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A Tour Through the New Writing Manual

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A Tour Through the New Writing Manual

The Ohio Supreme Court has recently published its first Writing Manual, a project it has been working toward for the past 20 years. In 1992, when issuing an interim edition to the Manual of Citations, the reporter’s office said that it soon planned to issue a more comprehensive version with a section on grammar. Instead, the court supplemented the manual in 2002. So, for the past ten years, attorneys had to reconcile the interim edition and its supplement to figure out Ohio citation form. But now, effective January 1, 2012, the court has issued a comprehensive manual that not only provides a fully updated and integrated Manual of Citations but also includes a Style Guide and a guide to the Structure of a Judicial Opinion.

C. Michael Walsh, a member of the Writing Manual Committee, said that it was very important to the committee to have everything in one volume. “The goal of putting all three parts into one unified document was to show that all of this goes together. Citation alone does not make good writing. Style alone does not make good writing. Structure alone does not make good writing. But if you have them all, then you can have good legal writing.”

Was it worth the wait? In a word, yes. Unlike its previous versions, the manual has a table of contents and an index, making it easier to navigate. It is organized in an outline format with a helpful explanation and several examples for each rule. Although it still contains a few discrepancies, for instance it both bans and expressly allows the use of *supra*, it is an enormous step forward, both in terms of its comprehensiveness and ease of use.

While the manual is not mandatory, the court strongly encourages judges and lawyers to follow it. As we have known since Aristotle published his Art of Rhetoric, how you deliver an argument is just as important in the art of persuasion as the argument itself. So, if you want to avoid the hidden penalties of poor legal writing and exert the full measure of your persuasive power, you will want to become familiar with the new Writing Manual.

I. A Brief Tour Through the Manual of Citations

The new Manual of Citations brings Ohio citation a little closer to national norms. One of the manual’s biggest changes is moving the parenthetical containing the date to the end of the citation. As before, parallel citations are still required but no longer include a citation to the Ohio Bar Reports (OBR) or Ohio Opinions (O.O., O.O.2d, or O.O.3d). So cases published in a print reporter before 2002 would look like these:

Print Published Cases Before 2002	
Supreme Court	<i>State v. Brooks</i> , 75 Ohio St.3d 148, 159-162, 661 N.E.2d 1030 (1996).
Appellate Court	<i>Pyle v. Pyle</i> , 11 Ohio App.3d 31, 34, 463 N.E.2d 98 (8th Dist.1983).

Trial Court	<i>Welter v. Welter</i> , 27 Ohio Misc. 44, 46, 267 N.E.2d 442 (C.P.1971).
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As for Ohio finally getting in line with the rest of the country by moving the date to the end of the citation, this change mostly applies to cases published before May 1, 2002. Because the court publishes most opinions issued after that date electronically and the WebCite it assigns includes the year, the manual does not require a separate date when citing those cases. If the case is published in a print reporter, the jurisdiction is still in the parenthetical at the end of the citation. Cases published both in a print reporter and in Ohio’s electronic reporter after 2002 will look like these:

Print Published Cases After 2002	
Supreme Court	<i>State v. Foster</i> , 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph seven of the syllabus.
Appellate Court	<i>Wascovich v. Personacare of Ohio</i> , 190 Ohio App.3d 619, 2010-Ohio-4563, 943 N.E.2d 1030, ¶ 25 (11th Dist.).
Trial Court	<i>Blankenship v. CFMOTO Powersports, Inc.</i> , 161 Ohio Misc.2d 5, 2011-Ohio-948, 948 N.E.2d 769, ¶ 12 (C.P.).

But, just to keep you on your toes, if a case is not published in a print reporter, then there is no parenthetical. In those cases, the jurisdiction will be placed before the docket number without parentheses and without a comma after it. Also, attorneys must cite to the district number; citation to the county’s name is no longer allowed as an alternative. Cases that are not published in a print reporter will look like these:

Non-Print Published Cases After 2002 with WebCite	
Appellate Court	<i>Flint v. Cleveland Clinic Found.</i> , 8th Dist. Nos. 80177 and 80478, 2002-Ohio-2747, ¶ 17-18.
Trial Court	<i>Atkinson v. Dept. of Rehab. & Corr.</i> , Ct. of Cl. No. 2008-10315-AD, 2009-Ohio-4271, ¶ 2.

For unpublished decisions with no WebCite, the manual had taken sides in the ongoing war between West and Lexis. When the manual was released, it only allowed for citation to Westlaw. But, the manual was recently revised to allow citation to any electronic database. Unpublished cases without a WebCite, thus, will look like these:

Non-Print Published Cases with No WebCite	
Appellate Court	<i>Bozzelli v. Brucorp</i> , 9th Dist. No. 17866, 1996 Ohio App. LEXIS 4708, *2 (Oct. 30, 1996).
Trial Court	<i>Bennett v. Tri-State Collection Serv.</i> , Cuyahoga C.P. No. 94002, 1976 WL 38806, *1 (Aug. 24, 1976).

Finally, the manual now provides examples of short form citation. If a volume number for the citation is not included in the preceding two paragraphs, the manual allows for a very short citation form—just a recognizable portion of the case name and a pincite. If the case is cited more than two paragraphs after a citation to the volume

number, then the manual requires parallel citations. So the citation, while shorter, is not all that short. Thus, a short cite will look like these:

Short Cite	
Volume within two paragraphs.	<i>Foster.</i>
	<i>Foster</i> at ¶ 6.
Volume not within two paragraphs.	<i>Foster</i> , 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, at ¶ 6.

Because this article can only cover a portion of the new manual, it concentrates on citing Ohio cases. Like the previous version, the manual also provides citation forms for federal and out-of-state opinions, as well as statutory and secondary sources. But with its user-friendly structure, it will be much easier to find and follow these new rules.

II. Style Guide

Unlike the Manual of Citations, the Style Guide is all new. While the Style Guide itself is new, it embraces longstanding formal writing principles and offers guidance where respected sources disagree. Acknowledging that it is not comprehensive, the court included some of the most common legal writing problems in the guide.

Notably, the guide weighs in firmly against placing citations in footnotes. But it leaves room for the occasional textual footnote. The footnote rule begins by deriding footnotes as “intrusive” and “unnecessary,” but later it acknowledges that footnotes may be helpful in limited contexts like providing excerpts of testimony or statutes.

The guide retains Ohio’s somewhat unique practice of using asterisks to show omissions in quoted matter rather than adopting the more commonly used ellipsis points. Many style manuals either do not mention the asterisk option or specifically prohibit its use. Ohio is not alone, however, in its use of the asterisk: the Government Printing Office, for example, also uses asterisks in place of ellipses.

Whether to spell out numbers or to use numerals causes many writers problems, in part, because sources give conflicting advice. The guide provides some definitive answers and leaves a few areas to the writer’s discretion:

Spell Out	Use Numerals	Writer’s Choice
<ul style="list-style-type: none"> • whole numbers one through ten • ordinals first through tenth • numbers that start a sentence 	<ul style="list-style-type: none"> • numbers greater than ten • ordinals greater than tenth • abbreviated units of measure (5 m.p.h.) • decimals 	<ul style="list-style-type: none"> • numbered series (e.g., Ex. 1) • fractions • thousand, million, etc. may replace a string of zeros • if both spelling out and using numerals in the same

<ul style="list-style-type: none"> • paragraph numbers • numbers of U.S. Const. Amendments 		<p>paragraph, may use numerals for all</p>
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The guide also provides clear rules for punctuating dates, another topic on which respected modern sources disagree. The guide requires commas between day and year but no comma between month and year:

Plaintiff filed her motion on June 23, 2011.
Plaintiff filed in June 2011.

When the date does not appear at the end of a sentence and it includes a year, the guide requires a comma after the year, except when the date is used as an adjective. For example, no comma follows the year in this sentence because the date modifies purchase agreement (i.e., the date is used as an adjective):

The company sought to rescind the November 11, 2011 purchase agreement.

Where the date is not used as a modifier, though, you must place a comma after the year:

The company hired Mr. Smith on October 14, 1997, one month to the day after he graduated from college.

The guide also instructs on how to pluralize acronyms and abbreviations like NGO or SUV, another place where respected sources disagree. Some sources add an *s* (NGOs or SUVs) while others add *'s* (NGO's or SUV's). The guide rejects the apostrophe in favor of simply adding an *s*.

In a few short pages, the Style Guide offers much useful advice. While not comprehensive, perhaps part of the beauty of the guide is in its brevity. It does not try to cover the world. Instead, it offers guidance on a few areas that commonly cause problems for legal writers. Given its brevity, these are rules that every lawyer can and should master.