

The Scrivener: Modern Legal Writing



Are You Practicing an Uninformed System of Citation?

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An important—but sometimes annoying—component of legal writing is citation to controlling authority. Through citation, we should provide our readers with recognizable and accurate references to the sources that form the basis of our legal analyses. The fundamental sources of controlling Colorado law are the Colorado statutes, session laws, rules of procedure, jury instructions and cases. Although *The Bluebook* forms for these sources are recognizable, they are rarely used in the Colorado courts.

*The Bluebook*¹ has long been the favored reference for uniform citation, but even that venerable standard has been evolving. Most of us who conquered proper *Bluebook* form in law school cannot now be complacent.

In late 1991, the fifteenth edition of *The Bluebook* arrived announcing that it had been “substantially restructured.”² For example, one major change was the elimination of the mandate to provide parallel citations. Although citation to official state reporters is still required for “legal documents submitted to courts of the deciding state,” now “in other forms of legal writing [one] need only cite to the appropriate regional reporter.”³

There are a few other significant changes to note in the fifteenth edition. For example, Rules 15 and 16 now require the full names of authors on law review and book citations; in the fourteenth edition, the initials and surname alone were sufficient. Another change is that all parts of the U.S. Constitution are now capitalized when referred to in text.

As a concession to practitioners, who previously struggled to translate the law review form that predominates *The Bluebook*, there is now an introductory “Practitioners’ Notes” section and a “Quick Reference: Court Documents and Legal Memoranda” list of citation form on the inside back cover.

Because citation form follows predictable and mechanical rules, citation checking—like spelling and grammar checking—is an excellent candidate for computer software. Attor-

neys should not be surprised to find there is now a computer assisted legal research service that will handle routine checking of citation form.⁴ However, in addition to cost concerns, the difficulty with any citation checking program that conforms citations to a standard form is that the Colorado courts do not universally follow any standard citation form.

As a general rule, *Bluebook* form is appropriate for documents submitted to the Colorado Supreme Court. According to Mac V. Danford, Clerk of the Colorado Supreme Court, the supreme court⁵ advises attorneys to submit documents in *Bluebook* form because that form can be easily found and is readily recognizable. However, Danford admitted that the court, in writing its own decisions, uses citation form for many Colorado legal sources that differs from standard *Bluebook* form. Former Justice Quinn provided me with a two-page sheet, titled, “Uniform Citation Forms” and dated May 1984, which has been incorporated into the supreme court’s manual for its law clerks and is still used to conform citation form in Colorado Supreme Court decisions. This sheet is the basis for most of the Colorado Supreme Court discrepancies from *Bluebook* form listed below.

Leo Smith, Reporter of Decisions to the Colorado Court of Appeals, provided me with the citation form used by that court. Aside from the variations listed below, and a few others, Smith advised me that the Court of Appeals generally follows the citation form in the fourteenth edition of *The Bluebook*.⁶

To be sure you are informed about the proper citation form for use in Colorado courts, you may want to clip and save the following list for future reference.

COLORADO CITATION FORMS

Colorado Statutes

Bluebook: Colo. Rev. Stat. § 16-11-301 (1986 & Supp. 1993).
Supreme Court: § 16-11-301, 8A C.R.S. (1986 & 1993 Supp.).

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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Court of Appeals: §16-11-301, C.R.S. (1986 Repl. Vol. 8A) or §16-11-301(3) (1993 Cum. Supp.).

The text of most of section 301 appears in Volume 8A in the 1986 replacement volume, and the text of an amendment to subsection 301(2) appears in the 1993 cumulative supplement.

The Court of Appeals would not include both (1986 Repl. Vol. 8A) and (1993 Cum. Supp.) in the same set of parentheses. The Court of Appeals version follows the form suggested in CRS § 2-5-101(3) (Supp. 1993) (this last form is *The Colorado Lawyer* version, except that the journal does not put in the parenthetical information).

Both courts follow the standard *Bluebook* rule that if the statute is at the beginning of a sentence, "section" is spelled out.

Session Laws

Bluebook: 1975 Colo. Sess. Laws, 291, 306-07, ch. 71, § 43 (amending Colo. Rev. Stat. § 8-53-102 (19)).

Supreme Court: Ch. 71, sec. 43, § 8-53-102, 1975 Colo. Sess. Laws 291, 306-07.

Court of Appeals: Colo. Sess. Laws 1975, ch. 71, § 8-53-102 at 306-07.

Rules of Procedure

	<i>Bluebook</i>	<i>Colorado Courts</i>
Civil:	Colo. Ct. C.P.R. 52(a)	C.R.C.P. 52(a)
Criminal:	Colo. R. Crim. P. 60	Crim. P. 60
Appellate:	Colo. R. App. P. 58	C.A.R. 58

Jury Instructions

Bluebook: No rule

Supreme Court
CJI-Civ.3d. 9:1
CJI-Crim. 17:07

Court of Appeals
CJI-Civ.3d. 9:1 (1993 Supp.)
COLJI-Crim. No. 17:07 (1983)

Colorado Cases Reported Only in The Pacific Reporter⁷

Bluebook: *State Dep't of Highways v. Denver & R. G. W. R.R.*, 757 P.2d 181 (Colo. Ct. App. 1988).

Supreme Court: Case citations were not included in the citation form sheet from Justice Quinn. Although the Colorado Supreme Court seems to follow *Bluebook* form generally, the most common court designation used is "Colo. App." instead of "Colo. Ct. App."⁸

Court of Appeals: *State Department of Highways v. Denver & Rio Grande Western R.R.*,⁹ 623 P.2d 418 (Colo. App. 1980).¹⁰

NOTES

1. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 15th ed. (Cambridge: Gannett House, 1991) ("*The Bluebook*"). *The Colorado Lawyer* does not follow *Bluebook* form either. In *Bluebook* form this citation would be as follows: The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation* (15th ed. 1991).

2. *The Bluebook* at v.

3. *The Bluebook* at vi and Rule 10.3.1. Thus, in Colorado, citation would be made only to the regional reporter, P.2d.

4. CiteRite is available from Jurisoft through Mead Data Central. CiteRite will review a document and advise you of discrepancies between the citations used and *Bluebook* form. Both computer research services now have programs that can review all citations in a document to give you feedback on whether the authorities cited are still good law. These programs are WestCheck from WESTLAW or CheckCite from Mead Data Central.

5. "Supreme court" is capitalized only when naming the court in full or when referring to the United States Supreme Court. *Bluebook* at 51. *But cf. Bluebook* at 17 ("capitalize 'Court' in a court document when referring to the court that will be receiving that document").

6. Both Danford and Smith advised me that the courts are not eager to adopt some of the changes in the fifteenth edition, such as the elimination of citations to official reporters when available. A recent clerk for the U.S. District Court for the District of Colorado advised me that the federal judges, including federal appellate judges, likewise are reluctant to drop the citation to parallel state reporters when it is available.

7. Colorado Supreme Court cases announced after September 15, 1980, or Colorado Court of Appeals cases announced after August 7, 1980.

8. The "Colo. Ct. App." court designation was first introduced in the thirteenth edition of *The Bluebook*, which was published in 1981. A WESTLAW and LEXIS search for "Colo. Ct. App." as the court designation turned up 48 and 50 Colorado Supreme Court cases respectively that have used this designation. Because the designation first appeared in a 1984 Colorado Supreme Court opinion, one can only speculate that some clerks, schooled as first-year law students with the changes in the 1981 *Bluebook*, introduced the new form to those court opinions immediately after graduation.

9. The Colorado Court of Appeals abbreviates only "Corp., Co., Ass'n, Inc., R.R., and Ry."

10. The Colorado Court of Appeals has never used the "Colo. Ct. App." form designated by *The Bluebook* for that court. The clerks in the federal courts in Colorado ordinarily use "Colo. App." as recognition of the standard practice in Colorado courts. However, this is not a universal rule because different judges place differing emphasis on *Bluebook* form.

ATTENTION READERS: NEW BOOK REVIEW FEATURE NEEDS IDEAS

The Colorado Lawyer will be publishing material on legal resources four times a year starting in 1994. We are interested in ideas from our readers on books, electronic media and any other informational systems that are particularly helpful in law practice. The newly established Book Review Committee will then evaluate the material and publish information on what it considers to be the most useful.

Please send press releases, promotional material, personal testimonials or information in any other form for the Committee's review to: *The Colorado Lawyer*, Book Review Committee, 1900 Grant St., #940, Denver, CO 80203. For more information, call 860-1118.