

Chapter 4: Citing Authority

Chapter Outline:

- ✓ § 4.1 Mandatory and Persuasive Authority
- ✓ § 4.2 Real World Citations
- ✓ § 4.3 Pinpoint Citations
- ✓ § 4.4 Star Pagination
- ✓ § 4.5 Authority and Citations

§ 4.1 MANDATORY AND PERSUASIVE AUTHORITY

Primary authority is law. Secondary authority is non-law. Non-authority is anything the court would not use in reaching its decision.

Primary Sources	Secondary Sources	Non-authority
<ul style="list-style-type: none"> · Constitutions · Statutes · Opinions · Treaties · Executive orders · Administrative rules · Administrative decisions · Rules of court · Charters · Ordinances 	<ul style="list-style-type: none"> · Am. Jur. 2d · C.J.S. · A.L.R. · Treatises · Legal periodicals · Legal dictionaries · Form books · State encyclopedias · Restatements of law · Any other non-law that is quoted 	<ul style="list-style-type: none"> · Digests · Shepard's · Invalid law · Headnotes · Indexes · Authority that is not on point

In this chapter the relationship between authority and citations will come full circle. An attorney, paralegal, or judge can look at a citation and, without even reading the case, know what kind of authority it would represent and how much potential weight it could carry (assuming the case is valid). However, the paralegal must first understand primary, secondary, mandatory, and persuasive authority.

Mandatory authority is any valid law from a higher level within the same jurisdiction as the court in which litigation is taking place. When primary authority is mandatory, the lower court must follow the ruling of the higher court.

Example § 4.1(a) | Mandatory Authority

Your attorney is arguing a matter in the Hawaii Circuit Court (a state trial court) and has found a case from the Hawaii Supreme Court. That case would be primary/mandatory authority, since the Hawaii Supreme Court is a higher authority than the Hawaii Circuit Court and in the appropriate jurisdiction.

Persuasive authority is any valid authority not from a higher authority, or an authority not within the jurisdiction of the matter being litigated. Secondary authority is always persuasive at best, since it is non-law.

Example § 4.1(b) | Persuasive Authority

Your attorney is arguing a matter in the Colorado Supreme Court. You find a case from the Colorado Court of Appeals. This case would be primary/ persuasive authority, since it is from a court lower than the court in which the matter is being argued.

Example § 4.1(c) | Persuasive Authority

Your attorney is arguing a matter in the Utah District Court (trial court) and you find an on-point case from the California Supreme Court. Even though the California Supreme Court is “higher” than the Utah District Court, it would be considered primary/persuasive, since the California court is not within the jurisdiction of the Utah court.

Possible Mandatory Courts

It may be helpful to view authority from another angle. Instead of looking at two possible authorities and their relationships to one another, identify the court in question and ask what courts might be considered mandatory.

Only courts *higher* than the court in which the matter is being litigated and within the appropriate jurisdiction could be considered mandatory authority. U.S. Circuit Courts of Appeals are mandatory on U.S. District Courts, because they are federal courts. (Remember, the U.S. Circuit Court of Appeals is one court that has been divided into different circuits.)

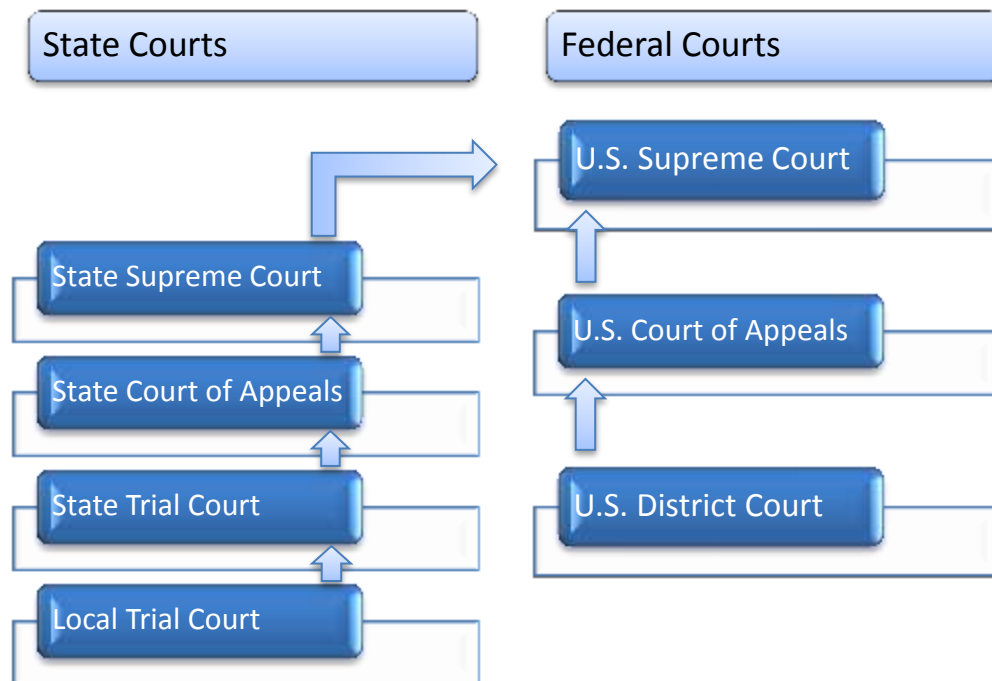
Assume the attorney is in the Colorado District Court, a state trial court. What court opinions could be considered mandatory on that court? What courts are higher with jurisdiction over that court? The list is very limited:

The Colorado Court of Appeals
The Colorado Supreme Court
The United States Supreme Court

That's it. Every other court, including all other state and federal courts, would be persuasive, at best.

Discussion Points § 4.1 | Mandatory Authority

1. *Would any relevant, valid case be considered primary authority?*
2. *May secondary authority be relied upon or quoted?*



Exercise § 4.1(a) | Mandatory Authority

What courts could be considered mandatory on the following?

1. The Virginia Circuit Court (a state trial court)
2. The U.S. Supreme Court
3. The New Hampshire Supreme Court
4. The U.S. Ninth Circuit Court of Appeals
5. The North Carolina Supreme Court
6. The U.S. District Court, District of Arizona
7. The California Court of Appeals
8. The Hawaii Circuit Court (a trial court)
9. A case from the Texas Reports
10. A case from the Nevada Reports
11. A case from the Federal Reporter
12. A case from the North Carolina Reports
13. A case from the Nebraska Supreme Court
14. A case from the Tennessee Court of Appeals
15. A case from the Federal Supplement
16. A case from the U.S. Reports, L. Ed. 2d

Exercise § 4.1(b) | Authority

Indicate which type of authority (of the types outlined below) is represented in the following examples. Unless otherwise indicated, the found authority is on-point.

Primary/Mandatory

Primary/Persuasive

Secondary/Persuasive

or

Non-authority

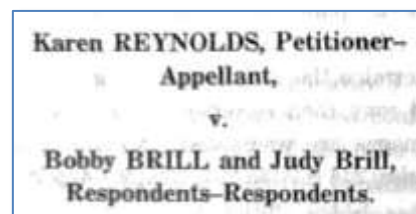
1. You are in the Circuit Court of Virginia, a state trial court. A case you have found is on-point and from the Virginia Supreme Court.
2. Your client's case is being heard by the Supreme Court of Colorado. The on-point authority you have found is a case from the Colorado Court of Appeals.
3. Your supervising attorney is involved with a trial in the Washington Superior Court, a trial court. You have located an on-point case from the Supreme Court of Georgia.
4. You are in the U.S. District Court. An on-point case is in the Federal Reporter, 2d.
5. Your client is involved in litigation in the U.S. District Court. Your attorney is relying on an on-point case from the Supreme Court of Texas.
6. You are in the U.S. Circuit Court of Appeals. The case you are relying on was found in the U.S. Reports and is on-point.
7. Your attorney is arguing a case in the Washington State Appellate Court. You have found on-point commentary in *Am. Jur. 2d*.
8. Your client has a case in the Third Circuit Court of Appeals. The relevant case you have researched is from the Ninth Circuit Court of Appeals.
9. Your case is in the U.S. Supreme Court. You are using an on-point case decided a year earlier by the U.S. Supreme Court.

10. Your supervising attorney is involved in litigation in the New Mexico Court of Appeals. You have found a case decided by the Tenth Circuit Court of Appeals that is on-point.
11. You have a case in the Colorado District Court, a trial court. You have found an invalid case from the U.S. Supreme Court that is on-point.
12. You are in the Alabama Appellate Court. The case you are relying on is from the Supreme Court of New Mexico. It is on-point.
13. You have a case in the California Supreme Court and are relying on an on-point case from the U.S. District Court, District of Southern California.
14. You are in the Washington Appellate Court. Your on-point authority is from the U.S. Supreme Court.

§ 4.2 REAL WORLD CITATIONS

In a law office, the paralegal will usually create a citation from the case itself. On the following pages, you are provided with the first page from several cases. Provide a complete and appropriate citation using the information provided. Some hints:

1. Check above the caption for any parallel citations. (If there is not citation above the caption, for this exercise you may assume that there is no parallel cite. If you were actually conducting research, you would want to use *KeyCite* on *Westlaw* or *Shepard's* on *Lexis* to make sure no parallel cite existed.)
2. Don't trust the citation form in the publication. They probably don't use *Blue Book* form.
3. For the title of the case, use the capitalized letters of the case, or use the title at the very top of the page. Capitalize the first letter of each word only.



Exercise § 4.2 | Real World Citations

Provide a correct *Blue Book* citation for the following case captions.

HEATHERRIDGE MANAGEMENT COMPANY v. BENSON Colo. 435	
Cite as, Colo., 558 P.2d 435	
HEATHERRIDGE MANAGEMENT COMPANY, Petitioner, v. Patrick BENSON, Respondent. No. C-756. Supreme Court of Colorado, En Banc. Dec. 6, 1976. Rehearing Denied Jan. 24, 1977.	of security deposit, treble damages, and attorneys' fees from landlord who allegedly wrongfully withheld security deposit, evidence supported finding that landlord's leasing agent released tenant from last two months of his lease obligation and had apparent authority to do so. C.R.S. '73, 38-12-103.
4. Landlord and Tenant ⇨184(2)	
In action brought by former tenant seeking recovery of security deposit, treble damages, and attorneys' fees from former landlord who allegedly wrongfully retained security deposit, evidence supported trial court's findings that tenant had provided	
Tenant brought action seeking recovery of security deposit, treble damages, and attorneys' fees from landlord who allegedly	

1.

JONES v. RCA MUSIC SERVICE 767	
Cite as 530 F.Supp. 767 (1982)	
Hayden Carl JONES v. RCA MUSIC SERVICE, et al. Civ. A. No. 81-4659. United States District Court, E. D. Pennsylvania. Jan. 27, 1982.	5. Damages ⇨50.10 Statements in record club collection letters that recipient was a member of, or owed money to, record club were not extreme and outrageous conduct or extraordinarily despicable so as to entitle recipient to recover on claim for mental distress.
Hayden Carl Jones, pro se.	

2.

58 **781 FEDERAL REPORTER, 2d SERIES**

an opportunity to correct any deficiencies in the NASD proceedings before issuing its final order.

S.E.C. v. WACO at 834.

The situation in the instance case, unlike *WACO*, involves a direct constitutional due process challenge by plaintiffs to the constitutionality of a rule adopted under 30 U.S.C. § 815. In effect, there is here a constitutional challenge to an enactment by Congress as interpreted through rulemaking by the Agency created by Congress to enforce the act which provides, inter alia,

Leon ALCORN, Petitioner-Appellant.

v.

Steve SMITH, Warden Kentucky State Reformatory, Respondent-Appellee.

No. 82-5623.

United States Court of Appeals,
Sixth Circuit.

Argued April 28, 1983.
Decided Jan. 9, 1986.

3.

930 **929 FEDERAL REPORTER, 2d SERIES**

to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Id.* The only question then is whether another New Jersey court would have allowed BQI to raise its federal claim in a subsequent state court action. We conclude that it would not.

Pursuant to the Entire Controversy Doctrine under New Jersey law, a plaintiff is precluded from litigating in a subsequent proceeding both claims that it actually litigated and claims that it could have litigat-

UNITED STATES of America, Appellee.

v.

Antonio DAVIS, Appellant.

No. 90-1755.

United States Court of Appeals,
Third Circuit.

Argued Feb. 26, 1991.
Decided April 2, 1991.

Defendant was convicted in the United States District Court for the Eastern Di-

4.

JASINSKI v. ADAMS **843**
Cite as 781 F.2d 843 (11th Cir. 1986)

tional violations to be vindicated pursuant to § 1983. *Baker v. McCollan*, 443 U.S. 137, 145, 99 S.Ct. 2689, 2695, 61 L.Ed.2d 433 (1979); *Sampley v. Ruetters*, 704 F.2d 491 (10th Cir.1983); *Wise v. Bravo*, 666 F.2d 1328 (10th Cir.1981).

Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982) stands for the rule that in any § 1983 action the question whether a police officer should be relieved of liability for a constitutional deprivation depends upon whether the officer acted in good faith, an issue to be determined within the context of the affirmative

Robert M. JASINSKI, Plaintiff-Appellee,
v.
R.A. ADAMS, Joe Mongiello, and
United States Border Patrol,
Defendants-Appellants.

No. 83-5176.

United States Court of Appeals,
Eleventh Circuit.

Feb. 3, 1986.

5.

130 Ga. **477 SOUTH EASTERN REPORTER, 2d SERIES**

ambulance for his step-mother who had been shot. When Seckinger took police to his apartment, they found Kersey nude in a partially filled bathtub with a gunshot wound to the back of the head. Seckinger gave several statements to police, in which he variously claimed that prowlers may have been involved, that he awoke after a nightmare to discover that the gun had gone off and she had been shot, and finally, that he had an argument with Kersey that night, shot her in the back of the head while she slept, and then put her in the bathtub and used a butcher knife to remove her clothes. At trial Seckinger testified that on the night of the shooting, he was returning from a walk when he saw a man running from the back door

222 Ga.App. 736
GENTILE
v.
BOWER.
No. A96A1125.

Court of Appeals of Georgia.
Sept. 12, 1996.

Purchaser brought action for breach of sales contract and fraud, alleging vendor made false representations regarding property. Vendor asserted counterclaim for bal

6.

<p>290 Neb. 434 NORTH WESTERN REPORTER, 2d SERIES</p> <p>230 Neb. 842</p> <p><u>1842</u> SECURITY STATE BANK, A Nebraska Banking Corporation, Appellant,</p> <p>v.</p> <p>Raymond L. GUGELMAN, Appellee.</p> <p>No. 87-308.</p> <p>Supreme Court of Nebraska.</p> <p>Jan. 13, 1989.</p>	<p>3. Appeal and Error ⇌1097(1)</p> <p>“Law of the case” is restricted to questions presented to and decided by Supreme Court at former hearing in case and questions necessarily involved in decision.</p> <p>See publication Words and Phrases for other judicial constructions and definitions.</p> <p>4. Appeal and Error ⇌1097(1)</p> <p>Decision of Supreme Court upon former appeal is controlling only as to point determined in that appeal.</p>
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7.

<p>782 Ala. 574 SOUTHERN REPORTER, 2d SERIES</p> <p>§ 12-15-13 is not applicable when alcoholic beverages are furnished to a person 19 years of age. See § 12-15-1(3), which does not include a person 19 years of age within the definition of a “child.”</p> <p>The summary judgment for the Batens was proper.</p> <p><i>Jeffrey Mitchell</i></p> <p>The plaintiff's theory of recovery against Mitchell is essentially the same as her theory.</p>	<p>WINN-DIXIE MONTGOMERY, INC</p> <p>v.</p> <p>Ben C. STIMPSON, et al.</p> <p>89-1092.</p> <p>Supreme Court of Alabama.</p> <p>Jan. 4, 1991.</p>
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8.

§ 4.3 PINPOINT CITATIONS

The following is a citation to a federal case:

Smith v. Jones, 930 F.2d 308 (8th Cir. 1998)

As you know, this case can be found in Volume 930 of the *Federal Reporter, second series*. The case begins on page 308. When citing a case in a document, as a courtesy to the reader, the author of the document should indicate the page on which the quote is located after the first page number. This is referred to as a pinpoint citation. Example:

Smith v. Jones, 930 F.2d 308, 315 (8th Cir. 1998)

The rule is that if the author cites one pinpoint, all parallel cites within the same citation must have pinpoints as well. A regular citation from a state case would read:

In re Jones, 98 Nev. 113, 351 P.2d 714 (1979)

An appropriate pinpoint citation would be as follows:

In re Jones, 98 Nev. 113, 115, 351 P.2d 714, 717 (1979)

Another form of pinpoint citation occurs after a quote in a memorandum or other legal writing. The rule is that an authority should be fully cited the first time it is mentioned in a document. The author may simply provide the *Id.* signal, and state where in that case the quote has been taken. For instance, if the following were a quote from a case that had been fully cited previously as *Smith v. Jones*, 584 F.2d 431 (4th Cir. 1989), the pinpoint would look like this:

...the court cannot provide relief when the Plaintiff fails to state a claim upon which relief can be granted.

Id. at 683

Exercise § 4.3 | Pinpoint Citations

Cite these cases using pinpoint citation form, assuming the quotation being cited is from the page in question.

1. Pinpoint this case to page 723.

716 Mo. 302 SOUTH WESTERN REPORTER, 3d SERIES

Karen REYNOLDS, Petitioner-Appellant,
v.
Bobby BRILL and Judy Brill, Respondents-Respondents.
No. SD 29700.
Missouri Court of Appeals,
Southern District,
Division Two.
Jan. 19, 2010.

stantial evidence, is against the weight of the evidence, or erroneously declares the law, applies in adverse possession cases.

3. Adverse Possession ¶13

To succeed on an adverse possession claim, the party claiming adverse possession must establish by a preponderance of evidence that possession was: (1) hostile and under a claim of right; (2) actual, open and notorious; (4) exclusive; and (5) continuous for a term of ten years.

1.

2. Pinpoint this case to pages 670 in the official, and 204 in the unofficial.

WILLIAMS v. MOODY
Cite as 697 S.E.2d 199 (Ga. 2010) Ga. 199

BROWN: He's done my cases before. He knows all about me, he's known me for about eight to nine years now and he knows all my family.

DETECTIVE: The quicker we get a grasp on things the better we will be able to more accurately answer any questions you might have.

This comment is clearly an express conditioning of answers to Brown's earlier questions concerning potential charges and bond upon his making an unsworn statement about

287 Ga. 665
WILLIAMS
v.
MOODY.
No. S10A0103.
Supreme Court of Georgia.
July 5, 2010.

Background: Prisoner petitioned for writ of habeas corpus in the Superior Court, Chatham County, Penny Haas Fressement. He was not afforded ef-

2.

§ 4.4 STAR PAGINATION

Assume that a paralegal has a case in the unofficial publication she wants to quote that begins on page 539, and assume the page the actual quote appears on is 545 (for the pinpoint). In order to be able to pinpoint that citation, both the initial page and pinpoint page in the official must be determined. How, then, can that page be determined? There are three ways.

1. The researcher can travel to the law library, look up the official, and locate the page on which the quote appears.
2. The researcher can look the case up in *Westlaw* or *Lexis* and locate the official publication, determining the correct page in the official.
3. The researcher can use star pagination, which is provided for in most unofficial reporters and in *Westlaw* and *Lexis*.

Star pagination allows the researcher to determine the corresponding official page while in the unofficial reporter. It is a system by which an unofficial publication indicates to the researcher what page the researcher would be on if the official publication had been available.

The researcher must be flexible, because the method varies. Sometimes it's as simple as a set of stars, such as: *115*. Sometimes it's a set of brackets: [115], or [343 U.S. 115]. In any case, these numbers refer to the page on which that reference begins in the *official* publication.

Star pagination is always found in an unofficial publication. Assume the

↓675 ARIZONA, Petitioner

above is from the Supreme Court Reporter by *West*. You are on page 248. The 675, above, indicates that had you been in the official U.S. Reports instead of the unofficial Supreme Court Reporter, the page would have been 675.

Following is an example of an unofficial reporter (110 S. Ct. 625). Within the page is a bracket that refers to the point where page 277 in the official publication (U.S. Reports) would begin. Notice that the wording after the bracket in the unofficial (S. Ct.) begins with the words "not only to the city but to..." Now refer to the page in the official. The beginning of that page contains the exact same words.

Unofficial Reporter

493 U.S. 278 **SPALLONE v. U.S.**
 Cite as 110 S.Ct. 625 (1990)

which the remedial decree was based. Although the injunctive portion of that decree was directed [277] not only to the city but to "its officers, agents, employees, successors and all persons in active concert or participation with any of them," App. 20, the remaining parts of the decree ordering affirmative steps were directed only to the city.¹

required by the court's obligation to set a standard for this investigation to the association.

Official Reports

SPALLONE v. UNITED STATES 277

Opinion of the Court

not only to the city but to "its officers, agents, employees, successors and all persons in active concert or participation with any of them," App. 20, the remaining parts of the decree ordering affirmative steps were directed only to the city.¹

It was the city, in fact, which capitulated. After the Court of Appeals had briefly stayed the imposition of sanctions in August, and we granted a stay as to petitioners but denied it to the city in September, the city council on September 9, 1988, finally enacted the Affordable Housing Ordinance by a vote of 5 to 2. While the District Court could not have been sure in late July that this would be the result, the city's arguments against imposing sanctions on it pointed out the cost of refusing that such sanctions would place on the city.

Lexis

the action, and they had not been found individually liable, which the remedial decree was based. Although [*277] not only to the city but to "its officers, agents, employees, successors and all persons in active concert or participation with any of them," App. 20, the remaining parts of the decree ordering affirmative steps were directed only to the city.

Westlaw

which the remedial decree was based. Although directed *277 not only to the city but to "its officers, agents, employees, successors and all persons in active concert or participation with any of them," App. 20, the remaining parts of the decree ordering affirmative steps were directed only to the city.

Typically, after the researcher has identified the page to cite in the official, it is not necessary to look up that case since it is identical to the unofficial.

§ 4.5 AUTHORITY AND CITATIONS

The paralegal who understands authority will be able to identify almost instantly the authority of a cited case. Assume, for example, that your attorney is involved in a case in the Tennessee Chancery Court (a state trial court.) You have located three on-point cases, featured below. What kind of authority would the following citations be to the Tennessee Chancery Court?

Smith v. Jones, 893 F.2d 493 (9th Cir. 1999)

Primary/persuasive, because of the difference between state and federal jurisdiction.

Keene v. Tyke, 476 S.W.2d 72 (Tenn. 1988)

Primary/mandatory, because the citation is from a higher authority within the jurisdiction.

Lamping v. Hayes, 287 P.2d 394 (Nev. 1981)

Primary/persuasive, because the case is from a different jurisdiction.

Exercise § 4.5 | Authority and Citations

What kind of authority would the following citations be on the North Carolina Court of Appeals (assuming all authorities are relevant)?

1. *Jackson v. Stewart*, 138 F.3d 198 (4th Cir. 1998)
2. *Gross v. State*, 372 N.C. 738, 634 S.E.2d 78 (1989)
3. *Britten v. Ventura*, 367 F. Supp. 1132 (E.D.N.J. 1977)
4. *Fremont v. Ferrar*, 473 U.S. 267 (1994)
5. *Peters v. Wilson*, 126 Utah 548, 384 P.2d 901 (1965)
6. *Corey v. Zane*, 231 Mich. App. 110, 463 N.W.2d 13 (1981)

CHAPTER 4 WRAP-UP

WHAT YOU SHOULD KNOW...

After reading this chapter you should know the following:

- What constitutes mandatory authority
- What constitutes primary authority
- Viewing only a case citation, be able to determine what kind of authority that case could be for your client's case
- How to create a citation based upon the caption of a case
- How pinpoint citations are created
- How to use star pagination
- The flow of state and federal courts, and how that relates to the concept of authority

ASSIGNMENTS

There are no assignments for this chapter.

