

The Scrivener: Modern Legal Writing



Legal Citations for the Twenty-first Century

by K.K. DuVivier

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Before law school, he had worked for Shepard's. He aced the 1L *Bluebook* exercise by remembering the space between Fed. and Supp. (F.▲Supp.) and the commas before and after affirmed (, *aff'd*). As technical editor of the law review, he underlined the period in *id.* and gained the "King of Cites" award at the farewell banquet. Four years and a federal clerkship later, I ran into him on the Sixteenth Street Mall. "You know what?" he said. "Citation's not such a big deal after all. Even some of the best attorneys don't get it perfect." He's right, and he's wrong.

The Impact of Incorrect Citations

True, a judge probably won't rule against you if your cites are wrong, but faulty cites do reflect poorly on you.¹ First, like good manners, proper citations illustrate both your knowledge of the rules of etiquette for legal writing and your precision in following those rules. If your citations are sloppy, some readers may presume that your research and reasoning were done in a similarly uninformed and careless fashion.

Second, incomplete citations can be a burden for your readers. The jurisdiction and date are important factors in weighing the precedential value of a case. If you don't provide this information, your readers may need to interrupt the process of digesting your argument and spend valuable time looking things up. Furthermore, the flow of your argument may never recover from such an interruption.

Finally, the most serious citation errors are those that mislead your readers. For example, it is important to know that all Colorado cases are reported in the Pacific Reporter. Consequently, the only way readers can know whether a case is one

decided by the Colorado Supreme Court instead of the Colorado Court of Appeals is the notation in parenthesis at the end of the case.

E.g., People v. Holmes, 981 P.2d 168 (Colo. 1999) v. *People v. Maass*, 981 P.2d 177 (Colo. App. 1998).²

Lack of Uniformity in the *Bluebook*

Although there are some exceptions, the majority of legal periodicals, lawyers, and courts in this country follow the citation system set out in the *Bluebook*.³ Furthermore, the *Bluebook* has retained its status as the Bible of citation,⁴ despite challenges from rival citation systems.⁵

The word "uniform" in the *Bluebook's* complete title—*A Uniform System of Citation*—might explain its persistence: legal writers crave consistency and a universal understanding of what citations mean. Nevertheless, the *Bluebook* is compiled by student editors who turn over on an annual basis. Consequently, the *Bluebook* has undergone a number of changes over the course of its sixteen revisions, and the frequency of these changes has undermined the very uniformity sought by the system.⁶

Often the changes from edition to edition of the *Bluebook* are relatively minor. However, at least one change in the latest edition (the 16th) creates the potential for the most serious kind of citation problem—one that could mislead readers. In the 16th edition, the introductory signal "see" is defined as follows:

Cited authority *directly states or clearly supports* the proposition.⁷

This definition is a radical departure from the previous edition of the *Bluebook* (the 15th), which defines "see" as follows:

Cited authority *clearly supports* the proposition. "See" is used . . . when the proposition *is not directly stated* by the cited authority but obviously follows from it; *there is an inferential step* between the authority cited and the proposition it supports.⁸

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, Reporter of Decisions, Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203.

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If you used "see" in the 15th-edition sense (indirect support) and the readers expected it in the 16th-edition sense (direct support), your citation might be interpreted as a deliberate attempt to mislead a court. However, if you are still using "see" to mean indirect support, you are probably with the majority of attorneys who graduated from law school before 1996. In fact, the Association of American Law Schools adopted a plenary resolution against the 16th-edition change of the meaning of "see."⁹ Such resolutions have eroded the *Bluebook's* status as a universal standard, and they highlighted the need for a more consistent and practical alternative to the *Bluebook*.

The ALWD Citation Manual

The Association of Legal Writing Directors ("ALWD") is an organization of more than 200 members representing approximately 150 law schools.¹⁰ This group of professional law school teachers decided to publish an alternative to the *Bluebook*. Unlike previous "alternatives" to the *Bluebook*, the *ALWD Manual*¹¹ did not attempt to reinvent the wheel by creating an entirely new system of citation. Because *Bluebook* form has been widely recognized as the universal currency in legal writing, the *ALWD Manual* deals in that same currency. However, the following are some features that set the *ALWD Manual* apart from the *Bluebook*:¹²

- The *Bluebook* is written by student editors and is geared to law review format; this is why only ten of the 367 pages of the *Bluebook* are aimed at practitioners' needs.¹³ In contrast, the *ALWD Manual* is aimed specifically to the everyday needs of lawyers and judges.
- The *ALWD Manual* simplified the typefaces for citations to two: standard or italic. This eliminates the confusion created by law review typefaces such as large and small caps.
- The *ALWD Manual* takes the guesswork out of spacing concerns in citations by using a symbol between the parts of a cite. *E.g.*, (Colo.▲App.▲1999).
- The *ALWD Manual* uses the same format regardless of where a citation appears, so there is no distinction between legal memoranda, law review articles, or footnotes.
- The "Quick Reference: Court Documents and Legal Memoranda" on the back cover of the *Bluebook* is one of the most useful guides to practitioners in that book. The *ALWD Manual* has expanded such guidance by having "Fast Format" pages of examples for users at the beginning of the description of each of the various citation sources.
- The *Bluebook* often was unavailable because of publishing problems. To avoid such problems, the *ALWD Manual* is professionally published and available by calling a toll-free number.¹⁴
- The *Bluebook* often raises more questions than it answers: Why does the *Bluebook* suggest that *cert. denied* be added only to cases that are less than two years old? When is it appropriate to cite unreported decisions? The *ALWD Manual* provides "sidebars" to explain some of these mysteries of citation to give readers methods of deducing how to proceed in a situation not addressed in the manual.¹⁵

- When you have a question or comment about a *Bluebook* rule, there is no one to turn to other than a former teacher or someone like my student above, the King of Cites. The ALWD has a website it will use to post updates and necessary clarifications to the *ALWD Manual*.¹⁶

Conclusion

The *ALWD Manual* represents the solution to many a practitioner's citation woes. Starting next fall, some ALWD members will choose to teach from the *ALWD Manual*, instead of teaching *Bluebook* skills that become obsolete before their students even graduate from law school. Once this practice becomes prevalent, the *ALWD Manual* will supplant the *Bluebook* to become the legal citation system for the twenty-first century. Then, the next time you see the King of Cites, you can tell him to relinquish his crown and hand the scepter over to the *ALWD Citation Manual*.

NOTES

1. Fischer, "Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers," 31 *Suffolk U. L. Rev.* 1 (1997).
2. Using *ALWD Citation Manual* format.
3. Fischer, *supra*, note 1 at n.257 (citing, Rideout and Ramsfield, "Legal Writing: A Revised View," 69 *Wash. L. Rev.* 35, 99 n.21 (1994) (noting the widespread use of The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 16th ed. (Cambridge, MA: Gannett House, 1996)).
4. Chen, "Something Old, Something New, Something Borrowed, Something Blue," 58 *U. Chi. L. Rev.* 1527, 1527 (1991).
5. *Id.* at 1532 (discussing the challenge waged by *The University of Chicago Manual of Legal Citation (The Maroonbook)* (1989)).
6. Dickerson, "An Un-Uniform System of Citation: Surviving the New Bluebook (Including Compendia of State and Federal Court Rules Concerning Citation Form)," 26 *Stetson L. Rev.* 53 (1996).
7. *The Bluebook, supra*, note 3, at 22 (16th ed.) (*emphasis in original*).
8. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation* at 23, 15th ed. (Cambridge, MA: Gannett House, 1991) (*first emphasis in original; second and third emphases added*).
9. Dickerson, "Seeing Blue: Ten Notable Changes in the New Bluebook," 5 *Scribes J. Legal Writing* 75, 79-80 (1996-97).
10. Association of Legal Writing Directors and Dickerson, *ALWD Citation Manual* Preface (New York, NY: Aspen L. & Bus., 2000).
11. Jamar, "The ALWD Citation Manual—A Professional Citation System for the Law," *Perspectives* (forthcoming 2000) (describing the membership of the ALWD and the origins and features of the *ALWD Manual*).
12. *See also id.*; Kaufman, "Uncomplicating the Citation Process," 87 *Illinois Bar J.* 675 (Dec. 1999).
13. *The Bluebook, supra*, note 3, at 10-19 ("Section P-Practitioners' Notes").
14. Copies of the *ALWD Citation Manual* can be ordered from Aspen Law & Business by calling (800) 234-1660.
15. The *ALWD Manual* explains that the two-year period represents the approximate time it would take a case to wend its way through the *certiorari* process.
16. *See* the ALWD website at: www.alwd.org. ■

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