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## Questions from Readers: Redbook Responses-Part II

K.K. DuVivier

*University of Denver*, [kkdvvivier@law.du.edu](mailto:kkdvvivier@law.du.edu)

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## THE SCRIVENER: MODERN LEGAL WRITING

# Questions From Readers: Redbook Responses—Part II

by K.K. DuVivier

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After the last “Scrivener” article,<sup>1</sup> I received several questions from readers about capitalization, so this entire column will address capitalization concerns. Although the title of this column is “Redbook Responses,” I also used *The Bluebook*<sup>2</sup> to respond to some questions that *The Redbook*<sup>3</sup> did not address.

Many legal writers use “up-style,” capitalizing more words than in standard English. However, the modern trend is to capitalize less,<sup>4</sup> and most professional editors prefer “down-style” in which words are capitalized sparingly. Uppercase or capital letters are harder to read than lowercase letters, and capitalization can be distracting, so it is best to avoid capitalizing unless a rule calls for it. Below are some of the capitalization rules most frequently applied in legal writing.

**Q: When should I capitalize the word “Court” and when should I use lower case “court” in briefs—and for that matter, in other legal correspondence?**

**A:** In briefs or other court documents, capitalize the word “Court” for the specific court to which the document is directed.<sup>5</sup> *The Redbook* states that capitalizing the word “court” shows deference to the tribunal and should be done even if the tribunal is the lowest ranked in its jurisdiction.<sup>6</sup>

*Example:* “This Court will be deciding a question never before ruled on in this jurisdiction. (In addressing a trial court.)”<sup>7</sup>

In all other instances, including both court documents and correspondence or other documents not addressed to a particular court, only capitalize the word “court” when: (1) “naming any court in full” or (2) “referring to the U.S. Supreme Court.”<sup>8</sup> Otherwise, use lowercase “court.”<sup>9</sup>

*Example:* The United States Supreme Court reversed the appellate court’s holding. The Court disagreed with the appellate court’s conclusions, stating that court misconstrued the statute.

*Example:* The *Cooper* case was decided by the Colorado Supreme Court in 2001. In *Cooper*, the court decided that parents may not waive the rights of their minor children.

**Q: When should I capitalize “plaintiff” or “defendant” in legal text?**

**A:** *The Redbook* does not address this issue, but *The Bluebook* does. In a brief or memo, capitalize the party designations, such as “Plaintiff” or “Defendant” when referring to the specific parties before the court.<sup>10</sup> In all other situations, use lowercase for “plaintiff” or “defendant” unless it is the first word of a sentence or part of a heading.

*Example:* The plaintiff in *Smith* alleged permanent injuries from the accident. The Plaintiff here alleges the same thing.

**Q: You mentioned headings. Should I capitalize all of the words in a heading?**

**A:** You do not need to capitalize all words in a heading, but in up-style headings capitalize all words except: (1) articles; (2) short conjunctions; (3) short prepositions (four letters or shorter); and (4) the word “to” in infinitives.<sup>11</sup> These exceptions also should be capitalized if they are the first or last word in the heading.<sup>12</sup>

*Examples:* “Run-of-the-Mill Cases in Property Law”

“Strategic Run-Arounds to Be Dealt With” (the preposition “with” is capitalized because it is the last word of the heading)<sup>13</sup>

**Q: Do I capitalize the word “Act” when referring to a specific statute or “Director” when speaking about a specific person?**

### 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](mailto:kkdುವಿವಿ@law.du.edu) or call her at (303) 871-6281.



*K.K. DuVivier is an Assistant Professor and Director of the Lawyering Process Program at the University of Denver College of Law.*

**A:** The general rule is to capitalize when referring to a specific statute or person designated as a short form for the full name. The shortened form may be a common noun, but if it refers to a specific statute, officer, or governmental or corporate entity, then the noun becomes a "proper noun" and should be capitalized.<sup>14</sup>

*Example:* The Homeland Security Act ("the Act")<sup>15</sup> may infringe an individual's rights under U.S. Const. amend. I.<sup>16</sup> Specifically the Act discourages First Amendment<sup>17</sup> free speech rights by allowing the FBI Director to investigate parties who express views with which the Director disagrees.

**Q: May I use all caps for emphasis?**

**A:** Capitalized letters are harder to read than a mixture of uppercase and lowercase letters. The uppercase characters seem indistinct because of their uniform size.<sup>18</sup> Even a passage that uses initial capitals is difficult to read because the capital letters are distracting.<sup>19</sup> Consequently, using all caps for emphasis is not very effective. Your readers may be confused because the intended message in all caps is "READ THIS," but, instead, the actual message is "DON'T READ THIS" due to the effort required to read capped material.<sup>20</sup>

### NOTES

1. DuVivier, "Questions From Readers: *Redbook* Responses—Part I," 31 *The Colorado Lawyer* 53 (Nov. 2002).

2. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation*, 17th ed. (Cambridge, MA: Gannett House, 2000).

3. Garner, *The Redbook, A Manual on Legal Style* (St. Paul, MN: West Group, 2002).

4. *Id.* at § 2.1.

5. *Id.* at § 2.12; *The Bluebook, supra*, note 2, at P.6(a).

6. *The Redbook, supra*, note 3, at § 2.12.

7. *Id.*

8. *The Bluebook, supra*, note 2, at P.6(a).

9. *The Bluebook* and *The Redbook* are inconsistent about whether to capitalize the word "court" when referring to the highest tribunal of a state supreme court. Section 2.12 of *The Redbook* says to capitalize "Court" in this situation, but *The Bluebook* does not. I have not seen practitioners or law reviews accepting *The Redbook* variation of capitalizing "Court" when referring to a court other than the U.S. Supreme Court.

10. *The Bluebook, supra*, note 2, at P.6(b).

11. *The Redbook, supra*, note 3, at § 2.10.

12. *Id.*

13. *Id.*

14. *Id.* at § 2.7.

15. See also *The Bluebook, supra*, note 2, at R. 8.

16. *Id.*, R.11 at 75.

17. *Id.* at R. 8 (stating that the parts of the Constitution should be capitalized when used in textual sentences).

18. *The Redbook, supra*, note 3, at § 2.19.

19. *Id.*

20. *Id.* at § 2.1. ■

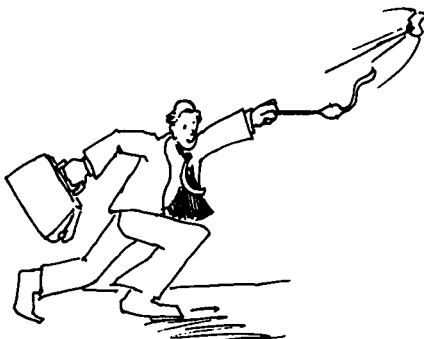
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