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Teaching Lawyers How to Perform: Legal Citation in Montana

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Teaching lawyers how to perform

By **Stacey L. Gordon**
Reference librarian/asst. professor
UM School of Law

As a reference librarian, I receive interesting phone calls. My favorite was from a man who asked, seriously, if the library checked out canoes (lest you get your hopes up, we do not). My research log, where I record most of my phone calls, shows a few questions that are asked over and over, mostly regarding divorce and fami-

Legal citation in Montana

ly law issues. However, there is a new most popular question this summer.

The call invariably has come from one of our students interning at a law firm. The question is always phrased along the lines of "Help! The lawyers want to know why they have to use this new ALWD Citation Manual." After a lengthy discussion, one frustrated intern said, "Why doesn't someone just write down what you have to do in Montana?" In response to the phone calls, and her suggestion, here is my attempt:

EXAMPLES

CITING TO MONTANA STATE COURTS*

Citing Montana Supreme Court Cases (Montana Local Rule)

Cases Before January 1, 1998:

Griffith v. Mont. Power Co. (1990), 243 Mont. 246, 251, 794 P.2d 692, 696.**

Griffith, 243 Mont. at 251, 794 P.2d at 696.

Cases After January 1, 1998:

Burkhart v. Semitool, Inc., 2000 MT 201, ¶ 21, 300 Mont. 480, ¶ 21, 5 P.3d 1031, ¶ 21.

Burkhart, ¶ 36.

Citing All Other Cases (ALWD R. 12)

Talbert v. Farmers Ins. Exch., 5 P.3d 610, 614 (Or. App. 2000).

Kalina v. Fletcher, 522 U.S. 118 (1997).

Kalina v. Fletcher, 522 U.S. 118, 118 S. Ct. 502 (1997), is also acceptable, but not preferred.

*Suggested (and strongly encouraged) only. See the Explanation below.

**Although the Montana Local Rule calls for the date to be placed directly after the case name, most Montana practitioners still put it at the end of the citation.

CITING TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF MONTANA*

Citing Montana Supreme Court Cases (ALWD R. 12)

Burkhart v. Semitool, Inc., 5 P.3d 1031, 1035 (Mont. 2000).

Citing All Other Cases (ALWD R. 12)

Talbert v. Farmers Ins. Exch., 5 P.3d 610, 614 (Or. App. 2000).

U.S. v. Peterson, 121 F. Supp. 2d 1309 (D. Mont. 2000).

*Mandatory. Mont. Fed. Dist. Ct. R. 10.4.

See next page for explanation of new Montana citation guidelines

The Purpose of Citation Rules

The precedential basis of our legal system creates an important role for legal citation. The basic purpose of all citation is to tell the reader where to find the cited material and give credit where credit is due. But legal citation also has a role beyond the basic. Clear and careful legal citation demonstrates that you researched and can provide support for your argument.

Legal citations also provide readers with information about the type and persuasiveness of your cited authority, and thus the strength of your argument.

Legal citation may seem picky and obsessive, but actually, instead of cluttering your legal writing, detailed citation succinctly conveys a great deal of information. Precise citation format dictates that you include the information your readers need to evaluate your legal argument.

Uniform citation formats allow your readers to focus on your legal arguments without the distractions of having to decipher where your precedential authority is from.

Sources of Citation Rules

There really are few rules definitively governing citation format in Montana. Citation rules generally come from two sources: court rules and citation manuals. The two are not mutually exclusive but instead work together to create a set of rules that are both complete and locally relevant.

Look first for a local rule, which will probably be mandatory, but most likely will only cover Montana case law. In the absence of a local rule covering the source you are citing, turn to a citation manual.

Local Rules

In *In re Op. Forms & Citation Stands. of the Sup. Ct. of Montana; & the Adoption of a Form of Pub. Domain & Neutral-Format Citation*¹ (“Montana Local Rule”), the Montana Supreme Court issued an order adopting a local citation rule. Citing the Montana Constitution’s Right to Know provision,² the Court established a public domain citation format to make its opinions more accessible to the public and to the media. The Montana Court was one of the first state courts to establish a public domain citation format, although many, if not most, have done so now.

However, the Montana Local Rule deals more with how the public domain citation is assigned and what it means, and less about how you should cite cases to the Court. There are two important things to remember about the citation guidance in the Montana Local Rule: 1) it only applies to Montana Supreme Court opinions cited to the Montana

Supreme Court; and 2) it is not mandatory. Relevant language from the order states: “This Court encourages the adoption and use of these formats in all briefs, memoranda and other documents filed in this court.”³

Because the Montana Local Rule does not prescribe citation at the district court level, you must turn to district court rules for guidance. Neither the Montana Uniform Rules for the Justice and City Courts nor the 1987 Montana Uniform District Court Rules contain citation rules, but Unif. Dist. Ct. R. 15 allows district courts to also promulgate rules.

Two judicial districts, the Second and Nineteenth Judicial Districts (Butte-Silverbow and Lincoln counties respectively), have included specific citation format rules in their local rules. Second Jud. Dist. Ct. R. 21 requires parallel citation to the Pacific and Montana reporters.⁴ Nineteenth Jud. Dist. Ct. R. 45 allows for citation to only the Pacific Reporter.⁵ Although not technically a citation rule, several judicial districts do have rules requiring that briefs citing materials not found in the county law library (usually anything not in the Montana Reports or sometimes the Pacific Reporter) be accompanied by photocopies of the source.⁶

Strictly speaking then, unless you are in the Second or Nineteenth Judicial District, or are writing a brief for the Montana Supreme Court, there are essentially no citation rules that you must follow. I am not, however, advocating free-for-all citation, and you will find my suggestions below.

Citation Manuals

Citation manuals are the other traditional source of citation rules. The most familiar is the “Bluebook: A Uniform System of Citation” (*Colum. L. Rev. Assn. et al. eds., 17th ed., Harv. L. Rev. Assn. 2000*). The new, less familiar manual that is causing some confusion in Montana is the Association of Legal Writing Directors & Darby Dickerson “ALWD Citation Manual” (*Aspen L. & Bus. 2000*). The important thing to remember about citation manuals is that without adoption by a court, a citation manual is advisory only.

Neither the Montana Supreme Court nor any of the Montana district courts has adopted either citation manual. Therefore, other than the Montana Local Rule for citing Montana Supreme Court cases to the Montana Supreme Court, there is no official citation guidance in Montana (with the exceptions noted above).

There is a third source of citation rules that governs citation practice in Montana — tradition. Tradition dictates use of the Bluebook, with parallel citation to the Montana Reports and the Pacific Reporter for Montana cases. But law students have started to rock the boat of tradition. At

Disciplinary staff settles into offices

Montana's attorney in charge of lawyer discipline investigation, Tim Strauch, standing at left, poses with his new staff, Paralegal and Investigator Mitchell D. Hill and Executive Assistant Marni Nett, in the new Office of Disciplinary Counsel offices in the old Federal Building in Helena.

The office's phone number is (406) 841-2980. The address is P.O. Box 203007, Helena MT 59620-3007.

Although the office only came into existence this summer, Mr. Strauch said it already is investigating more than 40 complaints against Montana lawyers.

Mitch Hill is a 1987 graduate of the College of Great Falls, and for 15 years has



worked for two law firms as a paralegal and investigator. He also has worked in Butte as a private corporation's claims adjuster, as well as providing litigation support for retained outside counsel.

Marni Nett graduated with honors from the University of

Montana College of Technology in Missoula with an associate degree in Legal Assisting. She has worked for a Havre law firm and a Great Falls accounting firm as administrative assistant, and for two Great Falls law firms as a legal secretary.

the Law School, we no longer teach the Bluebook, and, like 89 other U.S. law schools, have adopted the ALWD Citation Manual for citation in law school papers.

Although part of what we teach is how to read a citation manual so that our students know how to use the Bluebook when they encounter it, they have practice citing from the ALWD Citation Manual and have started using ALWD citation formats in the memos and briefs they are writing for the law firms where they intern and work. Which engenders the "why do we have to use the ALWD Citation Manual?" question.

Half the answer is that as long as you are citing to a Montana state court, you do not have to use the ALWD Citation Manual, nor do you have to use the Bluebook. However, the other half of the answer is that if you are citing to the U.S. District Court for the District of Montana, you do have to use the ALWD Citation Manual. Mont.

Fed. Dist. Ct. R. 10.4⁷ went into effect Jan. 1, 2002, making the U.S. District Court for the District of Montana the first U.S. court to adopt the ALWD Citation Manual. Rule 10.4 is the court's only citation rule; the Mont. Fed. Dist. Ct. Rules contain no locally specific rules. Therefore, in the Montana Federal Court, you must use the ALWD Citation Manual and you need use no other citation rules.⁸

How Local Rules and Citation Manuals Work Together

Even though the Montana U.S. District Court has no further local rules, adoption of a citation manual does not preclude also adopting local rules. Local rules are intended to prescribe citation formats for purely local materials that conform with local publishing patterns, availability of local

More *CITATION*, Page 10

CITATION, from Page 9

materials, and local practice. Citation manuals are intended to be more general in scope, prescribing citation formats for all those materials that fall outside of the local domain.

For example, ALWD R.12.4(a)(2) says, "Unless required by a local rule (see Appendix 2), cite only one source, in the following order of preference: A West reporter (regional reporters for state cases)..." For Montana, Appendix 2 contains the Montana Local Rule. Therefore, if you were citing a Montana Supreme Court case to the Montana Supreme Court, you would follow the local rule prescribed in the order. Otherwise, you would use the general ALWD rule.

Suggestions for Montana Practitioners

For uniformity's sake, always use the ALWD Citation Manual — the U.S. District Court requires its use, and the Montana courts do not preclude its use. Remember that the ALWD Citation Manual dictates that you defer to a relevant local rule so you should always be aware of local rules for the court you are in.

Also for uniformity's sake, when citing to any Montana court use the format prescribed in the Montana Local Rule. The Court's goal of improving access to legal materials is a good one and the public domain citation provides free access to Supreme Court opinions.⁹

Encourage wider adoption of the ALWD Citation Manual. While the Bluebook is written by law review editors, largely for law review editors, the ALWD Citation Manual more reflects the writing and citation needs of legal practitioners. It is easy to use, with many clear examples. Finally, it is flexible enough so that courts can incorporate local citation rules where local court practice would be better served by a more specific rule.

Sources of Information About the ALWD Citation Manual

A brief tutorial in specific ALWD Citation Manual rules is beyond the scope of this article. However, the following are a few sources where you will find more information about the manual and its use.

Where to Purchase the ALWD Citation Manual¹⁰

Aspen Publishers
<http://www.aspenpublishers.com>
\$23.95

amazon.com
<http://www.amazon.com>
\$23.95

Barnes and Noble
<http://barnesandnoble.com>
\$20.95

General Information

ALWD Website
<http://www.alwd.org/cm>

Comparison Between the ALWD Citation Manual and the Bluebook, 16th and 17th editions

ALWD Website
<http://alwd.org/cm/additional.htm>

This site also contains several Powerpoint presentations discussing specific features and rules of the manual, with practice exercises.

Live or Online Assistance

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NOTES

¹ 54 St. Rep. 1357 (1997).

² Mont. Const. art. II, § 9.

³ In re Op. Forms, 54 St. Rep. at 1358 (emphasis added).

⁴ "When citing Montana Supreme Court opinions, in addition to Pacific Reporter, give Montana Reporter citations or, if not available, the State Reporter." 2002 Lawyer's Deskbook and Directory 142 (State Bar of Mont. 2002). The index to the Local District Court Rules in the Deskbook indicates that local rules for the 9th, 16th and 22nd Districts were under revision at the time of publication and therefore unavailable. *Id.* at 134.

⁵ "It is not necessary to provide the citation to the Montana Reports if a Pacific Reporter citation is provided." *Id.* at 193.

⁶ The Sixth, Seventh, Eleventh, and Twenty-First Judicial Districts have this rule. 2002 Lawyer's Deskbook and Directory, *id.* at 157, 163, 170, 199.

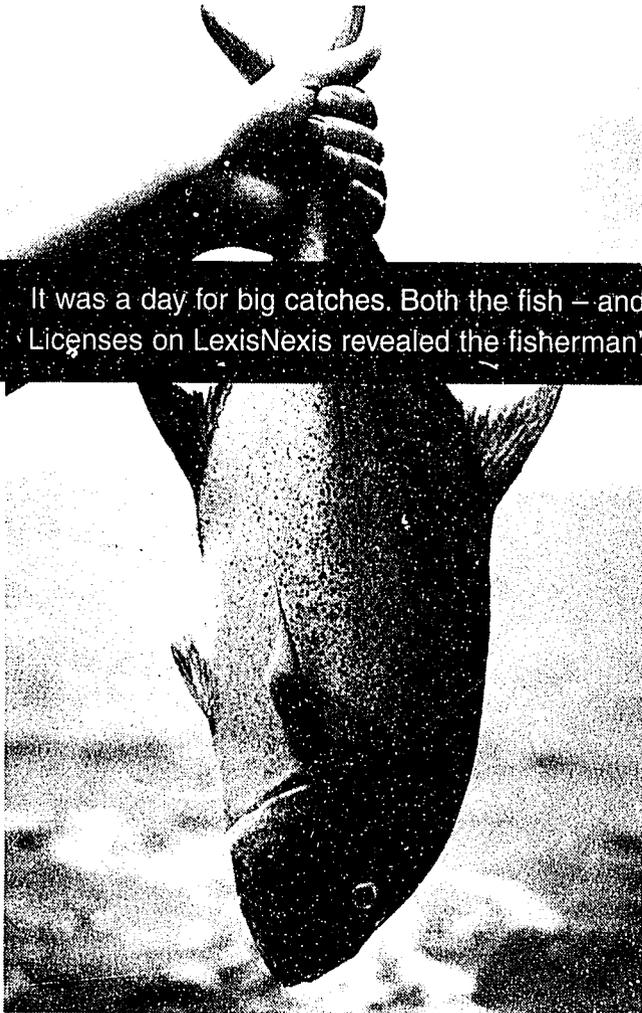
⁷ "All documents filed with the Court shall follow the citation form described in the current edition of the Association of Legal Writing Directors (ALWD) Citation Manual. . . "For any violation of L.R. 10.4, the Court in its discretion may return the document for correction." Mont. Fed. Dist. Ct. R. 10.4(a), (c).

⁸ Presumably, the exception to this is when you are citing international materials, such as treaties. International materials were not included in the 1st edition of the ALWD Citation Manual, but will be included in the 2d edition, which is scheduled to be published in 2003.

⁹ You can use the public domain citation to access opinions on the State Law Library's Montana Supreme Court Opinions website at <http://www.lawlibrary.state.mt.us/dscgi/ds.py/View/Collection-36>. Although public domain citations are only assigned to cases decided after January 1, 1998, the Supreme Court opinion database goes back as far as 1990. The database is also keyword searchable. In addition to the opinions, the database contains the briefs filed in the cases.

¹⁰ Make sure that you purchase the ALWD Citation Manual new instead of used. The first printing of the manual was in 2000, and the first several printings contained some printing errors. Most of the errors were minor, and were corrected in the later printings. In the last printing, there were still errors in the Montana Local Rule in Appendix 2, but those have been reported to the publisher and should be corrected soon if they have not already been corrected.

What can an attorney learn from a fish?



It was a day for big catches. Both the fish – and the fisherman. A search of the Alaska Fish & Game Licenses on LexisNexis revealed the fisherman's current address. A summons could now be served.

Surprisingly, one of the most reliable sources for honest information is a hunting and fishing license. Applicants almost universally seem to let down their guard. Perhaps they think no one will look up such an arcane document. They have no way of knowing that the fast, intuitive LexisNexis™ total research system offers you the Web's most extensive collection of public records – including a few among the 1.9 billion that some might call arcane. It's just one more example of how our service goes beyond cases and codes so that attorneys have a sporting chance. The LexisNexis total research system —
It's how you know.

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