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To Cite or Not To Cite: Is That Still a Question

Deborah L. Heller

Elisabeth Haub School of Law at Pace University

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Deborah L. Heller, To Cite or Not To Cite: Is That Still a Question?, 112 L. Libr. J. 393 (2020), <https://digitalcommons.pace.edu/lawfaculty/1168/>.

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To Cite or Not to Cite: Is That Still a Question?*

Deborah L. Heller**

Some states still restrict the citation of unpublished opinions, and the rules among the federal circuits vary slightly as well. This article looks at the history of case publication, the controversy over unpublished opinions, and the current rules related to the citation of unpublished cases.

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Introduction

¶1 The question of whether to cite an unpublished¹ opinion still lingers, despite changes brought by the near-universal use of electronic databases and search engines such as Google Scholar. Today’s law students often do not understand the concept of “unpublished” opinions or the rules against their being cited, both of which date to the print era. One might expect that the rules against citing unpublished opinions would have been eradicated years ago since, practically speaking, all cases are “published” since they are easily retrievable on legal research plat-

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** Acting Director of the Law Library, Elisabeth Haub School of Law at Pace University, White Plains, New York. Thank you to all the staff at the Haub Law Library, and especially to Vicky Gannon for your editing assistance.

1. The terms “unpublished” and “unreported” are often used interchangeably to express this concept. This article uses the term “unpublished” to represent the concept.

forms. However, this expectation has not been met in every jurisdiction.² As with most issues of law and procedure in the United States, the rules differ depending on jurisdiction. This means that an attorney must be familiar with the rules of any state in which he or she practices.

¶2 This article first explores the history of the publication process for cases, beginning with the Year Books in England and nominative reports in the early United States, through the National Reporter System begun by the West Company, and up to the age of computer-assisted legal research. Next, it traces the evolution of the unpublished case through the 1970s, leading to the fight to change the Federal Rules of Appellate Procedure to allow citation to unpublished opinions. Finally, it discusses the current rules on citation to unpublished cases as well as the publication designation process throughout the United States.

History of Case Publication

English Case Reports

¶3 Reports of cases in English date back to the Year Books prepared in England from 1292 to 1535.³ The Year Books record the law of the Middle Ages, from the time of Edward I to Richard III, and then into the reign of the Tudor kings Henry VII and Henry VIII, when the last was published in 1536.⁴ The publication of the volumes began as a continuous enterprise, but eventually became intermittent.⁵ Rumors swirled about the origins of the Year Books for years, with some believing that the volumes were compiled by official reporters paid by the king.⁶ After careful study of the manuscripts, it became clear that the Year Books were based on notes taken by lawyers who were present in the court.⁷

¶4 Following the Year Books were reports of the 16th, 17th, and 18th centuries, which are collections of cases.⁸ These reports are similar to the Year Books in that they appear to have been compiled for the reporter's personal use and contain a variety of material, from eulogies to deceased lawyers to arguments by attorneys and judges alike.⁹ These reports differ from Year Books in that they clearly show the change from oral pleadings to written pleadings, thus allowing the relation of better defined issues and decisions.¹⁰ Plowden, Coke, and Saunders compiled some of the famous reports of this era.¹¹ The volumes took on the name of the individual reporter, thus leading to the age of the nominative reporter, individually compiled by a member of the bar through his own notes, notes from other lawyers, or even the notes of judges.¹²

2. See *infra* ¶¶28–29 and apps. A & B.

3. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CALIF. L. REV. 15, 17 (1987).

4. W.S. HOLDSWORTH, SOURCES AND LITERATURE OF ENGLISH LAW 78 (1925).

5. *Id.*

6. *Id.* at 80.

7. *Id.* at 80–81.

8. *Id.* at 89.

9. *Id.* at 90–91.

10. *Id.* at 91.

11. *Id.* at 93.

12. Berring, *supra* note 3, at 17.

Early American Reports

¶5 In the early days of the American bar, lawyers committed important decisions to memory and depended on treatises by some of the great English jurists, such as Blackstone and Coke.¹³ Published law reports were not necessary in colonial America given the relatively few judicial decisions issued during that period;¹⁴ however, colonial printers did publish pamphlets with proceedings from some of the more newsworthy trials.¹⁵ Judges of the 18th century primarily provided oral rather than written justification for their judgments, thus leading to the compilation of personal notebooks to record the holdings in cases an attorney participated in or witnessed.¹⁶ Later attorneys cited to these handwritten notes by “vouching the record.”¹⁷ In most early reports of local decisions, reporters wrote down only the judges’ opinions and then added a summary of facts and arguments of counsel.¹⁸

¶6 The nominative reporters transferred from England to America and began to become more popular after the Revolutionary War.¹⁹ Early reporters published their works without any official state encouragement and thus relied on volume sales to compensate for their efforts.²⁰ Massachusetts appointed an official court reporter of the Supreme Judicial Court in 1804.²¹ The salary for the reporter was set at \$1000 annually, along with profits from the reports, to be paid from a fund comprised of the monies paid by attorneys to practice in the state.²² However, the act did have a term of three years from passage.²³ The only qualification required of the reporter was that he be “some suitable person, learned in the law.”²⁴ The reporter was required to “obtain true and authentic reports of the decisions already made, or that may be hereafter made”²⁵ New York State authorized the appointment of a reporter to the Supreme Court of Judicature to report cases of impeachments, corrections of errors, or other cases deemed important.²⁶ The reporter received a salary of \$850 per year paid on a quarterly basis.²⁷ Additionally, the reporter had to pay for and deliver one copy of the published report to each of the courts of common pleas.²⁸ The New York act also included a term limit, but this time of five

13. Marla Brooke Tusk, *No-Citation Rules as a Prior Restraint on Attorney Speech*, 103 COLUM. L. REV. 1202, 1207–08 (2003).

14. *Id.* at 1207.

15. Erwin C. Surrency, *Law Reports in the United States*, 25 AM. J. LEGAL HIST. 48, 52 (1981) (noting the publication of pamphlets on the treason trial of Nicholas Bayard in New York and “A Brief and True Narrative of Some Remarkable Passages Relating to sundry Persons afflicted by Witchcraft, at Salem Village which happened from the Nineteenth of March to the Fifth of April 1692” relating the events of the infamous Salem witch trials).

16. Charles J. Steigler, *The Precedential Effect of Unpublished Judicial Opinions Under Louisiana Law*, 59 LOY. L. REV. 535, 537 (2013).

17. *Id.*

18. Surrency, *supra* note 15, at 48.

19. Berring, *supra* note 3, at 19.

20. Surrency, *supra* note 15, at 53.

21. 1804 Mass. Acts 449.

22. *Id.* at 450.

23. *Id.*

24. *Id.*

25. *Id.*

26. 1804 N.Y. Laws 462.

27. *Id.*

28. *Id.*

years.²⁹ Several other states followed and began passing legislation to appoint an official reporter.³⁰ Other states during the same time period had case reports compiled by individuals without any legislative requirement dictating the publication of court decisions.³¹ By the end of the 19th century, all reporters were paid a salary for their work, and the printed reports, which some states had required the reporter to pay for, were now published at the expense of the states.³²

¶7 Decisions of the U.S. Supreme Court have been reported regularly from its infancy.³³ However, the first legal requirement for a reporter did not appear until 1817.³⁴ The legislation provided that the court appoint a person to report its decisions at an annual salary of \$1000, provided the reporter print and publish the decisions within six months of their issue and, at his own expense, deliver 80 copies to the Secretary of State.³⁵ The Secretary of State distributed these copies to the long list of officials and departments named in the Act, with any remaining copies going to the Library of Congress.³⁶ The act was limited to a term of three years.³⁷ The Supreme Court appointed Henry Wheaton as its first official reporter in 1817, although Wheaton had published reports of the court going back to 1816.³⁸

¶8 Henry Wheaton is famous not only for being the first official Supreme Court Reporter; he also brought an action regarding copyright of case reporters that made its way to the Supreme Court itself.³⁹ In 1828, Wheaton accused Richard Peters of infringing Wheaton's copyright by publishing Supreme Court reports that included condensed versions of the decisions Wheaton originally reported.⁴⁰ The litigation lasted until the Supreme Court issued an opinion in 1834.⁴¹ Justice McLean delivered the opinion of the Court and noted at the end that "[i]t may be proper to remark that the court are unanimously of opinion, that no reporter has or can have any copyright in the written opinions delivered by this court; and that

29. *Id.*

30. See, e.g., Del. Laws 188–89 (1837) (assigning the associate judge of the Superior Court in Kent County as the reporter of decisions of the Superior Court, Court of Oyer and Terminer, and Court of Errors and Appeals, and providing an increased salary for this role); 1820 Me. Laws 18–19 (assigning the duty to appoint a reporter of decisions of the Supreme Judicial Court to the governor with the advice of the council at a salary of \$600 annually); 1806 N.J. Laws 688–89 (authorizing the appointment of a person skilled in New Jersey law to compile the cases of the Supreme Court and provide to the state printer for printing); 1818 N.C. Sess. Laws 8 (providing for the judges of the Supreme Court to appoint a reporter of decisions for the court at an annual salary of \$500); 1823 Vt. Acts & Resolves 9 (authorizing the governor, with the advice of the council, to appoint a person learned in the law to report the decisions of the Supreme Court of Judicature at the annual salary of \$400, along with profits from the publication of the reports); 1819 Va. Acts 16 (authorizing the Court of Appeals to appoint a proper person to report the decisions of the court on or before January 1, 1821, and annually thereafter).

31. *American Reports and Reporters*, 22 AM. JURIST & L. MAG. 108, 126 (1839) [hereinafter *American Reports*].

32. Surrency, *supra* note 15, at 60.

33. *American Reports*, *supra* note 31, at 110.

34. Act of Mar. 3, 1817, ch. 63, 3 Stat. 376.

35. *Id.*

36. *Id.*

37. *Id.*

38. Surrency, *supra* note 15, at 56.

39. Thomas A. Woxland, *Forever Associated with the Practice of Law: The Early Years of the West Publishing Company*, 5 LEGAL REFERENCE SERVS. Q. 115, 121 (1985).

40. *Id.*

41. *Wheaton v. Peters*, 33 U.S. 591 (1834).

the judges thereof cannot confer on any reporter any such right.”⁴² Following the decision in *Wheaton*, many states decided to retain themselves the copyright to the court reports.⁴³

John West and the Birth of the National Reporter System

¶9 John West began his career as a traveling salesman with the D.D. Merrill Book store in St. Paul, Minnesota, in 1870.⁴⁴ Merrill primarily sold office supplies and equipment, but he also acted as a distributor of legal publications from the eastern United States.⁴⁵ West worked for Merrill for two years before using to his advantage the knowledge that customers waited long periods to receive court reports and practice books. He established himself as the first full-time law book salesman in Minnesota.⁴⁶ He worked as John B. West, Publisher and Bookseller, from 1872 until 1876, when he convinced his brother Horatio to help him start a weekly legal newsletter called the *Syllabi*.⁴⁷ The *Syllabi* contained information on various issues adjudicated by the Minnesota courts.⁴⁸ The publication soon became popular, and six months after it began its name changed to the *North Western Reporter*.⁴⁹ In 1879, the *North Western Reporter* began a new series in which it included the full text of current decisions from Iowa, Michigan, Minnesota, Nebraska, Wisconsin, and the Dakota Territory.⁵⁰ Over the next few years, West began publishing the *Federal Reporter* and the *Supreme Court Reporter*. In 1882, the business incorporated, and the West Publishing Company was born.⁵¹

¶10 John West did not invent the idea of regional court reporting. Around the same time, A.L. Bancroft and Company published the *West Coast Reporter*, and William Gould, Jr. and Company of Albany, New York, published the *Eastern Reporter*.⁵² However, West did make a move to provide nationwide coverage of reporters by announcing the prospective publication of four new regional reporters in 1885.⁵³ In 1886 and 1887, West purchased the *West Coast Reporter* and *Eastern Reporter* respectively.⁵⁴ West’s nationwide coverage put other publishers at a disadvantage; and by 1888, West Publishing Company won the court reporting publishing war when many rivals discontinued their publications.⁵⁵

¶11 Fast-forward nearly a century and the legal publishing world changed once again when Lexis introduced the first computer-assisted legal research system in April 1973.⁵⁶ Lexis was competing with West’s National Reporter System, and so the inclusion of unpublished cases in the system could be viewed as a marketing advan-

42. *Id.* at 668.

43. Woxland, *supra* note 39, at 121.

44. *Id.* at 115.

45. *Id.*

46. *Id.*

47. *Id.* at 115–16.

48. *Id.* at 116.

49. *Id.*

50. *Id.*

51. *Id.*

52. Surrency, *supra* note 15, at 62.

53. Woxland, *supra* note 39, at 116.

54. Surrency, *supra* note 15, at 62.

55. Woxland, *supra* note 39, at 116.

56. William R. Mills, *The Decline and Fall of the Dominant Paradigm: Trustworthiness of Case Reports in the Digital Age*, 53 N.Y.L. SCH. L. REV. 917, 923 (2008).

tage.⁵⁷ The system featured full-text database searching, which could serve as an alternative to West's digest system for finding case law.⁵⁸ Two years later, West Publishing Company introduced Westlaw.⁵⁹ Westlaw did not initially include the cases but allowed searching only of West headnotes.⁶⁰ In 1978, Westlaw added the cases and permitted full-text searching of the opinions.⁶¹ Soon after, Westlaw began loading cases excluded from the print National Reporter System volumes.⁶²

The Evolution of the Unpublished Case

The Seeds of the Idea

¶12 Declining to publish some court cases is not new. More than 350 years ago, Sir Francis Bacon, then Lord Chancellor, suggested to King James I that case reporters omit cases “merely of iteration and repetition.”⁶³ Justice Story complained about the number of law reports back in 1831.⁶⁴ The American Bar Association (ABA) appointed a standing committee in 1894 to study and report on how to stop the proliferation of law books.⁶⁵ The ABA appointed another committee in 1935 to report on the law book issue, and that committee issued a report in 1940.⁶⁶ In 1964, the Judicial Conference of the United States resolved that the courts of appeals should publish only “opinions which are of general precedential value.”⁶⁷ In 1971, the Federal Judicial Center issued an annual report that noted “widespread consensus that too many opinions are being printed or published or otherwise disseminated.”⁶⁸ The Judicial Conference, in 1972, instructed the various courts of appeals to develop their own plans for selective publication of judicial decisions.⁶⁹ Every court of appeals adopted a publication plan by 1974 and began implementing it over the years that followed.⁷⁰

¶13 In 1973, the Committee on Use of Appellate Court Energies of the Advisory Council on Appellate Justice issued its report on standards for publication of judicial opinions.⁷¹ The report recommended certain standards for the publication of opinions;⁷² they should be short and deal mainly with the facts as they relate to the law, be written especially for the parties involved, but “need not be polished.”⁷³

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 924.

62. *Id.*

63. Kirt Shuldberg, *Digital Influence: Technology and Unpublished Opinions in the Federal Courts of Appeals*, 85 CALIF. L. REV. 543, 545 (1997).

64. Hon. John J. O'Connell, *A Dissertation on Judicial Opinions*, 23 TEMP. L.Q. 13, 14 (1949).

65. *Id.*

66. *Id.*

67. Scott E. Gant, *Missing the Forest for a Tree: Unpublished Opinions and New Federal Rule of Appellate Procedure 32.1*, 47 B.C. L. REV. 705, 708 (2006).

68. *Id.*

69. *Id.* at 709.

70. *Id.*

71. ADVISORY COUNCIL ON APPELLATE JUSTICE, STANDARDS FOR PUBLICATION OF JUDICIAL OPINIONS (1973) [hereinafter STANDARDS FOR PUBLICATION OF JUDICIAL OPINIONS].

72. *Id.* at 4.

73. *Id.* at 5.

In contrast, published opinions should involve cases with broader importance and thus be written with care and attention.⁷⁴ The report named various problems with unlimited publication, including the jurist's burden of writing opinions, the lawyer's burden of searching endlessly for factual analysis, the publisher's burden of balancing reasonable prices with capacity to publish, and the innovator's burden of creating and expanding law-finding devices.⁷⁵ The report advised the highest court in a jurisdiction to promulgate rules for the standard for publication.⁷⁶ Furthermore, it urged the repeal of statutes that mandate publication of all appellate opinions, opting instead to advocate for publication of opinions only if a majority of the judges participating in the decision agreed that the standards for publication were satisfied.⁷⁷ The report outlined four standards for publication: (1) the opinion sets a new rule of law or modifies an existing rule; (2) the opinion involves a legal issue of continuing public interest; (3) the opinion criticizes existing law; or (4) the opinion resolves an apparent conflict.⁷⁸ The committee debated three alternatives for citation of unpublished decisions: (1) unpublished cases have precedential value and can be cited; (2) unpublished cases have no precedential value; or (3) unpublished cases may not be cited to support statements of law, and precedential value was not discussed at all.⁷⁹ The committee suggested applying the third option.⁸⁰

¶14 In 1974 and 1975, the Commission on Revision of the Federal Court Appellate System conducted an inquiry into the work of the federal courts of appeals.⁸¹ Senator Roman Hruska chaired the Commission, which included members of Congress, judges, teachers, and lawyers.⁸² The Commission held hearings in 1974 and 1975 and issued its final report in June 1975.⁸³ The Hruska Report spanned more than 170 pages and included recommendations such as establishing a national court of appeals and expansion of the judiciary through congressional appointment of more appellate judges to properly handle the mounting caseloads in the circuits.⁸⁴ As part of the report, the Commission surveyed the opinions of attorneys in three circuits (Second, Fifth, and Sixth).⁸⁵ The rate of return from each circuit exceeded 60 percent.⁸⁶ More than three-fourths of the attorneys questioned agreed that it was important for courts to issue a memorandum opinion, at a minimum, so that courts avoid the appearance of acting arbitrarily.⁸⁷ However, attorneys did not insist on either publication or a formal opinion.⁸⁸ "Majorities in each circuit were of the view

74. *Id.*

75. *Id.* at 6–8.

76. *Id.* at 9.

77. *Id.* at 9–10.

78. *Id.* at 15–17.

79. *Id.* at 20.

80. *Id.*

81. William L. Reynolds & William M. Richman, *The Non-Precedential Precedent—Limited Publication and No-Citation Rules in the United States Courts of Appeals*, 78 COLUM. L. REV. 1167, 1172 (1978).

82. *Id.*

83. *Id.*

84. COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM, STRUCTURE AND INTERNAL PROCEDURES: RECOMMENDATIONS FOR CHANGE vii, ix (1975) [hereinafter HRUSKA REPORT].

85. *Id.* at 42.

86. *Id.*

87. *Id.* at 49.

88. *Id.*

that in many cases it is not necessary to issue a written opinion for publication.”⁸⁹ In terms of written opinions, the report recommended “that in every case there be some record, however brief and whatever the form, of the reasoning which underlies the decision.”⁹⁰ The report further recommended the use of memoranda, brief per curiam opinions, and other alternatives when appropriate, and strongly encouraged selective publication.⁹¹ The report discussed some of the issues with selective publication, including access to opinions and citation of unpublished opinions, but noted that the Judicial Conference was the appropriate organization to solve such issues or make recommendations.⁹²

¶15 The growing caseload of the federal circuit courts is provided as one of the main reasons advanced for choosing to designate some opinions as unpublished. In 1964, at the same time that the Judicial Conference was suggesting that only precedential decisions be published, 78 judges disposed of 5700 cases in the courts of appeals.⁹³ In 1972, when the courts were instructed to develop their own selective publication plans, 97 judges disposed of 13,828 cases.⁹⁴ By 1977, although the number of judges remained at 97, they now issued dispositions in 17,784 cases.⁹⁵ Along with the rationale of case overload is the corollary that issuing formal published opinions is time consuming for judges and their clerks.⁹⁶ According to Judge Boyce F. Martin, Jr., “we use unpublished opinions in order to get through our docket.”⁹⁷ Judge Martin goes on to estimate that he and his clerks spend about half as much time on an average unpublished opinion as they do on a published opinion since the opinions are generally shorter, involve straightforward points of law, and take less research time.⁹⁸

¶16 The “threat to a cohesive body of law” by publishing all decisions is another reason provided for selective publication.⁹⁹ The fear is that an ever-larger body of case law will make it harder and more time consuming to find that needle in a haystack among cases; thus, the main principles of law will be lost among the chaff.¹⁰⁰ As a corollary to this idea, the creation of more published law would make legal research more expensive because libraries would need to purchase more and more case reporters.¹⁰¹ And the increase in case reporters would necessitate more shelving and storage capacity, which also proves costly.¹⁰² However, many libraries now rely on electronic databases for case research, so the expense caused by expanded storage space is not quite the same now as it might have been 40 years ago.

89. *Id.*

90. *Id.* at 50.

91. *Id.* at 51.

92. *Id.* at 51–52.

93. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF ADMINISTRATIVE OFFICE OF THE U.S. COURTS 164 (1977).

94. *Id.*

95. *Id.*

96. Reynolds & Richman, *supra* note 81, at 1183.

97. Hon. Boyce F. Martin, Jr., *In Defense of Unpublished Opinions*, 60 OHIO ST. L.J. 177, 189 (1999).

98. *Id.* at 190.

99. STANDARDS FOR PUBLICATION OF JUDICIAL OPINIONS, *supra* note 71, at 6.

100. Reynolds & Richman, *supra* note 81, at 1184.

101. *Id.*

102. *Id.*

¶17 Initially, attorneys and members of the public could procure an unpublished opinion by going to the clerk's office in the courthouse and requesting a copy of the decision.¹⁰³ However, as the use of computer-assisted legal research grew, more and more unpublished opinions became available through these platforms.¹⁰⁴ In 2001, West launched a new case reporter called the *Federal Appendix*.¹⁰⁵ The *Federal Appendix* followed the same formatting as the other case reporters in the National Reporter System, including headnotes and Key Numbers.¹⁰⁶ It differed from the others in that it published *only* previously unpublished circuit court opinions.¹⁰⁷ The policy of West was to include every unpublished case that it received from the various circuits and to exclude only those cases that were so informal that they could not produce a synopsis and at least one headnote.¹⁰⁸ Finally, the E-Government Act of 2002 required that federal courts post all written opinions, even those designated as unpublished, on their own websites.¹⁰⁹

¶18 The question of how to handle unpublished opinions for citation purposes goes hand in hand with the publication decision. Two arguments dominate the citation debate.¹¹⁰ First, allowing citation would frustrate the purpose of limited publication.¹¹¹ If unpublished opinions can be cited, judges might need to do more than merely apply the facts to the law for the purpose of the parties involved and instead provide a greater explanation as they do in published opinions, thus taking more judicial time.¹¹² Second, permitting citation might unfairly advantage some (better resourced) litigants over others.¹¹³ Since some large law firms have more money and access to resources that index unpublished opinions, their clients could presumably have an advantage over clients of small firms or pro se litigants.¹¹⁴

Anastasoff

¶19 Since the late 1970s, all of the federal circuits maintained their own rules for publication of opinions.¹¹⁵ Only the U.S. Court of Appeals for the District of Columbia Circuit discontinued the practice of labeling some opinions nonprecedential by allowing all opinions after January 1, 2002, to be cited as precedent, whether published or unpublished.¹¹⁶ The no-citation debate took center stage after the Eighth Circuit Court of Appeals issued its decision in *Anastasoff v. United States*.¹¹⁷ Anastasoff filed a request for a refund of taxes due on April 15, 1993, but it was not received by the IRS until April 16, 1996, and so the IRS denied the claim on the

103. Gant, *supra* note 67, at 709.

104. *Id.*

105. William R. Mills, *The Shape of the Universe: The Impact of Unpublished Opinions on the Process of Legal Research*, 46 N.Y.L. SCH. L. REV. 429, 444 (2002).

106. *Id.*

107. *Id.*

108. *Id.*

109. E-Government Act of 2002, Pub L. No. 107-347, § 205(a)(5), 116 Stat. 2899, 2913.

110. Reynolds & Richman, *supra* note 81, at 1185.

111. *Id.*

112. *See id.* at 1186.

113. *Id.* at 1185.

114. *Id.* at 1187.

115. Gant, *supra* note 67, at 710.

116. *Id.*

117. 223 F.3d 898 (8th Cir. 2000).

ground that it was not timely filed within the three-year refund window.¹¹⁸ The three-judge panel hearing the case noted that the circuit had rejected a similar legal argument, about a request mailed before the deadline but received after, made in an unpublished opinion of the court back in 1992.¹¹⁹ Anastasoff argued that *Christie* did not bind the court since it was unpublished and therefore not precedent under the circuit rules.¹²⁰ The three-judge panel concluded that

8th Circuit Rule 28A(i), insofar as it would allow us to avoid the precedential effect of our prior decisions, purports to expand the judicial power beyond the bounds of Article III, and is therefore unconstitutional . . . Rule 28A(i) expands the judicial power beyond the limits set by Article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional.¹²¹

¶20 At the same time the Eighth Circuit issued its opinion in *Anastasoff*, the Second Circuit reached an opposite conclusion about the timeliness of the demand for refund.¹²² Due to the Second Circuit decision, Anastasoff requested rehearing en banc.¹²³ On receipt of the petition, the government informed the court that it would pay Anastasoff the money she requested and asked for a dismissal of the rehearing as moot.¹²⁴ The Eighth Circuit agreed that the case was now moot and decided to vacate its previous judgment in the case.¹²⁵ The court also noted that “the constitutionality of that portion of Rule 28A(i) which says that unpublished opinions have no precedential effect remains an open question in this Circuit.”¹²⁶

¶21 In 2001, the Ninth Circuit, in an opinion authored by Judge Kozinski, weighed in on the constitutionality of court rules prohibiting citation to unpublished opinions.¹²⁷ In that case, the court ordered counsel to show cause why he should not receive a sanction for citing an unpublished opinion in his brief in contravention of Circuit Court Rule 36-3.¹²⁸ Ultimately, the court discharged the order to show cause finding that “*Anastasoff* may have cast doubt on our rule’s constitutional validity.”¹²⁹ However, Judge Kozinski provided a virulent attack on the decision in *Anastasoff* that no-citation rules are unconstitutional:

Unlike the *Anastasoff* court, we are unable to find within Article III of the Constitution a requirement that all case dispositions and orders issued by appellate courts be binding authority. On the contrary, we believe that an inherent aspect of our function as Article III judges is managing precedent to develop a coherent body of circuit law to govern litigation in our court and the other courts of this circuit. We agree with *Anastasoff* that we—and all courts—must follow the law. But we do not think this means we must also make binding law every time we issue a merits decision. The common law has long recognized that certain types of cases do not deserve to be authorities, and that one important aspect of the

118. *Id.* at 899.

119. *Id.* (citing *Christie v. United States*, No. 91-2375MN (8th Cir. Mar. 20, 1992)).

120. *Id.*

121. *Id.* at 900, 905.

122. *Weisbart v. U.S. Dep’t of Treasury*, 222 F.3d 93, 96–97 (2d Cir. 2000).

123. Appellant’s Petition for Rehearing En Banc at 1, *Anastasoff v. United States*, 235 F.3d 1054 (2000) (No. 99-3917), 2000 WL 34468102, at *1.

124. Appellee’s Response to Appellant’s Petition for Rehearing En Banc at 3–4, *Anastasoff v. United States*, 235 F.3d 1054 (2000) (No. 99-3917), 2000 WL 34017024, at *3–4.

125. *Anastasoff v. United States*, 235 F.3d 1054, 1056 (8th Cir. 2000).

126. *Id.*

127. *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001).

128. *Id.* at 1158.

129. *Id.* at 1180.

judicial function is separating the cases that should be precedent from those that should not. Without clearer guidance than that offered in *Anastasoff*, we see no constitutional basis for abdicating this important aspect of our judicial responsibility.¹³⁰

The Move to Federal Rule of Appellate Procedure 32.1

¶22 With *Anastasoff* and *Hart*, the debate over unpublished opinions in general and citation of unpublished opinions began anew.¹³¹ On January 16, 2001, then Solicitor General Seth P. Waxman sent a letter to Judge Will Garwood, Chair of the Appellate Rules Committee, suggesting the introduction of a new rule 32.1 to the Federal Rules of Appellate Procedure allowing citation of unpublished opinions in all federal courts of appeals.¹³² The Appellate Rules Committee had the topic of citation to unpublished opinions on its study agenda from 1991 until 1997.¹³³ In his May 1998 report to the Standing Committee on Rules of Practice and Procedure, Judge Garwood noted that he had reached out to chief judges on all the circuits and heard back from almost all, as well as other circuit judges, and “[t]he judges were virtually unanimous—and, on the whole, quite emphatic—that the Committee should not propose rules addressing *any* of these topics”¹³⁴ (meaning unpublished opinions and citation to the same). At its April 2001 meeting, the Appellate Rules Committee discussed the proposal floated by Solicitor General Waxman and agreed to postpone any further discussion to some later meeting.¹³⁵

¶23 At the April 2002 meeting of the Appellate Rules Committee, chaired by then-Judge Samuel A. Alito of the Third Circuit, he reported he had again surveyed chief judges on unpublished opinion citation and received mixed responses.¹³⁶ The Committee debated whether to suggest a national rule.¹³⁷ Supporters of allowing citation to unpublished opinions noted that some district courts and state courts allow citation for persuasive purposes, no-citation rules raise civil liberties concerns, and courts could still issue unpublished decisions.¹³⁸ Those who did not support allowing citation noted that some circuit judges could view it as the first step in eliminating popular nonprecedential opinions, caseloads do not allow writing a published opinion in each case, the opinions in unpublished cases have almost no value to anyone other than the instant parties, and it would create too much case law.¹³⁹ The Committee voted six to three to approve the Justice Department proposal from Solicitor General Waxman, but changed unpublished to nonpreceden-

130. *Id.*

131. *Gant*, *supra* note 67, at 717–18.

132. *Id.* at 720–21.

133. *Id.* at 719–20.

134. JUDGE WILL GARWOOD, COMMITTEE ON RULES OF APPELLATE PROCEDURE MAY 1998 REPORT 2–3 (May 12, 1998), http://www.uscourts.gov/sites/default/files/fr_import/AP5-1998.pdf [<https://perma.cc/8JEQ-ZVHE>].

135. MINUTES OF THE APRIL 11, 2001, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 64–65 (Apr. 11, 2001), https://www.uscourts.gov/sites/default/files/fr_import/app0401.pdf [<https://perma.cc/9JYX-Q336>].

136. MINUTES OF THE APRIL 22, 2002, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 23 (Apr. 22, 2002), https://www.uscourts.gov/sites/default/files/fr_import/app0402.pdf [<https://perma.cc/M5UX-N8PU>].

137. *Id.* at 24–27.

138. *Id.* at 24.

139. *Id.* at 25.

tial decisions and changed subdivision (b) of the rule, eliminating the requirement for parties to serve copies of nonprecedential opinions they cite.¹⁴⁰

¶24 At the November 2002 meeting, the Appellate Rules Committee discussed three versions of proposed Rule 32.1¹⁴¹ Alternative A was the most permissive, allowing a court of appeals to designate an opinion as nonprecedential and allowing citation to nonprecedential opinions without any restriction.¹⁴² Alternative B did not address whether courts should issue nonprecedential opinions, but only mentioned that nonprecedential opinions may be cited to without restriction.¹⁴³ Alternative C was the most restrictive, allowing citation to nonprecedential opinions “only if no precedential opinion of the forum court adequately addresses that issue.”¹⁴⁴ The Committee rejected Alternative A by consensus after a brief discussion.¹⁴⁵ After much deliberation the Committee approved by a vote of seven to one (with one abstention) Alternative B with some changes to be discussed at the spring 2003 meeting.¹⁴⁶

¶25 At the May 2003 meeting, the Appellate Rules Committee approved the redrafted Rule 32.1 by a vote of seven to one (with one abstention) with a slight modification.¹⁴⁷ The approved Rule 32.1 read:

Rule 32.1 Citation of Judicial Dispositions

Citation Permitted. No prohibition or restriction may be imposed upon the citation of judicial opinions, orders, judgments, or other written dispositions that have been designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent” or the like, unless that prohibition is generally imposed upon the citation of all sources.

Copies Required. A party who cites a judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database must file and serve a copy of that opinion, order, judgment, or other written disposition with the brief or other paper in which it is cited.¹⁴⁸

The one approved change to subsection (a) was to make it clear that no restriction can be imposed on the citation of unpublished judicial opinions unless the restriction is also imposed on the citation of published judicial opinions. Judge Alito, as the chair of the Committee, wrote a memorandum to the Standing Committee, proposing the new Rule 32.1.¹⁴⁹ The last part of subsection (a) was changed to read “unless that prohibition or restriction is generally imposed upon the citation of all judicial opinions, orders, judgments, or other written dispositions.”¹⁵⁰ The proposed Rule

140. *Id.* at 26–27.

141. MINUTES OF THE NOVEMBER 18, 2002, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 22–39 (Nov. 18, 2002), https://www.uscourts.gov/sites/default/files/fr_import/app1102.pdf [https://perma.cc/XW2M-94RK].

142. *Id.* at 22.

143. *Id.* at 28.

144. *Id.* at 32.

145. *Id.* at 35.

146. *Id.* at 39.

147. MINUTES OF THE MAY 15, 2003, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 11–17 (May 15, 2003), https://www.uscourts.gov/sites/default/files/fr_import/app0503.pdf [https://perma.cc/93PA-C6F8].

148. *Id.* at 11.

149. JUDGE SAMUEL A. ALITO, JR., REPORT OF ADVISORY COMMITTEE ON APPELLATE RULES 32–39 (May 22, 2003), https://www.uscourts.gov/sites/default/files/fr_import/AP5-2003.pdf [https://perma.cc/5KCD-F785].

150. *Id.* at 32.

32.1 received more than 500 comments, making it the second most commented upon rule in federal rulemaking up to that time and the most commented upon proposed appellate rule.¹⁵¹ The Appellate Rules Committee also held hearings on proposed Rule 32.1.¹⁵² On April 14, 2004, the Appellate Rules Committee discussed proposed Rule 32.1 yet again. Then–Judge John G. Roberts, Jr., of the D.C. Circuit reported on his appearance at the Standing Committee’s meeting in January, since he attended in place of Judge Alito.¹⁵³ Judge Roberts “stressed that the rule and accompanying Committee Note were drafted to take no position on the issue of whether it is lawful for a court to refuse to give binding precedential effect to one of its opinions.”¹⁵⁴ The Committee voted six to one (with one person missing) to approve Rule 32.1.¹⁵⁵ At its June 2004 meeting, the Standing Committee on Rules of Practice and Procedure considered Rule 32.1 and decided to return it to the advisory committee and recommend an empirical study about the practical experience of circuits that adopted rules allowing citation of unpublished opinions.¹⁵⁶

¶26 The Federal Judicial Center (FJC) conducted such a study and issued its final report on December 21, 2005.¹⁵⁷ The study included a survey of judges and attorneys, and a review of case files.¹⁵⁸ Judges in circuits that permitted citation to unpublished opinions did not think that the number of unpublished opinions, length of unpublished opinions, or time to draft unpublished opinions would change if the rules on citing unpublished opinions changed.¹⁵⁹ Judges in circuits with recently relaxed rules reported some increase in citation to unpublished opinions, but no impact on their work.¹⁶⁰ The federal appellate attorneys generally expressed support for a rule permitting citation to unpublished opinions.¹⁶¹ According to the 650 cases reviewed as part of the study, about one-third included published opinions, and most of the unpublished opinions were under 500 words, which makes them of limited citation value.¹⁶² The Appellate Rules Committee discussed the FJC preliminary report and approved Rule 32.1 by a vote of seven to two.¹⁶³ The Standing Committee finally approved, without objection, the new rule

151. Gant, *supra* note 67, at 723. Individual comments can be viewed at <https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/rules-comments?committee=40&year%5Bvalue%5D%5Byear%5D=2003> [<https://perma.cc/9L9L-VMXQ>].

152. TRANSCRIPT OF HEARING BEFORE ADVISORY COMMITTEE ON APPELLATE RULES (Apr. 13, 2004), www.nonpublication.com/aphearing.htm [<https://perma.cc/8D9L-7CPP>].

153. MINUTES OF THE APRIL 13–14, 2004, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 1–2 (Apr. 13–14, 2004), https://www.uscourts.gov/sites/default/files/fr_import/app0404.pdf [<https://perma.cc/G9Q9-TDVV>].

154. *Id.* at 2.

155. *Id.* at 9.

156. MINUTES OF THE JUNE 17–18 COMMITTEE ON RULES OF PRACTICE AND PROCEDURE 8–11 (June 17–18, 2004), https://www.uscourts.gov/sites/default/files/fr_import/ST06-2004-min.pdf [<https://perma.cc/F5YF-6T3G>].

157. ROBERT TIMOTHY REAGAN ET AL., FED. JUDICIAL CTR., CITING UNPUBLISHED OPINIONS IN FEDERAL APPEALS (2005), <https://www.fjc.gov/sites/default/files/2012/Citatio3.pdf> [<https://perma.cc/6VDD-L3XN>].

158. *See id.*

159. *Id.* at 6.

160. *Id.*

161. *Id.* at 17.

162. *Id.* at 22.

163. MINUTES OF THE APRIL 18, 2005, MEETING OF THE ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE 2–18 (Apr. 18, 2005), https://www.uscourts.gov/sites/default/files/fr_import

by voice vote at its June 2005 meeting.¹⁶⁴ At its meeting in September 2005, the Judicial Conference approved Rule 32.1, but added that it would apply only to judicial dispositions issued on or after January 1, 2007, and transmitted the rule to the Supreme Court with the recommendation that it be adopted.¹⁶⁵ The Supreme Court approved the new Rule 32.1 to take effect on December 1, 2006.¹⁶⁶

¶27 The one question unanswered by the adoption of Rule 32.1 is the precedential value of any unpublished opinion.¹⁶⁷ The Committee Notes to Rule 32.1 specifically state, “Rule 32.1 addresses only the *citation* of judicial dispositions that have been *designated* as ‘unpublished’ or ‘non-precedential’—whether or not those dispositions have been published in some way or are precedential in some sense.”¹⁶⁸ The consensus is that, at most, unpublished opinions would have persuasive value.¹⁶⁹

The Current Rules on Publication and Citation to Unpublished Decisions

Federal Circuits

¶28 All federal courts must at least follow Federal Rule of Appellate Procedure 32.1.¹⁷⁰ However, just as before, each circuit can also adopt local rules that govern the publication of decisions in the circuit, as well as the citation to unpublished decisions.¹⁷¹ Some circuits are more permissive than Rule 32.1 and allow for citation of opinions regardless of publication date.¹⁷² Others may have a different opening date of publication than 2007. Some essentially follow the Federal Rules of Appellate Procedure.¹⁷³ Attorneys must check the local circuit rules to know what

/AP04-2005-min.pdf [https://perma.cc/R4QC-WDXA] [hereinafter MINUTES APRIL18, 2005].

164. MINUTES OF THE JUNE 15–16 COMMITTEE ON RULES OF PRACTICE AND PROCEDURE 10 (June 15–16, 2004), https://www.uscourts.gov/sites/default/files/fr_import/ST06-2005-min.pdf [https://perma.cc/7ZHK-TSFS].

165. JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 36–37 (2005), <https://www.uscourts.gov/sites/default/files/2005-09.pdf> [https://perma.cc/RH7K-A3T5].

166. Order Amending Federal Rules of Appellate Procedure (Apr. 12, 2006), <https://www.supremecourt.gov/orders/courtorders/frap06p.pdf> [https://perma.cc/VP33-DCB8].

167. WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, INJUSTICE ON APPEAL: THE UNITED STATES COURTS OF APPEALS IN CRISIS 68–71 (2013).

168. MINUTES APRIL 18, 2005, *supra* note 163, at 3 (emphasis in original).

169. RICHMAN & REYNOLDS, *supra* note 167, at 69–70 (citing David R. Cleveland, *Local Rules in the Wake of Federal Rule of Appellate Procedure 32.1*, 11 J. APP. PRAC. & PROCESS 19, 45–46 (2010); Amy E. Sloan, *If You Can't Beat 'Em, Join 'Em: A Pragmatic Approach to Nonprecedential Opinions in the Federal Appellate Courts*, 86 NEB. L. REV. 895, 923 (2008); Stephen R. Barnett, *No-Citation Rules Under Siege: A Battlefield Report and Analysis*, 5 J. APP. PRAC. & PROCESS 473, 497 (2003)).

170. FED. R. APP. P. 32.1:

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like; and

(ii) issued on or after January 1, 2007.

(b) Copies Required. If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

171. See app. A, *infra*.

172. *Id.*

173. *Id.*

the court in their jurisdiction allows. The circuits also have different local rules for publication.¹⁷⁴ Some provide a laundry list of criteria to consider before making a publication decision.¹⁷⁵ Others barely mention the publication process.¹⁷⁶ Some circuits even provide the policy behind publication decisions.¹⁷⁷ The table in appendix A lays out the current rules regarding citation of unpublished opinions as well as publication rules in the federal circuits.

States/Territories

¶29 The states have differing rules regarding whether a party can cite an unpublished case for anything other than the usually accepted reasons of *res judicata*, claim preclusion, or law of the case. Some states still do not allow citation to unpublished cases, while other states allow citation to an unpublished case after a definitive date. Some states require a party citing an unpublished opinion to provide a copy to opposing counsel, while others do not. For the most part, unpublished opinions do not carry the same precedential power as published decisions but, again, the rules vary among the states. It is important to note that as late as 2019, some states were still changing the rules about citation to unpublished opinions, so researchers should still check this every so often. The table in appendix B lays out the current rules about citation to unpublished opinions and publication rules among the 50 states, the District of Columbia, and U.S. territories.

Conclusion

¶30 The case publication landscape has changed over the centuries, moving from personal annotations of trials to collected regional reporters to online access through court websites and databases. U.S. case law has proliferated exponentially, and in response the limited publication and limited citation movement was born. But does limiting case publication still make sense now that print sources are used infrequently, databases are increasingly more sophisticated, and searching for cases is easier? Legal professionals should regularly ask this question as they evaluate whether older rules for publishing cases remain useful. Since the major reason for limited citation—fairness—is a lesser concern in the digital landscape, courts should allow citation to all cases to ensure that litigants may use existing decisions openly and freely.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

Appendix A: Federal Circuit Court Citation/Publication Rules

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|---|---|--|---|--|
| First | 1ST CIR. R. 32.1.o (citation) 1ST CIR. R. 36.o(b) (publication) 1ST CIR. R. 36.o(c) (precedent) | Citation allowed regardless of date for dispositions of the circuit. FED. R. APP. P. 32.1 and rules of the other courts govern citation for dispositions of other courts, but may always cite for res judicata, collateral estoppel, law of the case, double jeopardy, abuse of writ, or similar doctrine. | Persuasive value unless for res judicata, collateral estoppel, law of the case, double jeopardy, abuse of writ, or similar doctrines. However, a panel decision to issue an unpublished opinion means the panel sees no precedential value. | N/A | Policy of the court is that opinions be published and available for citation. However, policy overcome when opinion does not state new rule of law, modify an established rule, apply an established rule to novel facts, or provide a significant guide to future parties. Publication will occur if there is a dissent or more than one opinion, unless all participating judges decide against publication. Any party or interested person may apply for good cause shown to the court for publication of an unpublished opinion. |
| Second | 2D CIR. R. 32.1.1 (citation) | Parties may cite summary orders issued on or after 1/1/2007. Parties may not cite summary orders issued before 1/1/2007 except in a subsequent stage of the case in which the summary order has been entered, in a related case, or for estoppel or res judicata; or when a party cites the order as subsequent history for another opinion it appropriately cites. | Summary orders do not have precedential effect. | A party citing a summary order must serve a copy on any party not represented by counsel. | N/A |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|--|--|---|---|--|
| Third | <p>3D CIR. I.O.P. 5.2–5.3 (publication)</p> <p>3D CIR. I.O.P. 5.7 (citation)</p> <p>3D CIR. I.O.P. 6.2 (publication)</p> | The court traditionally does not cite to its nonprecedential opinions as authority. | Nonprecedential opinions are not binding. | As per FED. R. APP. P. 32.1, a party must provide a copy when it is not available in a publicly accessible electronic database. | <p>Unless otherwise provided, an opinion that appears to have value only to the trial court or parties receives the designation “not precedential” and is posted on the court’s website.</p> <p>Judges may use a judgment order when the district court based its judgment on findings of fact not clearly erroneous; sufficient evidence supports a jury verdict; substantial evidence on the record as a whole supports a decision or order of an administrative agency; no error of law appears; the district court did not abuse discretion; or the court has no jurisdiction.</p> |
| Fourth | <p>4TH CIR. R. 32.1 (citation)</p> <p>4TH CIR. R. 36(a) (publication)</p> <p>4TH CIR. R. 36(b) (request for publication)</p> | <p>Disfavors citation of unpublished opinions issued before 1/1/2007 except for res judicata, estoppel, or law of the case. Allows citation if a party believes the cited case has precedential value for a material issue in its case and no published opinion would serve as well.</p> | N/A | As per FED. R. APP. P. 32.1, a party must provide a copy when it is not available in a publicly accessible electronic database. | <p>Will publish disposition if it establishes, alters, modifies, clarifies, or explains a rule of law in the circuit; involves a legal issue of continuing public interest; criticizes existing law; contains a nonduplicative historical review of a law; or resolves a conflict between panels of the court or creates a conflict with another circuit.</p> <p>To qualify for publication, parties must fully brief and present cases at oral argument.</p> <p>Additionally, all members of the court must acknowledge in writing receipt of the proposed opinion.</p> <p>Counsel may move for publication of an unpublished opinion, citing reasons for the motion.</p> |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|---|---|---|---|---|
| Fifth | 5TH CIR. R. 47.5.3–47.5.4 (citation) 5TH CIR. R. 47.5.1–47.5.2 (publication) | Parties may cite unpublished opinions issued before 1/1/1996 according to the rules in FED. R. APP. P. 32.1. Allow citation after that date for res judicata, collateral estoppel, or law of the case, and in instances allowed by FED. R. APP. P. 32.1. | Unpublished opinions before 1/1/1996 are precedent. Decisions after that date are precedent only for res judicata, collateral estoppel, or law of the case. | If the disposition is not available in an electronic database, the party citing it must provide a copy. | An opinion is published if it establishes, alters, or modifies a rule of law, or calls attention to an overlooked law; applies significantly different facts to an established rule; explains, criticizes, or reviews the history of existing case law or enacted law; creates or resolves a conflict of authority; discusses a factual or legal issue of significant public interest; has been reviewed previously and its merits addressed by a Supreme Court opinion. May also publish an opinion if it includes a concurring/ dissenting opinion, reverses decision below, or affirms on different grounds. Will publish an opinion unless each member of the panel determines its publication is neither required nor justified under the criteria. Any judge of the court or any party can request that the panel reconsider its decision not to publish, and it will be published if the panel determines it meets one or more of the criteria or should be published for any other good reason. |
| Sixth | 6TH CIR. R. 32.1(a) (citation) 6TH CIR. I.O.P. 32.1(b) (publication) | Permitted to cite any unpublished opinion, order, judgment, or other written disposition. | N/A | Yes, if not in a publicly accessible database. | Consider if it establishes a new rule, modifies an existing rule, or applies an established rule to novel facts; creates or resolves a conflict of authority; discusses an issue of continuing public interest; includes concurring or dissenting opinions; reverses the decision below unless the reversal was due to an intervening change in law or fact or reversal is to remand without comment; addresses a published lower court or agency decision; or has been reviewed by the U.S. Supreme Court. Any panel member can request publication, and the court may publish on motion. |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|---|---|---|---|--|
| Seventh | 7TH CIR. R. 32.1 (publication and citation) | May not cite an order of the court issued before 1/1/2007 except to support a claim of preclusion or to establish the law of the case from an earlier appeal in the same proceeding. May cite unpublished opinions in accordance with FED. R. APP. P. 32.1. | Not treated as precedent. | As per FED. R. APP. P. 32.1, a party must provide a copy when it is not available in a publicly accessible electronic database. | The court may dispose of an appeal by an opinion or order. Opinions are published, and orders are not published. Any person may request by motion to reissue an order as an opinion. |
| Eighth | 8TH CIR. R. 32.1A (citation) 8TH CIR. R. 47B (publication) | Allows citation for opinions issued before 1/1/2007 in cases of res judicata, collateral estoppel, or law of the case. Also allows citation when the party believes the cited case has precedential value on a material issue in its case and no published precedent would serve as well. | Unpublished opinions are not precedent. | Must provide a copy if the opinion is not available in a publicly accessible electronic database. | A judgment or order may be affirmed or enforced without opinion if the court determines an opinion would have no precedential value and one of the following exists: a judgment of the district court is based on findings of fact not clearly erroneous; evidence in support of a jury verdict is not insufficient; order of an administrative agency is supported by substantial evidence on the record as a whole; or no apparent error of law. |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|--|---|--|---|---|
| Ninth | 9TH CIR. R. 36-3 (citation) 9TH CIR. R. 36-2 (publication) 9TH CIR. R. 36-4 (request for publication) 9TH CIR. R. 36-5 (orders for publication) | <p>Allows citation to unpublished dispositions or orders of the court before 1/1/2007 in a request to publish or a petition for panel rehearing or rehearing en banc. Also allows citation to demonstrate a conflict among opinions, dispositions, or orders.</p> <p>Also permitted under the doctrine of law of the case, issue preclusion, claim preclusion, for factual purposes such as showing double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or a related case.</p> | Unpublished dispositions and orders of the court are not precedent except when relevant to law of the case, claim preclusion, or issue preclusion. | N/A | <p>Will designate a written disposition an opinion and publish if it establishes, alters, modifies, or clarifies a rule of federal law; calls attention to a generally overlooked rule of law; criticizes existing law; involves a legal or factual dispute of unique interest or substantial public importance; is a disposition in a case where the lower court or administrative agency published an opinion, unless publication is not necessary to clarify the disposition; follows a reversal or remand by the Supreme Court; or there is a separate concurring or dissenting expression and the author wants publication.</p> <p>May request publication of an unpublished disposition by a letter addressed to the clerk and providing the reasons for publication within 60 days of the issuance of the disposition.</p> <p>A majority of judges may specially designate an order for publication.</p> |
| Tenth | 10TH CIR. R. 32.1 (citation) 10TH CIR. R. 36.1–36.2 (publication) | May cite unpublished opinions both before and after 1/1/2007. | Persuasive value. | Yes, if not available in a publicly accessible electronic database. | Dispositions without opinion do not require application of new points of law that would make the decision valuable precedent. The court normally publishes opinions when the opinion of the district court, administrative agency, or tax court was also published. |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|----------|--|---|--|---|--|
| Eleventh | 11TH CIR. R. 36-2 (publication and citation) | May cite unpublished opinions as persuasive authority. | Persuasive authority. The court will not give the unpublished opinion of another circuit more weight than the decision is to be given in that circuit under its own rules. | Must provide a copy if the text is not available on the Internet. | An opinion shall be unpublished unless a majority of the panel decides to publish it. |
| | 11TH CIR. R. 36-3 (publishing unpublished opinions) | The court generally does not cite to its unpublished opinions. However, the court may cite to them where they are specifically relevant to determine whether the predicates for res judicata, collateral estoppel, or double jeopardy exist; to establish law of the case; or to establish procedural history or facts of the case. | | | At any time before the mandate has issued, the panel can on its own motion or motion by a party vote unanimously to order publication of a previously unpublished opinion. |
| | 11TH CIR. I.O.P. 5 (publication) | | | | |
| | 11TH CIR. I.O.P. 6 (precedential weight) | | | | The policy of the court is to exercise imaginative and innovative resourcefulness in fashioning new methods to increase judicial efficiency and reduce the volume of published opinions. |
| | 11TH CIR. I.O.P. 7 (citation by the court) | | | | |
| Federal | FED. CIR. R. 32.1(b) (publication) | Parties are not prohibited or restricted from citing nonprecedential dispositions issued after 1/1/2007. Parties may also cite nonprecedential dispositions issued before that date for reasons of claim preclusion, issue preclusion, judicial estoppel, law of the case, etc. | The court will not give its own nonprecedential disposition the effect of binding precedent. The court will not consider nonprecedential dispositions of another court binding precedent of that court unless the rules of the court provide for such. | As per FED. R. APP. P. 32.1, a party must provide a copy when it is not available in a publicly accessible electronic database. | Nonprecedential orders do not add significantly to the body of law. |
| | FED. CIR. R. 32.1(c) (citation) | | | | Any person may request and provide reasons to reissue an opinion as precedential within 60 days after its issuance as nonprecedential. |
| | FED. CIR. R. 32.1(d) (precedential value) | | | | |
| | FED. CIR. R. 32.1(e) (request for precedential status) | | | | The court may enter judgment of affirmance without opinion when it determines that an opinion would have no precedential value and any of the following circumstances exist: the judgment, decision, or order of the trial court is based on findings not clearly erroneous; evidence supporting the jury's verdict is sufficient; record supports summary judgment, directed verdict, or judgment on the pleadings; decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing review; or a judgment or decision was entered without an error of law. |
| | FED. CIR. R. 36 (publication) | | The court may look to a nonprecedential disposition for guidance or persuasive reasoning. | | |

| CIRCUIT | RULE/STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | PROVISION OF COPIES REQUIRED | PUBLICATION RULES |
|---------|---|---|--------------------|---|--|
| D.C. | D.C. CIR. R. 32.1(b) (citation) D.C. CIR. R. 36(c) (publication) D.C. CIR. R. 36(f) | <p>Parties may cite unpublished dispositions of the D.C. Cir. published on or after 1/1/2002.</p> <p>Parties cannot cite dispositions before this date.</p> <p>Parties may cite unpublished dispositions from other courts of appeals and district courts before 1/1/2007 when binding for res judicata or law of the case, or if the preclusive effect of the disposition is relevant. Otherwise, parties may only cite unpublished decisions of other courts of appeals entered before 1/1/2007 under circumstances and for the purposes permitted by the issuing court, and parties may not cite unpublished dispositions of district courts entered before that date. Parties may cite unpublished dispositions of other federal courts entered after 1/1/2007 in accordance with FED. R. APP. P. 32.1.</p> | N/A | Must provide a copy of each unpublished disposition not available in a publicly accessible electronic database. | <p>It is the policy of the court to publish opinions and explanatory memoranda that have general public interest.</p> <p>An opinion, memorandum, or other statement explaining the court’s action will be published if it meets one or more of the following criteria: it is a case of first impression of a substantial issue it resolves; it alters, modifies, or significantly clarifies a previously announced rule of law; it calls attention to an existing rule of law that has been generally overlooked; it criticizes or questions existing law; it resolves an apparent conflict in decisions within the circuit or creates a conflict with another circuit; it reverses a published agency or district court decision, or affirms a decision of the district court on different grounds; or it warrants publication in light of other factors giving it general public interest.</p> <p>Any person may move, within 30 days after judgment or 30 days from petition for rehearing, to request publication of an unpublished opinion.</p> <p>However, such motions are not favored and are granted only for compelling reasons.</p> |

Appendix B: State/Territorial Citation/Publication Rules

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Alabama | ALA. R. APP. P. 53 (Sup. Ct. and Ct. Civ. App.) ALA. R. APP. P. 54 (Ct. Crim. App.) | Only for doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar. | No precedential value. | N/A | <p>The Supreme Court or Court of Civil Appeals can affirm a judgment/order of the trial court without a written opinion if the court determines the opinion would not serve significant precedential purpose and at least one of the following exists: the judgment/order is based on findings of fact not clearly, plainly, or palpably erroneous; the evidence adequately supports the jury verdict; in a nonjury case in which the judge does not make specific findings of fact, the evidence would support the findings that would have been necessary to support the order/judgment; the order of an administrative agency is sufficiently supported by the record; the appeal is from summary judgment, judgment on the pleadings, or judgment on a directed verdict, and the judgment is supported by the record; or the court, after review of the record and party contentions, concludes judgment or order was entered without error of law.</p> <p>Such “no-opinion” cases are not published in the official reports but are collected in a periodic “Table of Decisions Without Published Opinions” that is published in the official reports.</p> <p>However, a special opinion written by a judge or justice dissenting or concurring with the outcome will be published.</p> <p>The Court of Criminal Appeals may also affirm a judgment/order without opinion if the case has no precedential purpose. Special opinions of this court will also be published.</p> |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Alaska | ALASKA R. APP. P. 214 | Not encouraged for reasons other than res judicata, estoppel, or law of the case; but allowed if party believes the unpublished opinion has persuasive value for a material issue in its case and no published opinion would serve as well. | Persuasive value at most. | Yes, if the unpublished opinion is not available in a publicly accessible electronic database. | <p>The court may decide an appeal by summary order and without formal written opinion and parties can request such.</p> <p>Exception is that in criminal cases, the summary order must contain a statement of the issues considered by the appellate court.</p> |
| Arizona | ARIZ. R. APP. P. 28 (publication) ARIZ. R. SUP. CT. 111 (citation and precedent) | May cite memorandum decisions only for purposes of claim preclusion, issue preclusion, or law of the case; to assist the court in deciding whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review; or for persuasive value if issued after 1/1/15, no opinion adequately addresses the issue before the court, and the citation is not to a depublished opinion. | Not precedent, but can be cited for persuasive value if issued on or after 1/1/15 and not a depublished opinion. | Provide either a copy or hyperlink to a free copy of the decision. | <p>An appellate court's decision of an appeal must be in writing but can be by opinion, memorandum decision, decision order, or order. A memorandum decision is not intended for publication. An appellate court will issue an opinion if a majority of the judges deciding determine the court's disposition does one or more of the following: establishes, alters, modifies, or clarifies a rule of law; calls attention to a generally overlooked rule of law; criticizes existing law; or involves a legal or factual issue of unique interest or substantial public import.</p> <p>Any disposition including a separate concurrence or dissent must be by opinion.</p> <p>Partial portions of decisions may be issued as an opinion.</p> <p>Appellate courts will consider a motion for publication of a memorandum decision as a motion for reconsideration under ARIZ. R. APP. P. 22.</p> |
| Arkansas | ARK. SUP. CT. & CT. APP. R. 5-2 | Cannot cite unpublished decisions of the Court of Appeals or Supreme Court issued before 7/1/2009 except for res judicata, collateral estoppel, or law of the case. Every opinion of the Supreme Court and Court of Appeals issued after 7/1/2009 may be cited. | Unpublished cases have no precedential value. Every Supreme Court or Court of Appeals opinion issued after 7/1/2009 is precedent. | N/A | Supreme Court and Court of Appeals shall file every opinion with the clerk, and the reporter of decisions shall post every opinion on the Arkansas judiciary's website. All opinions after 2/14/2009 shall be included on the website. |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| California | CAL. R. CT. 8.1115 (cita- tion) CAL. R. Cr. 8.1105 (publica- tion) | Can cite only for res judicata, law of the case, or collateral estoppel; or when relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respon- dent in another such action. | N/A | Must pro- vide copy on request of the court or a party. | <p>All opinions of the Supreme Court are published in the Official Reports.</p> <p>Court of Appeal or Superior Appellate Division opinions are published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final.</p> <p>Court of Appeal or Superior Appellate Division opin- ions should be certified for publication if the opinion establishes a new rule of law; applies an existing rule of law to significantly different facts in published opinions; modifies, explains, or criticizes an existing rule of law and provides reasons for such; advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule; addresses or creates an apparent conflict; involves a legal issue of continuing public interest; makes a sig- nificant contribution to legal literature by reviewing devel- opment of common law rule or legislative history; invokes a previously overlooked rule of law or reaffirms a principle not recently applied in a reported decision; or includes a separate concurring or dissenting opinion and the publication of all would sig- nificantly contribute to the development of law.</p> <p>The workload of the court or potential embarrassment of litigants, lawyers, judges, or others should not impact the publication decision.</p> |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Colorado | COLO. APP. R. 35 | Shall not cite orders of affirmance without an opinion issued by the Supreme Court or Court of Appeals except for law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar. | An order of affirmance issued by the Supreme Court or Court of Appeals without an opinion has no precedential value. | N/A | No Court of Appeals opinion shall be designated for publication unless it satisfies one or more of the following: establishes a new rule of law, alters or modifies an existing rule of law, or applies an established rule to novel facts; involves a legal issue of continuing public interest; majority opinion, dissent, or special concurrence directs attention to the shortcomings of existing common law or inadequacies in statutes; or resolves an apparent conflict of authority. |
| Connecticut | Sec. 67-9 repealed as to appeals filed on or after 7/1/2013 | N/A | N/A | N/A | N/A |
| Delaware | DEL. SUP. CT. I.O.P. XIII (publication) DEL. SUP. CT. R. 14 (citation) | Although there is no statement about citing to unreported opinions, there is mention of the style of citation to be used for such in R. 14(g)(ii). | N/A | N/A | The Supreme Court indicates to the clerk all opinions and case-dispositive orders that are designated for publication. |
| District of Columbia | D.C. Ct. APP. R. 28 (citation) D.C. Ct. APP. R. 36 (publication) | May not cite unless relevant under law of the case, res judicata, or collateral estoppel; in a criminal proceeding involving the same defendant; or in a disciplinary case involving the same respondent. | N/A | N/A | An opinion may be either published or unpublished. A party or interested person may request an unpublished opinion be published by filing a motion within 30 days after issuance. The court may sua sponte publish any previously issued unpublished opinion. |
| Florida | FLA. R. APP. P. 9.800 | May cite to a slip opinion if case not published. | N/A | N/A | N/A |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Georgia | GA. SUP. CT. R. 59 GA. CT. APP. R. 36 | N/A | No preceden- tial value. | N/A | Supreme Court can issue an affirmance without opinion in any civil case when the evidence supports the judgment; no harmful error of law, properly raised and requiring reversal appears; or judgment of court below adequately explains the decision and an opinion would have no precedential value. Court of Appeals can affirm a case without opinion if evidence supports judgment; no reversible error of law and an opinion would have no precedential value; judgment below adequately explains decision; or issues controlled adversely to appellant for reasons and authority given in the appellee's brief. |
| Hawaii | Hi. R. APP. P. 35 | Can cite memorandum opinion or unpublished dispositional order filed before 7/1/2008 only for law of the case, res judicata, or in a criminal action or proceeding involving the same respondent. Dispositions after 7/1/2008 may be cited. | Opinions issued after 7/1/2008 are not precedent but may be cited for persuasive value. | Append a copy to the brief or memorandum. | Memorandum opinions are not published. Dispositional orders may be published only on order of the appellate court. |
| Idaho | IDAHO SUP. CT. OPERATING R. 15 | If an opinion is unpublished, it may not be cited as authority or precedent. | No preceden- tial value. | N/A | At or after the oral conference following the presentation of oral argument or submission to the court on briefs, the court may unanimously decide not to publish the final opinion. |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Illinois | ILL. SUP. CT. R. 23 | May cite written orders and summary orders only to support contentions of double jeopardy, res judicata, collateral estoppel, or law of the case. | No preceden- tial value. ¹⁷⁸ | Provide a copy to other counsel and the court. | <p>Appellate court opinions are issued when a majority of the panel determines the decision establishes a new rule of law or modifies, explains, or criticizes an existing rule and/or the decision resolves, creates, or avoids conflict of authority within the appellate court.</p> <p>Written orders may be used for cases that do not qualify for an opinion. A summary order may be used when a unanimous panel decides that any one or more of 8 conditions are met: appellate court lacks jurisdiction; disposition is clearly controlled by case precedent, statute, or rules of court; appeal is moot; issues involve only application of well-settled rules to recurring facts; opinion or conclusion of trial court adequately explains decision; no error of law on the record; trial court/agency did not abuse discretion; or record does not show the trier of fact ruled against the weight of the evidence.</p> <p>If an appeal is disposed of by order, any party may move to have the order published as an opinion within 21 days of the entry of the order and provide reasons why it satisfies the criteria for disposition as an opinion.</p> |

178. [Ed. note: While this article was in press, the Illinois Supreme Court issued an amendment to R. 23 allowing citation for persuasive purposes, effective Jan. 1, 2021. See Committee Comment, Ill. Sup. Ct. R. 23 (Jan. 1, 2021), http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_I/arti.htm#Rule23 [<https://perma.cc/2ENL-RX5W>].]

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Indiana | IND. R. APP. P. 65 | A memorandum decision may be cited only for res judicata, collateral estoppel, or law of the case unless later designated for publication. | Not precedent unless later designated for publication. | N/A | <p>All Supreme Court opinions shall be published and citable.</p> <p>Court of Appeals opinions shall be published and citable if the case establishes, modifies, or clarifies a rule of law; criticizes existing law; or involves a legal or factual issue of unique interest or substantial public importance.</p> <p>A judge who dissents from a memorandum decision may designate the dissent for publication if it meets one of the above criteria.</p> |

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| Iowa | <p>IOWA CT. R. 6.904 (citation)</p> <p>IOWA CT. R. 21.22 (publication)</p> <p>IOWA CT. R. 6.1203 (publication)</p> <p>IOWA CODE § 602.4106 (2019) (Supreme Court publication)</p> <p>IOWA CODE § 602.5111 (2019) (Court of Appeals publication)</p> | An unpublished opinion or decision of a court or agency may be cited if it can be readily accessed electronically. The party needs to include an electronic citation indicating where the opinion can be readily found online. | Do not constitute controlling legal authority. | N/A | <p>All opinions of the Supreme Court, other than per curiam opinions, shall be published. A list of per curiam opinions shall be published quarterly in the <i>North Western Reporter</i>, except for those the court specially orders to be regularly published.</p> <p>The Court of Appeals, by a majority of its members en banc, shall decide which opinions shall be published.</p> <p>An opinion may be published only after it is final. If further review is granted, the opinion shall not be published unless directed by the Supreme Court.</p> <p>A judgment or order may be affirmed without an opinion if the Appellate Court decides the questions are not of sufficient importance to justify an opinion, an opinion would have no precedential value, and if a judgment of the district court is correct; the evidence in support of the jury verdict is sufficient; the order of an administrative agency is supported by substantial evidence; or no error of law appears.</p> <p>If the Supreme Court/Court of Appeals decides that a decision is not of sufficient general importance to be published, it will be designated as such and not included in the reports. No case is reported without an order of the full bench.</p> |

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| Kansas | KAN. SUP. CT. R. 7.04 KAN. STAT. ANN. § 60-2106 (West 2008) | Memorandum opinion may be cited only if it has persuasive value for a material issue not addressed in a published opinion of a Kansas appellate court and it would assist the court in disposition of the issue. | Not binding precedent except for res judicata, law of the case, and collateral estoppel. Otherwise nonbinding precedent. | Must be attached to any document, pleading, or brief in which it is cited. | An opinion will be issued as a formal opinion if a majority of the panel decides that it establishes a new rule of law or modifies an existing rule; involves an issue of continuing public interest; criticizes existing law; applies an established rule to a factual situation different from existing opinions in the state; resolves a conflict of authority; or is a significant and nonduplicative contribution to legal literature by reviewing the history of law or describing legislative history. Memorandum opinions will be published only if they contain a separate concurring or dissenting opinion and the author requests publication or the Supreme Court orders publication. A party or other interested person may file a motion in the Supreme Court asking for an opinion of the Supreme Court or Court of Appeals to be published. The motion must state the grounds for publication, include the opinion, and comply with KAN. SUP. CT. R. 5.01. |
| Kentucky | KY. R. CIV. P. 76.28 | Unpublished Kentucky appellate decisions after 1/1/2003 may be cited if no published opinion would adequately address the issue. | Not binding precedent. | Provide a copy to the court and all parties. | The court designates whether an opinion is published or not published. |

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| Louisiana | LA. CODE CIV. P. art. 2168 (cita- tion) LA. CTS. APP. UNIF. R. 2-16 (publica- tion) | Unpublished opin- ions of the Supreme Court and courts of appeals are posted on the websites of the courts. Opinions that are posted may be cited as authority. | N/A | N/A | <p>A formal opinion of a court of appeal shall be published unless a majority of the panel decides otherwise. A memorandum opinion or a summary disposition of a court of appeal shall not be published unless the majority of the panel decides otherwise.</p> <p>A case may be disposed of by formal opinion when at least one of the following criteria is met: establishes a new rule of law or alters/modifies an existing rule; involves a legal issue of continuing public interest; criticizes or explains existing law; applies an established rule of law to a significantly different factual situation from that in published decisions; resolves an apparent conflict; or constitutes a significant and non-duplicative contribution to legal literature through a historical review of law, review of legislative history, or review of conflicting decisions.</p> <p>The panel shall reconsider its decision not to publish at the request of the trial judge or a party as long as the reasons are made in writing within the delays for rehearing following the rendering of the opinion.</p> |
| Maine | ME. R. APP. P. 12 (cita- tion) ME. STAT. tit. 4, § 702 (2018) (publica- tion) | N/A | A memo- randum of decision does not establish precedent. | N/A | <p>The reporter of decisions reports cases more or less at large according to his or her judgment of their importance and acts in accordance with instructions or advice given by the Chief Justice of the Supreme Judicial Court.</p> <p>A memorandum of decision will not be published as an opinion of the court in the <i>Maine Reporter</i>.</p> |

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| Maryland | <p>MD. R. 1-104 (citation)</p> <p>MD. R. 8-605.1 (publication)</p> <p>MD. R. 8-113 (publication)</p> | <p>An unreported opinion of the Court of Appeals or Court of Special Appeals may be cited before either court for any purpose other than precedent within the rule of stare decisis or as persuasive authority. In other courts, unreported decisions of either court may be cited only when relevant under law of the case, res judicata, or collateral estoppel; in a criminal action or related proceeding involving the same defendant; or in a disciplinary action involving the same respondent.</p> | Persuasive authority. | A copy must be attached to the pleading, brief, or paper in which it is cited. | <p>The Court of Special Appeals reports only those opinions of substantial interest as precedents. The court can on its own or at the request of a party or nonparty designate for reporting something previously designated as unreported before the mandate is due to be issued.</p> <p>All opinions of the Court of Appeals shall be filed with the clerk, who shall deliver a copy of each to be reported to the state reporter for inclusion in the state reports.</p> |
| Massachusetts | <p>MASS. GEN. LAWS ch. 211A, § 9 (2019) (publication) (App. Ct.)</p> <p>MASS. GEN. LAWS ch. 221, § 64 (2019) (publication) (Sup. J. Ct.)</p> <p>MASS. APP. PRAC. R. 1:28 (citation)</p> | <p>A party can cite to an order of the Appeals Court in which the court determined that no substantial question of law is presented or that some clear error of law has been committed that injuriously affected the substantial rights of an appellant and affirmed, modified, or reversed the action of the court below.</p> <p>Only such orders issued after 2/26/2008 may be cited.</p> <p>The party must cite the case title, a citation to the Appeals Court Reports where issuance of the order is noted, and a notation that the order was issued pursuant to Rule 1:28.</p> | N/A | The full text of the order should be included as an addendum to the brief or other filing. | <p>Opinions and rescripts of the Appeals Court shall be published by the reporter of decisions.</p> <p>The reporter of the Supreme Judicial Court has the discretion to report cases more or less at large according to their relative importance and not to unnecessarily increase the size or number of volumes of reports.</p> |

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| Michigan | MICH. CT. R. 7.215 | Unpublished opinions should not be cited for propositions of law when there is published authority. If a party cites an unpublished opinion, the party must explain the reason for citation and how it is relevant to the issues presented. | Unpublished opinions are not precedentially binding under the rule of stare decisis. | Must provide a copy to the court and opposing parties with the brief or other paper in which the citation appears. | <p>An opinion must be published if it establishes a new rule of law; is a matter of first impression of a constitution, statute, regulation, ordinance, or court rule; alters, modifies, or reverses existing rule of law; reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a reported decision since 11/1/1990; involves an issue of significant public interest; criticizes existing law; resolves a conflict among unpublished Court of Appeals opinions brought to the attention of the court; or decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch is invalid.</p> <p>Any party may request publication of an opinion not designated for publication by filing with the clerk 4 copies of a letter stating why the opinion should be published and mailing a copy to each party to the appeal not joining in the request and to the clerk of the Supreme Court.</p> <p>The request must be filed within 21 days of the release of the opinion or 21 days within denial of a timely motion for rehearing.</p> |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Minnesota | MINN. STAT. § 480A.08 (2018) | Unpublished opinions of the Court of Appeals must not be cited unless the party citing provides a full and correct copy to other counsel at least 48 hours before its use in any pretrial conference, hearing, or trial; or a full and correct copy is attached to the brief where cited. | Unpublished opinions of the Court of Appeals are not precedential. | Must provide 48 hours before use in trial or hearing or append to a brief. | Court of Appeals publishes only decisions that establish a new rule of law; overrule a previous decision not reviewed by the Supreme Court; provide important procedural guidelines in interpreting statutes or administrative rules; involve a significant legal issue; or would significantly aid in the administration of justice. |
| Mississippi | Miss. R. APP. P. 35-A (Sup. Ct.) Miss. R. APP. P. 35-B (Ct. App.) | Cannot cite Supreme Court opinions in cases decided before 11/1/1998 except for continuing or related litigation. Cannot cite Court of Appeals opinions not designated for publication except in continuing or related litigation. | Per curiam decisions have no precedential value. | N/A | Supreme Court shall publish all written opinions; however, per curiam decisions may affirm an action of a trial court without a formal opinion. Court of Appeals shall publish all opinions; however, per curiam decisions can affirm the action of the trial court without a formal opinion. A per curiam affirmance may be issued with the concurrence of all participating justices that the opinion would have no precedential value and one or more of the following criteria exist: the court concurs in the facts as found or as found by necessary implication by the trial court; material evidence supports the jury verdict; or there is no reversible error of law. |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| Missouri | Mo. SUP. Ct. R. 84.16 | Memorandum deci- sions and written orders may not be cited in any court. | N/A | N/A | <p>All cases decided by the Supreme Court and Court of Appeals shall be in writing. If all judges agree to affirm and believe the opinion would have no precedential value, disposition may be by memo- randum decision or written order.</p> <p>The factors used to determine whether to issue a memoran- dum decision or written order include that the judgment of the trial court review- able under Rule 84.13(d) is supported by substantial evidence and not against the weight of evidence; judgment of trial court in a proceeding under Rule 24.035/29.15 is based on findings of fact not clearly erroneous; evidence in support of jury verdict is not insufficient; order of admin- istrative agency is supported by competent and substantial evidence on the record; or that no error of law appears.</p> |
| Montana | MONT. SUP. Ct. I.O.R. § 1 | Memorandum opinion is not citable as bind- ing precedent, but can be cited for res judi- cata, law of the case, collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same person. | Not binding precedent. | N/A | <p>If an appeal to the Supreme Court presents no consti- tutional issues or issues of first impression, establishes no new precedent, does not modify existing precedent, or presents a question con- trolled by settled law or clear application of standards of review, the court can clas- sify the appeal as one for a memorandum opinion. A memorandum opinion shall be reported to LexisNexis Group and to the <i>Pacific Reporter</i> along with the case number in the quarterly table of memorandum opinions.</p> |

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| Nebraska | NEB. CT. R. APP. P. § 2-102 NEB. REV. STAT. § 24-1104 (2016) | Opinions of the Court of Appeals not designated as “For Permanent Publication” may be cited only when such case is related by identity of the parties or cause of action to the case before the court. | N/A | N/A | Memorandum opinion shall not be published unless ordered by the Court of Appeals. The Court of Appeals should consider certain factors when deciding to publish: whether the decision creates a new rule of law; applies an established rule of law to a significantly different factual situation than in previous published opinions; resolves or identifies a conflict between prior decisions of the Court of Appeals; provides a contribution to legal literature by collecting case law or reciting legislative history; or involves a case of substantial and continuing public interest. |
| Nevada | NEV. R. APP. P. 36 | May cite an unpublished opinion issued by the Supreme Court on or after 1/1/2016. Unpublished dispositions of the Court of Appeals may not be cited in any Nevada court for any purpose except to establish issue or claim preclusion or law of the case. | Persuasive value, if any. | Must cite an electronic database if available, as well as docket number and date filed in the Supreme Court. Must serve a copy on any unrepresented party. | The Supreme Court or Court of Appeals will decide a case by published opinion if it presents an issue of first impression; alters, modifies, or significantly clarifies a rule of law of either court; or involves an issue of public importance that has application beyond the parties. |
| New Hampshire | N.H. SUP. CT. R. 20 (citation) N.H. SUP. CT. R. 25 (publication and citation) N.H. REV. STAT. ANN. § 505:7 (2010) (publication) | Cases disposed of through summary disposition shall not be cited as authority. Nonprecedential orders may be cited as long as identified as such. The nonprecedential orders are controlling with respect to issues of claim preclusion, law of the case, and similar issues involving the same parties or facts of the case in which the order was issued. Nonprecedential orders must identify the court, docket number, and date. | Controlling for claim preclusion, law of the case, etc. No precedential value for other reasons. | All citations to nonprecedential orders shall identify the court, docket number, and date. | Reporter publishes report of case in which court provides an opinion. The Supreme Court may issue an order of summary affirmance when no substantial question of law is presented and the court does not disagree with the result below; the case includes the decision of the trial court, which identifies and discusses the issues presented and the court does not disagree; the case includes the decision of the administrative agency, no substantial question of law is presented, and the court does not find the decision unjust or unreasonable; or other just cause exists for summary affirmance. |

| STATE/ TERRITORY | RULE/ STATUTE | IS CITATION ALLOWED? | PRECEDENTIAL VALUE | COPIES REQUIRED | PUBLICATION RULES |
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| New Jersey | <p>N.J. R. Ct. 1:36-2 (publication)</p> <p>N.J. R. Ct. 1:36-3 (citation)</p> | Can only cite appellate opinions not approved for publication that have been reported in an authorized administrative law reporter or to the extent required by res judicata, collateral estoppel, the single controversy doctrine, or other similar principle of law. | No unpublished opinion shall constitute precedent or be binding on any court. | Must serve a copy of the opinion and all contrary unpublished opinions known to counsel on the court and all other parties. | <p>All opinions of the Supreme Court shall be published unless otherwise directed by the court.</p> <p>Opinions of the Appellate Division shall be published only by direction of the panel issuing the opinion.</p> <p>The Chief Justice shall appoint a committee on opinions to review formal written opinions submitted for publication by a trial judge. The committee shall not review a trial court opinion until the time for appeal from the final judgment has expired, except in extraordinary circumstances.</p> <p>If no appeal is taken, the committee determines whether to approve publication. If an appeal is taken, the Appellate Division will determine whether the opinion should be published when it decides the appeal.</p> <p>Opinions will be published when they involve a substantial question under the U.S. or N.J. Constitutions; determine a new and important question of law; change, reverse, seriously question, or criticize the soundness of an established principle of law; determine a substantial question on which the only case law in the state is from before 9/15/1948; are based on a matter of practice and procedure not previously authoritatively determined; are of continuing public interest and importance; resolve an apparent conflict of authority; or otherwise merit publication, constitute a significant and nonduplicative contribution to legal literature by providing an historical review of the law, describe legislative history, or contain a collection of cases that should be a substantial aid to the bench and bar.</p> <p>Any person may request publication of an opinion by letter to the committee on opinions explaining the reasons for the request.</p> |

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| New Mexico | N.M. R. APP. P. 12-405 | Nonprecedential dispositions may be cited for any persua- sive value and under the doctrines of law of the case, claim preclusion, and issue preclusion. Any citation to a nonprecedential disposition from any jurisdiction must indi- cate in a parenthetical that the disposition is nonprecedential or unpublished. | Persuasive value. | Must provide a copy if it is unavailable in a publicly accessible electronic database. | Cases may be disposed of by nonprecedential order, deci- sion, or memorandum opin- ion if the issues presented were previously decided by the Supreme Court or Court of Appeals; presence or absence of substantial evidence dis- poses of the issue; issues are answered by statute or rules of the court; asserted error is not prejudicial to complain- ant; or issues presented are manifestly without merit. |
| New York | N.Y. JUD. LAW § 431 (McKinney 2018) (pub- lication) | There is no published rule in New York State regarding the citation of unreported cases. | N/A | Some judges have specific practice rules that require copies of unreported cases that are not available on Westlaw, Lexis, or NYSCEF, or that are reported in the NYLJ but otherwise not available. See N.Y. COM. DIV. N.Y. CTY. R. MASLEY, pt. 48. | The law reporting bureau shall report every cause in the Court of Appeals and appellate divisions of the Supreme Court unless other- wise directed by the deciding court. The bureau may also report any cause determined in any other court that the state reporter, with approval by the Court of Appeals, considers worthy of reporting because of usefulness as a precedent or importance to matter of public interest. |
| North Carolina | N.C. R. APP. P. 30 | Citation of unpub- lished opinions in trial and appellate divisions is disfavored except to establish claim preclusion, issue preclusion, or law of the case. If a party believes that an unpublished opinion has precedential value to a material issue in its case and no pub- lished opinion would serve as well, citation is permitted as long as a copy is served on the court and other parties. | Unpublished decisions are not control- ling legal authority. Persuasive value at best. | Provide a copy to the court and serve it on other parties. | The Court of Appeals is not required to publish an opin- ion in every case, and if the panel determines that an opinion involves no new legal principles and would have no value as precedent, the panel may direct that no opinion be published. Counsel of record and pro se parties of record may move for publication of an unpub- lished opinion, citing reasons based on N.C. R. APP. P. 30(e) (1) and serving a copy on all other counsel and pro se par- ties of record within 10 days of the filing of the opinion. |

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| North Dakota | N.D. SUP. CT. ADMIN. R. 27 | N/A | N/A | N/A | <p>An opinion of the Court of Appeals may be published only when it satisfies one of the following: establishes a new rule of law or alters/modifies an existing rule; involves a legal issue of continuing public interest; criticizes or explains existing law; applies an established rule to new facts different from previously published opinions of the state; resolves an apparent conflict; or constitutes a significant and nonduplicative contribution to legal literature.</p> <p>An opinion may be published only if one of the three judges participating determines that one of the standards is met.</p> <p>The published opinion must include concurrences and dissents.</p> |
| Ohio | OHIO SUP. CT. R. REP. OP. 3.4 (citation) OHIO REV. CODE. ANN. § 2503.42 (LexisNexis 2016) (pub- lication) | All opinions of the courts of appeals issued after 5/1/2002 may be cited as legal authority and weighted as deemed appropriate by the courts without regard to whether it was published. | Legal authority if issued after 5/1/2002. | N/A | The Supreme Court shall report each of its decisions that determines or modifies an unsettled or new and important question of law, or gives construction to a statute of ambiguous import. The decisions shall be as short as is practicable. The court shall also report other decisions that it deems of public interest and importance. |

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| Oklahoma | <p>OKLA. STAT. tit. 20, § 30.5 (2011) (Ct. Civ. App.)</p> <p>OKLA. STAT. tit. 20, § 60.4 (2011) (Emergency App. Div.)</p> <p>OKLA. STAT. tit. 12, R. 1.200 (2011)</p> | <p>No opinion of the Court of Civil Appeals shall be cited as precedent unless it has been approved by a majority of the justices of the Supreme Court for publication in the official reporter.</p> <p>No opinion of the Emergency Appellate Division shall be cited unless approved by the Court of Criminal Appeals for publication in the official reporter.</p> <p>May cite an unpublished opinion of the Supreme Court or Court of Civil Appeals only for res judicata, collateral estoppel, or law of the case.</p> | <p>Unpublished Court of Civil Appeals opinions are not binding.</p> <p>Unpublished opinions are deemed without value as precedent.</p> <p>An opinion designated for publication in O.B.J. is not considered precedent.</p> | N/A | <p>A majority of the justices of the Supreme Court must decide which cases of the Court of Civil Appeals to publish in the official reporter.</p> <p>Those cases that apply settled precedent and do not settle new questions of law will not be released for publication in the official reporter. An affirmative vote of at least two members of the division responsible can be used to decide to publish an opinion.</p> <p>Opinions of the Court of Emergency Appellate Division must be approved by the Court of Criminal Appeals for publication in the official reporter.</p> <p>An opinion of the Supreme Court and the Court of Civil Appeals shall be prepared in memorandum form unless it establishes a new rule of law or alters/modifies an existing one; involves a legal issue of continuing public interest; criticizes or explains existing law; applies an established rule of law to a factual situation significantly different from that in published opinions of the courts in the state; resolves an apparent conflict; or constitutes a significant and nonduplicative contribution to legal literature through a historical review of law or a description of legislative history. A memorandum opinion shall not be published unless it is ordered published. An opinion shall be published only if a majority of justices participating in the decision find one of the standards is met.</p> |
| Oregon | OR. R. APP. P. 5.20 | Cases affirmed without opinion by the Court of Appeals should not be cited as authority. | N/A | N/A | N/A |

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| Pennsylvania | PA. R. APP. P. 126 PA. I.O.P. SUPER. CT. § 65.37 (as amended by PA. ORDER C.O. 0026) | <p>Nonprecedential opinions that are unpublished memorandum decisions of the Superior Court filed after 5/1/2019 or unreported memorandum opinions of the Commonwealth Court filed after 1/15/2008 may be cited for persuasive value.</p> <p>Single judge opinions other than those reported in an election law matter after 10/1/2013 may be cited for persuasive value and not as binding precedent.</p> <p>Any disposition can be cited if relevant to law of the case, res judicata, or collateral estoppel; or if relevant to a criminal action or proceeding because it recites issues raised and reasons for decisions affecting the same defendant in a prior action or proceeding.</p> <p>An unpublished memorandum decision filed before 5/2/2019 shall not be relied on or cited by a court or a party except for law of the case, res judicata, collateral estoppel, or relevance to a criminal action or proceeding because it recites issues raised and reasons for decisions affecting the same defendant in a prior action or proceeding.</p> | Persuasive value. | <p>Party should direct the court to the specific part of the authority. If the authority is not readily available, it should be attached as an appendix to the filing.</p> <p>If citing an unpublished memorandum filed before 5/2/2019, a copy must be provided to the court and other party.</p> | After an unpublished memorandum decision has been filed, the panel may sua sponte, or by motion of any party to the appeal, or request by trial judge, convert it to a published opinion. The panel has the sole discretion to publish. |
| Rhode Island | R.I. SUP. CT. ART. I, R. 16 | Unpublished orders will not be cited by the court or counsel. | No precedential effect. | N/A | N/A |

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| South Carolina | S.C. APP. Cr. R. 268 (citation) S.C. APP. Cr. R. 220 (publica- tion) | Memorandum opin- ions and unpublished orders should not be cited except in proceedings in which they are directly involved. | No preceden- tial value. | N/A | Memorandum opinions shall not be published in the offi- cial reports. The Supreme Court may file a memorandum opinion when it unanimously determines that a published opinion would have no prec- edential value and one or more of the following condi- tions are met and are disposi- tive of the issues submitted to the court: a judgment of the trial court is based on findings of facts that are or are not clearly erroneous; the evidence to support a jury verdict is not insufficient; the order of an administrative agency is or is not supported by the level of evidence pre- scribed by the statute or law permitting judicial review; or no error of law appears. |

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| South Dakota | S.D. CODIFIED LAWS § 15-26A-87.1 (2016) | Memorandum opinions or orders of the Supreme Court shall not be cited or relied on as authority except for law of the case, res judicata, collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same person. | Memorandum opinions and orders of the Supreme Court are not authority. | N/A | <p>Supreme Court may enter an order or memorandum opinion affirming the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that the appeal is without merit because issues are clearly controlled by settled state law or federal law binding on the state; issues are factual and there is sufficient evidence to support the jury verdict or findings of fact below; or the issues are of judicial discretion and there was clearly no abuse of discretion.</p> <p>This can be unanimous or on a majority vote as long as all justices participating agree summary disposition may be made.</p> <p>The Supreme Court may also enter an order or a memorandum opinion reversing the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and record that the order or judgment is clearly erroneous for one or more of the following reasons: summary judgment was erroneous because a genuine issue of material fact exists; judgment or order was clearly contrary to settled state law or federal law binding on the states; or the issue is one of judicial discretion and there clearly was an abuse of discretion. This may be done unanimously or on a majority vote as long as all the justices participating agree summary disposition may be made.</p> <p>A list of such memorandum opinions and orders shall be published quarterly in the <i>North Western Reporter</i>.</p> |

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| Tennessee | <p>TENN. SUP. Ct. R. 4 (publication and citation)</p> <p>TENN. CT. APP. R. 12 (citation)</p> | <p>An opinion designated as “Not for Citation” shall not be cited by any judge in any trial or appellate decision, or by any litigant, except when the opinion is the basis for a claim of res judicata, collateral estoppel, law of the case, or to establish a split authority, or when relevant to a criminal, postconviction, or habeas corpus action involving the same defendant.</p> <p>Citation of unpublished opinions is allowed in the Court of Appeals.</p> | <p>Opinion of intermediate court whose application for permission to appeal is denied by the Supreme Court with a “Not for Citation” designation has no precedential value.</p> <p>An unpublished opinion is considered controlling authority between the parties to the case when relevant under res judicata, law of the case, collateral estoppel, or in a criminal, postconviction, or habeas corpus action involving the same defendant.</p> | <p>A copy is not required if it is available from an Internet-based electronic database and the citation includes both appropriate citation to the database and whether an appeal has been filed or permission to appeal denied.</p> <p>A copy must be provided within 5 days of a written request for a copy or if not available in an Internet-based database.</p> | <p>Unless explicitly designated “Not for Publication,” all opinions of the Supreme Court shall be published in the official reporter.</p> <p>Opinions of the Special Workers’ Compensation Appeals Panels shall not be published unless publication is ordered by a majority of the Supreme Court.</p> <p>An intermediate appellate court opinion may be published if permission to appeal is filed and denied and the opinion meets one or more of the following criteria: establishes a new rule of law, alters or modifies an existing rule of law, or applies an existing rule to facts not in a published opinion; involves a legal issue of continuing public interest; criticizes, along with reasons, an existing rule of law; resolves an apparent conflict of authority; updates, clarifies, or distinguishes a principle of law; or makes a significant contribution to legal literature by reviewing the development of a common law rule or legislative/judicial history of a provision of a constitution, statute, or other written law.</p> |

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| Texas | <p>TEX. R. APP. P. 47.7 (citation)</p> <p>TEX. R. APP. P. 47.2 (publication)</p> <p>TEX. R. APP. P. 47.4 (publication)</p> <p>TEX. R. APP. P. 47.6 (publication)</p> <p>TEX. R. APP. P. 77.2–77.3 (publication and citation)</p> | <p>Opinions and memorandum opinions in criminal cases not designated for publication by the courts of appeals may be cited with the notation “Not Designated for Publication.”</p> <p>Opinions and memorandum opinions in civil cases designated “Do Not Publish” by the courts of appeals before 1/1/2003 may be cited with the notation “Not Designated for Publication.”</p> | No precedential value. | N/A | <p>Each opinion of the court must be designated an opinion or a memorandum opinion. A majority of the justices who participated in the case must make the determination.</p> <p>An opinion may not be designated a memorandum opinion if the author of a concurrence or dissent opposes it. An opinion must be designated a memorandum opinion unless it establishes a new rule of law, alters/modifies an existing rule of law, or applies an existing rule to novel facts that are likely to recur in the future; involves issues of constitutional law or other legal issues important to Texas jurisprudence; criticizes existing law; or resolves an apparent conflict.</p> <p>An en banc court may change a panel designation of an opinion.</p> |
| Utah | <p>UTAH R. APP. P. 30 (citation)</p> <p>UTAH R. APP. P. 31 (publication)</p> | <p>Unpublished decisions of the Court of Appeals issued on or after 10/1/1998 may be cited as precedent in all courts of the state.</p> <p>Other unpublished decisions may be cited as long as all parties and the court are supplied with accurate copies when first cited.</p> | Precedent if issued on or after 10/1/1998. | Must provide copy of decisions issued before 10/1/1998. | The court may consider for expedited decision without opinion: appeals involving uncomplicated factual issues based primarily on documents; summary judgments; dismissals for failure to state a claim; dismissals for lack of personal or subject matter jurisdiction; and judgments or orders based on uncomplicated issues of law. |

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| Vermont | Vt. R. APP. P. 28.2 (citation) Vt. R. APP. P. 33.1 (preceden- tial value) | A party may cite any unpublished judicial opinion, order, judgment, or other written disposition. | An unpub- lished deci- sion by a three-justice panel may be cited as persuasive authority and is controlling precedent only on issues of claim preclusion, issue preclu- sion, law of the case, and similar issues involving the parties or facts of the case. | Must provide a copy of the document with the brief or paper in which it is cited. | N/A |
| Virginia | VA. R. SUP. CT. 5:1 (cita- tion Sup. Ct.) VA. R. SUP. CT. 5A:1 (citation Ct. App.) VA. CODE ANN. § 17.1- 413 (2015) (publica- tion) (Ct. App.) VA. CODE ANN. § 17.1- 322 (2015) (publica- tion) (Sup. Ct.) | Permitted to cite unpublished deci- sions as informative in both the Court of Appeals and Supreme Court. | Informative but not bind- ing. | If not avail- able in a publicly accessible electronic database, a copy must be provided with the brief or paper. | Opinions designated by the Court of Appeals as having precedential value or signifi- cance for the law or legal sys- tem shall be reported in <i>Court of Appeals Reports</i> . The clerk of the Court of Appeals shall retain in the clerk's office a list and brief summary of the case for all unpublished decisions and opinions of the Court of Appeals. The judges of the Supreme Court direct the reporter which cases shall be reported. |

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| Washington | WASH. GEN. R. 14.1 | <p>Unpublished opinions of the Court of Appeals filed on or after 3/1/2013 may be cited as nonbinding.</p> <p>Unpublished opinions issued by any court from a jurisdiction other than Washington may be cited if citation is permitted under the law of the jurisdiction.</p> <p>Washington appellate courts should not cite or discuss unpublished opinions in their opinions unless necessary for a reasoned decision.</p> | Nonbinding authority may be accorded persuasive value as deemed appropriate by the court. | Must provide a copy of an opinion from a jurisdiction other than Washington. | N/A |
| West Virginia | W. VA. R. APP. PROC. 21 | Memorandum decisions may be cited in any court or administrative tribunal in the state as long as the citation makes it clear that it is a memorandum decision. | N/A | N/A | <p>The court may issue a memorandum decision affirming the decision of the lower tribunal when the court finds no substantial question of law and does not disagree with the decision below as to the question of law; upon consideration of the standard of review and the record, the court finds no prejudicial error; or there is other just cause for summary affirmance.</p> <p>The court may issue a memorandum decision reversing the lower court decision, but this should be done in limited circumstances.</p> <p>Memorandum decisions are not published in the <i>West Virginia Reports</i>, but are posted on the court’s website.</p> |

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| Wisconsin | Wis. Stat. § 809.23 (2019) | <p>An unpublished opinion may not be cited in any court except in support of a claim of claim preclusion, issue preclusion, or law of the case.</p> <p>However, an unpublished opinion issued on or after 7/1/2009 and authored by a three-judge panel or a single judge under § 752.31(2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion.</p> | Persuasive if authored by a three-judge panel or a single judge under § 752.31(2) and issued on or after 7/1/2009. | Serve a copy with the brief or other paper. | <p>Criteria for publication include whether the opinion creates a new rule of law or modifies, clarifies, or criticizes an existing rule; applies an established rule to a significantly different factual situation than in published opinions; resolves or identifies a conflict; contributes to the legal literature by collecting case law or reciting legislative history; or decides a case of substantial and continuing public interest.</p> <p>Any person at any time may file a request that an opinion not recommended for publication or an unreported opinion be published in the official reports.</p> <p>Cannot be for an opinion by one court of appeals judge under §§ 752.31(2) and (3) or a per curiam opinion on issues other than appellate jurisdiction or procedure. A person may request that a per curiam opinion that does not address issues of appellate jurisdiction or procedure be withdrawn, authored, and recommended for publication within 20 days of the date of opinion. A copy of any request for publication must be served on the parties to the appeal/proceeding.</p> |

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| Wyoming | WYO. R. APP. P. 9.06 (publica- tion) Order Adopting a Public Domain or Neutral- Format Citation (Wyo. Aug. 19, 2005) (citation) | Per curiam opinions are not to be cited as precedent. | N/A | N/A | The Supreme Court can unanimously vote to enter an abbreviated opinion affirming or reversing the judgment or order of the district court for the reason that it is clear that affirmance or reversal is required because the issues are clearly controlled by settled state law or federal law binding on the state; issues are factual and there is clearly sufficient evidence to support the jury verdict or findings of fact below; sum- mary judgment was errone- ously granted because there is a genuine issue of material fact; or issues are ones of judicial discretion and there clearly was or was not abuse of discretion. Abbreviated opinions shall be published. |
| American Samoa | N/A | There are currently no published rules regarding citing unpublished cases. | N/A | N/A | N/A |
| Guam | GUAM R. APP. P. 27 | Opinions that are not published shall not be cited in any other action or proceed- ing except when it establishes law of the pending case, res judicata, collat- eral estoppel, or in a criminal action or pro- ceeding involving the same respondent. | N/A | N/A | Opinions of the Supreme Court shall be published unless designated otherwise. Memorandum opinions shall not be published. |
| Northern Mariana Islands | N. MAR. I. SUP. CT. R. 32.1 | Although highly dis- favored, parties may cite dispositions from any jurisdiction that are designated as unpublished as long as its unpublished status is noted clearly in the citation. | N/A | If an opin- ion is not available in a publicly accessible database, a copy must be filed and served with the brief or paper in which it is cited. | N/A |

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| Puerto Rico | R. SUP. CT. P.R. 44 ¹⁷⁹ | Inappropriate to cite as authority or precedent a decision of the Supreme Court that has not been issued through an opinion or that has not been published by the Bar Association or the court itself. | N/A | N/A | All decisions of the court that have opinions will be sent by the secretary to the compiler and publicist of jurisprudence, the Bar Association, and any bona fide entity that requests them. The judgments that are issued will not be sent for publication without an opinion. |
| U.S. Virgin Islands | V.I. SUP. CT. I.O.P.R. 5:3 V.I. SUP. CT. I.O.P.R. 5:7 | An unpublished judicial opinion, order, judgment, or other written disposition of this court may be cited regardless of the date of issuance. The citation of dispositions of other courts is governed by the rules of the issuing court. Unpublished or non-precedential dispositions may always be cited to establish a fact about the case before the court or when the binding preclusive effect of the opinion is relevant to support a claim of res judicata, collateral estoppel, law of the case, double jeopardy, abuse of writ, or other similar doctrine. | Unpublished opinions, etc., have persuasive value but no binding precedent. | If a party cites a judicial opinion, order, judgment, or other written disposition not available in a publicly accessible electronic database, a copy must be served with the brief or paper in which it is cited. | An opinion that the majority of the panel decides has value only to the trial court or the parties is not published. Unless an opinion states that it is not for publication on its face, it shall be for publication. |

179. Translated from the Spanish using Google Translate.