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Cross-references, As Stated Above

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The Scrivener: Modern Legal Writing



Cross-references, As Stated Above

by K.K. DuVivier

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Often one argument in your brief may share common elements with another. Have you ever attempted to save space and time by simply referring your readers to another argument in a brief with “as stated above” or a similar cross-reference? This article provides tips for helping your readers follow such cross-references with ease.

Three Ways of Clarifying Cross-references

Cross-references are efficient. When an element transfers from one claim to another, readers do not want to wade through the full argument a second time, citations and all. A brief can be structured so that this one element is fully argued in just one section. The difficulty arises when the element comes up again and you want to refer to it. If you allude to an argument, remember that your readers are trying to understand the brief on the first reading. Help them out.

First, at the very least, identify the specific argument being referenced. Vague wording may make sense to you because you prepared the brief and you know which of perhaps several arguments you made above is the one you intend to reference. However, your readers are not in the same position. Give them a label so they will recognize which particular argument is being addressed.

Example: Based on the analysis above . . .

Revision: Based on the “knew or should have known” analysis above . . .

Second, remember that your audience is busy. Judges and clerks are conscientious readers, but if you expect them to flip back and forth from one part of the brief to another, at least make it easier for them. Provide the specific section and page numbers in the brief to show where the argument you are referencing appears.

Example: Based on the “knew or should have known” analysis above . . .

Revision: Based on the “knew or should have known” analysis on pages 5-6 above . . .

Third, the best solution is to give your readers a choice. In addition to a label and page reference, provide them with an encapsulated summary of the argument. This reminds readers of the salient points and gives them the option of flipping back to the complete argument if they feel they need additional clarification or of continuing to read without the interruption.

Example: The claim of false light invasion of privacy also requires public disclosure as discussed above.

Revision: The claim of false light invasion of privacy also requires public disclosure, that is, communication to the public in general or to a large number of persons, as discussed in Section I above.

Example: The same test as used in Section I applies here.

Revision: The same three-part negligence test as used in Section I applies here. Thus, defendant (1) had a duty; (2) breached that duty; and (3) caused plaintiff’s injury.

Avoiding Legalese in Cross-references

When using cross-references, avoid using “as argued supra” or “as argued infra.” Although this phrasing is tempting for those of us who studied Latin throughout high school and who want to put this knowledge to use, it only adds the obscurity of legalese¹ to the strain of a cross-reference.

Conclusion

It is the writer’s job to structure briefs to minimize unnecessary repetition. Cross-references can be an effective tool in this process. Gain your readers’ good graces by summarizing an argument to avoid requiring them to flip back and forth throughout a document. And, if they choose to check a cross-reference, make it easy for your readers to do so.

NOTE

1. DuVivier, “Be Plain,” 21 *The Colorado Lawyer* 909 (May 1992). ■

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkdುವಿವಿ@law.du.edu or call her at (303) 871-6281.

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Rocky Mountain Children's Law Center Needs You!

For twenty years, the Rocky Mountain Children's Law Center ("Center") has been devoted to the protection of children who have been seriously abused and neglected, the preservation of safe and healthy families, and systemic reform. To successfully accomplish such endeavors, the Center has expanded its services beyond courtroom advocacy to encompass a broad focus on the unmet legal needs of children through the programs described below.

• **Pro Bono Attorney Project:** This Project recruits and trains attorneys to represent children at risk in domestic violence cases and was selected by the National Council of Juvenile and Family Court Judges as one of the twenty-nine most effective and innovative programs in the nation. The Center's 500 trained *pro bono* lawyers are taught to never accept "easy" solutions if a policy is ineffective for an individual child's needs. Even with hundreds of attorneys who devote millions of dollars worth of legal services for children in need, the Center is always seeking the help of additional attorneys.

• **Crisis Calls:** The Center receives approximately 3,000 crisis calls annually from children and adults seeking help. Callers are provided with immediate access to resources, referrals, and intervention in egregious cases. Staff attorneys also regularly participate by special request in Channel 9's Law Line 9 where they respond to hundreds of calls in the areas of child abuse, adoption, domestic violence, and custody disputes. The "call" for help, however, cannot always be met through the Center's resources, and more attorneys are needed.

• **Dandelion Project:** This Project is a unique and creative therapeutic gardening program designed to empower abused and neglected children and increase their self-esteem through group therapy, mentoring, and gardening projects. The Dandelion Project has provided opportunities for healing and has positively affected the lives of over forty-five children in its two seasons of operation. It also has appeared as part of a national documentary "Teen Files: The Truth About Violence," and it was a front-page story in *The Denver Post* during its first year of operation. Many volunteers, including attorneys, have donated their time for the Project. More are needed.

• **University of Denver Child Advocacy Clinical Program:** This partnership between the Center and the University of Denver College of Law is an innovative, year-long clinical program that trains third-year law students interested in a career in child advocacy. Third-year law students represent children under the Center's supervision in the Denver district courts and all surrounding metro courts in the areas of child abuse, custody, guardianship, adoption, foster parenting, and domestic violence.

• **Foster Parent Training and Empowerment Program:** This state-of-the-art program includes twelve annual trainings for foster parents as well as recruiting attorneys to provide *pro bono* representation for foster parents.

• **Education of Professionals:** The Center sponsors and/or makes presentations at conferences for human services providers and lawyers, lectures, and publishes articles in legal journals promoting reform and better legal representation for children.

• **Legislative Reform:** The Center has been a catalyst for legislative reform, achieving legal standing for foster parents and the right to intervene with or without an attorney. The Center has established speedy trial rights for children in dependency and neglect cases and has created a foster care review system for children. The Center also works with legislators to identify issues for legislative reform.

Please call to volunteer today!

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