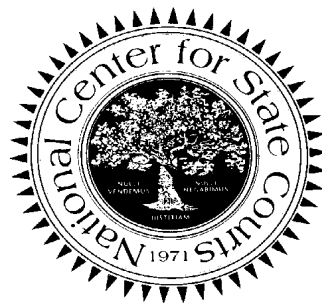


Conference of Chief Justices

Report of the Committee on Opinions Citation



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Washington, DC**

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Conference of Chief Justices Opinions Citation Committee
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The Honorable Duane Benton, MO
The Honorable Vincent L. McKusick, ME (Ret.)
The Honorable Randall T. Shepard, IN
The Honorable Hardy Summers, OK
The Honorable Herbert P. Wilkins, MA

Opinions Citation Subcommittee

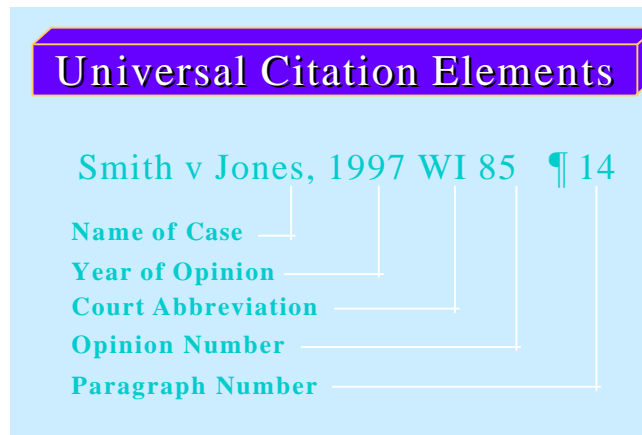
The Honorable Paul J. Barbadoro, NH
Mr. James Carbine, MD
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With information technology such as electronic bulletin boards, CD-ROMs and the Internet so readily available and widely used, there is growing interest among courts in a citation form that is both medium neutral and vendor neutral. Such a neutral citation form is known as a universal citation form. The purpose of this memorandum is to highlight the issues a supreme court faces in considering a universal citation form and official electronic opinions and to offer some suggestions and options. Whether a Supreme Court should adopt such a system is outside the scope of this report.

THE CITATION

A universal citation generally contains the following elements: case name; year the opinion was issued; identification of the court that issued the opinion; a sequential number for each opinion; and for pinpoint citation, a paragraph number. The American Association of Law Librarians Committee on Citation Form has recommended the following universal citation form:



- The Year

To avoid confusion with the numbers given to bound volumes of opinions and to avoid repeating the Y2K problem we recommend identifying the year with four digits rather than two.

- The Court

Each court may, of course, designate its own court reference abbreviation. A court might select the *Bluebook* reference, if there is one, or devise its own. We recommend that a court reference be as brief as possible, while still clearly identifying and distinguishing a particular court. The American Association of Law Librarians Committee on Citation Formats suggests that states be identified by their two-digit postal codes. For example, the court reference for Wisconsin Supreme Court opinions might be WI, and for Wisconsin Court of Appeals, WI App.

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If a court sits in subdivisions, the division, district or circuit number can be added to the court reference if the court chooses. See, e.g., OH App (6th) or US App (DC).

- The Sequential Number

Opinions issued by a particular court should be numbered independently of opinions issued by another court. If a court sits in multiple locations but is a single court, its opinions should generally be numbered in one consecutive string. If the court is not a single court and sits in multiple locations, the opinions of each location could be numbered independently. Each state may choose a sequential numbering system for itself.

Every year, a court should begin to number its opinions at “1.”

A court issuing published and unpublished (unreported) opinions has various options. Although in several jurisdictions unpublished opinions are not to be cited as authority, electronic publishers now make these opinions available. Therefore, the Supreme Court might conclude that reference to an unpublished opinion should also be put in universal citation form.

Here are two suggestions for sequential numbering of unpublished opinions:

- (1) A court could number all opinions, published and unpublished, in one consecutive string, adding a “U” to the number to denote an unpublished opinion.
- (2) A court could number its opinions in two separate sequences, one for published and one for unpublished opinions. Under this system, each opinion number would include either a “P” for published or a “U” for unpublished.

When to Number Opinions A court must decide when to assign opinion numbers. For example, numbers might be placed on opinions when released to make the opinions immediately available for citation purposes. Or numbers might be added to the opinions at a later time as described below.

If a court’s opinions are not final upon release, but may be edited during a specified time period, several options are available:

- (1) An opinion could be numbered immediately upon release, but would carry a banner stating that it is “not final; subject to further editing.” The banner would be removed when the opinion became final.
- (2) An opinion could be numbered immediately upon release. When an edited opinion became final, an “F” would be placed at the end of the sequential number.

(3) An opinion could remain unnumbered until all editing was completed and the text of the opinion was "closed." Until final editing was completed, the unnumbered opinion could include a banner stating "not final; subject to further editing." An opinion number would be assigned when the editing was completed.

Who Numbers Opinions If the opinions of a particular court are released through a central office, such as the clerk of court's office or a reporter of decisions office, it might be appropriate to have that office assign the sequential opinion numbers. If a court is divided into districts, with each district releasing its own opinions, the sequential numbers might be added by each individual district office. (The unique court reference must be designed to ensure that no duplication in references will occur.)

- Paragraph Numbers; Pinpoint Citations

The traditional use of page numbers to designate pinpoint citations has limited relevance when opinions are issued in electronic form. However, paragraph numbers are useful for pinpoint citation in both electronic and printed formats.

States that have adopted a universal citation form use the paragraph number in place of the page number for the pinpoint citation.

Paragraph numbers can be added to a court's opinions either by the writing judge's office or by a central office when a final opinion is prepared for release. Simple software programs or macros capable of inserting paragraph numbers are readily available. Regardless of when paragraph numbers are inserted, all opinions in a particular case—the majority, along with any concurrences and dissents—should be issued with a single set of consecutive paragraph numbers. It may be possible to start a new paragraph number sequence for a concurrence or dissent with a "C" or a "D" prefix, but there does not seem to be any need for this complication.

Some judges object to paragraph numbering because they think the numbers impair the flow or literary style of the writer. Perhaps this criticism is valid. It may be possible to provide internal markers for page numbers that remain constant regardless of print or electronic publication. Nevertheless, the value of the paragraph number may, for many, outweigh concerns of literary style.

Several states have incorporated paragraph numbering in their opinions. In fact, because paragraph numbers are considered part of the text of an opinion, the West Group has begun to include paragraph numbers in its regional reporters.

Parallel Citation to a Print Version

To accommodate those without access to electronic media, a court adopting a universal citation form might wish to adopt not only a universal citation but also a parallel citation to the print version of its opinions. In some states this parallel print citation is mandatory, while in other states it is acceptable, but not required.

A court that adopts a parallel print citation to the universal citation has the following options:

(1) Because the paragraph numbers are the same in both versions, omit a parallel pinpoint citation in a print version if a pinpoint citation has been made to an electronic version.

(2) Adopt a parallel pinpoint citation to a page number of a print version.

(3) Adopt a parallel pinpoint citation to a paragraph number of a print version.

- Costs of Universal Citation

Those jurisdictions that are adding sequential opinion numbers or paragraph numbers report that no additional costs are associated with these activities. Numbering opinions and paragraphs is a mechanical process. Several states have developed macros or software techniques for adding the necessary numbers, and are often willing to share these tools with other jurisdictions.

For further information about the universal citation, see *Universal Citation Guide*, Tentative Draft, September 1998 (American Association of Law Libraries).

ELECTRONIC OPINIONS: SPECIAL CONSIDERATIONS

- Editing the Opinion

A court opinion is often edited after initial distribution. Printed advance sheets, although often cited, are not the final version of an opinion. The version of an opinion printed in the bound edition of a reporter becomes the final edited version of the opinion for virtually all users. Thus, the use of bound printed volumes imposes editing deadlines on a court.

There is a danger that an electronic opinion, without the publication deadlines of printed versions, could be edited indefinitely. Courts should therefore consider establishing a cutoff to

the editorial process. For example, the editing deadline for a printed bound volume could be the same deadline for electronic versions as well.

Courts should consider developing mechanisms for notifying electronic publishers when editing is complete and an opinion is final. In some jurisdictions a reporter of decisions office has the responsibility for editing an opinion or for making certain that the edits are conveyed to the official print publisher(s). A court might choose to give this same office the responsibility for conveying all edits to electronic publishers. A court should also consider flagging both the initial and final versions of an opinion. (See When to Number Opinions, above.)

- Security of Opinions

One assumes that the print version of an opinion accurately reflects the court's opinion. Ensuring the accuracy of a court's electronic opinions can be difficult. A court cannot oversee a private electronic publisher and cannot guarantee the accuracy of such a publisher's Web site. A story making the rounds is that someone downloaded a copy of a state constitution and proceeded to add individual rights to the document. Even if the constitution had not been on the Internet, someone could have uploaded a self-revised constitution to a Web site. Courts might take steps to assure the accuracy of the electronic versions of their opinions. For example, a court might employ persons to periodically check the reliability of electronic publishing services.

A court might also use electronic watermarking on its opinions to indicate they haven't been tampered with. Furthermore, sophisticate users of the Internet learn to evaluate the sources of the materials.

OFFICIAL ELECTRONIC OPINIONS

Most state courts maintain an official printed version of their opinions. These state courts have identified a regional reporter or another reporter as the official publisher of printed versions of their opinions.

In some jurisdictions, however, the printed published version is not the official version. For example, the Federal Reporter is an unofficial version of the U.S. Court of Appeals' opinions. The official version is the copy of the opinion retained in the court's case file.

Just a decade ago, only two commercial services, LEXIS and Westlaw, were producing electronic versions of court opinions. Although these services were able to make opinions available before the print editions appeared, their versions were always considered to be

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unofficial. Nevertheless, by 1991 the 15th edition of the *Bluebook* acknowledged and sanctioned a citation format for cases not yet in print but available on a widely used electronic database.

The technology of the late 1980s and early 1990s made it possible for courts to begin using electronic bulletin boards to transmit their opinions to both their print and electronic publishers. Generally, opinions were not archived on these bulletin boards. Opinions were housed on the bulletin boards temporarily until LEXIS and Westlaw or a print version became widely available. No court designated the opinions on its bulletin board as official.

The CD-ROM services of the early 1990s were often little more than electronic versions of the print editions. West, LEXIS, LOIS and Michie, for example, each published CD-ROMs with quarterly updates. For the most part, these CD-ROM services were not identified as official court publications.

As courts increased their use of technology, the idea of an official electronic version of opinions began to be considered and then implemented. The official electronic archive of opinions would keep opinions secure from unauthorized changes. Unlike electronic bulletin boards, opinions uploaded to an Internet Web site can remain there indefinitely.

Adopting a universal citation form does not mean that a court must also designate an official electronic version of its opinions. For example, the Wisconsin court system maintains an electronic version of case law on its Web site. But that Web site is not official. On the other hand, a court may designate an electronic version of its opinions as an official version if it so chooses. The Supreme Court of Oklahoma, for example, has designated the Web site version of its opinions as an official version.

Documents can be stored electronically and made available for downloading in a file format that retains the consistency of style as it was intended by the original author. An example of one such file format is PDF as used by the Adobe Acrobat product.

The following issues should be addressed if a court decides to adopt an official electronic version of its opinions.

- Selecting an Official Electronic Version

If a court decides to maintain an official electronic version of its opinions, it can do so in one of several ways, including the following:

(1) A court might simply designate a commercial electronic vendor as an official publisher, just as the court might so designate a commercial print vendor. Both LEXIS and Westlaw maintain comprehensive “libraries” of each appellate court’s decisions.

(2) As with the commercial online services, a court might designate a particular CD-ROM vendor as an official publisher. Several CD-ROM publishers have developed fully searchable databases of case law.

(3) A court that maintains an Internet Web site might designate that site as the location of the official version of its opinions.

- Finalizing the Text of an Official Electronic Version

A court must address several concerns when finalizing the text of an electronic opinion:

(1) Someone or some office must be made responsible for uploading opinions to the court's Web site. A court might select the clerk of court's office, the reporter of decisions office or a “Webmaster” from the information technology department.

(2) If a court’s opinions are edited after initial release, the electronic versions will need to be updated until editing is completed. A court should consider developing a mechanism for informing publishers (who might retrieve opinions from the Web site on a daily basis) that an opinion has been edited. In addition, users who retrieve an opinion on a one-time basis must be made aware of the date of the last opinion edit. For example, a running date box, or “time stamp,” incorporated in the opinion might display the most recent update. Once an opinion is final, an appropriate designation should be made. (As mentioned in When to Number Opinions above, finalizing the opinion may entail, for example, only the removal of a banner, or the adding of an “F” to the opinion number.)

(3) It is important that there be a limited time period for editing electronic versions of opinions. Bound volumes of opinions impose deadlines by virtue of preset publication dates. Courts might decide to allow changes, edits and corrections of an electronic version until the press deadline for a bound volume. Changes made thereafter either would not appear in print or would be incorporated in the bound volume by means of a “paste-up” paragraph or page. A similar editing system should be developed for opinions on a Web site. For example, a court might decide that the deadline for edits to electronic opinions would coincide with the editing deadline for the print version of its opinions.

- Web Security

If a court elects to place an official version of its opinions on the Web, the court must ensure that the opinions remain intact and accurate and that they cannot be altered by unauthorized persons. The court's set of opinions must be secure so that in the event of a discrepancy among several versions, the court's opinion on its Web site would be considered the official version.

- Citation Links

A court developing a Web site to house the official electronic version of its opinions might wish to consider linking the electronic citation directly to a printed-page citation. Oklahoma has developed such a link through a cross-reference table that takes a user directly from the universal citation to a printed-page citation and vice versa. The cross-reference table is available on the Oklahoma Supreme Court's Web site.

- Search Engines

A court that has elected to have an electronic official version of its opinions on the Web might, but need not, choose to have those opinions available with a search engine. Such a search engine would enable readers to access the court's opinions in multiple ways. For example, a search engine could identify specified fields such as docket number, party name or judge. A more sophisticated search engine could allow a user to locate an opinion by searching for topics, subjects or key words. An even more sophisticated search engine would incorporate hypertext links to opinions, statutes and other information available on the Web. A court that wants to make the opinions it has placed on the Web fully searchable might select software for its search engine designed to achieve that goal.

Although the development of a search engine might be helpful, a court could elect to place only the "archival" text of its opinions on the Web, while relying on other Web sites or electronic sources (free or commercial) to make the text searchable.

- Costs

Developing and maintaining an official electronic version of a court's opinions involves cost considerations. First there is the cost of developing a Web site. Second, in addition to editorial work associated with a Web site, a court will have the responsibility for "time stamping" or otherwise dating changes to the released version of its opinions. A court will also bear the cost of protecting the integrity of its opinions once they are declared to be final. Courts might want to consider employing a Webmaster or a Web editor to assist with these responsibilities. Courts

choosing to pursue any of the activities described in this memorandum are advised to obtain cost estimates for each activity being considered.

THE OKLAHOMA EXPERIENCE

The Supreme Court of Oklahoma adopted a universal citation system in 1997. Under the Oklahoma system, a new opinion is assigned a citation upon release and is placed on the court's Web site. Opinions that predate creation of the Web site are being scanned into the site and receive a retroactive universal citation. All the opinions are indexed and searchable. Using about 14 law school interns to assist with these tasks, Oklahoma developed a universal citation form and prepared an electronic database of its opinions from 1951 to the present for a cost of less than \$2,000. Oklahoma's experience with the universal citation system has been a positive one, according to Chief Justice Yvonne Kauger. Not only have "legal research costs dropped," but "ease of access to legal documents has greatly increased," the chief justice reports.