

Moving pages 20-27 under page 19 shows the viewer that these pages belong together – in this case they comprise Article 5.

Alternatively, a new folder can be created in the Binder, and pages 19-27 can be moved under it.

Scrivener offers different ways of viewing the collected documents. So far we have shown only the tree-style listing at the left side of the window, with the contents of the selected item in the main editing window. There are other ways to view the collection.



| Title and Synopsis | Label | Status | Section Type |
|-----------------------------------|----------|-----------|--------------|
| 20 Definition of dwelling unit | No La... | No Status | Section |
| 21 | No La... | No Status | Section |
| 22 | No La... | No Status | Section |
| 23 | No La... | No Status | Section |
| 24 Definition of resort | No La... | No Status | Section |
| 25 | No La... | No Status | Section |
| 26 | No La... | No Status | Section |
| 27 | No La... | No Status | Section |

If you select the “corkboard” icon found in the collection of three on the toolbar, you will see the synopses of the documents contained in the folder, allowing for a quick overview of their contents. Alternatively, an outline of the contents can be displayed. (The name is a holdover from earlier versions of Scrivener, where this window displayed with a corkboard background.) The pages contained in a folder can be rearranged within the corkboard window, if needed. Choose the “outline” icon to see the items in an outline display, with *label* and *status* visible.

Using the system

This system allows us to maintain all of the documents for a complex case, review them in an organized fashion, add comments and annotations as needed as part of the review process, and (crucially) *quickly find what we need* during the course of a deposition, a hearing, or trial.

But finding what **we** need, useful as it is, addresses only part of the story. The witness, the judge, and other counsel need to be able to find it as well.

The following is a fairly typical scenario, familiar to all litigators. During a deposition, the attorney wants to ask a medical witness about a nurse's note dated February 10, 2018 at 12:40 p.m. The transcript of the deposition might include a colloquy like this:

Q What was the nurse's entry written at 12:40?
A Where is that?
Q It's on the page that reads "Nursing database", on the right.
A This one (showing)?
Q (Reviewing) No, it's the one with the date of February 10 written on the top.
A Where – Oh, I see it now.
(By Ms. Cooper) Which one is this now? Is it the one after the I&O entries?
Q No, it's about halfway through the handwritten entries.
(By Mr. Stone) I can't seem to find it...

Every day, across the country, hundreds of hours of attorney time and clients' money are wasted on episodes like this.

Using the LDM system, the attorneys and the witness can quickly key the question and answer to the intended page.

Q What was the nurse's entry written at 12:40?
A Where is that?
Q Tab M, page 102, on the right.
A OK. She notes that the patient is thirsty and is asking for ice water.

Anyone reading the transcript – attorneys, experts, clients, claims personnel – can also find page 102, either on the computer screen or as paper copies in the looseleaf binder.

Coordinating with a printed copy

Recall that we emphasized that it is important, before a document is imported into Scrivener, to ensure that it includes page numbers (Bates numbers) on the pages. And we recommended that the page number be retained when the item is renamed under Scrivener. This is a key point for using documents in litigation. As you are preparing a brief on a motion or a case evaluation summary, or as you are questioning a witness, being able to find, cite, and copy the key documents that support your case will greatly enhance your productivity.

The efficiencies that this system brings are most apparent in a deposition or at trial, where a witness who is testifying will often have only a printed copy of the document available as he is answering questions. The example page in question defines a “resort” based on the number of “dwelling units” found on a single parcel of land. It will be important for him to be able to quickly find and review that definition before having to answer questions about how the ordinance is enforced.

In the above example, finding the definitions of “dwelling unit” and “resort” under Scrivener meets only part of the need. The witness needs to be able to go to the same location in a printed version of the document that he has in front of him, with page numbers, so that he can quickly go to pages 20 and 24 to respond to questions about that part of the document.

These efficiencies are well worth the additional effort that it takes to get the PDF files into Scrivener.

Details on Scrivener

Scrivener - Literature & Latte - <https://www.literatureandlatte.com/> The version that is displayed here is version 3 for Mac. The Windows edition is still on version 2, though a full release of version 3 is likely in mid-2020. If you need to ensure full access under both platforms, it will be necessary to stay with version 2 for now. (The screenshots used here come from version 3. The functionality for version 2 is the same as that described here, but the appearance is a little different.)

A book called Take Control of Scrivener is available for \$10 from Take Control Books

<https://www.takecontrolbooks.com/scrivener-2>

Online articles

You will not be surprised to learn that all of the following articles address using Scrivener to help with writing projects. They are recommended for background on the product.

<https://michaelhyatt.com/switched-to-scrivener/>

<https://www.helpingwritersbecomeauthors.com/resources/scrivener-template-for-outlining-and-structuring-your-novel/>

<https://thewritingkylie.com/scrivener-templates>

<https://justinswapp.com/scrivener-resources/>

<https://zapier.com/blog/ulysses-scrivener/>

<http://belindacrawford.com/2012/11/22/scrivener-templates-for-you-and-me/>

<http://scrivenercoach.com/va-blogging-home-page/>

<https://www.scrivenervirgin.com>

Gwen Hernandez -

<https://scrivenerclasses.com/>

<http://gwenhernandez.com/scrivener-corner/scrivener-tips/>

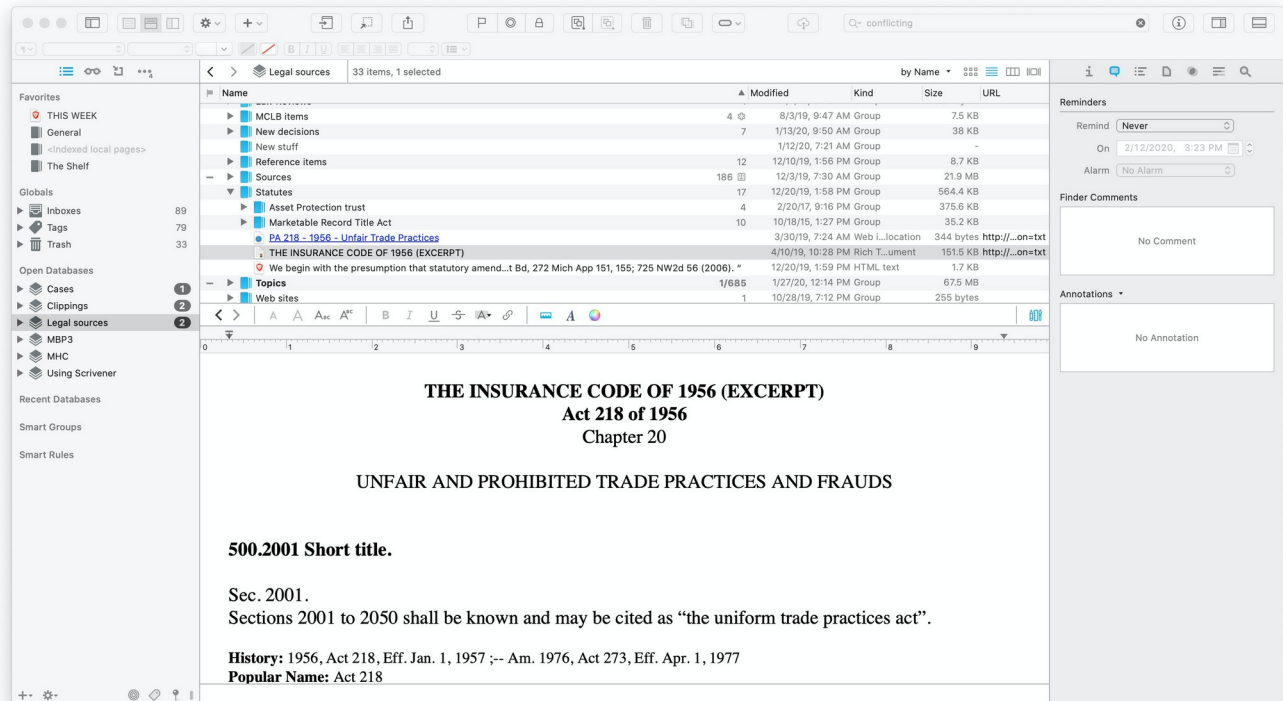
USING DEVONTHINK 3 FOR DOCUMENT MANAGEMENT

This second part of the presentation addresses the use of DevonThink version 3 (DT3) as an alternative environment for viewing PDF files after they have been prepared and unfolded, and other documents that you may have collected. DT3 offers some of the same tools and ideas, but there are some differences, and some features not available with Scrivener. DT3 is only available under the Mac platform.

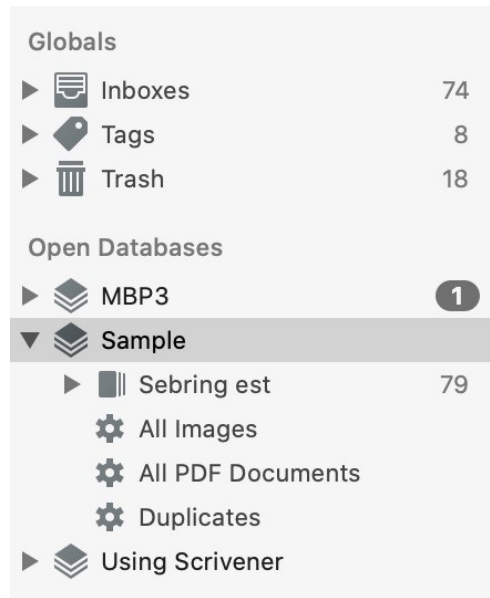
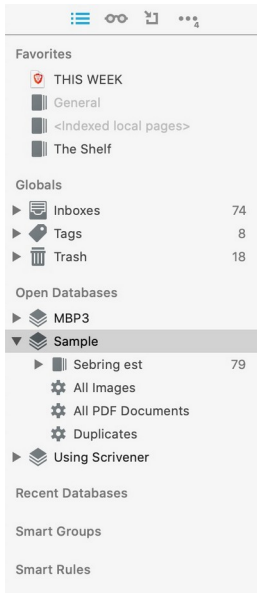
DT3 presents each document, web page, or note as a discrete item of information which is or can be

- contained in a database
- contained in a “group” or folder
- tagged
- annotated, highlighted, etc.
- combined with other similar items

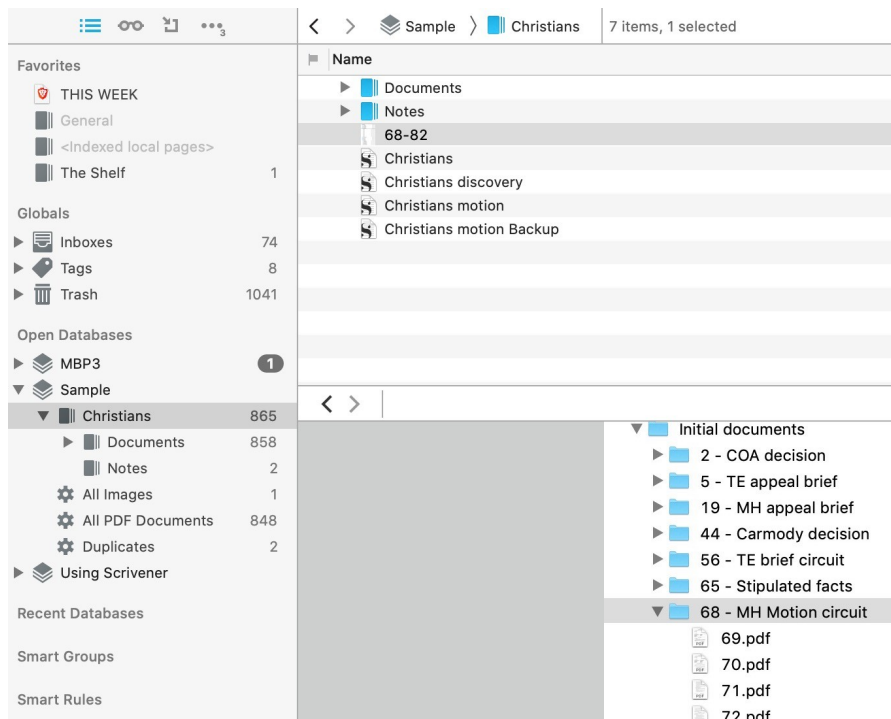
This is the DT3 display. It consists of a *sidebar* showing a list of databases and groups at left, an *item list* of groups and items in the upper middle, a *view/edit pane* showing the contents of the selected item in the lower middle, and an *inspectors* panel at right for comments, annotations and other useful activities.



There are several sections in the sidebar. At the top are Favorites, followed by the “global” items, including Inboxes and Tags, and below that is a list of the databases that are currently open. The groups contained within those databases can be hidden or shown, as desired.



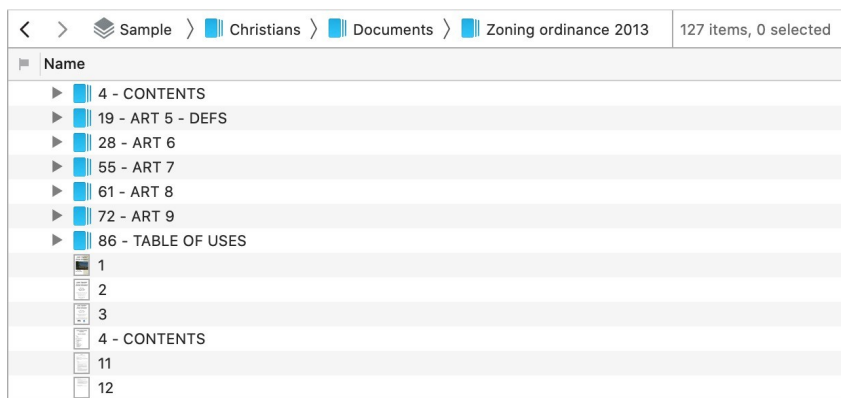
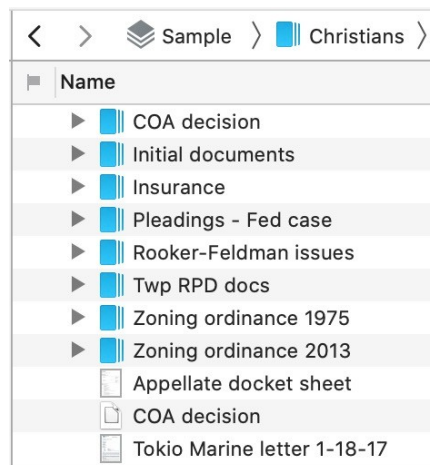
As we see below, the groups appear both in the sidebar and in the item list. Items that are not contained in any group will appear only in the item list. They are not displayed in the sidebar.



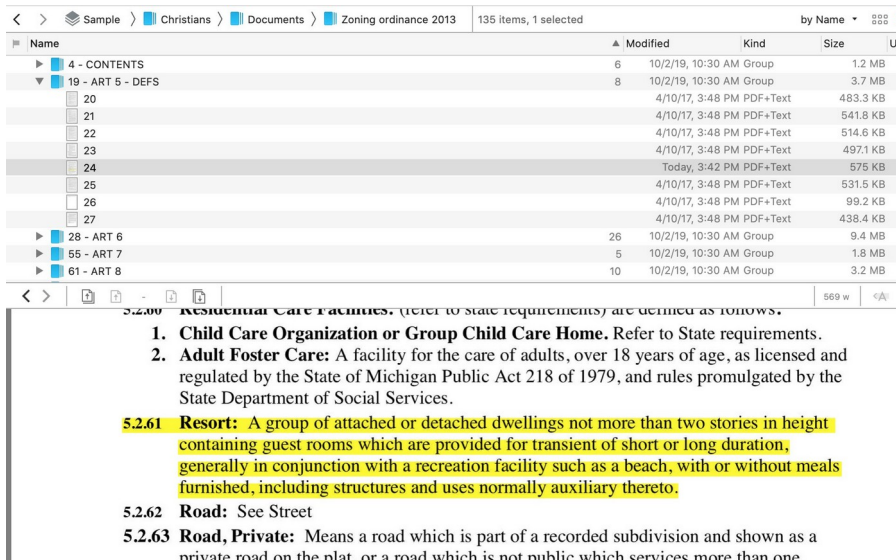
A group can be opened using the “twistie” at left to see what it contains. Here we again see the 2013 zoning ordinance for the township, the last group in this list.

Double-clicking on that one displays its contents directly in the item list without the other groups. At the top of the item list is a trail that displays where we are in the hierarchy of groups.

The Zoning ordinance 2013 group contains subgroups as well as individual items. A new group may be created by selecting one or more items or groups and choosing “group items” from the context menu.



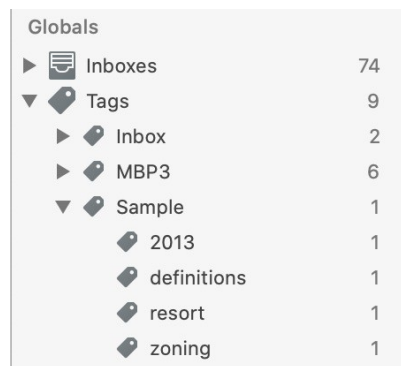
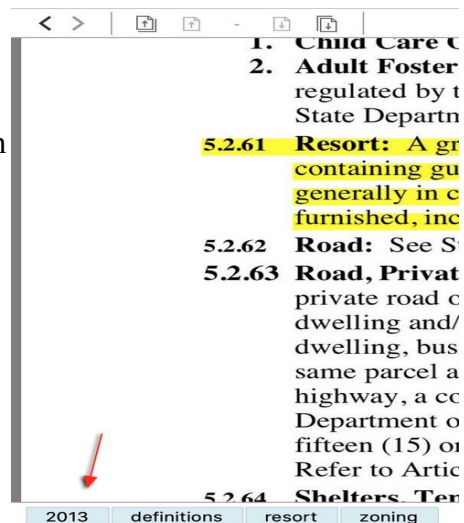
When we open the folder containing Article 5 (beginning at p. 19), we can see its contents, we can select page 24 in the item list, and we can scroll to that page in that document. Here we have highlighted the desired entry. Unlike Scrivener, it is possible to highlight text in PDF files under DT3. That is a definite plus.



Once again, having both the page numbers and the descriptive names allows us to quickly find the document that we need.

We noted above that any document can be *tagged*. At the bottom of the screen is the tags line, where one or many tags can be quickly assigned to the document being viewed. If you want to tag each of several related files, select them all and then enter the tag.

Tags provide an alternative way of associating related items without keeping them in actual groups, folders, or even databases. Where do we find the list of tags? We go to the global items in the sidebar.



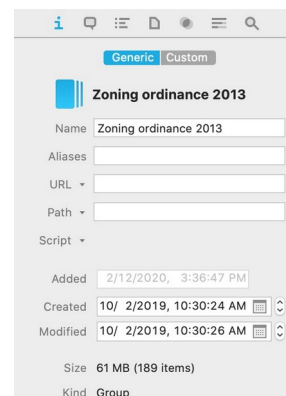
The “globals” in the sidebar include inboxes and tags. Each database has its own inbox, but the designers of DT3 chose to group them all together in this location by default. They did the same with tags. The tags that have been created are automatically gathered here, they can be separately viewed, and they may be deleted or renamed as desired.

The inbox for any database can be used in any way you choose. It could be the “junk drawer” where incoming items are stored pending further organization. Somewhat confusingly, the default database (which is still available if all other databases are closed) is called the Inbox database, and it has its own Inbox.

Comments and annotations

As is the case with Scrivener, DT3 allows the user to add short or long explanatory text or a quick abstract of the item being reviewed. The second icon under the right panel brings up the two windows where these items can be used. (See the screenshot on the next page.) The only differences between them is that the entries made in the first window are included in the Spotlight search database, but are not collected in the special Annotations folder described below. .

At the top of the right pane, the inspectors are shown by choosing one of several different icons. The first displays item information, and the second will bring up the comments and annotations. (A couple of the inspectors are not useful for the document review process and will not be described here.)



The item information panel displays metadata about the currently selected document or item. These are the generic elements that apply to all items. If you choose the Custom label you can add metadata elements of your own.

| Freq... | Groups | Leng... | Weight | 4,773 |
|---------|--------|---------|--------|-----------|
| 3,591 | 159 | 3 | 4 | The |
| 2,231 | 153 | 2 | 4 | Of |
| 1,540 | 158 | 3 | 5 | And |
| 1,411 | 151 | 1 | 2 | A |
| 1,295 | 136 | 2 | 4 | Or |
| 1,243 | 158 | 2 | 3 | To |
| 1,067 | 64 | 5 | 11 | Shall |
| 1,015 | 137 | 2 | 4 | Be |
| 765 | 152 | 2 | 3 | In |
| 649 | 150 | 3 | 4 | For |
| 501 | 109 | 9 | 11 | Ordinance |
| 497 | 135 | 2 | 4 | By |
| 470 | 102 | 6 | 9 | Zoning |
| 440 | 108 | 3 | 5 | Any |
| 440 | 125 | 3 | 6 | Use |
| 439 | 121 | 8 | 9 | Township |

The list of words contained in the current item may be of some interest. It is shown by choosing the fifth icon.

But it is the two comments/annotations panes that are the most useful for our purposes.

The screenshot shows the application interface with a document viewer. The left pane shows a tree view of items under 'Zoning ordinance 2013'. The right-hand pane contains several sections:

- Reminders:** Includes a 'Remind' dropdown set to 'Never', an 'On' date field set to '2/13/2020, 9:14 AM', and an 'Alarm' dropdown set to 'No Alarm'.
- Finder Comments:** Contains a text area with the text 'Resort - definition'.
- Annotations:** Contains a text area with the text '5.2.61 - definition of resort a group of dwellings containing guest rooms transient (short or long) generally with a recreation facility with or without meals furnished'.

The main document viewer shows a list of items:

- Child Care Organization or Group Child Care Home.** Refer to State requirements.
- Adult Foster Care:** A facility for the care of adults, over 18 years of age, as licensed and regulated by the State of Michigan Public Act 218 of 1979, and rules promulgated by the State Department of Social Services.

Item 5.2.61 is highlighted in yellow:

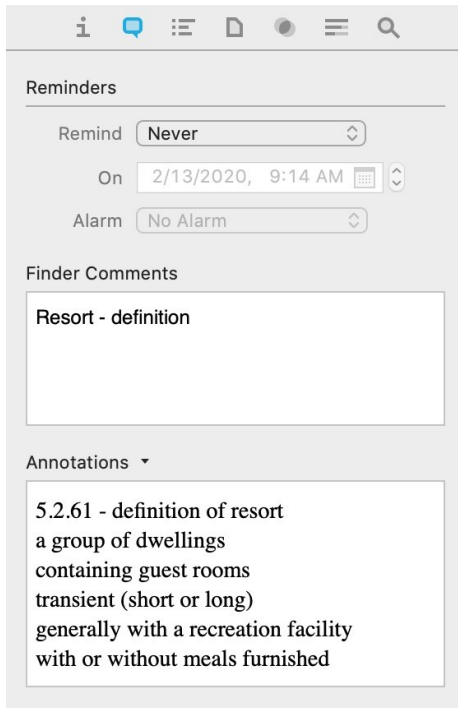
5.2.61 Resort: A group of attached or detached dwellings not more than two stories in height containing guest rooms which are provided for transient of short or long duration, generally in conjunction with a recreation facility such as a beach, with or without meals furnished, including structures and uses normally auxiliary thereto.

The detail from this inspector is shown on the next page. In that pane we can include *links* providing cross-references to other items within the database. The currently displayed item above, containing the definition of “resort,” is page 24 of the zoning ordinance. You can choose Copy Item Link from the context menu

The Annotations pane shows a text area containing the text: 'See definition in [24](#) under article 5'.

and then the resulting link can be pasted in the annotations window for any other item or, for that matter, in the body of any text item in any database, to allow you to quickly return to page 24. The link can even be used outside DT3 – it can be pasted in another text-based program such as Pages, for

example, and it will open that page. If DT3 is not running, selecting the link will open DT3 and then display the linked page.

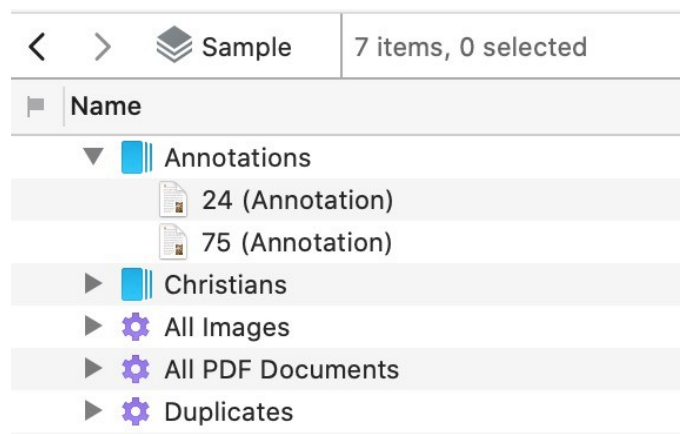


This is the detail from the comments/annotations pane in the Inspector.

At the right of the word “Annotations” you can see a tiny icon. It brings up a menu, and from there you can automatically copy text that has been selected in the document being displayed into the Annotations window.

(Reminders is a DT3 feature but has no role to play in document management.)

We noted earlier that DT3 likes to collect certain elements of its data in special places. At the top of the listing of groups for any database is a special, system-created group called Annotations. This is where all of the Annotations created in these panes are duplicated. It may be useful to know which of your items has an associated annotation.



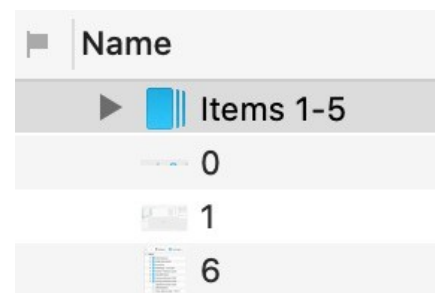
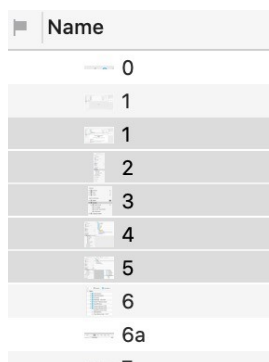
Grouping and merging files

As is the case with Scrivener, it is useful to group separate PDF documents together so that related documents may be reviewed and considered together.

Are we contradicting ourselves on document strategy? After all, we spent considerable effort to unfold large PDF files into separate files at the outset of this exercise.

The answer is that we want to have the best of both worlds. We want to be able separately review and annotate individual PDF pages but we also want to gather them and keep them together with related files.

When a series of documents is viewed in the listing in DT3, they can be quickly grouped together. Select all related documents, whether or not they are adjacent in the listing, and choose *Group Items* from the context menu. They will be moved to the new group. Name the resulting group as needed.



Note that the group itself can have its own comments, annotations, and tags, separate from those that were created for the individual files. The files contained within the folder do not “inherit” those elements from the folder.

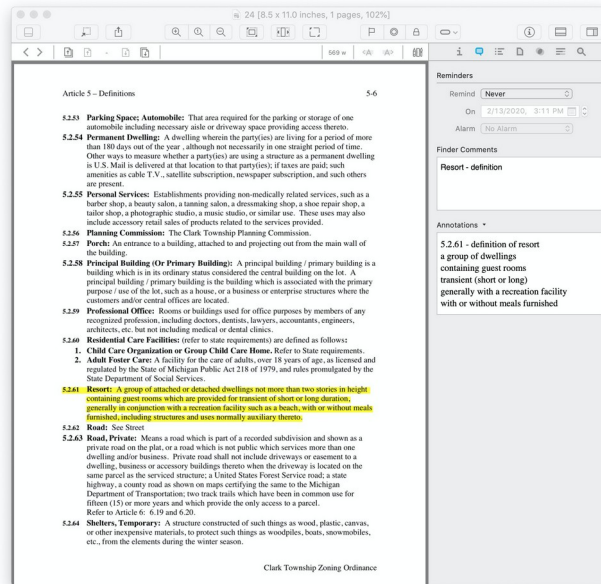
If you want to combine several files in the window into one, that can be accomplished by selecting the desired items and choosing *Merge x files* from the context menu. (With the *x*, DT3 will tell you how many files you are merging.) A new single file, either in the same format or in PDF if they are of different formats, will be created, and can be renamed. The original files are not deleted; they remain in place. Again, we have the best of both worlds.

So at this point what is included in the database is:

- A collection of all of the documents that have been produced, all of the pleadings and briefs, and any items that we have found online
- The 2013 zoning ordinance, consisting of 181 pages within one group, with additional groups under it
- A subgroup consisting of pages 19-27, the pages displaying Article 5
- Highlighting on page 24 of the definition of “resort”
- An abstract of the key points of that definition in the window
- A set of tags associated with that page

When we want to use the documents for a deposition or a trial, the following finding, navigation, and display tools are available:

- We can search in the search box at upper right for any word or phrase we wish. Recall that we did OCR on these documents at the outset so that they would be searchable.
- We can double-click on the line for any particular document to bring it up in its own floating window so that it may be more closely reviewed (shown below).
- There is a “full screen” button that will allow you to view only the current item, against a plain background.



Other available tools:

- If you overlooked doing OCR on a document before importing it, DT3 has its own built-in OCR capability using the FineReader engine. This is a function not found in Scrivener. Choose Data | OCR and choose the format of the target.
- You can convert an item or a list of items from the current format (such as Word) to another (such as PDF). Data | Convert
- You can export one or several documents to get them out of DT3 if you need to copy them for another person or send them by email.
- An item can be given a color-coded label as another way of identifying important or related items. You can set up a key to give each color a customized meaning.
- An item can be “flagged”.
- An item can be locked so that its contents cannot be changed. (Annotations can still be added in the inspector, however.)
- You can select any text within an item and make it a link to a web page.
- You can highlight any text within an item with your choice of background color.
- DT3 can create a new summary of the highlighted entries by choosing “summarize highlights.”

- DT3 has built-in “smart folders,” and more can be created. These folders will automatically be populated with the documents that match the defined criteria. The screenshot of the Sample database displayed on page 2 shows three of the standard smart folders, which collect all images and all PDF files contained in the database.
- DT3 has an icon that sits in the upper right system menu bar and provides additional tools to do a number of other things from wherever you are: to take quick notes or screenshots of areas or windows from your screen, to create a voice note as audio, or to take a photograph of yourself from the computer’s camera. That is the tool that was used to take the screenshots used in this document.

The user can use a “flag and tag” strategy if he begins by creating a new smart group to collect items that have been flagged. Once he has all of the needed items included there, he can select the entire list, tag all of the items with one or more tags, and then mark them all as “unflagged.” Flagging is good to use for temporary purposes like this, while tags and/or labels can be used as more permanent markers.

As was the case with Scrivener, once you have a collection of documents under DT3 which has been organized using groups, and annotated with comments, the collection is very useful for efficient review of the facts of the case, writing briefs for motions or for case evaluation, and for display and use at depositions, hearings, or trial.

DevonThink 3 is available from Devon Technologies at

<https://www.devontechnologies.com/apps/devonthink>

The Pro version is \$200.

The developer makes available Joe Kissell’s Take Control of DevonThink 3 as a free download at

<https://www.devontechnologies.com/support/download/extras>

USING THE SYSTEM FOR ORGANIZED TEXT

This section discusses the use of Scrivener to display organized text. In essence, it can highlight the organization and structure of the text so that the reader can more readily follow and comprehend the article he is reading.

By “organized text,” we mean normal narrative text that is presented in an organized manner, with the regular use of headings or titles. A related concept is “structured text,” which is any text-based document that is presented using titles and subtitles, sections and subsections (to any number of levels), to present points in a hierarchy.

There are several formats for organized text, and each has its own schema:

- Briefs filed by attorneys representing litigants in court cases, both in the trial court and at the appellate level. The briefs filed with appellate courts tend to be more tightly organized.
- Decisions issued by courts. Each court seems to have its favored organizational “template.”
- Scholarly articles, including law review articles.
- Statutes and regulations at the Federal and state level.

Sometimes the sections and subsections (going as deep as the author wishes) are numbered, often they use titles, and sometimes both numbers and titles are used.

As an example for the purposes of this discussion, we refer to the decision issued in April 2020 by the Sixth Circuit Court of Appeals in the case entitled *Gary B. v Gretchen Whitmer*. The slip opinion as issued by the court consists of 85 pages. The majority opinion, 61 pages, is divided into sections I to III, and section II – “Discussion” is further divided into 17 different subsections. The deepest goes to four sublevels: subsection III – E – 3 – c – ii is entitled “The Due Process Clause Provides Only Negative, Not Positive Rights.”

To convert the 85-page PDF into an organized Scrivener file, the following steps are used:

1. Ensure that the document as issued by the court is a text-based PDF file. (It is.)
2. Select all of the text, copy from the source file and paste it into a new blank text document in the destination Scrivener file.
3. Either during the import or after, split the file into its component parts – see further discussion below.

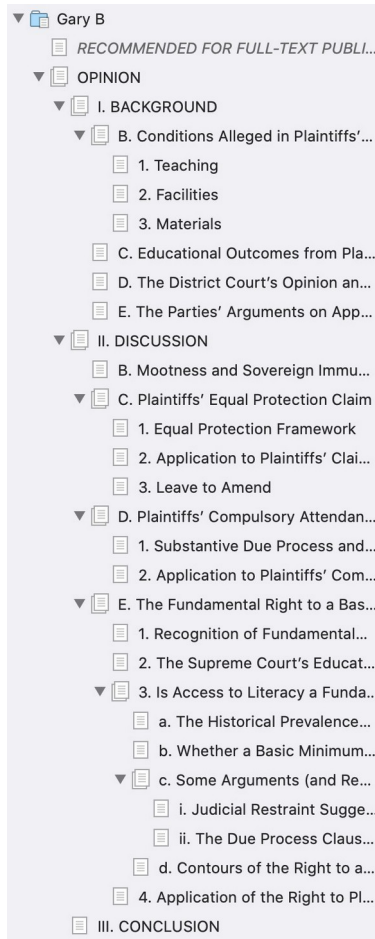
4. Do a Split (found on the context menu) just before footnotes or endnotes, if any. Name the item “Footnotes” or “Endnotes.”
5. In the Binder, physically move each subitem under its parent item. Once this is completed, you will have a fully collapsible extrinsic outline of the court’s opinion.

Splitting the document - The two alternatives to splitting the document when or after importing to Scrivener are:

1. The manual approach. Import the document. Find each section, heading, subheading, title, and subtitle and make it a separate document in the Scrivener file. Highlight the title or subheading and choose “Split with Selection as Title” from the context menu. This makes a new item consisting of everything at and after the highlighted text, with its name taken from the highlighted text. Repeat for each successive title or subheading.
If you missed a title or subheading, you can always split the document that contains it by highlighting and splitting, as done above. The resulting split file will appear where it belongs in the hierarchy.
2. The automatic approach. Use the “Import and Split” command that is built into Scrivener. For a source document that was created under Word, using styles to present titles and subtitles, Scrivener can split it into separate documents automatically, with the title of each document based on the text of the title or subtitle. Note: If you are using a document that has been converted from PDF to Word, the titles and subtitles will probably not have carried through. You will have to manually edit each title and subtitle to apply a predefined style (typically these are called Heading 1, Heading 2, and Heading 3) or a newly created style before importing the Word file into Scrivener.

One way or the other, some manual work needs to be done in order to end up with a properly organized Scrivener file.

Using our sample, after this is all done, the majority opinion and the dissent will display in the Binder as shown on the next page.



As it turns out, the majority opinion, authored by Judge Clay, uses numbers and letters combined with titles, while Judge Murphy’s dissent uses numbers and letters only.

Once this has been done, the advantages of using Scrivener to display the opinion are readily evident: The sections and subsections of the opinion can be seen at a glance. Their relationships to each other are made clear. Navigation to specific sections and topics is quick and intuitive. You can quickly find a particular section and read it. You can quickly go back to an earlier section if you want to check back on it.

If you look at the hierarchy carefully, you will see that there is no subsection A under II – DISCUSSION. That is because the opinion does not present any text under section II before subsection A, as seen here:

II. DISCUSSION

A. Standard of Review

We review a district court’s grant of a motion to dismiss de novo. E.g., *Huntington Bancshares, Inc.*, 864 F.3d 455, 458 (6th Cir. 2017). A motion is granted if the plaintiff has “fail[ed] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

If we had made a separate document for subsection A, the document just before it would simply contain the line “II. DISCUSSION,” and we preferred to avoid that result. The tradeoff is that the subtitle “Standard of Review” does not appear in the Binder.

All of the annotation tools that we discussed earlier are also available to you here. You can enter a short amount of descriptive text in the Synopsis, and notes of any length in the Notes pane.

There are some cautions. Conversion of a text-based PDF file to Word often leads to some formatting errors that may need to be fixed. Footnotes that display at the bottom of the printed page, in particular, need to be redone in order to return the text to its proper flow. Scrivener allows the user to insert an inline footnote, and normally you will want to convert the footnotes to Scrivener's inline footnote.

It is also necessary to consider headers and footers. The Word file that created the PDF document distributed by the court included a header on each page after the first:

Nos. 18-1855/1871 *Gary B., et al. v. Whitmer, et al.* Page 3

Deciding whether to leave these headers in place or remove them is a matter of personal preference. You may choose to leave them so that someone reading the Scrivener document can find or cite to a page in the slip opinion. If you leave them, you may still wish to clean up pages by reconnecting paragraphs broken up by the page break and the header.

Some further notes:

1. We do not recommend using DevonThink for the presentation of documents using organized text, due to some of the technical limitations that it presents. DevonThink does not offer a function similar to Import and Split, and it imposes an automatic alphabetic ordering that sometimes gets in the way of what we are trying to do.
2. One of our sample documents is adapted from the decision of the United States Supreme Court in the 1992 case of *Planned Parenthood v. Casey*, one of the major abortion cases decided by that Court. This very long decision includes just over 58,500 words, five separate opinions by the Justices, presented in 51 different documents in the Binder. Review that document to see how Scrivener handles the display of a very complex document.

STATUTES AND REGULATIONS

The contents of statutes and regulations present another form of organized text. Some are also structured using a hierarchy of titles, subtitles, parts, subparts, etc. (think of the Internal Revenue Code as one enormous example) while others will consist simply of a series of sections. What is particular to statutes and regulations, however, is the fact that each particular section begins with an identical string of text, a fact that will prove to be useful.

The People of the State of Michigan enact:

567.221 Short title.

Sec. 1.
This act shall be known and may be cited as the "uniform unclaimed property act".

History: 1995, Act 29, Eff. Mar. 28, 1996

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567.222 Definitions.

Sec. 2.
As used in this act, unless the context otherwise requires:
(a) "Administrator" means the state treasurer.

Let's consider the text of the Uniform Unclaimed Property Act (UUPA), MCL 567.221-265, consisting of 54 sections and 15,119 words. If we go to the online site for the Michigan legislature, we can find MCL 567.221 et seq. and download the entire Act as one document in HTML format. Choose "Printer Friendly" at the very top of the page, and then HTML from the two choices given.

(The other choice is a PDF file.) From the context menu, choose Download and identify a target folder.

The document needs to be in either plain text or rich text format, though. There are two methods we recommend for conversion. One is pretty low-tech: open the HTML file in a browser, use Ctrl-A to select all text on the page and then paste it using Ctrl-V into your preferred text editor. The other involves DevonThink. Import or index the HTML file, then run Convert (Data | Convert | to plain text) on the file. Then export the resulting text file to a new plain-text document, or to rich text if you prefer.

Import the file into Scrivener, and then split the file into named sections following the instructions above. The Import and Split command can be particularly useful here. Looking at the UUPA in a text editor, as seen on the previous page, you will see that it uses regular delimiters (called "separators" in the Scrivener manual) in the form of a blank line followed by a new line beginning with the string "567." Using the Find and Replace function in your text editor, you can find each instance of a line feed followed by the string "567" and use the "replace all" function to replace each instance of that combination with the following:

- a new line feed
- the string "---"
- another new line feed
- the string "567"

You will need to ensure that you include the line feed code as part of both the search key and the replace key, since you do not want to include the locations where the string "567" might appear

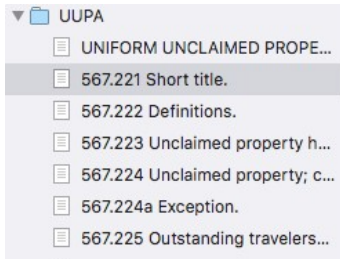
What is a "line feed?" - from Wikipedia

Newline (frequently called **line ending**, **end of line (EOL)**, **line feed**, or **line break**) is a control character or sequence of control characters in a character encoding specification (e.g. ASCII or EBCDIC) that is used to signify the end of a line of text and the start of a new one. Some text editors set this special character when pressing the ↵ Enter key.

elsewhere in the text, as it sometimes does in the History and Compiler's Notes that accompany Michigan statutes.

After the delimiter has been added, you can do the Import and Split, instructing Scrivener to split the source document into 54 separate documents. (Import and Split will operate on plain text, rich text, and Word files. It will not work on PDF or HTML files.)

Once you are done, you will have a folder in your Scrivener project that nicely presents each section's title in the Binder and displays each section's text in the Editor.



567.221 Short title.

Sec. 1.

This act shall be known and may be cited as the "uniform unclaimed property act".

History: 1995, Act 29, Eff. Mar. 28, 1996

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