

GOING IN STYLE: On Citations

Appearance matters. No appellate attorney would attend oral argument wearing gym clothes. Even though we expect our cases to be judged on their merits, we know an unprofessional appearance can damage our credibility, which can lessen the impact of our arguments. The same principle applies to the briefs we file with the court.

In this occasional series, we will review elements of style in California appellate briefing. Many of the topics will not be guided by specific rules, but are left to the preference of practitioners. ADI's goal is not to ensure every brief filed in the Fourth District looks the same, but to ensure appellate practitioners know what is required, are aware of their discretionary choices, and make those choices with the goal of a consistent, professional presentation most likely to advance the interests of their clients.

In legal writing, unlike some other venues, the point of style is not to stand out or demonstrate a unique personality, but to make a brief easy to read and avoid distractions while hopefully being engaging and persuasive. Aesthetics matter to the extent they move toward these goals, and also demonstrate professionalism. What a brief looks like can make a difference in how it is perceived. A lack of consistency suggests an inattention to detail that can make the reader less trusting of the arguments.

We'll start with citations. According to California Rules of Court, rule 1.200, citations to cases and other authorities "must be in the style established by either the *California Style Manual* [sic] or *The Bluebook: A Uniform System of Citation* [sic], at the option of the party filing the document." (Notably, rule 1.200 italicizes the titles of the two manuals, although the Style Manual, which the rules are supposed to follow, calls for book titles to be non-italicized. (Cal. Style Manual (4th ed. 2000) §§ 3:10, 3:13, pp. 103, 105.) Everyone makes mistakes once in a while!)

Every appellate practitioner in California should have a copy of the California Style Manual (4th ed. 2000), the "yellow book," which is subtitled A Handbook of Legal Style for California Courts and Lawyers. The Fourth Edition was

published in 2000 by the California Supreme Court, written by Edward Jessen, then the official Reporter of Decisions for the Supreme Court and Courts of Appeal. So while citations are not required to adhere to the principles in the California Style Manual, its provenance in the Supreme Court should make it the default for briefs filed in California appellate courts.

Case Citations

We see a lot of briefs at ADI, and almost every one follows the California Style Manual when it comes to basic case citations, for example: *People v. Prettyman* (1996) 14 Cal.4th 248, 266; *People v. Dawson* (1997) 60 Cal.App.4th 534, 544.

This form contrasts with the Bluebook style, which prefers underlining in legal documents, puts the year at the end, and includes spaces in the name of the specific reporter: People v. Prettyman, 14 Cal. 4th 148, 266 (1996); People v. Dawson, 60 Cal. App. 4th 534, 544 (1997).

Even though either style is acceptable under the rules, there seems to be no good reason to use the Bluebook form. It looks antiquated and a bit flabby with the extra spaces. More importantly, California courts don't use Bluebook style in their opinions, so it will likely stick out in a way that is more discordant and distracting than stylish.

One issue that often comes up in citations in the California style is the appearance of superscripts, as in the "th" in 14 Cal.4th 248. Superscripting in a case citation is incorrect, as looking at published cases and the Style Manual demonstrates. Many word processors default to superscript – 1st, 2nd, 3rd, etc. The issue does not come up when we cite to Cal.2d or Cal.3d, but does with 4th and 5th. The solution is to turn off automatic superscripting in your word processor's auto-correct options. (Or alternatively, one can type "14 Cal.4h 248" and then go back and add the "t.")

One never needs superscript in a brief, except for footnote numbers, including in a date, such as July 25th. (See Cal. Style Manual, *supra*, § 4:29, p. 142.) Superscripts are tiny and relatively hard to read – they are basically good for

nothing but footnotes. If there ever is another specific need to use them (for example, in the name of a business), one can apply superscript formatting to specific text. But generally, superscript should not be used and never in the names of case reporters. So find your auto-correct options and turn them off if you haven't already! (Turning off automatic superscripts should not affect the format of footnote numbers.)

The Style Manual's rules for subsequent citations – *supra*, *id.*, and *ibid.* – are relatively straightforward. (§ 1.2.)

When using *supra* for subsequent citations to a case, one can even use strategic inconsistency. Either of the following, including or omitting the opinion's inception page, is acceptable under the rules: *People v. Prettyman, supra*, 14 Cal.4th 248, 288, or *People v. Prettyman, supra*, 14 Cal.4th at page 288. Abbreviate “page” as “p.” if citation is in parentheses. (Cal. Style Manual, *supra*, § 1:2[B], p. 7.)

The Style Manual notes with apparent approval that “[s]ome authors prefer mixing the ‘at page’ and inception/point page styles within a lengthy document to periodically provide the inception page throughout.” (Cal. Style Manual, *supra*, § 1:2[B], p. 7.) That is a convenience to readers, who are not required to scroll through a number of preceding pages to find the inception page.

Within the same paragraph one can also omit *supra* and cite to a shortened case name, e.g.: *Prettyman*, at page 269. (Cal. Style Manual, *supra*, § 1:2[C], p. 7.)

We do see some misuse of *id.* and *ibid.* These signals are properly used to refer only to an *immediately preceding* case or publication that has already been mentioned *in the same paragraph*. (Cal. Style Manual, *supra*, §§ 1:2[C], p. 7, 3:1[D], p. 92.) In other words, one is not supposed to “*id.*” to the last case in the previous paragraph even if there is no intervening authority. Instead, the first time a previously cited case is mentioned in a paragraph it should be in *supra* form, even if it was just cited in the previous paragraph.

One should be careful not to use *id.* and *ibid.* if there are intervening citations or if the previous citation was a string citation with two or more cases. Although one would assume the reference is the last case in the string, the clarity of a *supra* cite will keep the reader from wondering.

Record citations

We cite the record – the Clerk’s Transcript and the Reporter’s Transcript – in almost every appellate brief. The 4th edition of the California Style Manual does not address citations to the record on appeal and the other main way to look for style guidance, looking at court opinions, doesn’t work because opinions don’t generally cite to the record on appeal. So this is an area where appellate practitioners have choices to make, with the key being simplicity of use for the reader and consistency. Here are two common forms: 4 R.T. p. 643 and 4RT 643.

Although our audience of research attorneys and appellate justices make it not necessary, it can make authorial sense for the first cite to spell out “Reporter’s [or “Clerk’s”] Transcript.” Thus: 4 Reporter’s Transcript [R.T.] p. 643. Another approach is to use a footnote to spell out record abbreviations the first time they appear. These footnotes can then serve as an easy-to-find “key” to the various volume abbreviations.

With a multi-volume record, including the volume number is important, and required by California Rules of Court, rule 8.204(a)(1)(C). Remember that ease of use for the reader is key. If she has to look at two or more volumes to find which one contains the page cited to, the writer has made the reader’s life harder for no good reason.

Ease of use for the reader is also why string cites to the record at the end of a paragraph are not good practice. (See, e.g., *Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 694, fn. 1.) String cites force a reader who wants to see a specific point in the record to search through multiple pages. Avoid making the reader wonder if it would be difficult to go to the record to verify the point you are making. Build trust with accurate, specific citations to the record. This does not mean a good sentence in a Statement of Facts might not cite to

multiple pages in the record. But that is different from citing multiple pages in the record to support multiple sentences. Unless the previous sentence(s) in a brief are relying on exactly the same page or two, each sentence should have a record cite, even if the cites are repetitive. That shows the reader that the writer is being both meticulous and respectful of his attention.

Finally, is it appropriate to use *id.* and *ibid.* as a citation to the record if the citation is identical to the previous? There is apparently no clear answer to this, but the principle of making things easy on the reader suggests they should *not* be used for record citations. *Id.* and *ibid.* are intended to shorten citations, and record citations are already relatively short. “*Id.* at p. 317” is actually longer than “2RT 317.” Using the actual record citation keeps the reader’s eyes moving through your text, rather than back and forth on the page to see what *id.* or *ibid.* is referring to. Plus, the fact that most briefs do not use *id.* and *ibid.* for record citations means when they do appear, it stands out in a possibly distracting way.

Citing other authorities

The Style Manual has citation forms for too many types of authority to go through here, but it is always good to check when citing materials like treatises, books, newspapers, etc.

Citations to websites should include the title of the page, the Internet address, and the date the site was viewed. (See Cal. Style Manual, *supra*, § 3:15, p. 109.) Here is an example from an appellate opinion in a civil case:

At the same time, by giving effect to such provisions courts will be empowering licensors to sell licensees a pig in a poke, a phrase dating back to an apparently widespread medieval confidence trick. (See Brewer, Dictionary of Phrase and Fable (1898) <<http://www.bartleby.com/81/13246.html>> [as of Aug. 12, 2009]; Wikipedia, The Free Encyclopedia <<http://en.wikipedia.org/wiki/Pig-in-a-poke>> [as of Aug. 12, 2009].)

One thing to note is that web or email addresses should not be hyphenated or otherwise broken up. Although it can produce an uneven look, the best practice is to copy and paste the exact website address into the brief. That way a reader can copy and paste from the brief into a web browser and go straight to the cited page.

Conclusion

Making citations in a consistent, approved style is a basic building block of a professional appellate brief. In most situations, following the California Style Manual is the key.

If you have comments, questions, or suggestions about citations or other aspects of style in appellate briefs for California courts, email Art Martin at abm@adi-sandiego.com.