

WRITING BRIEFS WITH *Style*

It is easy to underestimate the value of proper citation form, but the consistent use of correct citation format in appellate briefs shows an attorney is accurate, organized, and professional. Also, being consistently correct in citation format enhances an attorney's credibility with the court, and ensures that use of unorthodox citation form will not detract the reader from the substance of the argument.

This article identifies and discusses the most frequently “used and abused” rules to enable attorneys new to appellate practice to become acquainted with the proper style and form. And, for the more experienced appellate attorney, the article will reinforce the command of those style rules, and perhaps highlight a few new ones. All rules discussed are applicable to brief-writing in the state appellate courts; federal (“blue book”) style rules are not discussed.

There are two sources that set the style standards for legal brief writing in the California courts. The first, the California Style Manual (CSM), is in its fourth edition and was approved and adopted by the California Supreme Court in 1999. The California Style Manual is available through West Group, 620 Opperman Drive, P.O. Box 64833, St. Paul, MN 55164 - 0833; (800) 328-9352, or via the internet at: <http://west.thomson.com/Default.asp> . It currently sells for \$16.95 (softbound) and is an essential component of the appellate practitioner's library.

The second source is the California Rules of Court. And because there are always questions of style that arise which are not specifically covered by either the rules or the CSM, the practices affecting appointed appellate counsel and recommended by CCAP have been included in this article.

The Rules Governing Appellate Briefs

1. Cover: All appellate briefs filed in or served on the Court of Appeal or the Supreme Court should be bound or stapled, and if stapled, the staples covered with black tape. All service copies should simple be stapled.

On the cover of the brief is the appellate court case number, with the superior court county name and case number placed to the right side of the caption. Centered beneath the caption is the title of the document and the name of the trial judge who rendered the judgment. At the bottom right corner is appellate counsel's name, California State Bar number, address, and telephone number. (Cal. Rules of Court, rule 8.204(b)(10).) Under this information should be a statement that the attorney is appointed by the Court of Appeal and designated as either an Independent or Assisted case.

2. Table of Contents and Table of Authorities: Each brief begins with a table of contents and a table of authorities. (Cal. Rules of Court, rule 8.204(a)(1)(A).) The table of contents should be on the first page of the brief, and the convention is to number using lower-case roman numerals “i, ii, etc.” because the rules permit the tables and brief to have separate numbering systems. (Calif. Rules of Court, rule 8.204(b)(7). It should be organized as follows:

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The statements of case, facts, appealability, and the conclusion are not preceded by roman numerals; only each individual argument heading is numbered. It should appear the same way in the body of the brief.

The table of authorities usually begins on page “ii” and should be divided into the following headings: cases, statutes, Constitutions, court rules, and other authorities. Cases (as well as statutes and other authorities) should be listed in alphabetical and numerical order. When listing the page number(s), if a reference appears throughout the brief, list the first page on which it appears, then the term *passim* (italicized).

3. Body of the Brief: The brief should be printed on plain white or unbleached, recycled paper. (Cal. Rules of Court, rule 8.204(b)(1).) The attorney’s name and address should not be on the first page of the brief. The first page numbered with arabic numbers should contain the case caption at the top, and continue on the same page with the statement of the case, followed by the statement of appealability. Page numbers should

appear at the bottom center of each page. The statement of facts, each numbered argument heading, and the conclusion should each start on a new page. Argument headings are numbered with capital roman numerals "I";"II"; etc.; subheadings are "A."; "B."; etc.; and sub-subheadings are "1."; "2."; etc. Never have an "A" without a "B", or a "1" without a "2." The last page of the brief should contain a signature block, including the attorney's name, address, and telephone number. Insert the word count certificate page before the proof of service page. For a petition for review, insert it after the conclusion and before the exhibit/Court of Appeal opinion.

4. Citations to Codes: When citing a code section in the text of the brief and outside parentheses, abbreviations are not used. (CSM, § 2:6.) The full code name is given, and the word "section" is spelled out; "section" is not capitalized. No comma is needed between the name of the code and the section number when the citation appears outside parentheses. Examples:

- **Penal Code section 459;**
- **Evidence Code section 701.**

When the code citation appears in parentheses, however, the code name is abbreviated and followed by a comma, and either a section sign is used ["§"], or section is abbreviated "sec." (CSM, § 2:6.) To preserve uniformity and avoid confusion, *all* references to subdivisions of code sections should use the word "subdivision" or within parentheses "subd." Examples:

- **Penal Code section 288, subdivision (a);**
- **Penal Code section 1203, subdivision (e)(5);**
- **(Pen. Code, sec. 288, subd.(a).);**
- **(Pen. Code, §1202, subd.(e)(5).)**

Note that a period precedes the closed parenthesis.

Follow the subdivision form found in the section. Examples:

- **Penal Code section 26, subdivision Five;**
- **Penal Code section 487, subdivision 1**

Follow the Legislature's enactment as to the use of parentheses or brackets with subdivisions. (CSM, § 2:7.)

Code citations which are parenthetically referenced should abbreviate the specific code. These code name abbreviations are found in section 2:8 of the CSM. (See item 10, below, for commonly used code name abbreviations.)

5. Citations to Constitutions: The rules regarding citation to the state and federal constitutions are the same. **The United States Constitution** (capitalized) is always referred to with that designation, or as **the federal constitution** (not capitalized). Parenthetically, it is abbreviated as **(U.S. Const., 14th Amend.)** or **(U.S. Const., art. I, § 5, cl. 3.)**. (CSM, § 2:2.) **The California Constitution** (capitalized) is referred to as such in text, or as **the state constitution** (not capitalized). Parenthetically, as a citation, both “California” and “Constitution” should be abbreviated, as are “article,” “section,” “subdivision” and “paragraph.” (CSM, § 2:3.) For example, **(Cal. Const. Art. XIII, § 28, subd. (f), par. (3).)**

6. Citations to Cases: The case citations rules have changed over time. Most notably, in California, full citations are italicized, including “v.”; “*in re*”; and “*ex rel.*”(CSM, § 1:1[B].) This marks a departure from the previous practice of italicizing only the names of the parties, and was undoubtedly fomented by the now-prevalent use of word processors. Not italicizing the “v.” in case names generated many additional keystrokes which the new rules makes no longer necessary. Worthy of mention here is that in the old days of typewriters, case names were underlined because there were no italics in the standard typewriter; accordingly, rule 8.204(b)(3) still permits it. However, since word processing equipment is the appellate industry standard, italics are now the standard. (CSM, § 4:39.)

The CSM now includes rules regarding the citation of computer based sources for recently filed opinions. (CSM, § 1:3.) After the opinion title, include the full date and docket number in parentheses. Provide blanks for the official citation only if the opinion is to be published. Then, in brackets, provide the on-line citation, such as Lexis, Westlaw, or the internet URL. Example:

- **(*Kaupp v. Texas* (May 5, 2003, No. 02-5636) ___ U.S. ___ [2003 U.S. LEXIS 3670].)**

When citing a case or other authority, or to the record, the citation should always be enclosed in parentheses at the end of the sentence. That is, the sentence should end with appropriate punctuation, followed by a double space, and then the citation, enclosed in parentheses. Example:

- **Appellant contends the impound was a pretext for a search. (*People v. Aguilar* (1991) 228 Cal.App.3d 1049.)**

The convention in appellate practice in California has been to leave out parallel cites such as the Pacific or Cal. Reporter. However, in the fourth edition, the CSM touts including parallel citations to one or both paper-based unofficial reporters as the “better practice.” (CSM, § 1:12.) All U.S. Supreme Court and out-of-state case citations should

include parallel cites enclosed in brackets. (CSM, § 1:32[B].) Examples:

- **(*Chapman v. California* (1967) 386 U.S. 18 [17 L.Ed.2d 705, 87 S.Ct. 824].);**
- **(*People v. Brittain* (1972) 52 Ill.2d 91 [278 A.2d 815].)**

In case names, the "v." should not be written "vs." Names of the parties should not be abbreviated. (E.g., *United States v. Hill*, not *U.S. v. Hill*.) The "Cal." and the "App." should not be abbreviated "CA." No space should appear between the "Cal.," the "App.," and the "3d." The year should appear after the case name, and the two are not separated by a comma. In federal cases, the parentheses contain the year and the court deciding the case. (CSM, § 1:1[D].) Examples:

- **(*People v. Davis* (1988) 202 Cal.App.3d 1009.);**
- ***United States v. Miller* (9th Cir. 1985) 675 F.2d 123;**
- ***United States v. Burns* (N.D. Cal. 1983) 555 F.Supp. 345.**

7. Citations to the Record: Under the third edition of the CSM, citations to the record were to appear in parentheses at the end of a sentence and the record was to be referred to as "C.T." and "R.T.", or for augmented transcripts "A.C.T." and "A.R.T." with the page designation following, with a space between the record cite and the page number, and a period following the page numbers, e.g. (C.T. 22-23.) However, "CT", "RT", "ACT" and "ART" (without the periods) have become commonly accepted.

8. Italics: The modern tendency is to italicize words in text as little as possible. An exhaustive list of words that should not be italicized, as well as one of those that should be italicized, is included at section 4:36[B] & [C] of the CSM. As a general rule, however, the more obscure foreign terms are italicized, while the more common terms are not.

9. Previously Cited Material – Use of *supra* / *Id.* / *Ibid.*: When a case has previously been cited in full, subsequent references may use the term "*supra*" in place of the year. Example: (*People v. Davis, supra*, 202 Cal.App.3d at 1011.) (CSM, 1:2[B].) In comparison, "*Id.*" is used to repeat the parent citation where there are no intervening citations **and** there is a change in the page number referred to. Example: (*Id.* at 1012.) Finally, "*Ibid.*" is used to repeat the parent citation when there are no intervening citations **and** no changes of any kind. Example: (*Ibid.*) (CSM, § 1:2[C].) Note that "*supra*", "*Ibid.*" and "*Id.*" are always italicized. (CSM, § 4:39[B].)

10. Abbreviations: The following is a list of commonly used citations and their abbreviations within parentheses:

- Rules: **California Rules of Court, rule 8.304(b)(1); (Cal. Rules of Court, rule 8.304(b)(1).)** (CSM, § 2:18.)
- Recently Filed Opinions: **(*People v. Williams* (9/4/92) ___ Cal.App.4th ___ [92 DJDAR 12447].)** (CSM, § 1:18.)
- Jury instructions: **“CALJIC Nos. 3.34, and 8.77 (4th ed. 1979), previously required”;** (CALJIC No. 7.08 (4th ed. 1979).) (CSM, § 3:5.)
- Emphasis: **(*People v. Howard* (1992) 1 Cal.4th 1132, emphasis added.)** or, **(*Id.* at 1140, emphasis omitted.)** (CSM, § 4:27.)
- Citation omitted: **“This is the general rule. [Citation.] But,”** (CSM, § 4:13[F].)

The following is a list of commonly used codes and their abbreviations when used within parentheses (CSM, § 2:8.):

- Civil Code – **(Civ. Code)**
- Code of Civil Procedure – **(Code Civ. Proc.)**
- Evidence Code – **(Evid. Code)**
- Family Code – **(Fam. Code)**
- Government Code – **(Gov. Code)**
- Health and Safety Code – **(Health & Saf. Code)**
- Insurance Code – **(Ins. Code)**
- Penal Code – **(Pen. Code)**
- Vehicle Code – **(Veh. Code)**
- Welfare and Institutions Code – **(Welf. & Inst. Code)**

11. Capitalization: Names of people should not appear in all capitals, but should be written in the normal combination of capital and lower case letters. The words appellant, respondent, court, superior court, municipal court, judge, district attorney, public defender, sheriff, police officer, petitioner, information, count, article, section, rule, exhibit, order, equal protection, due process, a.m., and p.m. are not capitalized unless as the first word of a sentence or citation. (CSM, §§ 4:3 & 4:5.) However, exceptions apply when the full or formal title is used in conjunction with the name. Compare:

- **Sacramento Police Officer Jones**
- **Jones, a Sacramento police officer**

Although reference to a court is capitalized when a full or formal name is used, i.e., **California Supreme Court, Fifth District Court of Appeal**, do not capitalize a

partial or general reference to a court:

- **The Supreme Court has decided the issue.**
- **The state’s high court has decided the issue.**
- **The Fifth Appellate District has decided the issue.**
- **The appellate court has decided the issue.**
- **Court of Appeal** however, is still capitalized.

Generally, do not capitalize reference to a party in the text of a brief even when the designation is combined with a name:

- **Mr. Smith represented appellant Jones at trial.**
- **The respondent misreads the record.**

Capitalize official titles of statutes, some popular names, and government programs (CSM § 2:34):

- **Crime Victims Justice Reform Act (Prop. 115)**
- **California Law Enforcement Telecommunications System (CLETS)**
- **Domestic Violence Prevention Law**
- **“Three Strikes” law (quotation marks omitted after the first use**
- **Lanterman-Petris-Short Act (LPS)**

Do not, however, capitalize familiar doctrines such as the **statute of limitations** or **res ipsa loquitur**:

- **Capitalize “Internet,” “Web,” and “World Wide Web.”**
- **Note that “Web site” is two words and “site” is not capitalized.**

Adding a number to a common noun such as “exhibit” or “appendix” does not create a proper noun. For that reason, do not capitalize counts in a complaint or information. Follow the numbering style used in the complaint or information when referencing its paragraphs or counts:

- **count one**
- **count I**
- **exhibit A**
- **appendix B**

The correct use of CAPITALS in headings and subheadings gives visual appeal to a brief. Use the same style for all headings at the same level and different styles to distinguish different levels. If, for example, the first heading is all capital letters, make the next lower heading different by italicizing it, or capitalizing only the important words. When using capitals for the important words in a heading or subheading do not capitalize articles, coordinating conjunctions, prepositions of fewer than five letters and words separated by a connective hyphen:

**I. APPELLANT’S FIRST DEGREE MURDER
CONVICTION MUST BE REDUCED TO
VOLUNTARY MANSLAUGHTER; THE EVIDENCE
IS INSUFFICIENT TO SHOW HE ACTED WITH
DELIBERATION AND PREMEDITATION**

A. The Legal Standard for Evaluating Substantial
Evidence Claims on Appeal

12. Quotations: Quoted material may use the same line spacing and margins as the rest of the text, or may block indented (both left and right margins) and single spaced. (CSM, § 4:20.) If block indented, quotations marks are not used unless there is a quotation within the material. The citation is not indented, and is placed at the left-hand margin of the next line after the quote. The rules governing the use of ellipses and omissions are set forth in section 4:13 of the CSM. Recommended: indent quotations longer than two lines in a brief.

13. Numbers: The rules governing the use of numbers are extensive, but when a conflict exists, the more specific rule is to be followed. (CSM, § 4:28.) Generally, copy should be used verbatim, including numbers. When a sentence starts with a number, the word, rather than the number, is used. Numbers one through nine are spelled out. Numerals are used for 10 and above. Figures should be used in tabular work. When one number follows another in a sentence, a comma should be used to separate them and consistency maintained – all spelled out, or all numerals adopted. Where two numbers describing the same item occur together, one should be expressed with a figure to avoid confusion (e.g. six \$5 bills or five 5-year terms).

14. Dates and Time: In text, use numerals for dates and spell out holidays. When only the month and day are used, the preferred form is July 28, but July 28th or the 28th of July may be used. If the year is added, then July 29, 2003, should be used. (CSM, § 4:29.) In setting forth a time, a.m. and p.m. are not capitalized, and 12:00 noon is preferred to 12 noon. (CSM, § 4:30.)

And, in delinquency cases, Welfare and Institutions Code section 602 appeals, the cover should appear as follows:

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE _____ APPELLATE DISTRICT

IN RE JOHN C.)
A Person Coming Under the)
Juvenile Court Law)
_____)

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,) 3 Civ. C000000
)
v.) _____ County
) Superior Court
JOHN C.,) No. _____
)
Minor and Appellant.)
_____)

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF _____, JUVENILE DIVISION

Honorable _____, Judge

APPELLANT'S OPENING BRIEF

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Appointed by the Court of Appeal
on an Assisted/Independent Basis

A supplemental section 602 proceeding under section 777 (probation revocation or change in placement) is initiated by the probation officer who is then substituted as plaintiff and respondent. [E.g., . . . HAROLD HELP, as Chief Probation Officer, Plaintiff and Respondent, etc.] (CSM, § 6:36.)

In section 600 cases the minor is designated as the **minor or appellant**, not “defendant”; it is a **petition**, not an **information**; a **detention hearing**, not an arraignment; a **disposition hearing**, not sentencing; a **commitment** (or disposition), not a sentence.

16. Victim’s Names: The last names of living victims of sex crimes and minors innocently involved in appellate court proceedings are not used. Instead, refer to them by their first name and last initial, or by their status in the litigation. (CSM, § 5:09.)

17. Juror’s Names and the Names of Witnesses subjective to a Protective Order of Nondisclosure: Juror personal identifying information is sealed, as can be the identities of victims or witnesses. Care must be taken to avoid the use of their names. (CSM, § 5.12; Fifth District Written Policy/Feb. 2003.) If a violation of this rule is detected, counsel is to notify the Court of Appeal immediately, so that the court can order the parties to return the affected pages of the transcript to the clerk for redaction.

18. Race and Gender Designations: A relatively new section describes correct racial, ethnic and gender designations and a preference for gender-neutral language. The race or ethnicity of an individual should only be mentioned if it is necessary to the discussion. The references should normally track the identification terms in the record and the most specific term is to be used. For example, use Salvadoran rather than Hispanic if that information is in the record. (CSM, § 5:1[A].) Because the repeated use of paired masculine and feminine pronouns – “he or she”, “him or her”– is cumbersome, six strategies to avoid the necessity of gender designation are suggested. (CSM, § 5:1[B].)

There are times that the California Rules of Court and the CSM do conflict. For example, the Rules of Court still permit the underscoring of case names, while the CSM while the CSM requires the use of italics. (Cal. Rules of Court, rule 8.204(b)(3); CSM, § 1:1[B].) Overall, however, the California Rules of Court and the CSM set the style standards for appellate practice, and a strong command of the rules will help appellate counsel demonstrate his or her professionalism to the appellate court.