

CHAPTER 4

CITING AUTHORITY

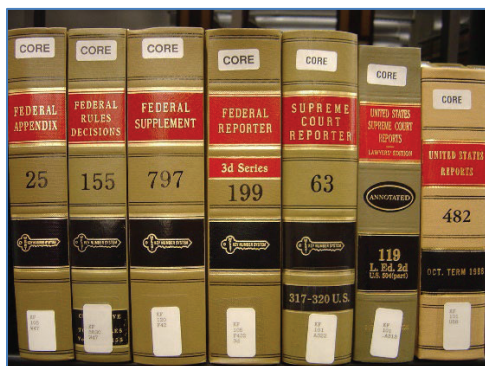
Chapter Outline

VOLUME 2, CHAPTER 4

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

ASSIGNMENTS

There are no assignments for this chapter.



Chapter 4 Introduction

FIRST IMPRESSIONS

Some things can be learned, while other things must be experienced. One of the purposes of this textbook is to help you learn from the experiences of previous paralegals so you can avoid pitfalls.

It may not seem fair, but first impressions with attorneys can be career limiting. Conversely, they can also be career expanding.

When it comes to first impressions, think of attorneys like baby ducks. When the ducklings first hatch, they will imprint on the first thing they see. This is usually their mother, of course, but it can also be another duck, or even a human. Likewise, an attorney often “imprints” on the first time he or she asks a paralegal to perform a task or reviews a paralegal’s work product.

If the task has been done well, that is great news. If the work product has just a couple of minor problems, fine. But if the paralegal performs a task poorly, or turns in work product that is not of good quality and shows a lack of effort, that attorney may not use the paralegal for those types of duties again. At least for a long time.

This dynamic applies to citations. If you turn in work that includes inaccurate citation form, an attorney may well pigeon-hole you. Right or wrong, a poorly crafted citation may mean, in the attorney’s eyes, that you don’t understand research, law books, or even court structure. It’s an instant judgment that is not fair, but may stick in the lawyer’s mind. So study citations well. When it comes to citation form, first impressions matter.

IN THIS CHAPTER . . .

MANDATORY AND PERSUASIVE AUTHORITY

PINPOINT CITATIONS

STAR PAGINATION

§ 4.1

Mandatory and Persuasive Authority*How Much Weight?***CRITICAL SKILL-SET**

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 OF 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 court, or an authority not within the jurisdiction of the matter being litigated. Secondary authority is always persuasive at best since it is non-law.

PRIMARY - SECONDARY - NON**Sources of Authority****SOURCES OF PRIMARY AUTHORITY**

- Constitutions
- Statutes
- Opinions
- Treaties
- Executive orders
- Administrative rules
- Administrative decisions
- Rules of court
- Charters
- Ordinances

SOURCES OF SECONDARY AUTHORITY

- 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

SOURCES OF NON-AUTHORITY

- Digests
- Shepard's
- Invalid law
- Headnotes
- Indexes
- Authority that is not on point

EXAMPLE 1 OF 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 2 OF PERSUASIVE AUTHORITY

Your attorney is arguing a matter in the Utah District Court (a 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

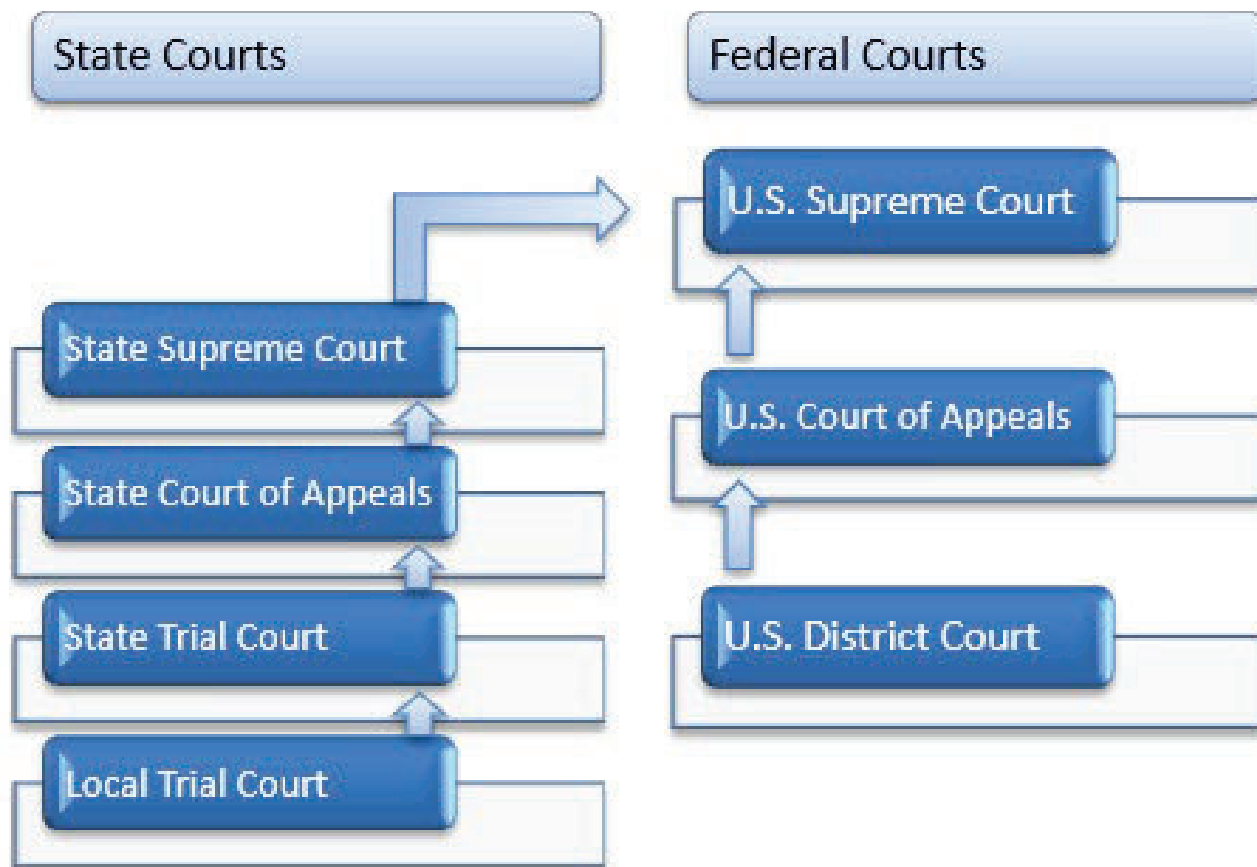
It may be helpful to view authority from another angle. Instead of looking at two possible authorities and their relationships to one another, identify the court in question and ask: what courts might be considered mandatory?

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.

**EXERCISE 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 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
Secondary/Persuasive

Primary/Persuasive
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.

Primary/Mandatory
Secondary/Persuasive

Primary/Persuasive
Non-authority

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.

Primary/Mandatory
Secondary/Persuasive

Primary/Persuasive
Non-authority

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.

Primary/Mandatory
Secondary/Persuasive

Primary/Persuasive
Non-authority

4. You are in the U.S. District Court. An on-point case is in the Federal Reporter, 2d.

Primary/Mandatory
Secondary/Persuasive

Primary/Persuasive
Non-authority

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.

Primary/Mandatory
Secondary/Persuasive

Primary/Persuasive
Non-authority

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

7. Your attorney is arguing a case in the Washington State Appellate Court. You have found on-point commentary in *Am. Jur. 2d*.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

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.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

14. You are in Washington's Court of Appeals. An on-point case is from the U.S. Supreme Court.

<i>Primary/Mandatory</i>	<i>Primary/Persuasive</i>
<i>Secondary/Persuasive</i>	<i>Non-authority</i>

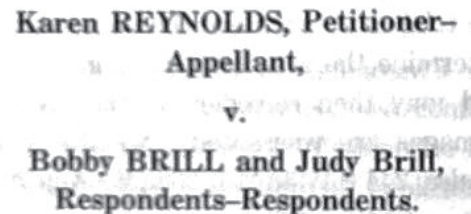
§ 4.2

Real World Citations

Citing Actual Cases

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 no citation above the caption, for this exercise you may assume that there is no parallel cite. If you were conducting research for a real client, you would want to use *KeyCite* on *Westlaw* or *Shepard's* on *Lexis* to make sure no parallel cite existed.)
2. Do not trust the citation form in the publication. It is likely not *Bluebook* 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. But when you write your citation, capitalize only the first letter of each word.



Karen REYNOLDS, Petitioner-Appellant,
v.
Bobby BRILL and Judy Brill,
Respondents-Respondents.