

## V. FOOTNOTE FORM

### A. The Fine Print

No literate person can possibly be disturbed by a little small type at the bottom of a page, and everyone, professional and lay readers alike, needs to know on occasion the credentials of a fact. Footnotes also provide an exceedingly good index of the care with which a subject has been researched.<sup>1</sup>

Footnotes<sup>2</sup> are endemic to legal writing because footnotes make writing look impressive and, more importantly, “legal.” Lawyers attempt to awe readers with massive footnotes designed to convey their superior knowledge. Humbled by the display, readers rarely read the footnote itself. The proud string of sources, the pithy text, the cryptic italicized Latin all intimidate readers into believing the authority of legal writers without questioning anything that has been said. Additionally, writers feel a real thrill in being able to ramble at the reader's expense.<sup>3</sup> A footnote can be a way for the writer to mumble to himself, protest the failings of modern society, and generally brandish the lofty banner of erudition.

Unsurprisingly, footnotes can annoy readers. Footnotes, however are a necessary evil. There is no better way for readers to know the credentials of a fact or idea. As a discerning journal writer and reader you must determine which footnotes are useful and informative versus extraneous and simply annoying. The latter should be dropped. When trying to decide whether to drop a footnote, use the following rules as a guide:

1. While footnotes can add to a fuller understanding of an article's subject matter, nothing that is absolutely essential to the article's analysis should be put into the footnote. If you do not have the guts to put the material in the text, then you probably do not understand the material or its relevancy

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<sup>1</sup> B. BOB GALBRAITH, *A Note on Sources*, in *THE GREAT CRASH* (1972). Oddly enough, Galbraith used no footnotes in his own work.

<sup>2</sup> **Note:** While this entire section is on footnotes, you will almost exclusively be working with endnotes as an ELJ member (e.g. while writing your note, editing other's notes and articles, etc.). The major difference between the two is their placement in the document; endnotes follow all text while footnotes, such as this entry, are at the foot of the text. However, when *ELJ* is published all the endnotes you dealt with become footnotes for the final publication.

<sup>3</sup> In the case of judicial opinions, the rambling is at the taxpayer's expense. In this footnote, the rambling is at your expense. Notice how a rambling footnote, like this one, breaks the reader's concentration. The reader loses the point of the main text before the footnote finally ends.

2. You must use a footnote to document everything except an idea or theory you created or that is common knowledge. If you follow this suggestion and still generate thousands of footnotes, you have not thought about what you are writing and probably have not talked to your roommate in weeks. Do not document the obvious.<sup>4</sup>
3. Footnotes should tell the reader where you got the information. The note you write can be a research tool for somebody else who might someday be thinking about the same problem. Your footnotes should answer every legitimate question that somebody else might have. Footnotes are also a good place to distinguish one source from another and point out disagreements among authorities.

## B. Footnote Form

Perhaps the most difficult aspect of journal style is mastering the complex rules of citation. The reputation of *The Elder Law Journal* heavily rests on your knowledge of these citation rules. Because mastery of the citation rules is necessary not only for writing an exemplary note, but also for cite checking and proofreading accurately, members are urged to familiarize themselves with *The Bluebook*.<sup>5</sup>

*The Bluebook's* index is very thorough and should serve as an easy guide to the intricate rules. Also, the inside front cover contains model citation forms for the more frequently cited authorities. While complaints about the complexity of *The Bluebook* are common, frequent use will pierce the shroud of mystery that surrounds *The Bluebook*.

Past experience has shown us which mistakes journal members commonly make. New journal members frequently overlook important citation rules. Further, *The Elder Law Journal* uses some citations that are not found in *The Bluebook*. The following lists contain some of these rules. Please pay close attention to those rules concerning Illinois materials that are unique to *The Elder Law Journal*.

### 1. Citation of Cases. BB R. 10.

- a. *Abbreviations in case names.* BB R. 10.2.1(c), 10.2.2.

*Always* abbreviate any word listed in Table T.6 (BB at 430 – 31).

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<sup>4</sup> The dictionary defines "obvious" as "easy to see or understand; evident." WEBSTER'S NEW WORLD DICTIONARY 296 (compact school and office ed. 1967).

<sup>5</sup> THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 19th ed. 2010) [hereinafter BB].

*b. Citation of case reporters.* BB R. 10.3. See BB at 215 – 77 tbl. T.1 (the United States jurisdictions table, which gives official reporters and abbreviations for federal and state jurisdictions).

i. When citing to a U.S. Supreme Court case, use only the "U.S." cite. See BB at 215. If the "U.S." cite is not yet available, use the "S. Ct." cite.

ii. Federal court cases. BB R. 10.4(a). Cite to "F. Supp." or "F.2d" (or "F.").

iii. State court cases. BB R. 10.4(b). For all state cases, cite only to the regional reporter. BB R. 10.3.1(b).

**IL Supreme court cases:**

People v. Roe, 357 N.E.2d 465, 466 (Ill. 1977).

**Appellate court cases:**

People v. Roe, 358 N.E.2d 57, 58 (Ill. App. Ct. 1977).

iv. Pay close attention to proper spacing. See BB R. 6.1(a). Thus, "F.2d," "P.2d," "S.W.2d," "N.E.2d," but "So. 2d."

*c. Date or year.* BB R. 10.5. When a single case has several different decisions in the *same year*, include the year only with the last-cited decision. *United States v. Eller*, 114 F. Supp. 384 (M.D.N.C.), *rev'd*, 208 F.2d 716 (4th Cir. 1953), *cert. denied*, 347 U.S. 934 (1954). If the exact date of decision is required in either case, however, include both dates. *United States v. Simmons*, 248 F.2d 181 (5th Cir. 1957), *petition for cert. filed*, 26 U.S.L.W. 3172 (U.S. Nov. 15, 1957) (No. 56-625). BB R. 10.5(c). If citing to material in a topical service, give the exact date for a looseleaf service and the year for a bound service. BB R. 19.1(d).

*d. Prior and subsequent history.* BB R. 10.7. When citing a case in full, always give the subsequent history. Only give prior history if it is significant to the point or if the disposition cited does not intelligibly describe the issues.

*e. Abbreviation of circuit and district numbers.* Use the following designations: 1st, 2d, 3d, 4th, 5th, etc. Thus, *White v. Gravens*, 452 F.2d 1103 (3d Cir. 1972).

*f. Geographical abbreviations.* See BB at 436 – 37 tbl. T.10.

## 2. Citation of Statutes. BB R. 12.

- a. BB R. 12.2.1 tells you which source to cite for statutes. Cite statutes to the current *official* code or its supplement, to the current preferred unofficial code, or to some other current unofficial code before citing to official session laws. Do *not* give parallel citation. Example:
  - i. Public Utilities Act, 220 ILL. COMP. STAT. 5/5-201 (West 1992).
- b. Never use "*et seq.*" when citing to consecutive sections or subsections of a statute; always give the inclusive section numbers. BB R. 3.3(b).
- c. See BB at 215 – 77 tbl. T.1 for proper citation forms for federal and state statutes. These rules can be very tricky; pay close attention to when a pocket part must be cited.

## 3. Citation of Periodicals. BB R. 16.

The periodical abbreviations are listed in the BB at 444 – 67 tbl. T.13 . Use these abbreviations for any periodical that you cite.

## 4. Structure of Citations. BB R. 1.

- a. Use introductory signals like "*see*" and "*cf.*" to indicate authorities that do not identify the source of a quotation or identify an authority in the text. Note that there is a rigid order to the signals and to the authorities within each signal. See BB R. 1.3, 1.4.
- b. "*See*" is *not* always italicized. Italicize "*see*" only when it is used as a signal. When using "*see*" as a verb, in an ordinary sentence, however, do not italicize it. See BB R. 1.2(e). Example:
  - i. For an expanded discussion of this issue, see John Q. Public, *The Constitutional Right to a Psychiatric Expert*, 89 YALE L.J. 802, 809-12 (1980).
  - ii. See John Q. Public, *The Constitutional Right to a Psychiatric Expert*, 89 YALE L.J. 802, 809-12 (1980).
- c. Parenthetical explanations following case citations are encouraged when string cites are used or the cited authority does not directly support the proposition. BB R. 1.5, 10.6. In some situations, *The Bluebook* requires parenthetical information. BB R. 10.6. Works discussed by the cited primary authority should be indicated

parenthetically in parentheses, and works that discuss a primary authority should be appended to the citation.

Ex.: National League of Cities v. Usery, 426 U.S. 833, 840 (1976) (quoting Fry v. United States, 421 U.S. 542, 547 (1975)), *distinguished in* Hodel v. Virginia Strip Mining Ass'n, 452 U.S. 264, 270 (1981).

Always indicate, in parentheses, citations to dissenting or plurality opinions even if the nature of the opinion is indicated in the text. Ex.: Parker v. Randolph, 442 U.S. 62, 84 (1979) (Stevens, J., dissenting). BB R. 10.6.1.

Do not punctuate the end of a sentence inside parentheses unless quoting a complete sentence or using "?".

#### 5. Short Citation Forms. BB R. 4.

- a. Use "*id.*" if citing to the immediately preceding authority. "*Id.*" can only be used to cite to the immediately preceding footnote when there is only one authority in the preceding footnote.
- b. Use of "*supra.*" BB R. 4.2(a). "*Supra*" is never used with case or statute short forms.

If a writer fully cites an authority other than a case or statute, then subsequent footnotes to the same authority may use *supra* (e.g., WALTERS, *supra* note 5, at 47). Writers should use the "hereinafter" form when using a writer-created short citation form. See BB R. 4.2(b).

Writers should study the rules for short citation forms closely because these forms are used frequently.

- c. *The Bluebook* lists several alternative forms for the short case citations. BB R. 10.9. The best short form is: *Calandra*, 414 U.S. at 343. In law review footnotes, a short form may be used for a case only if the case "can be readily found" in one of the five preceding footnotes. The use of the short form will always be appropriate if one of the five preceding footnotes only contains the citation to that case. See BB R. 10.9 for the appropriate use of "*id.*" with cases and more information and examples.
- d. Any use of short citation forms should use the same typeface as the original citation. For example:

**Original citation:** HUMAN RIGHTS WATCH, OLD BEHIND BARS: THE AGING PRISON POPULATION IN THE U.S. 4 (2012) [hereinafter OLD BEHIND BARS], *available at* [http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf).

**Short citation form:** OLD BEHIND BARS, *supra* note 3, at 6.

## 6. Quotations. BB R. 5.

- a. An ellipsis, indicating omission of material, contains three periods ("..."). Indicate omission of material immediately before or after a sentence's period by inserting three additional periods at the appropriate location, using proper spacing as specified in the rule. BB R. 5.3.
- b. NEVER begin a quote with an ellipsis.
- c. Indent and single-space a quote only if it contains fifty or more words. BB R.5.1(a), (b). , Do not use quotation marks. Do *not* indent the citation; place it at the left margin on the line immediately following the quotations. This applies even if the citation is simply "*Id.*"
- d. Do not use an ellipsis at the end of a quotation used as a phrase or clause. BB R. 5.3(a).

## 7. Citation to Particular Pages or Footnotes. BB R. 3.2.

Note that you should never use "p." as an abbreviation for "page." Simply put the page number in the citation. BB R. 3.2. *E.g.* Jane Q. Public, *Municipal Bankruptcy*, 84 YALE L.J. 918, 966 (1974).

## 8. Typeface. BB R. 2.

To handwrite indications for large and small capitals and italics, *The Elder Law Journal* uses the following scheme of underlining:

- a. W. Prosser, Law of Torts (small capital letters)
- b. See, e.g., supra (italics)

Thus, to indicate large capitals, underline a letter three times. To indicate small capitals, underline a letter twice. To indicate italics, underline a letter once. All writers are required to use these conventions in all drafts.

### 9. Cross-references. BB R. 3.5.

*The Elder Law Journal* does not cross-reference to text within an article by use of page numbers. This practice would require costly changes at the revised page proof stage of the printing process. *The Elder Law Journal* cross-references by use of footnote numbers.

To refer to text, use the following convention:

*See supra* text accompanying notes 103-15.

To refer to both text and footnotes use:

*See supra* notes 103-15 and accompanying text.

If no footnote number appears at the beginning or end of the portion of the text being cross-referenced, refer to the nearest footnote number either before or after the beginning or the end, as long as the reference will not be misleading or confusing. Also, a cross-reference to text includes a general reference to the footnotes accompanying that text. Writers need not make further reference to footnotes unless footnote material is especially important.

To refer to footnotes only, use the following conventions:

*See supra* notes 21-24.

*See cases cited supra* note 38.

*See infra* notes 21-24.

*See cases cited infra* note 38.

Numerous cross-references indicate poor organization and distract the reader. Therefore, all writers should minimize their use of internal cross-references by carefully organizing their arguments.