

The Scrivener: Modern Legal Writing



Pesky Citations

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Constant citation to legal authorities presents a unique problem for legal writers. Although these authorities are necessary to the analysis, integrating them can interrupt the flow of the writing, or more significantly, can obscure the meaning. Law reviews have chosen to use footnotes to address this problem. But footnotes create their own form of vertical interruption,¹ and many courts discourage their use in briefs. This article addresses some of the difficulties created by these pesky citations and suggests some solutions for incorporating them more smoothly.

Full Citations in Sentences

The Bluebook requires a full citation the first time you address any legal authority.² A problem arises, however, if the first time you cite is at the beginning or in the middle of a sentence. Such a citation makes the sentence cumbersome and interrupts the subject and verb flow. A better alternative is to move the citation to the end of the sentence. Another solution is to start with a sentence that introduces the case, so that you can get the full citation out of the way at the end, in a separate citation sentence. After giving a full citation, you may then, in the next sentence, reference the case by name only.³

Example: In *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed. 144 (1987), the United States Supreme Court held that the proponent of evidence falling within the co-conspirator hearsay exception need not demonstrate the unavailability of the declarant.

Revision: The United States Supreme Court has addressed the co-conspirator hearsay exception. *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed. 144 (1987). In *Bourjaily*, the Court held that the proponent of evidence falling within the exception need not demonstrate the unavailability of the declarant.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

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Two Citations in One Sentence

Citations create additional difficulties when more than one proposition, and thus more than one supporting authority, is addressed in the same sentence. Instead of listing two authorities at the end of the sentence, which might create some ambiguity about which source references which point, *The Bluebook* requires that the citation immediately follow the proposition it supports.⁴ Therefore, *The Bluebook* seems to dictate that a citation be placed in the middle of a sentence. However, as noted above, this mid-sentence stretch is best avoided. A better solution in these double-citation situations is to break the sentence into two and to cite at the end of each separate sentence.

Example: Although the determination whether waiver has occurred is typically a question of fact, *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979), it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

Revision: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). However, it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

You may also be tempted to place two citations in one sentence when you refer to one authority that cites to another authority. However, it is easiest for readers to understand this information if all citations are moved out of the text and relegated to a separate citation sentence.

Example: Similarly, in *People v. Taylor*, 804 P.2d 196 (Colo. App. 1990), the Colorado Court of Appeals, citing *United States v. Inadi*, 475 U.S. 387, 106 S. Ct. 1121, 89 L.Ed.2d 390 (1986), held that a preliminary showing of unavailability was not required.

Revision: Similarly, the Colorado Court of Appeals held that a preliminary showing of unavailability was not required. *Peo-*

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ple v. Taylor, 804 P.2d 196 (Colo. App. 1990) (citing *United States v. Inadi*, 475 U.S. 387, 106 S. Ct. 1121, 89 L.Ed.2d 390 (1986)).⁵

Back-to-Back References

Because citations cause readers to stumble, a particularly difficult hurdle is created by placing two citations back to back. For example, one sentence ends with a citation, and the next starts with one. Give your readers the opportunity to touch ground between citations by moving the second one from the beginning to the end of its sentence. Another advantage of moving the citation to the end is the opportunity it provides to introduce the new authority before giving its citation.

Example: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991), however, holds that a determination of waiver may be decided as a matter of law when the material facts are undisputed.

Revision: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). However, in a more recent case, the Colorado Court of Appeals held that it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

References to Statutes

Most people process words more easily than numbers. Thus, advertisers give us a slogan instead of a phone number: such as, 1-800-Hotline. This phenomenon makes legal discussions about statute sections especially hard to follow. It can help to use a short form of the statute,⁶ for example, instead of referring to the full statute section each time, the distinction between sections may be clearer if you cite the subsections. An-

other alternative is to use labels for the statutes instead of repeating the disconnected numbers.

Example: The offenses for which defendant was convicted are listed in § 18-18-405(1)(a), C.R.S. 1999. Section 18-18-405(2)(a)(I), C.R.S. 1999, provides that any person who commits an offense listed in § 18-18-405(1)(a), C.R.S. 1999, commits a class 3 felony.

Revision 1 (using short forms): The offenses for which defendant was convicted are listed in § 18-18-405(1)(a), C.R.S. 1999. Classification of the offenses is set out in the next subsection. § 18-18-405(2)(a)(I), C.R.S. 1999. Section 405(2)(a)(I) provides that any person who commits an offense listed in § 405(1)(a) commits a class 3 felony.

Revision 2 (using labels): The offenses for which defendant was convicted are listed in the subsection describing controlled-substance offenses. § 18-18-405(1)(a), C.R.S. 1999. Classification of the offenses is set out in the next subsection. § 18-18-405(2)(a)(I), C.R.S. 1999. The classification subsection provides that any person who commits any of the controlled-substance offenses listed in the first subsection commits a class 3 felony.

In conclusion, good legal writing, by necessity, is laced with citations. Instead of viewing these citations as pesky interruptions, blend them deftly into the fabric of your writing to make your concept become clear.

NOTES

1. DuVivier, "The Footnote = An Interruption," 26 *The Colorado Lawyer* 47 (May 1997).
2. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 16th ed. (Cambridge, MA: Gannet House, 1996) at 15.
3. *Id.* at 71.
4. *Id.* at 13-14.
5. *Id.* at 29-30.
6. *Id.* at 86-87. ■

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