First District Court of Appeal

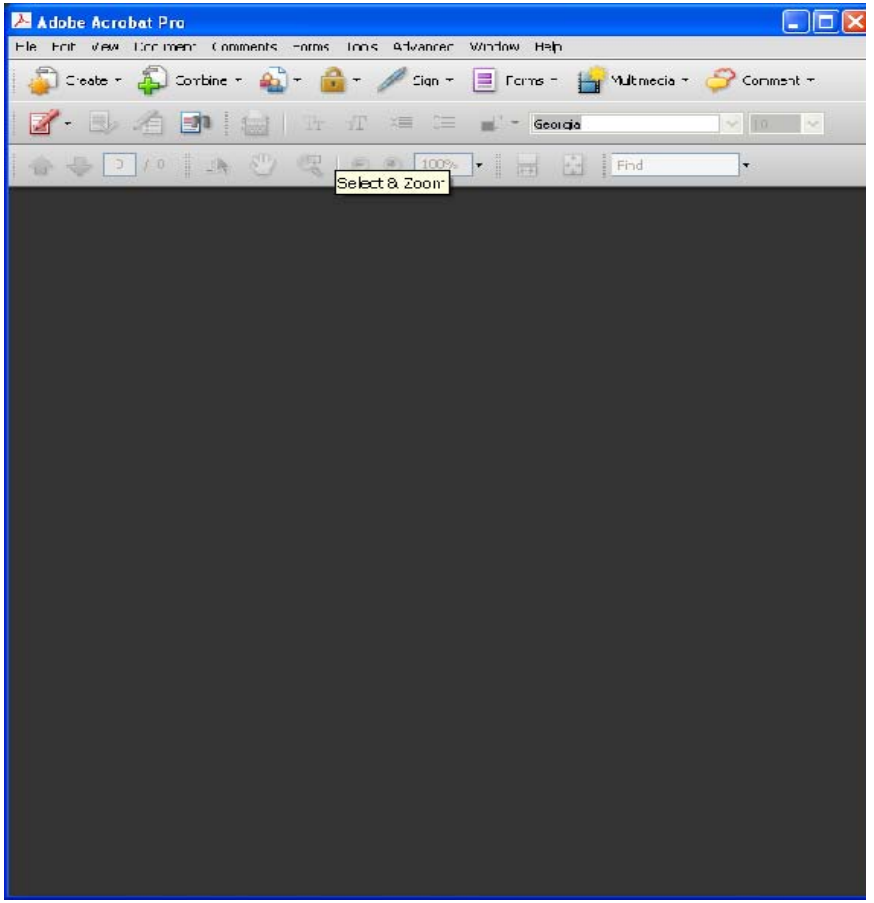
Creating Bookmarks within Adobe Acrobat

(updated 10/13/2020)

Florida Rule of Appellate Procedure 9.220 requires that all appendices be bookmarked. Adobe Acrobat includes a function for bookmarking PDF documents. The bookmarks appear on the left side of the screen and allow the user to click on the exact document that the user desires to review without having to scroll through all pages of an appendix to find a specific document.

Adobe Acrobat Standard or Professional (version 9.0 or later) allows the user to create PDFs or combine several PDFs into a single file and bookmark the PDF for easy reference. Be advised, **Adobe Reader** does not have the necessary features to create a bookmarked document.

For advice on creating PDF documents, please see the tutorials titled “Creating a PDF with ...” at http://www.1dca.org/eaccess.html.

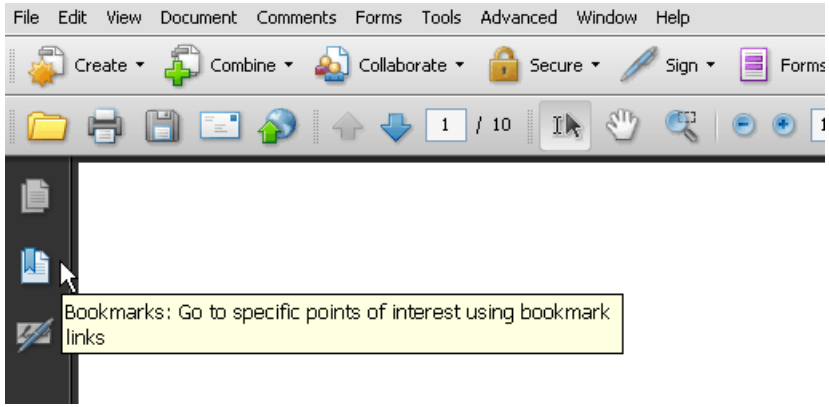


Adobe Acrobat Pro shown above. The “Pro” version has many advanced features, but it is not necessary for this purpose. The “Standard” version of Adobe Acrobat is sufficient.

Go to www.adobe.com for details on Adobe Acrobat.

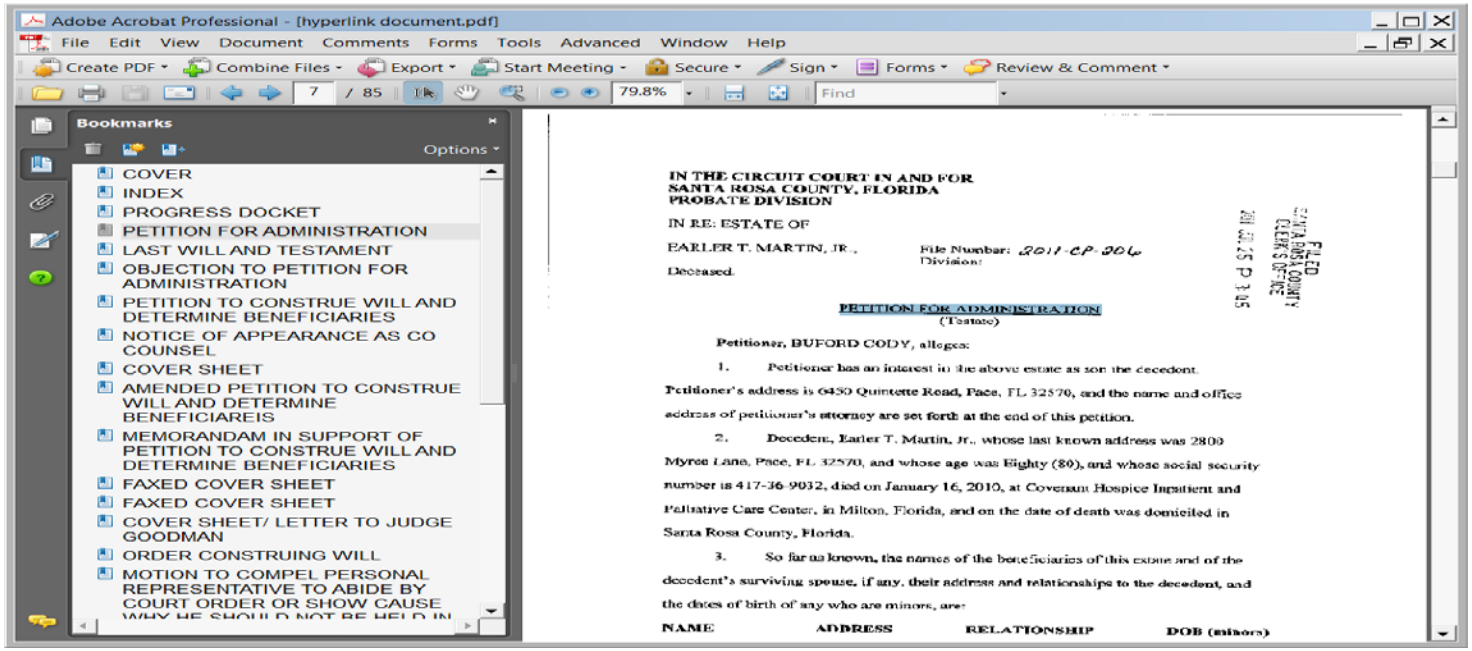
Bookmarks are PDF document navigational tools that allow the reader to quickly locate and link to points of interest within a document.

To view a document's bookmarks, click on the Bookmarks toolbar on the left hand side of the document.

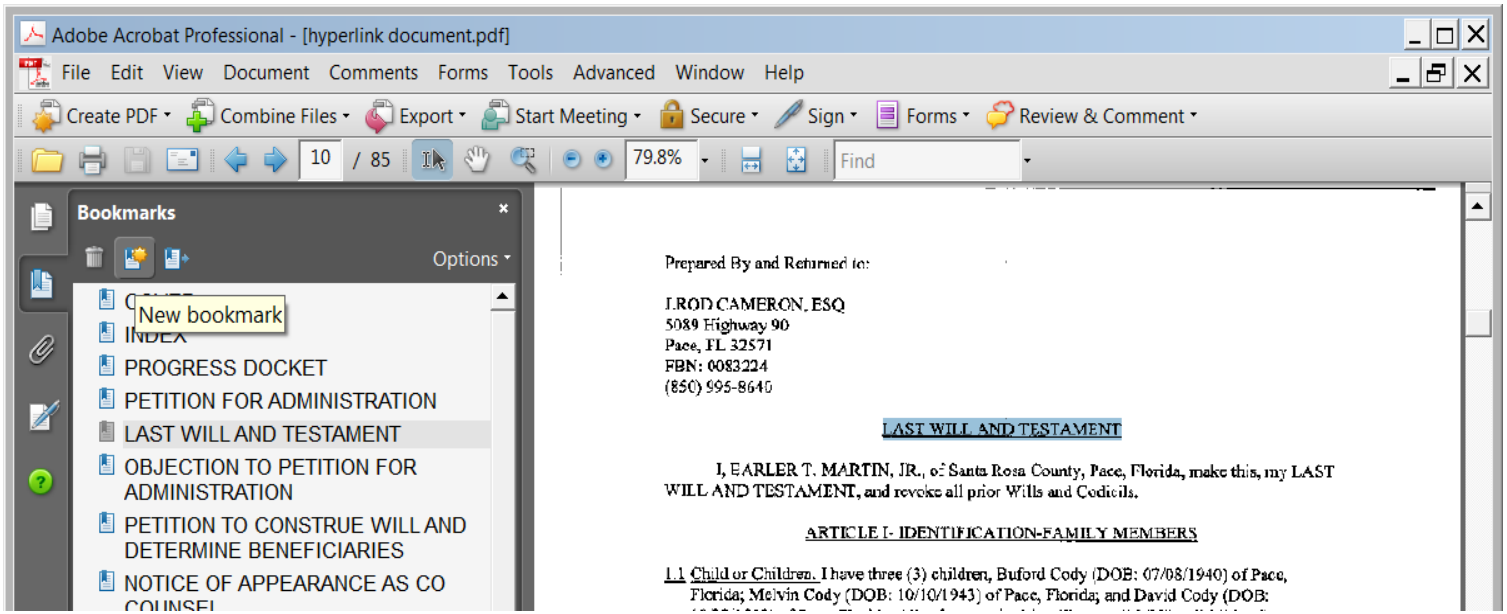


To create a new bookmark, select the text heading that you would like to have linked in the Bookmarks menu then select "New Bookmark" from the "Options" menu. (Alternately, use Control +B on your keyboard or Command +B for Macs.)

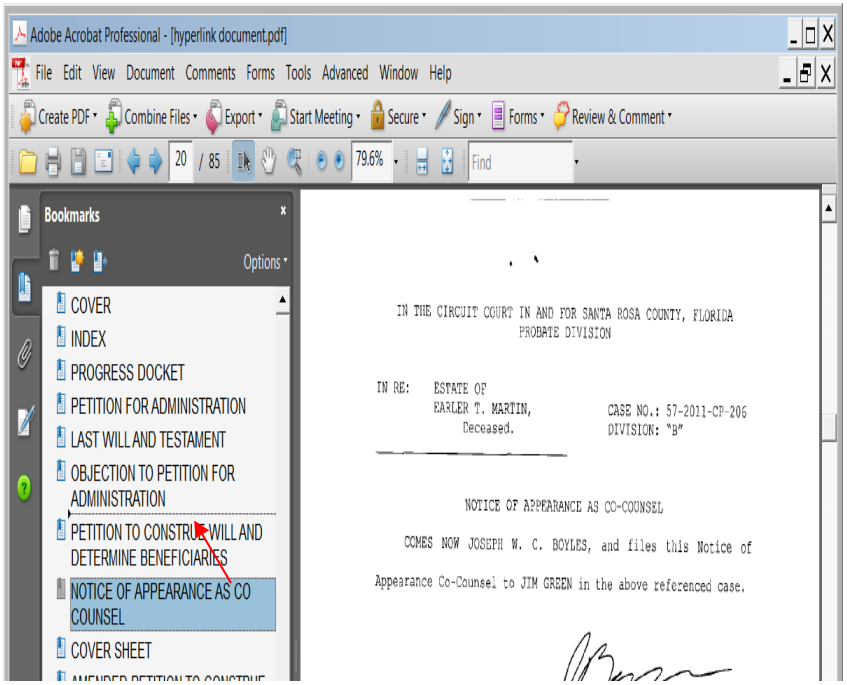
Avoid using text headings such as "Appendix A," "Tab 1," Order, Motion, Exhibit A, or similar generic titles. The bookmark/text heading should tell the court what the document is, such as "Amended Complaint" or "Motion for Summary Judgment."

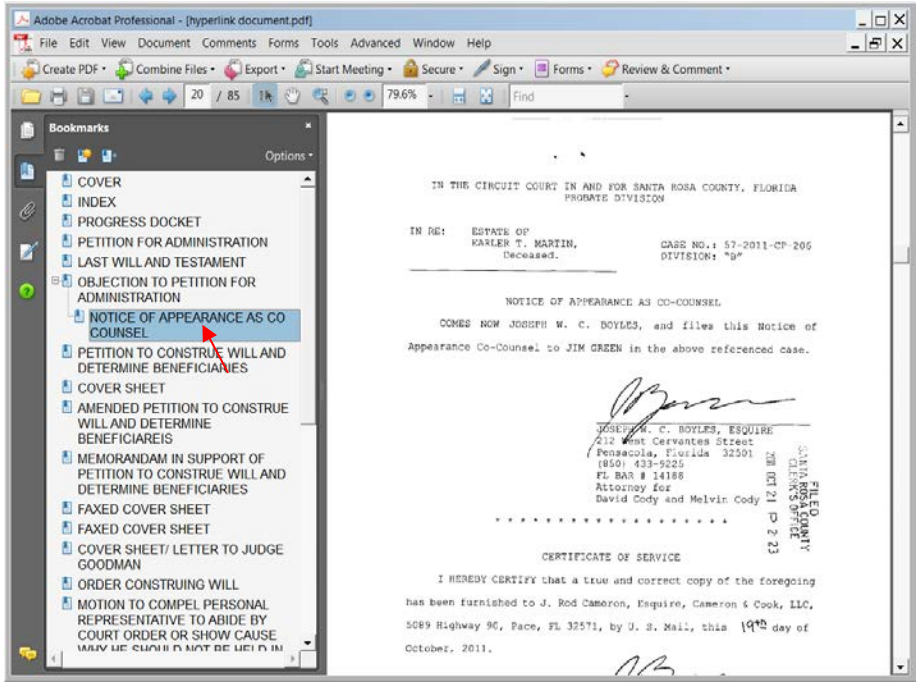


Repeat the process by selecting document headings and adding Bookmarks.

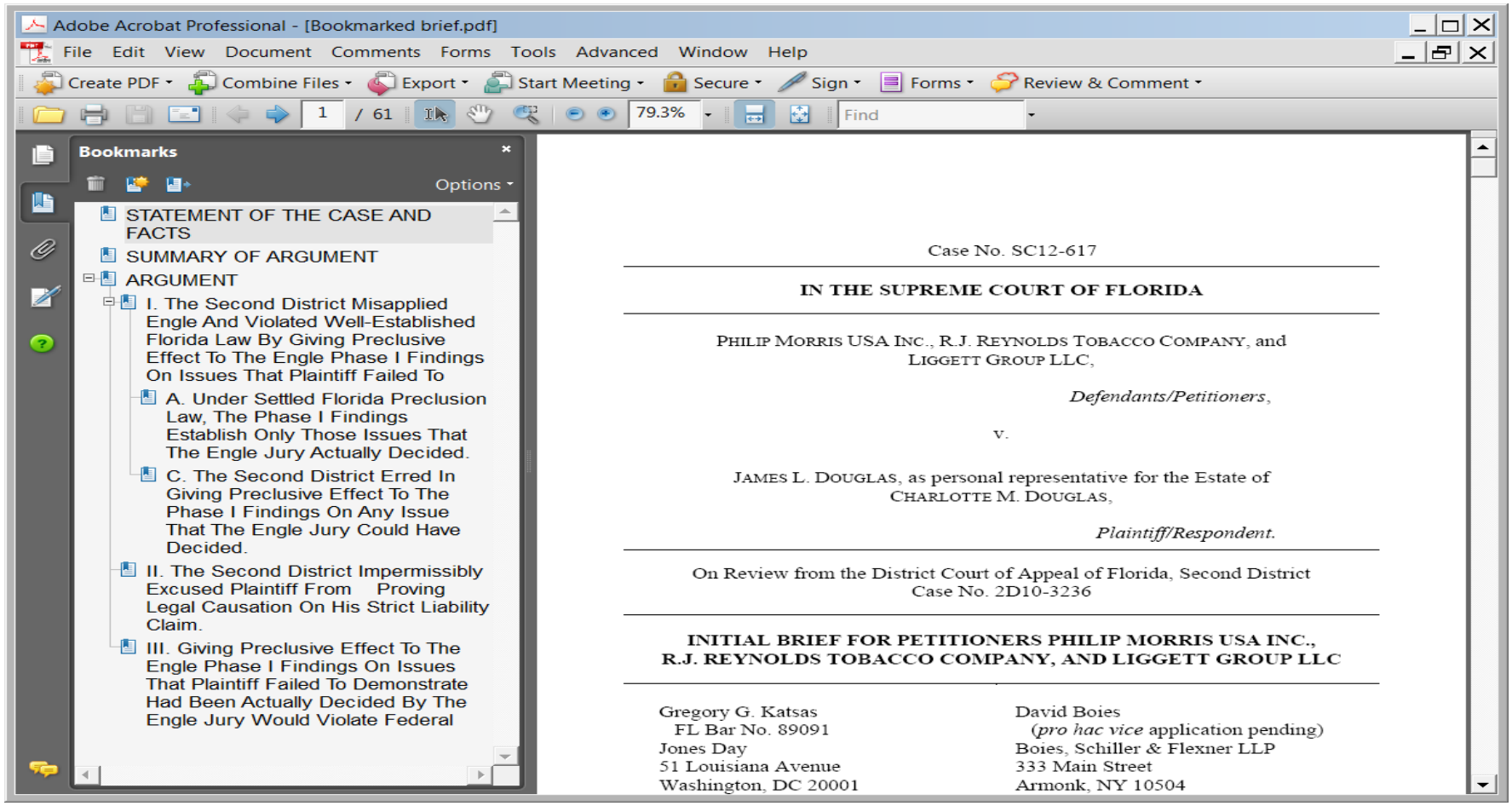


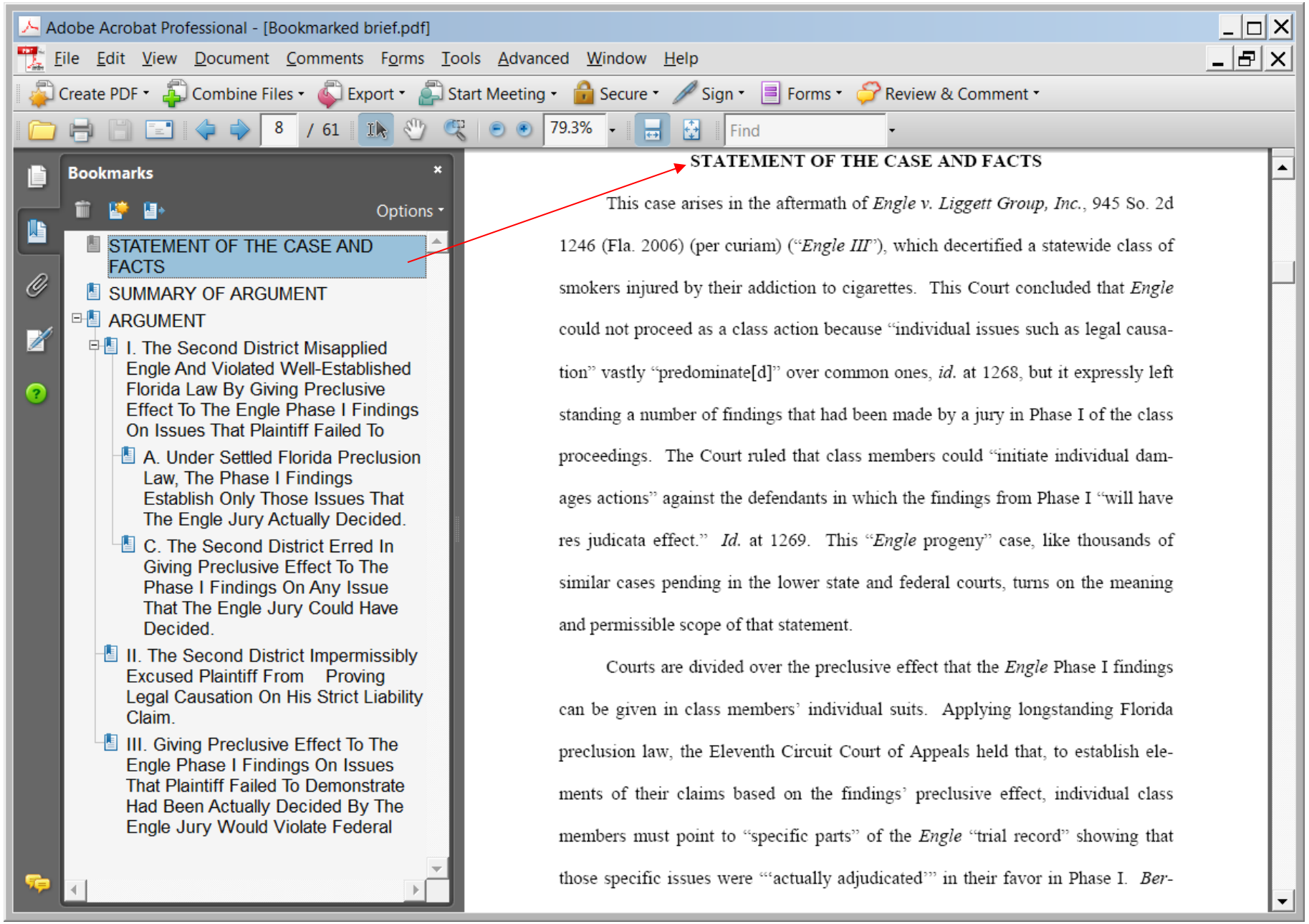
Next, if desired, you can create a hierarchy for the bookmarks. From the Bookmarks menu, while holding down on the mouse button, click the bookmark that you would like to move. You will see a horizontal bar with a right arrow. Drag the arrow to the right to create a sub heading structure. Likewise, drag the arrow left to move the bookmark up in the hierarchy.





Here is an example of the use of bookmarks for a brief.

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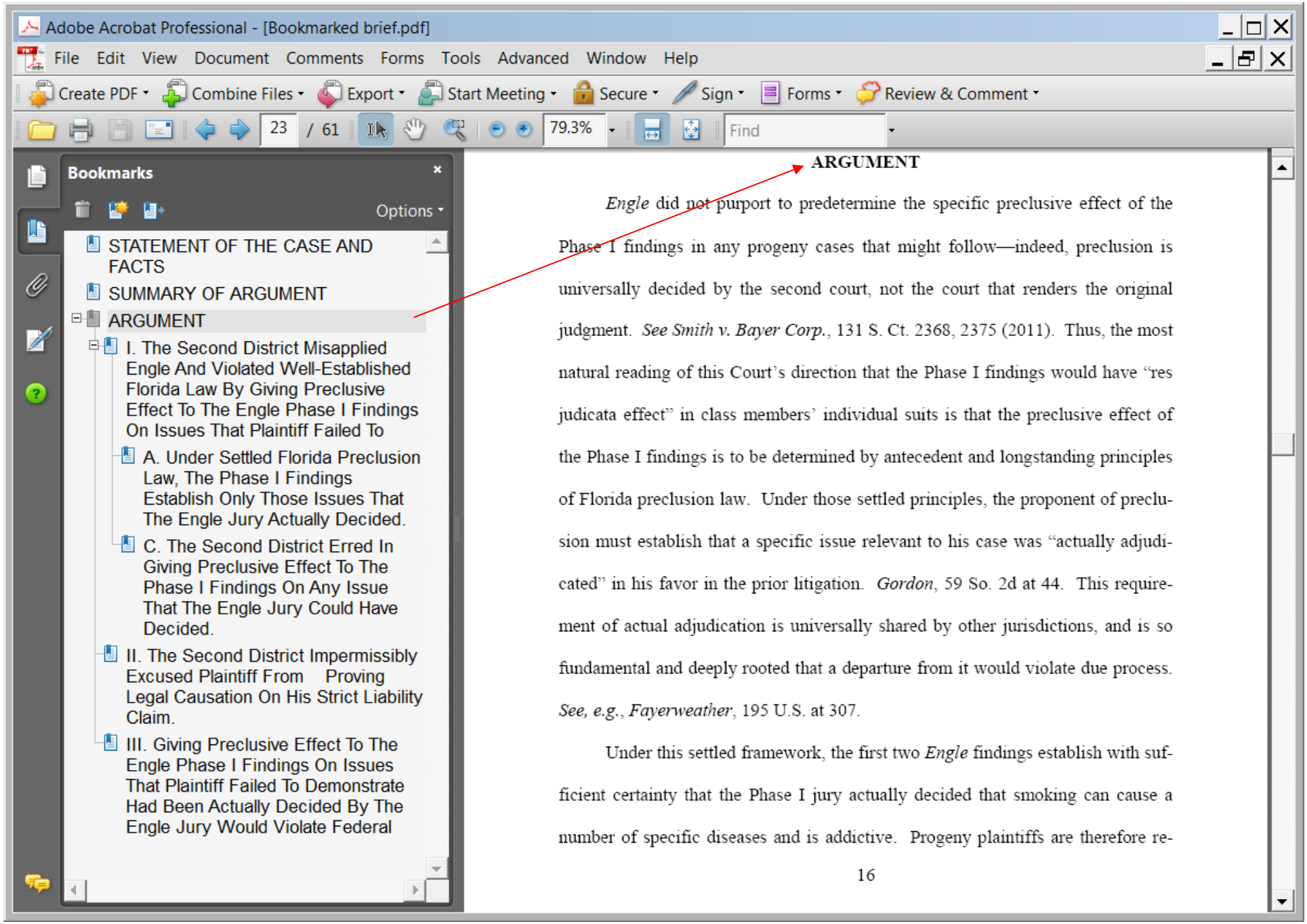
STATEMENT OF THE CASE AND FACTS
SUMMARY OF ARGUMENT
ARGUMENT
I. The Second District Misapplied Engle And Violated Well-Established Florida Law By Giving Preclusive Effect To The Engle Phase I Findings On Issues That Plaintiff Failed To
A. Under Settled Florida Preclusion Law, The Phase I Findings Establish Only Those Issues That The Engle Jury Actually Decided.
C. The Second District Erred In Giving Preclusive Effect To The Phase I Findings On Any Issue That The Engle Jury Could Have Decided.
II. The Second District Impermissibly Excused Plaintiff From Proving Legal Causation On His Strict Liability Claim.
III. Giving Preclusive Effect To The Engle Phase I Findings On Issues That Plaintiff Failed To Demonstrate Had Been Actually Decided By The Engle Jury Would Violate Federal
STATEMENT OF THE CASE AND FACTS
This case arises in the aftermath of Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006) (per curiam) ("Engle III"), which decertified a statewide class of smokers injured by their addiction to cigarettes. This Court concluded that Engle could not proceed as a class action because "individual issues such as legal causation" vastly "predominate[d]" over common ones, id. at 1268, but it expressly left standing a number of findings that had been made by a jury in Phase I of the class proceedings. The Court ruled that class members could "initiate individual damages actions" against the defendants in which the findings from Phase I "will have res judicata effect." Id. at 1269. This "Engle progeny" case, like thousands of similar cases pending in the lower state and federal courts, turns on the meaning and permissible scope of that statement.
Courts are divided over the preclusive effect that the Engle Phase I findings can be given in class members' individual suits. Applying longstanding Florida preclusion law, the Eleventh Circuit Court of Appeals held that, to establish elements of their claims based on the findings' preclusive effect, individual class members must point to "specific parts" of the Engle "trial record" showing that those specific issues were ""actually adjudicated"" in their favor in Phase I. Ber-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A. Under Settled Florida Preclusion Law, The Phase I Findings Establish Only Those Issues That The Engle Jury Actually Decided.
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ARGUMENT
Engle did not purport to predetermine the specific preclusive effect of the Phase I findings in any progeny cases that might follow—indeed, preclusion is universally decided by the second court, not the court that renders the original judgment. See Smith v. Bayer Corp., 131 S. Ct. 2368, 2375 (2011). Thus, the most natural reading of this Court's direction that the Phase I findings would have "res judicata effect" in class members' individual suits is that the preclusive effect of the Phase I findings is to be determined by antecedent and longstanding principles of Florida preclusion law. Under those settled principles, the proponent of preclusion must establish that a specific issue relevant to his case was "actually adjudicated" in his favor in the prior litigation. Gordon, 59 So. 2d at 44. This requirement of actual adjudication is universally shared by other jurisdictions, and is so fundamental and deeply rooted that a departure from it would violate due process. See, e.g., Fayerweather, 195 U.S. at 307.
Under this settled framework, the first two Engle findings establish with sufficient certainty that the Phase I jury actually decided that smoking can cause a number of specific diseases and is addictive. Progeny plaintiffs are therefore re-
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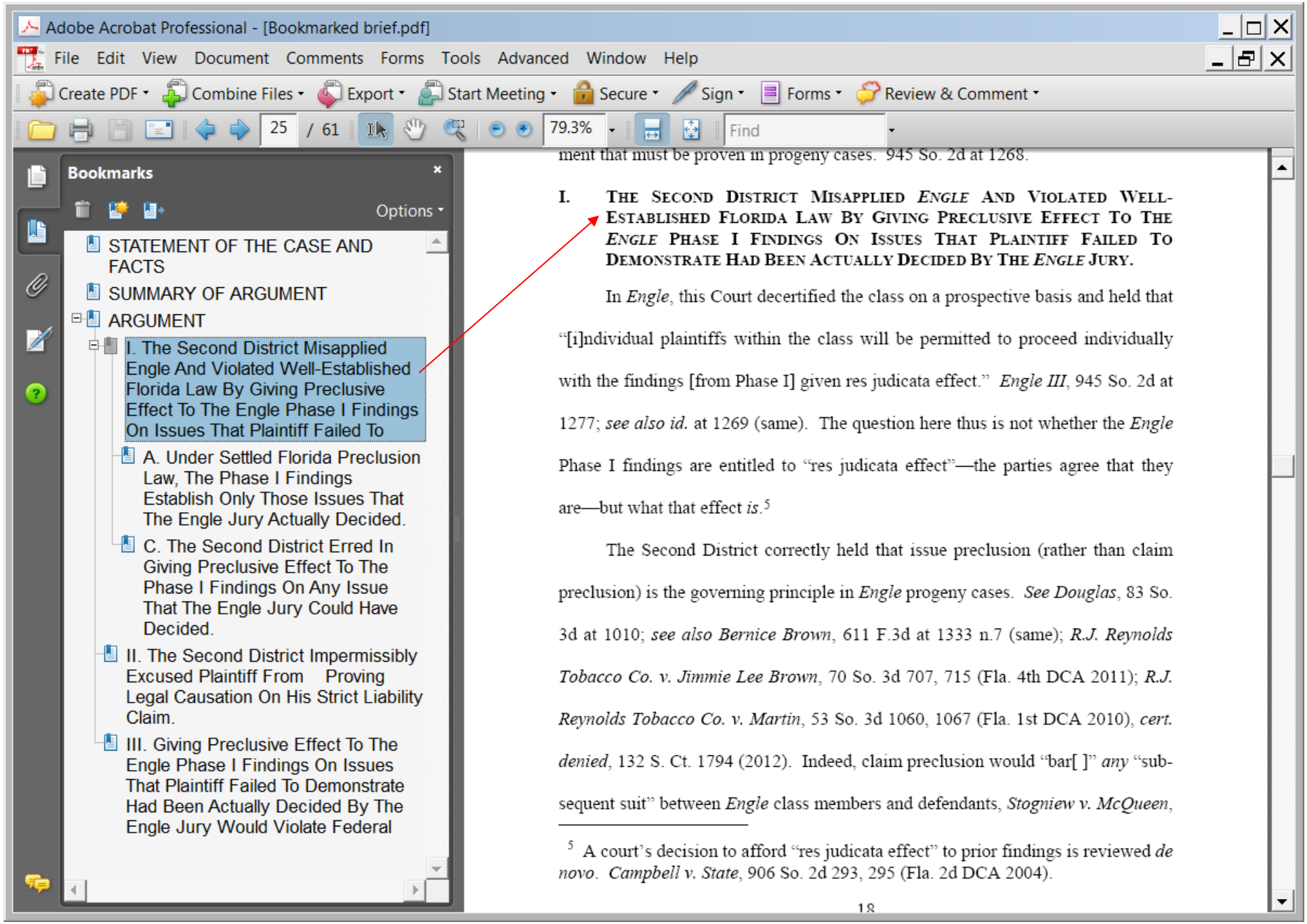

ment that must be proven in progeny cases. 945 So. 2d at 1268.

I. THE SECOND DISTRICT MISAPPLIED *ENGLE* AND VIOLATED WELL-ESTABLISHED FLORIDA LAW BY GIVING PRECLUSIVE EFFECT TO THE *ENGLE* PHASE I FINDINGS ON ISSUES THAT PLAINTIFF FAILED TO DEMONSTRATE HAD BEEN ACTUALLY DECIDED BY THE *ENGLE* JURY.

In *Engle*, this Court decertified the class on a prospective basis and held that "[i]ndividual plaintiffs within the class will be permitted to proceed individually with the findings [from Phase I] given res judicata effect." *Engle III*, 945 So. 2d at 1277; *see also id.* at 1269 (same). The question here thus is not whether the *Engle* Phase I findings are entitled to "res judicata effect"—the parties agree that they are—but what that effect *is*.[5]

The Second District correctly held that issue preclusion (rather than claim preclusion) is the governing principle in *Engle* progeny cases. *See Douglas*, 83 So. 3d at 1010; *see also Bernice Brown*, 611 F.3d at 1333 n.7 (same); *R.J. Reynolds Tobacco Co. v. Jimmie Lee Brown*, 70 So. 3d 707, 715 (Fla. 4th DCA 2011); *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060, 1067 (Fla. 1st DCA 2010), *cert. denied*, 132 S. Ct. 1794 (2012). Indeed, claim preclusion would "bar[ ]" *any* "subsequent suit" between *Engle* class members and defendants, *Stogniew v. McQueen*,

[5] A court's decision to afford "res judicata effect" to prior findings is reviewed *de novo*. *Campbell v. State*, 906 So. 2d 293, 295 (Fla. 2d DCA 2004).