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Pesky Citations

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Pesky Citations

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The Scrivener: Modern Legal Writing



Pesky Citations

by K.K. DuVivier

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Constant citation to legal authorities presents a unique problem for legal writers. Although these authorities are necessary to the analysis, integrating them can interrupt the flow of the writing, or more significantly, can obscure the meaning. Law reviews have chosen to use footnotes to address this problem.¹ But footnotes create their own form of vertical interruption,¹ and many courts discourage their use in briefs. This article addresses some of the difficulties created by these pesky citations and suggests some solutions for incorporating them more smoothly.

Full Citations in Sentences

The Bluebook requires a full citation the first time you address any legal authority.² A problem arises, however, if the first time you cite is at the beginning or in the middle of a sentence. Such a citation makes the sentence cumbersome and interrupts the subject and verb flow. A better alternative is to move the citation to the end of the sentence. Another solution is to start with a sentence that introduces the case, so that you can get the full citation out of the way at the end, in a separate citation sentence. After giving a full citation, you may then, in the next sentence, reference the case by name only.³

Example: In *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed. 144 (1987), the United States Supreme Court held that the proponent of evidence falling within the co-conspirator hearsay exception need not demonstrate the unavailability of the declarant.

Revision: The United States Supreme Court has addressed the co-conspirator hearsay exception. *Bourjaily v. United States*, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed. 144 (1987). In *Bourjaily*, the Court held that the proponent of evidence falling within the exception need not demonstrate the unavailability of the declarant.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, Reporter of Decisions, Colorado Court of Appeals, 2 E. 14th Ave., Denver, CO 80203.

Two Citations in One Sentence

Citations create additional difficulties when more than one proposition, and thus more than one supporting authority, is addressed in the same sentence. Instead of listing two authorities at the end of the sentence, which might create some ambiguity about which source references which point, *The Bluebook* requires that the citation immediately follow the proposition it supports.⁴ Therefore, *The Bluebook* seems to dictate that a citation be placed in the middle of a sentence. However, as noted above, this mid-sentence stretch is best avoided. A better solution in these double-citation situations is to break the sentence into two and to cite at the end of each separate sentence.

Example: Although the determination whether waiver has occurred is typically a question of fact, *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979), it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

Revision: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). However, it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

You may also be tempted to place two citations in one sentence when you refer to one authority that cites to another authority. However, it is easiest for readers to understand this information if all citations are moved out of the text and relegated to a separate citation sentence.

Example: Similarly, in *People v. Taylor*, 804 P.2d 196 (Colo. App. 1990), the Colorado Court of Appeals, citing *United States v. Inadi*, 475 U.S. 387, 106 S. Ct. 1121, 89 L.Ed.2d 390 (1986), held that a preliminary showing of unavailability was not required.

Revision: Similarly, the Colorado Court of Appeals held that a preliminary showing of unavailability was not required. *Peo-*

K.K. DuVivier is Reporter of Decisions for the Colorado Court of Appeals.

ple v. Taylor, 804 P.2d 196 (Colo. App. 1990) (citing *United States v. Inadi*, 475 U.S. 387, 106 S. Ct. 1121, 89 L.Ed.2d 390 (1986)).⁵

Back-to-Back References

Because citations cause readers to stumble, a particularly difficult hurdle is created by placing two citations back to back. For example, one sentence ends with a citation, and the next starts with one. Give your readers the opportunity to touch ground between citations by moving the second one from the beginning to the end of its sentence. Another advantage of moving the citation to the end is the opportunity it provides to introduce the new authority before giving its citation.

Example: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991), however, holds that a determination of waiver may be decided as a matter of law when the material facts are undisputed.

Revision: The determination of whether waiver has occurred is typically a question of fact. *Gulf Insurance Co. v. State*, 43 Colo. App. 360, 607 P.2d 1016 (1979). However, in a more recent case, the Colorado Court of Appeals held that it may be decided as a matter of law when the material facts are undisputed. *Nikolai v. Farmers Alliance Mutual Insurance Co.*, 830 P.2d 1070 (Colo. App. 1991).

References to Statutes

Most people process words more easily than numbers. Thus, advertisers give us a slogan instead of a phone number: such as, 1-800-Hotline. This phenomenon makes legal discussions about statute sections especially hard to follow. It can help to use a short form of the statute,⁶ for example, instead of referring to the full statute section each time, the distinction between sections may be clearer if you cite the subsections. An-

other alternative is to use labels for the statutes instead of repeating the disconnected numbers.

Example: The offenses for which defendant was convicted are listed in § 18-18-405(1)(a), C.R.S. 1999. Section 18-18-405(2)(a)(I), C.R.S. 1999, provides that any person who commits an offense listed in § 18-18-405(1)(a), C.R.S. 1999, commits a class 3 felony.

Revision 1 (using short forms): The offenses for which defendant was convicted are listed in § 18-18-405(1)(a), C.R.S. 1999. Classification of the offenses is set out in the next subsection. § 18-18-405(2)(a)(I), C.R.S. 1999. Section 405(2)(a)(I) provides that any person who commits an offense listed in § 405(1)(a) commits a class 3 felony.

Revision 2 (using labels): The offenses for which defendant was convicted are listed in the subsection describing controlled-substance offenses. § 18-18-405(1)(a), C.R.S. 1999. Classification of the offenses is set out in the next subsection. § 18-18-405(2)(a)(I), C.R.S. 1999. The classification subsection provides that any person who commits any of the controlled-substance offenses listed in the first subsection commits a class 3 felony.

In conclusion, good legal writing, by necessity, is laced with citations. Instead of viewing these citations as pesky interruptions, blend them deftly into the fabric of your writing to make your concept become clear.

NOTES

1. DuVivier, "The Footnote = An Interruption," 26 *The Colorado Lawyer* 47 (May 1997).

2. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 16th ed. (Cambridge, MA: Gannet House, 1996) at 15.

3. *Id.* at 71.

4. *Id.* at 13-14.

5. *Id.* at 29-30.

6. *Id.* at 86-87. ■

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The Adult Learning source offers low-cost GED, adult basic education skills, and English language classes throughout the Denver area. Daytime and evening classes are available. Instruction is provided by volunteer tutors who have been trained by the Adult Learning Source to teach adults to read, improve their math skills, prepare for the GED, and improve their English skills. Call the Adult Learning Source at (303) 394-3464 for information about getting involved.



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LEGAL SUPPORT BRIEFS

Colorado Attorney General is Featured Speaker at Legal Staff Professionals of Denver Monthly Dinner Meeting—March 7, 2000

Colorado Attorney General Ken Salazar will be the featured speaker at the Legal Staff Professionals of Denver's monthly dinner meeting. The meeting will take place on Tuesday, March 7, 2000, at 6:00 P.M. Salazar will discuss the role of the Attorney General, and will entertain ideas as to what his legacy actually will be. Guests are welcome. For more information, please contact Betty Huff at (303) 244-1818.

"Internal Negotiations" Is Subject of March 16 Lunch Meeting of ALA—Mile High Chapter

The Association of Legal Administrators—Mile High Chapter will feature Daniel Reid of Paladin International, LLC, speaking on "Internal Negotiations" at its monthly meeting on March 16, 2000. Reid will discuss the elements of negotiation, including the rules for effective negotiations and types of negotiators and the games they play. The presentation will include ideas on how to negotiate internally with staff, contemporaries, and "The Boss," as well as how to prepare and take the lead in your negotiations. The meeting will be held at noon at the Top of the Rockies in Denver. Call Libby Moser at (303) 376-5130 for information, or visit the Mile High Chapter's website at www.milehighala.org.

MHALSS Presents Program on "Equine Law" March 20, 2000

The Mile High Association of Legal Support Staff will welcome Tamatha Ann Blase, of Tamatha A. Blase, P.C., at its monthly meeting on March 20, 2000. The topic of Blase's presentation is "Equine Law." A short business meeting will take place at 6:00 P.M., followed immediately by dinner. The presentation by Blase will begin at 7:00 P.M. Guests are encouraged to attend the meeting and presentation, which will be held at Park Place Auditorium, 111 Emerson St., in Denver. Please call Valerie Gonzales, PLS, at (303) 832-1122 for information.

CBA Paralegal Committee Announces Schedule of Meetings

The Colorado Bar Association Paralegal Committee provides a schedule of meetings through June 2000. All meetings will be held at 4:30 P.M., in Denver, at locations listed below:

- March 1: Offices of Pendleton, Friedbert, Wilson & Hennessey, P.C., 303 E. 17th Ave., Suite 1000. Contact Elin P. Harrington-Schrieber, (303) 839-1204
- April 5: CBA offices, 1900 Grant St., 9th Floor
- May 3: Offices of Holme Roberts & Owen LLP, 1700 Lincoln St., #4100. Contact Cheryl Arnold, (303) 866-0420
- June 7: CBA offices, 1900 Grant St., 9th Floor

Please feel free to contact Committee Co-Chairs for additional information: Eileen Kelly-Sharpe—eksparalegal@cs.com; Sharon Halford—shar@cs.cca.ccooes.edu.

RMPA Goes Electronic: Newsletter, Job Site, And Meeting Calendar Posted on Website

The Rocky Mountain Paralegal Association ("RMPA") is pleased to announce that starting April 1, 2000, RMPA's newsletter, "The Overview," will be available on-line at www.rockymtnparalegal.org. Additionally, RMPA offers job listings on their website. Contact Judith Baxter-Warrington at www.rockymtnparalegal.org to access the job site or to place a job opening on the site.

The March RMPA meeting calendar is available for review on-line as well. March meeting events include:

- March 7: Experienced Paralegal Network meeting. Contact Sandra Numedahl at (303) 753-8646
- March 8: RMPA Freelance Group. 5:30 P.M. Contact Jody Hobbs at (303) 830-2389 for complete information.
- March 13: RMPA Executive Committee meeting at the law office of Canges Iwashko & Bethke, P.C. 5:45 P.M. Contact Nanette K. Yokomizo, (303) 860-1900, for more information.
- March 21: RMPA Boulder Section meets at noon at the offices of Chrisman, Bynum & Johnson. Contact Karen Warren at (303) 438-6645 to R.S.V.P. or for further information.
- March 22: RMPA March luncheon at Top of the Rockies. Contact Nanette K. Yokomizo at (303) 860-1900 for more information.
- March 22: RMPA Probate Section meeting. Noon at the offices of Holme Roberts & Owen. Contact Diane Carns or Dorothy Wydman at (303) 861-7000 to R.S.V.P. or for more information.

Organizational Membership Information

Association of Legal Administrators (ALA), Mile High Chapter:

Linda C. Brittain, Denver, (303) 861-8013

Association of Legal Assistants of Colorado (ALAC):

Sunde King, Colorado Springs, (719) 684-9241

Colorado Association of Legal Support Staff (CALSS):

Janet Boughton, Grand Junction, (970) 241-0316

Colorado Bar Association Paralegal Committee:

Eileen Kelly-Sharpe, Denver, eksparalegal@cs.com

Legal Staff Professionals of Colorado:

Perri Morris, Denver, (303) 860-7700

Mile High Association of Legal Support Staff (MHALSS):

Teresa Stenwall, Denver, (303) 534-0311, ext. 24

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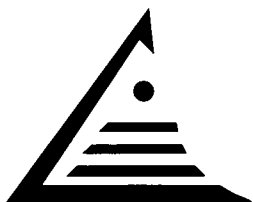
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- Employee, Team and Sales Incentives
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