

**Legal Writing:
The More Things Change,
The More They Stay The Same**

Public Law for Public Lawyers CLE
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Presented by
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10 TIPS IN 20 MINUTES

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Correct? Affect is used as a noun.



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Nope!


Remember the
RAVEN.



AFFECT is a verb.

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Correct? The police arrested *over*
500 people at the rally.




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Nope.

The police arrested *more*
than 500 people at the rally.

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Correct?
One writes numbers from zero to ninety nine according to the Bluebook.




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Yes!

Rule 6.2 (a). **Numerals.** In general, spell out the numbers zero to ninety-nine in text and in footnotes; for larger numbers use numerals.
--please note that there are several exceptions to this rule

Correct? John gave the book to him and I.



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Nope.

John gave the book to him and *me*.

In this instance, me is the object of the preposition and therefore me is the correct pick. In your mind, substitute "us" for the phrase "him and me." Because that sounds right, it is!



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Correct? I appreciate you taking time to help me prepare my brief.



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Nope.

I appreciate **your** taking time to help me prepare my brief.

Use the possessive when it precedes a gerund. A gerund is a verb that becomes a noun when -ing is added. Not all words ending in -ing are gerunds. Note how the word is used in the sentence. If it's used as a noun, then use the possessive form of the noun antecedent (the noun before the gerund).

Brenda D. Gibson
Director of Legal Writing

LEGAL WRITING

The 5 Pillars of Legal Writing

1. Proper tone
2. Concision
3. Clarity/Precision
4. Well organized
5. Proper attribution



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• Proper Tone

- Proper tone is achieved by remembering your audience.
- Good legal writing is all about the READER (not the writer).
- Depending on your audience, the same issue may be discussed quite differently.
 - Ex. trial brief vs. appellate court brief



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• Concision

- Avoid verbosity, shorten long, rambling sentences, eliminate redundancies, and keep it simple.
- Usually achieved during editing.
- Shorter documents are most often the most effective and will better hold the readers' attention.
- Concision usually leads to clarity.

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• Clarity/Precision

- Use plain English.
- Unclear writing makes it almost impossible for the reader to agree with you.
- Sometimes "important-sounding" words can be less clear than simple ones.
- Clarity encompasses the use of action words, avoiding passive voice, and ditching the legalese.



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- Well organized

- Absence of CRAC or any recognizable organizational structure
 - A failure to use any case law to explain the operation of the rule by way of comparison or contrast
 - The absence of a recognizable counter-argument
- NO roadmaps
 - Topic sentences
 - Introductory paragraphs
 - Transitional phrases between sentences and paragraphs
 - Topic sentences in each paragraph
- Clearly no plan made by authors

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- Attribution

- No one has ever said, there are too many citations.
- All information that is not your original idea **MUST** be cited!
- Every citation should have proper pin and parallel cites, as required by the *Bluebook*.
- Use signals to add depth to your analysis.

[+] cite

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Clarity and Editing: An Exercise



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- Assume that the following memo has appeared on a bulletin board in the Durham Police Department:
Please be advised that the Office of Internal Affairs has concluded after searching and diligent consideration, that it must call upon some unit officers as expert witnesses to elucidate and/or provide relevant information respecting intricate issues articulated in the Durham Police Department's procedures for prosecution of local street crime by the Durham County District Attorney's Office. It is the opinion of Internal Affairs that the participation of the aforesaid witnesses will elucidate the thread of the complex issues intertwined in the policies and procedures carried out by the Durham Police Department. In consonance and spirit with the letter of Executive Order 1141 as amended, it is the considered judgment of Internal Affairs that the participation of unit officers as expert witnesses will be on official time. The said witnesses will be called as needed.

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Revision

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The Bluebook

- The 20th edition retains the basic approach to legal citation, but there have been some "helpful" changes.
 - Some citation forms have been expanded, elaborated upon, or modified to reflect the "ever-expanding" range of legal authorities.



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Top 5 Bluebook Changes

1. Bluepages

- Now parallel the Whitepages in numbering and content.
- B1--Typeface rules have been relaxed to accommodate practitioner use of large and small caps.
 - Before: "Large and Small Caps are never used"
 - After: "Large and Small Caps are not required (but may be used for stylistic purposes)."

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- BT2 has been expanded to include more local rules of court.
 - Specifically for North Carolina . . .
 - Before: N.C. R. App. P. 30(e)(3) (citation of unpublished opinions)
N.C. R. App. P. 1(a) (may cite as "N.C. R. App. P. __")
N.C. R. App. P. app. B (required use of most recent ed. of Bluebook; inclusion of citation to official state reporters)
 - After: N.C. R. App. P. 1(a) (may cite as "N.C. R. App. P. __")
N.C. R. App. P. 30(e)(3) (citation of unpublished opinions)
N.C. R. App. P. app. B (citations should be made according to The Bluebook)
A Style Manual for the North Carolina Rules of Appellate Procedure (2012),
http://www.aoc.state.nc.us/www/public/html/pdf/appellatestylemanual_10152012.pdf
- *Though not specifically stated in parenthetical as before, parallel citation is still required.

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2. Rule 10– Cases

- 10.2.1(f) requires the omission of all geographical terms that follow a comma.
- Included at the end of the rule:
 - Omit all geographical designations that follow a comma:
 - > City of Arlington v. FEC
 - Not: City of Arlington, Texas v. FEC



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– 10.2.2 clarifies that words in a case name that would be abbreviated according to T6 should not be abbreviated if the words are part of a state, country, or other geographical unit that is the entire name of a party.

- Before: “Always abbreviate any word listed in table T6, even if the word is the first word in a party’s name[.]”
- After: “Always abbreviate any word listed in table T6, even if the word is the first word in a party’s name, **unless the word is part of a state, country, or other geographical unit that is the entire name of the party**[.]”

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3. Rule 14– Administrative and Executive Materials

– 14.2(b) has been expanded to include detailed information on citing comments to agencies.

– Added to the end of the rule:

- When citing comments, provide the name of the commenter and the proposed rule to which the comment pertains. Prohibitively long titles may be shortened as long as the result is unambiguous. Citing to an agency or governmental website is appropriate:
- > Chamber of Commerce of the United States of America, Comment Letter on Proposed Rule to Require Registration of Certain Hedge Fund Advisors Under the Investment Advisors Act of 1940 (Sept. 15, 2004), <http://www.sec.gov/rules/proposed/s73004/dhirschmann091504.pdf>.

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– 14.4– previously titled, “Short Forms for Regulations,” is now titled, “**Commercial Electronic Databases**,” and provides detailed information on citing administrative sources found on commercial electronic databases.

- When citing to administrative materials contained in a commercial electronic database, give the name of the database and any identifying codes or numbers that uniquely identify the material. If the name of the database is not clear from the database identifier, include it parenthetically at the end of the citation:
- >FTC Credit Practices Rule, 16 C.F.R. § 444.1 (2000), WL 16 CFR § 444.1.
- >Reichhold Chems., Inc., 91 F.T.C. 246 (1978), 1978 WL 206094.
- >39 Op. Att’y Gen. 484 (1940), 1940 US AG LEXIS 16.
- >Rev. Rul. 86-71, 1986-1 C.B. 102, 1986 IRB LEXIS 189.

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4. Rule 15– Books, Reports, and Other Nonperiodic Materials

– Rule 15.8(a) provides updated citation formats for BALLENTINE’S LAW DICTIONARY and BLACK’S LAW DICTIONARY.

- Before:
 - > BALLENTINE’S LAW DICTIONARY (3d ed. 1969).
 - > BLACK’S LAW DICTIONARY (9th ed. 2009).
- After:
 - > *Noscitur a sociis*, BALLENTINE’S LAW DICTIONARY (3d ed. 1969).
 - > *Good-Faith Bargaining*, BLACK’S LAW DICTIONARY (9th ed. 2009).

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– 15.9 Electronic Media and Online Sources

- removes language that requires the use of “available at” in parallel citations.

– 15.9(c) introduces a citation format for ebooks.

- NEW rule 15.9 previously ended at (b).
- The rule stipulates that the print versions of the books are authoritative, but that ebooks may be cited if they are the sole media through which the book is available.

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– 15.9(c)

- Print versions of books are authoritative; ebooks should be cited only if they are the sole media through which the book is available. Because books published as ebooks may differ in format from the print version, the two sources should not be treated interchangeably. To indicate that an ebook is being cited, place an “ebook” parenthetical after the date:
 - >Anne Umland & Blair Hartzell, *Picasso: The Making of Cubism 1912–1914*, 25 (2014) (ebook). If an ebook uses location numbers rather than page numbers, use “loc.” to indicate where the cited material can be found:
 - >Ronald Collins & David Skover, *When Money Speaks* loc. 2992 (2014) (ebook) (“[T]he *Buckley* wall between contributions and expenditures . . . has been breached.”).

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• 5. Rule 18 The Internet, Electronic Media, and Other Non-print Resources

- No longer separately categorized Internet citations as either direct or parallel; all citations are treated as direct.



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- 18.2.1(b)(iii)- provides for the direct citation of Internet sources that share the characteristics of a print source such that they can be fully cited according to another rule, whether or not the source is in print.

- Added:

- (ii) Online sources with print characteristics.

If an online source shares the characteristics of a print source such that it could be fully cited according to another rule in The Bluebook, the citation should be made as if to the print source and the URL appended directly to the end of the citation, even if it is unknown whether the cited information is available in print.

> Fed. Trade Comm'n, Consumer Fraud in the United States 12 (2007), <http://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-second-federal-trade-commission-survey-staff-report-federal-trade/fraud.pdf>

> Tim Ganser & Stan Veuger, Strategic Voting in Proportional Representation Systems 28-29 (Am. Enter. Inst., Working Paper No. 2014-02, 2014), http://www.aei.org/wp-content/uploads/2014/02/-veuger-strategic-voting-econ-working-paper_085307749177.pdf.

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- 18(b)(ii) (cont'd)

- To share the characteristics of a print source, an online source must be a version permanently divided into pages with permanent page numbers, as in a PDF, and have the elements that characterize a given print source, such as a volume number (for law review articles and the like) or publication date (for magazine articles and the like).
- If an online source can be formatted in full compliance with another rule in The Bluebook, for purposes of citation style it does not matter whether that source has in fact been published in print. As noted above, traditional printed sources or authenticated digital copies are required as a matter of authority; this does not, however, affect the citation rules for print-like online sources.

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– REVISED 18.2.1(c)-- previously titled, “Sources using ‘available at’ to indicate where access is available,” now titled, “Order of authorities and parentheticals”) based on the new treatment of all internet citations as direct.

- A citation to an online source that shares the characteristics of a print source such that it could be fully cited according to another rule in The Bluebook does not affect the order of authorities under rule 1.4. The source is ordered in the same way that the traditional printed source would be:

> See Marcel Kahan & Edward B. Rock, Corporate Constitutionalism: Antitakeover Charter Provisions as Pre-Commitment, 152 U. Pa. L. Rev. (forthcoming Dec. 2003), <http://ssrn.com/abstract=416605>; Interview with Morris Kramer, Partner, Skadden, Arps, Slate, Meagher & Flom, in N.Y.C., N.Y. (Mar. 14, 1997) (discussing the limitations of shareholder rights plans).

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– 18.2.1(c) (cont’d)

- When such a citation requires multiple parentheticals, place them in the order indicated in rule 1.5(b). Thus, the URL of a source cited in accordance with rule 18.2.1(b) should follow format-related parenthetical information (such as “on file with author,” “unpublished manuscript,” or “emphasis added”) and related authority parentheticals (such as “citing” or “quoting”), but precede explanatory parentheticals:

> Polly J. Price, Precedent and Judicial Power After the Founding, 42 B.C. L. Rev. 81, 84 (2000) (emphasis added) (citing Guido Calabresi, A Common Law for the Age of Statutes 4 (1982)), <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2166&context=bclr> (discussing precedent in the context of statutory construction).

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– NEW 18.2.1(d) provides guidance on how to cite Internet sources using archival tools.

(d) Archival.

Archiving of Internet sources is encouraged, but only when a reliable archival tool is available. For citations to Internet sources, append the archive URL to the full citation in brackets:

> Tom Goldstein, Somewhat Significant Settlement, SCOTUSblog (Feb. 7, 2005, 8:54 PM), <http://www.scotusblog.com/2005/02/somewhat-significant-settlement> [<http://web.archive.org/web/20050208081922/www.scotusblog.com/movabletype>].

> Letter from Rose M. Oswald Poels, President/CEO, Wis. Bankers Ass’n, to Elizabeth M. Murphy, Sec’y, SEC (Sept. 17, 2013), <http://www.sec.gov/comments/s7-03-13/s70313-178.pdf> [<http://perma.cc/B7Z7D9DJ>].

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– 18.2.2(a) provides guidance on how to cite author information on social media platforms.

- Added to end of rule:

For social media feeds, provide the author's name if discernible and verified. If the author uses a username or handle on the social media platform, include the username or handle in parentheses after the name or, if the name is not discernible and verified, use only the username or handle. After author information, include the title of the post if applicable and the name of the social media platform:

> November Project, The Bubble Is GONE!, Facebook (Mar. 19, 2014), <https://www.facebook.com/media/set/?set=a.516646258443810.1073741983.246449015463537&type=1>.

> Wendy Davis (@wendydavistexas), Instagram, <http://instagram.com/wendydavistexas> (last visited May 20, 2014).

> @LegalRebels, Twitter (Mar. 24, 2014, 10:36 AM), <https://twitter.com/LegalRebels/status/448151433222062080>.

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– 18.2.2(b)(iii) and 18.2.2(b)(v) detail how to cite titles for blogs contained within a larger website and titles for social media posts, respectively.

- (iii) Titles for blogs contained within a larger website (inserted before the old (iii), which is now (iv))

If the cited source is published under the name of a blog that has its own content and presence within a larger website, both the name of the site and the name of the blog should be included:

> Emmarie Huetteman, 2016 Republican Prospects Spar Over Ukraine, N.Y. Times: The Caucus (Mar. 9, 2014, 2:57 PM), <http://thecaucus.blogs.nytimes.com/2014/03/09/2016-republican-prospects-spar-over-ukraine>.

> Andrew Morse, Credit Suisse Is Latest Swiss Bank Humbled by U.S. Tax Evasion Crackdown, Wall St. J.: L. Blog (May 19, 2014, 5:04 PM), <http://blogs.wsj.com/law/2014/05/19/credit-suisse-is-latest-swiss-bank-humbled-by-u-s-tax-evasion-crackdown>.

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– NEW 18.2.2(b)(v)

- Added after (b)(iv)

- (v) Titles for social media posts.

If the content is contained on a social media website, place titles, if applicable, between the author information and the platform identification. Only include a title if one is clearly intended and conveyed; otherwise omit:

> November Project, The Bubble is GONE!, Facebook (Mar. 19, 2014), <https://www.facebook.com/media/set/?set=a.516646258443810.1073741983.246449015463537&type=1>.

> Ted Cruz (@SenTedCruz), Twitter (Mar. 27, 2014, 9:35 AM), <https://twitter.com/SenTedCruz/statuses/449223209058332672>.

> Eugene Volokh, LinkedIn, <http://www.linkedin.com/pub/eugene-volokh/9a/5bb/b07> (last visited Mar. 27, 2014).

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– 18.3 now catalogs the locations within The Bluebook that provide how to cite various sources found on commercial electronic databases.

- Added to end of the rule:

For guidance as to the specific use of commercial electronic databases, see the following rules:

Cases rule 10.8.1

Constitutions rule 11

Statutes rule 12.5

Legislative Materials rule 13.7

Regulations rule 14.4

Books, Reports, and Other Nonperiodic Materials rule 15.9

Periodical Materials rule 16.8

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Honorable Mention(s)

- Some of the Tables have also been revised.
 - See tables T1, T2, T13.
 - Terms have been added to tables T6, T8, T14, and T15.



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Q & A

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