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Write On

Good citations another step toward good advocacy

By Julie Baker and Lisa Healy

Write On is an occasional feature providing guidance for attorneys on writing legal memoranda and briefs.

The Bluebook. It was everyone's favorite part of law school, right? Dense, complex, with rules spread out in such a way that no matter how much you looked, you were certain to miss something. As practicing lawyers, we have the luxury of knowing that nobody is "bluebooking" our citations. For most of us, that has meant developing our own quasi-system of citation, in which we each do our cites "the way I've always done them" or "the way they were done in the sample brief." What's wrong with that?

Well, nothing, in the sense that no one is going to be deducting points from your writing if your citations are wrong. But, from an effective advocacy standpoint? Potentially, several things. Everything in a legal document should further the goals of that document; and anything that detracts from those goals will detract from its ultimate effectiveness. So how can you make sure that your citations are helping, not hindering, your advocacy?

Be consistent. In every aspect of good writing, consistency matters. If your citations are random (i.e., sometimes you use short form, sometimes long; sometimes you put in the date, sometimes you don't), then they will undermine your credibility with the reader. Someone who cannot cite carefully and consistently cannot be relied upon to do the much more complex task of analyzing multiple legal authorities correctly. Even worse, sloppiness communicates a lack of care and attention to detail, which will annoy readers. If you don't care about what you are writing, why should they?

Make your citations count. Legal writers love string citations. If one authority is good, then 12 must be better, right? Wrong. String citations are rarely useful to the reader, unless he wants a list of cases to look up and read for himself. While you always want to provide adequate support for the points that you are making, do so by citing directly to the most recent case on point from the highest level court. Then, if you want to indicate further support, put in a "see also" and some additional authorities - but include parenthetical explanations with each one. Now your point about those cases and how they support your argument is in the document itself, helping to further your advocacy.

To the extent possible, keep citations out of the text. One of the first things that we all learned as new legal readers was to "skip" the citations, letting our eyes skim right over them until we reach the next part of the text. Citations interrupt the flow of your writing, so much so that in recent years, there has been a movement in some jurisdictions to require all citations in court filings to be placed in footnotes rather than in the text.

To minimize the disruption, do not include citation information in text sentences; instead, just refer to the case by name in the sentence, and put the citation information at the end of the sentence. When you do this, you must be careful to avoid confusion. If there is only one case in the sentence, then you can just follow with the cite, without repeating the case name. If multiple cases are mentioned, then you will need to repeat the names and citations for each case - yet another reason to write short, simple sentences rather than long, convoluted ones.

With these techniques in mind, you may still dread citation. But now, at least, your cites will be contributing to your advocacy, rather than disrupting it. Give it a try.

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