Mastering the BlueBook to Become a More Persuasive Writer

In addition to writing their sentences well, effective legal writers think about how they use and cite legal authority in their writing. One part of this process includes learning the mechanics of citation, a task that law students begin their first semester of law school when introduced to the BlueBook. Good writers, however, also learn how to use citation **to persuade** by understanding the citation principles in the BlueBook.

So that you can navigate the BlueBook to become a more effective and persuasive legal writer you should:

- **CONSIDER THE SOURCE OF YOUR CITATION AND HOW IT SHOULD BE USED.**

A persuasive writer considers, when citing to supporting material, the source of the applicable law, whether the authority is binding or merely persuasive, and the credibility of the author or the authority cited. Your job, in advancing your client's position, is to persuade a court to follow precedent, distinguish it, or overrule it. To do this, you should determine whether your case is controlled by constitutional, statutory or common law or a combination and then the precedential weight of that authority in convincing the court.

Keep in mind:

- Constitutional provision or statutes: If there is a constitutional provision or a statute, either state or federal, directly at issue in your legal argument, it is your most persuasive authority.

- Common Law: If a motion is before a judge in the Circuit Court of Baltimore City regarding a matter of Maryland law and not involving a statute, plaintiff's memo citing a Louisiana case, even if factually on point, will generally have very little value to the presiding judge. Consider the following:

  Maryland Court decisions: Maryland courts generally will find that decisions issued from the Court of Appeals of Maryland and addressing issues of state law are most persuasive and must be followed by Maryland's lower courts. If the Court of Appeals has not addressed the particular issue that you are arguing, you may rely on an opinion from the Court of Special Appeals of Maryland as precedent.

Other State Court Decisions: A case from the highest court of another state supporting your position has persuasive value provided that it is good law and in accordance with the weight of authority. If you plan to rely on an out-of-state case, you should explain to the court why you are doing so (e.g., it's factually on point, represents a majority view, or has analysis that you think Maryland courts would be interested in adopting).

Trial Court Decisions: If the legal question is not resolved, trial court decisions supporting the proposition, if well-reasoned, may be persuasive.

Unreported Opinions: These are opinions that are available on the electronic research platforms, such as Westlaw, but are not considered "official" by the court issuing the opinion. (A disclaimer saying as such will accompany the opinion.) Maryland Rule 1-104(a) states that "[a]n unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority." There are limited exceptions when an unpublished case may be used as spelled out in Maryland Rule 1-104(b).

- Other Sources: There are many additional and valuable resources for determining the state of law on a particular issue. However, these sources should be used with caution:

    - Restatements and Comments. These authorities are controlling only if the particular section has been adopted in Maryland, but are generally persuasive.
    - Treatises and Texts. The persuasiveness of these authorities depends on the reputation of the author and publisher.
    - Legal Encyclopedias. Materials such as the Maryland Encyclopedia of Law, American Jurisprudence, and Corpus Juris Secundum should be used as secondary sources only. They may be cited in the following manner: "See cases collected at ... ."
    - Law Review Articles. These materials may be excellent research tools for finding primary authorities, but they may only have moderate persuasive value.

- **THINK ABOUT THE HEIRARCHY OF AUTHORITY, TIMELINESS & THE FACTS OF YOUR CASES (Rule 1.4)**

Typically, the higher the court that issued a decision, the more persuasive the citation will be to the reader. However, you also must consider the timing of a particular decision. A nineteenth century Court of Appeals of Maryland opinion may not be the most persuasive authority if a recent Court of Special Appeals case revisited the legal principles of that case. (Although the prior opinion should be cited to recognize its seminal value, it should not necessarily be the leading case you rely on.) Court decisions involving identical facts are, of course, the most persuasive. If a case involving identical facts cannot be found, a case involving similar material facts will be the most persuasive. In cases involving similar material facts, you must analogize the cases to prove that the material facts are similar. When the facts are not

similar, the authority is less persuasive, and the argument must establish that the facts are nevertheless sufficient to support the same holding.

Rule 1.4 recognizes that an authority that is "more helpful or authoritative than the other authorities within a signal," may be precede all other authorities. But Rule 1.4 also provides specific listings for how to order one's authorities generally: cases are generally arranged according to a hierarchy of court systems. Thus, when considering an issue of federal law, federal courts take precedence over state courts and the Supreme Court takes precedence over the federal courts of appeals and the federal district courts. State court decisions are listed alphabetically by state and then by rank within each state. If you are citing to more than one decision from the court, you would list the most recent case first.

Example:

> *Brown v. Board of Ed.*, 347 U. S. 483 (1954) ; *Caldera v. Alberici*, 153 F.3d 1381 (Fed. Cir. 1998); *Smith v. Tommy Roberts Trucking*, 435 S.E.2d 54 (Ga. 1993); *Davis v. City of Annapolis* 635 A.2d 36 (Md. Ct. of Spec. App. 1993);*Womble v. State*, 258 A.2d 786 (Ct. of Spec. App. 1969); *Miller v. City of Tacoma,* 979 P.2d 429 (Wash. 1999).

- **LEARN HOW TO INCORPORATE APPROPRIATE INTRODUCTORY SIGNALS (Rule 1.2)**

Using the correct introductory signal connects your text to your citation and demonstrates the importance and credibility of your cited authority. Examples include not using a signal at all, "see, e.g.," "Cf.," and "Contra." If done well, adding an appropriate introductory signal permits the reader to reach a certain conclusion to advance your client's cause. For example:

> Maryland courts will transfer a case when the presiding jurisdiction has no ties at all to the case. *Stidham v. Morries*, 161 Md. App. 562, 870 A.2d 1285 (2005).

Many Maryland courts have concluded that there is no reason to keep a case when the jurisdiction has no ties at all to it. *See, e.g., Stidham v. Morries*, 161 Md. App. 562, 870 A.2d 1285 (Ct. Spec. App. 2005) (transferring a case from Prince George's County to Baltimore County because of case's complete lack of connection to Prince George's County); *Brendsel v. Winchester Const. Co*., 162 Md. App. 558, 875 A.2d 789 (Ct. Spec. App. 2005) (same).

Typically if the Court finds some tie, even if nebulous, the court may consider not transferring the case. *See* Jones v. Jones, 162 Md. App. 570, 871 A.2d 1285 (2006) (suggesting a slight connection to the case and thus not transferring it); *but cf.*, *Stidham v. Morries*, 161 Md. App. 562, 870 A.2d 1285 (Ct. Spec. App. 2005).

- **ADD PARENTHETICAL INFORMATION WHEN APPROPRIATE (Rule 1.5)**

Incorporating parenthetical information can be quite effective. This additional information enables the writer to demonstrate the relevance of a particular authority. Often parentheticals bolster an argument by including substantive or explanatory material or even a direct quote.
Compare: *Jensen v. Wooley,* 386 S.E.2d 364, 368 (discussing liability waivers in rental agreements)

Ineffective.

With: *Jensen v. Wooley,* 386 S.E.2d 364, 368 (holding that a liability waiver in a rental contract is not enforceable if the risk factor "is not readily apparent to a reasonable lessee.")

Effective

- **PERSUADE WITH QUOTATIONS (Rules 5.1, 5.2 and 5.3)**

If used judiciously and sparingly, a quotation can be a very powerful tool of persuasion.

Rule 5.1: Quotation Formatting.

Quotations of fifty or more words should be indented on the left and right and quotation marks should not be used. The double indent substitutes for the quotation marks. If there are quotation marks in the block quote where what you are quoting also quoted some other decision, the original quotation remarks remain. Your citation to the block quote material follows the block quote on a separate line that is double-spaced from the block quote. If what you are quoting is at the beginning of a paragraph, you may also indent to reflect this. However, if you are not taking a quote from the beginning of a paragraph, you do not indent nor do you use ellipsis (. . .).

Quotations of forty-nine or fewer words should use quotation marks rather than block quote formatting. If you are quoting material that also quoted text, then you use a single quotation mark to indicate as such. Subject to a few rare exceptions, you do not indicate the original paragraph structure of the material quoted.

Commas and period should always be placed inside the quotation marks—other punctuation, such as questions marks, should not, unless they are part of the original text that you are quoting.

Rule 5.2: Alterations to Quotations.

It is perfectly fine to alter a quotation by substituting a different letter or word, so long as it does not alter its meaning, to better enable the flow of a quote or not distract a reader. You may also delete letters or words from a common root word. Substitutions or deletions are indicated by the use of brackets ("[ ]").

Example: "[P]ublic confidence in the [adversary system] depend[s upon] full disclosure of all the facts, within the framework of evidence."

Example: "Judgment[]"

Example: "[D]iscretion reposed in the trial court [to modify judgments] 'is a discretion which must be exercised liberally, lest technicality triumph over justice.' " *Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 408, 701 A.2d 405, 411 (1997) (*quoting Eshelman Motors Corp. v. Scheftel*, 231 Md. 300, 301, 189 A.2d 818, 823 (1963)).

Rule 5.3 Omitting words and indicating their omission with ellipses.

Good legal writers don't avoid the use of quote just because the quote is "too long." So long as the meaning of the quoted text is not significantly altered, omitting words and inserting ellipses contained within the quoted material is acceptable and indeed effective.

Compare

"It is imperative for the players of the judicial system to demonstrate the underlying integrity of the jury system by allowing expansive voir dire of the jurors."

With

"It is imperative . . . [for] the judicial system to demonstrate the . . . integrity of the jury system by allowing expansive voir dire. . . ."

Rule 5.3 provides additional rules regarding when you omit words at the beginning, middle and the end of a cited text and is worth examining when you wish to use a lengthy quote.

Caution: When making alternations to quotations, remember never to alter a quotation in a way that would change its meaning.