

“Gentle Reminders” For Writing and Researching in Court Filings

1. Cite Wisconsin Bankruptcy Court authority when it exists, instead of citing secondary sources or authority from other jurisdictions. A great, free resource for Eastern District of Wisconsin bankruptcy authority can be found on our website at <http://www.wieb.uscourts.gov/opinions/opinions/search/2>. There, decisions are listed by Judge, and our IT department recently made the decisions searchable by keyword.
2. Remember the preferred “pecking order” of sources:
 - a.) The decisions of one bankruptcy judge in a district aren’t binding on another judge in that same district (or any other, for that matter).
 - b.) If a party appeals, and the district court issues a decision, that decision is binding only upon the bankruptcy judge who issued the underlying decision.
 - c.) If a party appeals, and the 7th Circuit issues a decision, that decision is binding upon all bankruptcy judges in the 7th Circuit states.
 - d.) The Supremes, of course, are binding on everyone.
 - e.) All other decisions—from bankruptcy, district, or circuit courts in other jurisdictions, or from B.A.P.’s in those circuits that have them—may have persuasive value, but are not binding.
3. When asking the court to follow a particular legal theory, actually cite the law or rule – don’t simply rely on the assertion that “there’s case law out there,” or “it’s in the rules, Judge,” even when that’s true.
4. When you are citing a case that other courts have questioned, it usually is best to address and distinguish the cases that question your case before the opposing party or the court discovers these cases. Similarly, always Shepardize or KeyCite your cases to make sure you’re not citing authority that has been overruled (as opposed to simply questioned).
5. If state law governs a question, and there is a state court decision on that issue, cite to that decision.
6. If you cite a source that is not easily available online, provide the Court with a copy of the source with your filing.
7. When citing a string of cases, include parentheticals with the cases with a short statement about why the cases are being relied upon.

8. Remember the rules regarding citing unpublished opinions:

Unpublished opinions from all jurisdictions can be cited for purposes of res judicata, collateral estoppel, or law of the case. The issue here is whether and when unpublished opinions can be cited, not for those purposes, but to advance a legal or factual argument in a different case/setting.

Section 809.23, Wis. Stats. governs the citation of unpublished Wisconsin appellate court decisions. Unpublished appellate court decisions before July 1, 2009 cannot be cited, even as persuasive authority. Unpublished decisions from and after July 1, 2009 can be cited as persuasive authority, but only if they are authored decisions from three-judge panels or a single judge under Sec. 751.31(2), Wis. Stats. Per curiam opinions, memorandum opinions, summary disposition orders or other orders that are not authored opinions cannot be cited. A copy of the case must be submitted with the document referring to it. See also Wis. Stats. Secs. 809.19, 809.62, regarding appendices and document certifications. The court need not discuss or distinguish an unpublished opinion in its decision, and there is no affirmative duty to research or cite unpublished opinions.

For unpublished decisions from other states, each state's appellate rules must be reviewed to determine that state's citation rules.

In the federal system, under Federal Rule of Appellate Procedure 32.1, unpublished decisions from and after January 1, 2007 may be cited as persuasive authority. Again, a copy of the case should be submitted with the underlying citing document.

For federal cases before January 1, 2007, each circuit's circuit and district court rules should be consulted to determine whether an opinion may be cited and, if so, the conditions of its citation. The Seventh Circuit, for example, which divides its rulings into opinions and orders, prohibits the citation of orders before January 1, 2007, except for claim preclusion or law of the case purposes. Circuit Rule 32.1(d). The Eastern District of Wisconsin rules, for their part, do not prohibit the citation of unreported or non-precedential opinions (subject to federal appellate and circuit rules 32.1). See Civil L. R. 7(j) and Committee comments.

A useful research starting point, which includes a circuit rule chart (as of the article's March 9, 2007 date), is "Citing Unpublished Federal Appellate Opinions Issued Before 2007," by Robert Timothy Reagan of the Federal Judicial Center, which can be accessed at <http://ftp.resource.org/courts.gov/fjc/citrules.pdf>.¹

¹ Diane Slomowitz, *Watch your step with unpublished opinions*, Wis. Law J. (9/28/10), available at <http://wislawjournal.com/2010/09/28/watch-your-step-with-unpublished-opinions/>.

9. Avoid engaging in “selective quotation” from a case. If the rest of the case does not support the cited proposition, it is best to preemptively address that.

10. Proofread your citations if you want the court to be able to find the case you are citing and save the court time. Try to use proper Bluebook format.

11. Don’t hesitate to use our help desk when filing documents through the CM/ECF system. They can be reached at 414-290-2700. A live chat feature also was just introduced on our website, located at <http://www.wieb.uscourts.gov/> (click on the green box on the left hand side that says Chat Now).