WESTERN CENTER ON LAW & POVERTY

Litigation Practice Tip - December 2021

We're talking about [citation] practice

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A litigation tip on citations? I know, your inner Allen Iverson is telling me, "We're sitting here talking about citations?![1] Dick, have you run out of topics?"

No, but getting the hang of citations is more important than you might think. Whether your audience is a judge, opposing counsel, or even a prospective employer, good use of citations sends a message that you pay attention to detail, thereby bolstering your credibility. And misuse of citations can antagonize judges and make them doubt that the law is really on your side.

Using citations well is partly a matter of optics, and partly a matter of clear and persuasive communication. **Here are some tips on how to achieve both goals.**

Use a recognized citation format, and stay consistent.

California Rule of Court 1.200 requires briefs to cite cases using "either the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the party filing the document." In federal court, the Bluebook prevails.

I am not going to opine on which style is preferable; wars have been fought on that subject.[2] Under either book, Rule 3.1113(c) says that a case citation "must include the official report volume and page number and year of decision." In state court, "official report volume" means "Cal., Cal. 2d, etc." or "Cal. App., Cal. App. 2d, etc.," not "Cal. Rptr." or "P." Parallel citations are a waste of space, especially in an electronic age.

And whichever book you use, under Rule 1.200 the "same style must be used consistently throughout the document." So once you cite a case with the year at the end of the citation (*Bluebook*) or with the year at the beginning (*California Style Manual*), *all* your case citations within the same brief must use the same style.

This does not necessarily mean slavishly adhering to every aspect of either manual regardless of whether doing so makes sense. For example, the *Bluebook*, written for a national audience, would require you to cite our retaliatory eviction statute as "*Cal*. Civ. Code § 1942.5," you don't need to tell a California judge which state's Civil Code you are discussing. "Civ. Code § 1942.5" is sufficient.

As a matter of optics rather than rule requirements, stay consistent in all your citations, not just case citations, within the same brief. If, for example, you are repeatedly citing declarations and exhibits, decide between "Dec." and "Decl." and between "Ex." and "Exh." Then stick with your choice.

Never, ever neglect necessary pin cites.

When citing a portion of an opinion as standing for a particular point, you need to include a pin cite, i.e., the page or pages where that point appears. Without a pin cite, you are, in effect, telling the judge, "take my word for it, and if you have any doubts you can always ask your research attorney to look through the 30-page opinion to prove I'm right." That message will not go over well with the judge, or especially the research attorney (if there is one).

The only time you don't need a pin cite is when the entire case supports your point. For example, if the argument is "public benefit recipients are entitled to due process protections before their benefits can be terminated," you can just cite *Goldberg v. Kelly*, 397 U.S. 254 (1970). But if the argument is "a recipient faced with a termination of benefits has the constitutional right to contest that termination in person," the correct citation is *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). (Or if it's a second citation to that case: *Goldberg v. Kelly*, 397 U.S. at 269.)

Know when and how to use the signal "*see.*"

The seemingly innocuous "*see*" is perhaps the most over-used and misused word in brief-writing. When a brief I am reading asks me to "*see*" an opinion, my immediate response is "why?" If the answer is that the case cited directly supports the preceding argument, then jettison "*see"* and just cite the opinion without a signal, which is a much stronger statement.

"See" should be used when the opinion you cite doesn't directly support the preceding argument, but either the holding of the opinion or something the opinion says advances your argument in some way. For instance, a brief seeking a preliminary injunction preventing loss of public benefits might argue that "denial of a preliminary injunction will cause irreparable harm to Plaintiff in in this case" and rely on *Goldberg v. Kelly.* But even though *Goldberg v. Kelly* discussed harm to recipients from benefits terminations, it would be mistaken to cite the opinion directly because (1) *Goldberg* did not involve a preliminary injunction; and (2) a 1970 opinion cannot be support for a conclusion about the plight of a particular litigant in 2021.

That's where "see" comes in. The brief could say,

> denial of a preliminary injunction will cause irreparable harm to Plaintiff. *See Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (termination of benefits "may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate.")

As the example suggests, whenever you use "*see*," it needs to be followed by a parenthetical telling the court why you want it to see the opinion.**[3]**

Edit all your citations for clarity and brevity.

When you are editing your brief or that of a colleague, don't skip over the citations. Just as you would for the remaining text, ask yourself whether the citation is sufficiently clear for the judge to access it; and whether it could be shortened without sacrificing clarity. For example, if you are citing a string of declarations, you don't need to keep writing "Decl. of" for each cited declaration. Just say "Decl. of" once, then list the names and paragraph numbers.

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[1] Meaning you might be reacting the way Hall of Fame basketball great Allen Iverson did when asked to confront the allegation that he didn't try hard enough in practice. Iverson, known for his fierce determination on the court, kept reframing the question, saying the word "practice" no fewer than 20 times in varying tones of disbelief and disparagement. (Google "**Iverson & practice**.") An excerpt from his monologue appeared in a Ted Lasso episode entirely out of context. *Ted Lasso: Two Aces* (AppleTV, Sept. 4, 2020); *see Ted Lasso/ Allen Iverson Practice Speech Mashup*, YouTube (Dec. 13, 2020), **https://youtu.be/p-BR1mXwtB0** (interlacing Iverson's original comments with Ted Lasso's scolding).

[2] Okay, maybe not wars, but at least the appellate lawyer equivalent: snippy email exchanges.

[3] Both the Bluebook and the California Style have explanations of the other signals. The Bluebook: A Uniform System of Citation R. B1.2, 1.2 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020), https://www.legalbluebook.com/bluebook/; California Style Manual § 1:4 (4th ed. 2000), http://www.sdap.org/downloads/Style-Manual.pdf.

If you have any questions about citations or any of the previous Litigation Practice Tips, send me an email at **rrothschild@wclp.org**.
