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Briefly: The persuasive value of a well-crafted citation

By: Staff, Kaitlin Ek and Eric J. Magnuson April 15, 2022

Special to Minnesota Lawyer

All of us can agree that legal writing is one of the most important tools you have on your belt for winning appeals. Good legal writing can clarify complex legal principles, cast the evidentiary record in the most favorable light, and persuade a judge to accept your argument instead of your opponent's. It makes sense, then, that if you want to improve your legal writing skills, you can easily find countless books, workshops, and websites that will help you achieve that goal.

Legal *citation*, on the other hand, doesn't enjoy the same positive press. We all know, of course, that citations to authority are required in any appellate brief. Nonetheless, lawyers often treat them as mere afterthoughts. Some commentators like Bryan Garner have gone even further — suggesting that citations are jarring interruptions that should be relegated to footnotes to minimize their impact on the text. Bryan A. Garner, *The Redbook: A Manual on Legal Style* 149 (3d ed. 2013).

But it's a mistake to ignore the persuasive value of a well-crafted citation in an appellate brief. Using legal citations the right way can make your arguments clearer and more compelling without distracting from your (hopefully) brilliant prose. Here are three things to keep in mind when you're putting the finishing touches on your citations:

1. Choose your citations wisely

When it comes to citations, more isn't always better. For many legal propositions, you could cite dozens upon dozens of cases. For example, the summary-judgment standard is well-known and repeated in countless cases. *See, e.g.*, *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) ("We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." (cleaned up)). But having stated the proposition once in your brief, it's hardly necessary to repeat it. And that's what you do when you cite more than one case for an unremarkable legal proposition.

On the other hand, there are some circumstances where citing several cases for a single point is the right choice. Suppose your case presents an issue of first impression in your jurisdiction, but most courts outside your jurisdiction have overwhelmingly come down on your side. A string citation will demonstrate to the court that, even though it is not bound by those out-of-jurisdiction cases, it should give serious weight to their reasoning.

In addition to citing the right number of cases, it's important to pick the most persuasive cases. Too often, lawyers find the boilerplate standard of review for a particular issue and cite it without much thought. For example, we all know that a "trial court has broad discretion in determining jury instructions and will not be reversed absent an abuse of that broad discretion." *Matter of Welfare of J.K.B.*, 552 N.W.2d 732, 734 (Minn. Ct. App. 1996). But if you're the appellant, that's not very helpful articulation of the standard. Instead, you should find a case with more favorable language — maybe something to the effect of: "While district courts have broad discretion to formulate appropriate jury instructions, a district court abuses its discretion if the jury instructions confuse, mislead, or materially misstate the law." *State v. Taylor*, 869 N.W.2d 1, 14–15 (Minn. 2015) (cleaned up).

We see appellate brief after appellate brief where the appellant simply recites the standard without trying to distinguish it. That's like intentionally taking the first two pitches that pass through the strike zone without swinging at them. If you're Joe Mauer, maybe you can get away with it, but few of us are that skilled. In other words, don't take a called strike when you can start your argument by citing a case that recognizes the standard of review, but nonetheless finds that the trial court went too far.

2. Pay attention to matters of style

Beyond the challenges of selecting the right authority, there are also significant questions of style. The debate about whether to put citations in the body of the brief or in footnotes has probably come to an end. Surveys have shown that judges overwhelmingly prefer in-line citations. Peter M. Mansfield, *Citational Footnotes: Should Garner Win the Battle Against the in-Line Tradition?*, 19 Appalachian J.L. 163, 177 (2020). Using footnotes may even prompt a scolding from a judge who considers them "not only incompatible with the rules but also a hindrance to the Court's consideration of the parties' respective arguments." *N. Valley GI Med. Grp. v. Prudential Invs. LLC*, No. CV JKB-15-3268, 2016 WL 4447037, at *1 (D. Md. Aug. 23, 2016).

Given that your citations will most likely appear in the body of your brief, you will want to be particularly thoughtful about how you integrate them. They should add value to your argument, not distract from it. One consideration is how much to say about the authority you're citing. The temptation is strong to quote at length from a favorable case. But it's usually best to resist that temptation. It is a fact that most readers simply skip over long block quotes. As the (now-disgraced) Judge Kozinski once wrote: "Let's face it, if the block quote really had something useful in it, the lawyer would have given me a pithy paraphrase." Alex Kozinski, *The Wrong Stuff*, 1992 B.Y.U. L. Rev. 325, 329 (1992).

And be sure you use citation signals correctly. "See" is different from "accord," and they're both different from "see also." You should keep these differences in mind. Moreover, it is almost always helpful for readers if a citation with a signal in front of it is followed by a parenthetical explaining exactly why they should "see" the case. The parenthetical should be just long enough to show why the case supports the proposition you're asserting. If you find that you want more than a line or two to discuss a case, it might be a sign that you should move the discussion to the body of your argument instead.

3. Follow the proper conventions

And then there are the technical aspects of citations. Sweating the small stuff is important. *See* Haynes Hansen & Eric Magnuson, *Briefly: Sweat the small stuff – it matters*, Minnesota Lawyer (February 22, 2022). There is no more surefire way to scuttle an otherwise strong argument than to support it with inaccurate or incomplete citations or to fail to cite to the approved reporter in the approved fashion.

It's also important to remember that some local courts have peculiar rules. For instance, Wisconsin requires citations in a significantly different form than Minnesota does, including citations to the paragraph numbers that are in the official case reports. Wis. Stat. Rule 809.19(1)(e). And in some cases, you'll need to look beyond your Bluebook to get your citations right. For example, the Bluebook won't warn you that the New York Commercial Division requires citations to include hyperlinks to electronic versions of your sources. 22 NYCRR 202.70(g) (Rule 6(b)). Check the local rules well in advance of your deadline to avoid an embarrassing correction from the court.

At the end of the day, legal citations deserve the same kind of strategic approach that you take to the rest of your appellate brief. With some extra effort, you can ensure that each case you cite is an asset to your analysis, rather than a pesky interruption.

Kaitlin Ek is an associate in the Minneapolis office of Robins Kaplan, where she focuses on business litigation and appeals.