

**Yes, Judges Really Care About That!  
Lawyers' Most Common Citation Mistakes.**

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## TABLE OF CONTENTS

- I. Introduction
  - A. Why You Should Care About Citation Form
  - B. Citation Form Resources
    - 1. The Bluebook
    - 2. The Texas Rules of Form (the “Greenbook”)
    - 3. The AWLD Citation Manual
- II. Cases
  - A. Case Names
    - 1. *Italics* vs. Underscore
    - 2. Abbreviations
  - B. Pinpoints and Jump Pages
  - C. Parentheticals
  - D. Subsequent History
  - E. Unpublished Opinions
- III. Statutes
  - A. General Citation Form
  - B. Citing Multiple Sections and Scattered Sections
- IV. Westlaw, LEXIS and Other Internet Sources
  - A. Westlaw and LEXIS Citation Form
  - B. Internet Citation Form
    - 1. *Available at* vs. *at*
- V. Signals
  - A. *See* vs. *see also*
  - B. Duty to Disclose Adverse Authority (*Contra* and *But see*)
- VI. Conclusion

## ***Yes, Judges Really Do Care About That! Lawyers' Most Common Citation Mistakes.***

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*The central function of a legal citation is to allow the reader to efficiently locate the cited source.*

### The Bluebook

#### I. Introduction

##### A. Why you should care about citation form.

You have a reputation as a legal writer. Judges, their staff attorneys, and their briefing attorneys know you and talk about you and your work product. You have a reputation in the back halls of the courthouse. It is a reputation many of you probably have not thought much about but one that is more important to the success of your docket than you give it credit for. For many of you, it is a reputation you have entrusted to a young lawyer or paralegal in your firm.

Knowing the most common citation mistakes and how to correct them will make you a more effective and efficient legal writer. When judges, their staff attorneys, and their briefing attorneys know that you are a lawyer who properly cites legal authority you build a reputation of trust upon which your success as a written and oral advocate rests.

One lawyer's reputation finally got the best of him when the Federal Court of Claims wrote the following:

The Court is constrained to note that *once again* counsel for Plaintiff has filed a complaint in this Court which, to borrow Judge Miller's characterization, is "deficient in almost every respect." *Locke v. United States*, No. 06-629T, slip op. at 1 (Fed. Cl. July 10, 2007). In *Locke*, Judge Miller took Plaintiff's counsel to task for filing papers containing egregious errors stating:

As an initial matter, the court is compelled to point out that the pleading and brief filed by plaintiff's counsel were deficient in almost every respect. Some egregious errors include ***incorrect case citations; case names without any citations; statutes that have either been repealed or never existed***; unclear and confusing facts purporting to support plaintiffs' claims; and arguments based entirely on conjecture.

*Pope v. United States*, No. 06-446C, 2007 WL 2219340 \*7 (Fed. Cl. July 31, 2007) (quoting *Locke v. United States*, No. 06-629T, slip op. at 1 (Fed. Cl. July 10, 2007)) (emphasis added).

The Court went on to state that “[i]n light of the deficient filings in this action and the other four, this Court has referred this matter to the Chief Judge pursuant to Rule 83.2 [a disciplinary rule for violation of the Code of Professional Conduct].” *Pope*, 2007 WL 2219340 at \*7.

This paper is meant to be a brief introduction to the basic sources of legal citation used by Texas lawyers and provide you with the most up-to-date legal citation principles to correct common citation mistakes.

## B. Citation form resources

There are three main citation form resources used by the Texas lawyer: The Bluebook, A Uniform System of Citation (the “Bluebook”), the Texas Rules of Form (the “Greenbook”), and the Association of Legal Writing Directors Citation Manual (the “ALWD Citation Manual”).

### 1. The Bluebook

The Bluebook, now in the Eighteenth Edition, is published by the Harvard Law Review Association in conjunction with the Columbia Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal. The Bluebook is organized in three main sections: the blue pages (formerly known as *Practitioners’ Notes*), the white pages, and the blue border pages.

The blue pages are new to the Eighteenth Edition and serve as a how-to guide for basic legal citation. The blue pages are an abbreviated introduction of the Bluebook. The heart of the Bluebook is the second part: the white pages. The white pages section is subdivided into two main parts. Part one establishes general standards for citation and style and consists of Rules 1 through 9. Part two provides citation rules for specific types of legal authority and consists of Rules 10 through 21. The final section of the Bluebook, the blue border pages, consists of various tables used for citing particular authority. Arguably, the most useful part of the Bluebook is its comprehensive index.

The Eighteenth Edition of the Bluebook includes many major revisions that are beyond the scope of this paper. Practitioners wishing to review the major changes to the Bluebook can do so at <http://www.legalbluebook.com/about18th.shtml>. The Bluebook may be purchased from the Harvard Law Review Association using their secure website by following the *Purchase the Bluebook* link at <http://www.legalbluebook.com>. Local law school book stores also carry the Bluebook and the other citation form manuals discussed in this paper.

### 2. The Greenbook

*Texas Rules of Form*, more popularly known as the Greenbook, is a legal citation style guide published by the University of Texas Law Review as a companion to the Bluebook. The Eleventh Edition of the Greenbook is currently available. The Greenbook sets forth the definitive legal citation form for Texas legal authorities.

The Greenbook may be purchased from the Texas Law Review online (by following the link at <http://www.utexas.edu/law/journals.tlr/utpublications/orderform.html>), by telephone (512-232-1149), or by e-mail ([publications@mail.law.utexas.edu](mailto:publications@mail.law.utexas.edu)). The Greenbook is updated frequently and some of the major changes in form over the last few years are discussed in this paper.

### 3. The ALWD Citation Manual

The major characteristic distinguishing the ALWD Citation Manual from the Bluebook and the Greenbook is that it makes no distinction between law review citation form and citation form for other types of legal writing, that is, it is a practitioner's citation guide. The ALWD is a relatively new citation manual. It was proposed by Professors Jan Levine of Temple and Richard Neumann of Hofstra in 1997 and by February 2000, the First Edition of the ALWD Citation Manual was published. The Second Edition of the ALWD Citation Manual is currently available.

The ALWD Citation Manual has been adopted by seventy-two law schools in the United States. In Texas, the first-year legal writing programs at the University of Texas School of Law and St. Mary's University School of Law have adopted the ALWD Citation Manual. The United States Court of Appeals for the Eleventh Circuit is the first circuit court to adopt the ALWD Citation Manual but other circuits are currently discussing following suit. Many experts suggest that it is the popularity of the ALWD Citation Manual that led to the major revisions of the Bluebook in its Eighteenth Edition.

The ALWD Citation Manual may be purchased from Aspen Publishers' online bookstore (<http://www.aspenpublishers.com>) or through retailers such as Amazon.com and Barnes & Noble.

The following is a brief look at some of the most common areas where Texas lawyers make mistakes in legal citation form.

#### II. Cases

Failing to cite-check is the most common mistake made by lawyers in their legal writing and it is the one thing you can do to immediately build your reputation among the judges before whom you practice. Cite-checking a pleading before filing can save the judge the frustration of trying to locate authority you inadvertently transposed or misspelled and it takes very little time and can be delegated to a paralegal or associate. Cite-checking is the single most important point of this paper—do it and do it well.

## A. Case Names

### 1. *Italics* vs. Underscore

One of the most common citation mistakes made by Texas lawyers (this one usually gives away their age!) is underscoring case names rather than *italicizing* a case name. Rule 1.2 of the Greenbook provides that case names should be italicized not underscored.

### 2. Abbreviations

Many lawyers do not abbreviate common words in case names. While the Greenbook is silent on the abbreviation of common words in case names, Table 6 of the Bluebook identifies many common words that should be abbreviated in case names.

Tip: Tab your Bluebook for easy reference. A template for adding tabs to your Bluebook is available for download at <http://www.graybecker.com/publications>.

## B. Pinpoints and Jump Pages

Nothing is more frustrating to judges and their staff attorneys than not including a pinpoint (or jump page) citation when citing a case. Proper cite-checking will prevent this mistake 100% of the time. A pinpoint is the specific page referred to, that is, it is the page or pages where the proposition for which you cite the case can be found.

Tip: When the pinpoint cite spans consecutive pages, always retain the last two digits while omitting repetitious digits (*e.g.*, 342-45).

## C. Parentheticals

There are generally three types of parentheticals used when citing cases: (1) weight of authority parentheticals; (2) quoting or citing parentheticals; and (3) explanatory parentheticals. The most common mistake made by Texas lawyers involves the use of explanatory parentheticals. Most practitioners make explanatory parentheticals complete sentences. The most effective use of an explanatory parenthetical is to begin the parenthetical with a verb ending in “-ing.” A properly cited opinion from a Texas court of appeals using an explanatory parenthetical looks like this:

*Yuen v. Fisher*, 227 S.W.3d 193, 199 (Tex. App.—Houston [1st Dist.], 2007, no pet.) (concluding that the trial court did not abuse its discretion in setting aside the default judgment).

## D. Subsequent History

Greenbook Rule 6.1.1 states that “[a] complete citation must contain the reporter citation; the court of decision; the city in which that court is located; the date; and the writ or error history, petition history, or subsequent history.” The most common citation error made by Texas lawyers when citing a decision of a Texas court of appeals is failing to include the subsequent history.

In Texas, if a court of appeals decision was decided on or after September 1, 1997, you must use petition history. If the court of appeals decision was decided before September 1, 1997, you must use writ history. The following chart lists the two subsequent history tables for Texas cases.

Cases decided *before* September 1, 1997:

no writ  
writ dismiss’d by agr.  
writ dismiss’d  
writ dismiss’d w.o.j.  
writ dismiss’d judgment cor.  
writ ref’d w.o.m.  
writ ref’d n.r.e.  
writ denied  
writ ref’d  
writ granted w.r.m.  
writ granted

Cases decided *after* September 1, 1997:

no pet. h.  
no pet.  
pet. filed  
pet. dismiss’d  
pet. ref’d, untimely filed  
pet. ref’d  
pet. granted  
rev. granted, without pet.

Tip: When you print a case from Westlaw or LEXIS, make it a habit to also print the subsequent history. This saves you time (and your client money) when you cite-check your pleading by preventing you from having to log back on to the electronic database.

### E. Unpublished Opinions

One of the most common misconceptions in Texas practice is that a practitioner cannot cite unpublished opinions. Rule 4.1.2(c) of the Greenbook provides that “[o]pinions not designated for publication by the courts of appeals under current or prior rules have no precedential value but may be cited with the notation, ‘(not designated for publication)’ following the full citation.”

A properly cited unpublished opinion from a Texas court of appeals looks like this:

*Barefield v. State*, No. 14-95-01313-CR, 1997 WL 445805, at \*1 (Tex. App.—Houston [14th Dist.] Aug. 7, 1997, pet. ref’d) (not designated for publication).

### III. Statutes

## A. General Citation Form

The biggest mistake Texas lawyers make when citing Texas statutes is failing to parenthetically indicate the publisher and copyright year of the statute. Most lawyers take a shortcut and leave out the publisher and copyright year. Thus, a proper citation to a Texas statute looks like this:

Tex. Tax Code Ann. § 171.201 (Vernon 1992).

Another mistake many Texas lawyers make when citing statutes is formatting the font of the statute with small caps. The use of small caps formatting when citing a statute is no longer required by the Greenbook. Today, a properly cited statute looks like the Texas Tax Code cited above and uses regular font style as opposed to small caps.

## B. Citing Multiple Sections and Scattered Sections

Rule 3.3(b) of the Bluebook provides in relevant part that “[w]hen citing consecutive sections or subsections, use two section symbols (§§). Give inclusive numbers; do not use ‘*et seq.*’” Many Texas lawyers make the mistake of using *et seq.* when citing multiple sections. When scattered sections are cited, each section should be separated with a comma.

A properly cited statute with multiple sections looks like this:

Tex. Bus. Orgs. Code §§ 101.051-.053 (Vernon 2006).

A properly cited statute with scattered sections looks like this:

Tex. Bus. Orgs. Code §§ 101.051, .053 (Vernon 2006).

Tip: Bluebook Rule 3.3(a) allows you to repeat digits if necessary to avoid confusion (*i.e.*, the scattered section can be cited as follows: §§ 101.051, 101.053).

## IV. Westlaw, LEXIS and Other Internet Sources

Two of the most common questions I get from lawyers at my firm involve the proper citation form for a Westlaw or LEXIS case and the proper citation form for information found only on the Internet.

### A. Westlaw and LEXIS Citation Form

Rule 4.1.3 of the Greenbook provides that “[c]itation to recent opinions should be to an electronic medium, such as LEXIS or Westlaw, if possible.” A proper Westlaw citation looks like this (LEXIS looks the same except the Westlaw database identifier, 2007 WL 2330719, will instead be a LEXIS database identifier):

*Fontenot v. Hanus*, No. 03-05-00551-CV, 2007 WL 2330719 (Tex. App.—Austin Aug. 17, 2007, no pet. h.) (mem. op.).

Tip: Texas courts of appeals opinions after January 1, 2003, are either “opinions” or “memorandum opinions.” Be sure to designate memorandum opinions.

## B. Internet Citation Form

Over the last several years, the citation of legal and non-legal information and authorities on the Internet has exploded and many lawyers do not know how to properly cite authority that is found exclusively on the Internet and authority that is found on the internet but can also be found offline. The general rule is that if the source material is available offline, the legal citation must be made to that offline source.

### 1. *Available at* vs. *at*

Rule 18.2 of the Bluebook states that “[a]n Internet citation should only be provided when (1) the source is unavailable in a traditional printed format or on a widely available commercial database; or (2) the source is identical to that of the printed version and a parallel citation to the Internet (introduced by the explanatory phrase “*available at*”) will substantially improve access to the source cited.”

A proper citation to an Internet source that is primarily available in a traditional printed source looks like this:

Byron Egan, *Choice of Entity Decision Tree* (May 18, 2007), *available at* <http://www.jw.com/site/jsp/publicationinfo.jsp?id=796>.

Before the Eighteenth Edition of the Bluebook, if information was found exclusively on the Internet the “*at*” signal was used prior to the web address. Today, Rule 18.2.3 of the Bluebook requires that the URL be appended directly to the end of the citation. Thus, a proper citation to an Internet source that is only available on the Internet would look like one of the following:

Bradley B. Clark, *What’s All the Buzz About?*, TEXAS LAW BLOG, July 25, 2007, <http://texaslaw.blogspot.com/2007/07/whats-all-buzz-about-number-two-book-on.html>.

Texas Law Blog, <http://texaslaw.blogspot.com/> (July 25, 2007, 13:26 C.S.T.).

Tip: Only use the “last visited” parenthetical when the material is undated. Also, many judges find it helpful if you attach a printout of the Internet material and attach it as an appendix to your pleading. Be sure to check your local rules to see if this is allowed.

## V. Signals

### A. *See* vs. *see also*

Many lawyers confuse the use of *see* and *see also* when citing legal authority. The *see* signal is used when the cited authority clearly supports the proposition. Rule 1.2 of the Bluebook provides that “[s]ee is used instead of ‘[no signal]’ when the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the authority cited and the proposition it supports.” The *see also* signal, on the otherhand, is used when the cited authority constitutes additional support of the proposition.

Tip: Use of an explanatory parenthetical following a citation using the *see* or *see also* signal is very effective legal writing and strongly recommended.

### B. Duty to Disclose Adverse Authority (*Contra* and *But see*)

Failing to disclose adverse authority is a serious mistake that can carry serious penalties for Texas lawyers. Texas Disciplinary Rule of Professional Conduct 3.03(a)(4) states that “[a] lawyer shall not knowingly fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.”

On September 28, 2001, the Dallas Court of Appeals threatened to impose disciplinary sanctions against an attorney for failing to cite authority contrary to his position and in violation of Texas Disciplinary Rule of Professional Conduct 3.03(a)(4). *See In re R.D.W.*, No. 05-00-01416-CV, 2001 WL 1143313 (Tex. App.—Dallas Sept. 28, 2001) (mem. op.).

The two most common signals used to cite adverse authority are *contra* and *but see*. Bluebook Rule 1.2(c) states that *contra* is used when the “[c]ited authority directly states the contrary of the proposition.” *But see* is used when the cited authority “supports a proposition contrary to the main proposition.” THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2(c), at 47 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

In addition to complying with the Rules of Professional Conduct, citing adverse authority (and distinguishing it to your case) increases your credibility with the court.

Tip: Always *discuss* (rather than *merely citing*) adverse authority.

## VI. Conclusion

Legal citations should be simple, clean, and correct. Make it a habit to always cite-check your work and I promise that you will have a reputation as an effective and efficient legal writer.

I have created a one-page desk reference of common citation rules that is available for download at <http://www.graybecker.com/clientupdates.htm>. This quick reference can be kept in the top drawer of your desk and used to make sure you do not make the common citation mistakes discussed in this paper.