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FEDERAL AND STATE COURT RULES GOVERNING PUBLICATION AND CITATION OF OPINIONS: AN UPDATE

Melissa M. Serfass and Jessie Wallace Cranford*

INTRODUCTION

The debate over citation of unpublished opinions continues. Some jurisdictions have become more permissive, some have clearly rejected citation of unpublished decisions, and some are still considering the issue. The First Circuit, the District of Columbia Circuit, Alaska, Iowa, Kansas, North Carolina, Ohio, Texas, Utah, and West Virginia have all modified their rules in some way to allow citation of unpublished opinions either as persuasive authority or in some cases as precedent. The Wisconsin Supreme Court has rejected a proposed rule change to allow citation of unpublished opinions for persuasive purposes.¹ Hawaii has tabled a proposed rule change to allow citation of unpublished decisions for persuasive value pending a decision on proposed Federal Rule of Appellate Procedure 32.1,² which itself has been sent back to the Advisory Committee on Appellate Rules for further study and consideration.³ The

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1. *In re Amendment of Wis. Stat § (Rule) 809.23(3) Regarding Citation to Unpublished Opinions*, 261 Wis. 2d xiii (2003) (available at http://www.wicourts.gov/sc/sc_rules/02-02.pdf).

2. Telephone Interview with Jim Branham, Chief Staff Attorney, Haw. S. Ct. (Jan. 11, 2005).

3. U.S. Courts: The Federal Judiciary, *Federal Rulemaking, Standing Committee Action, June 2004 Meeting*, <http://www.uscourts.gov/rules/index.html> (accessed Jan. 11, 2005; copy on file with Journal of Appellate Practice and Process).

Illinois Supreme Court Special Committee to Study Rule 23 has proposed that unpublished orders issued after the proposed amendment's effective date be citable as persuasive authority.⁴ The Illinois Supreme Court Rules Committee has made a recommendation concerning this proposal to the Supreme Court, and the court is expected to take action on the proposal in 2005.⁵

In light of this continued ferment, these charts update the information originally published here in Spring 2001.⁶ As before, they focus on the basic guidelines for publication of opinions and rules regarding citation of unpublished opinions in the federal courts of appeal and the appellate courts of the fifty states and the District of Columbia.

Once again, we seek to convey only the essence of each rule, thinking that a quick reference will be useful to the bench and bar. We do not provide extensive analysis or delve into actual practice.⁷ In most instances, rules or standard practices for the court of last resort and the intermediate appellate court⁸ are provided. If a court rule exists, that rule is cited. In the absence of a court rule, applicable internal operating procedures, statutes, or cases are cited. When no criteria for full published opinions are available, standards for disposition by summary order or memorandum opinions are cited. In listing publication criteria, the term "affects" encompasses terms such as "alter," "modify," "clarify," or "explain." When a phrase such as "criteria include" introduces a list, it may be illustrative, rather than all-inclusive. Because American courts generally allow citation of unpublished opinions for *res judicata*, collateral estoppel, law of the case, or other related-case purposes, that language is usually omitted from the citation rule.

4. Stephen R. Barnett, *No-Citation Rules Under Siege: A Battlefield Report and Analysis*, 5 J. App. Prac. & Process 473, 480 n. 46 (2003).

5. Any change will be announced on the Illinois Supreme Court web site, <http://www.state.il.us/court>. E-mail from Keith Beyler, Ill. S. Ct. Rules Comm. Rptr., to Melissa Serfass (Dec. 23, 2004) (copy on file with authors).

6. Melissa M. Serfass & Jessie L. Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 3 J. App. Prac. & Process 251 (2001).

7. For an exceptionally thorough analysis of citation rules and actual practices in the courts, see Barnett, *supra* n. 4.

8. Delaware, the District of Columbia, Maine, Montana, Nevada, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming do not have intermediate appellate courts. *Directory of State and Federal Courts, Judges, and Clerks*, xi-xiv (Catherine A. Kitchell, comp. 2005 ed., BNA 2005).

TABLE 1: RULES IN FEDERAL COURTS

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
First	<p>1st Cir. R. 36(b) The general policy is that opinions be published and available for citation. An exception may be made if an opinion would not articulate a new rule of law; modify an established rule; apply an established rule to novel facts; or “serve otherwise as a significant guide to future litigants.”</p>	<p>1st Cir. R. 32.3(a)(1)-(2) The court disfavors citation of unpublished opinions, but an unpublished opinion of the court may be cited if (1) the party believes the opinion persuasively addresses a material issue in the appeal and (2) no published opinion from the court adequately addresses the issue. Unpublished opinions are considered only for their persuasive value.</p> <p>1st Cir. R. 32.3(b) Unpublished or non-precedential opinions of other courts may be cited if (1) the party believes the opinion persuasively addresses a material issue in the appeal and (2) no published opinion from this court adequately addresses the issue, unless the rules of the issuing court prohibit such citation.</p>
Second	<p>2d Cir. R. 0.23 “[I]n those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition will be made in open court or by summary order.”</p>	<p>2d Cir. R. 0.23 The court may append a brief written statement to dispositions by summary order. These statements shall not be cited or otherwise used in unrelated cases before this or any other court.</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Third	<p>3d Cir. I.O.P. 5.2 “An opinion, whether signed or per curiam, is designated as precedential and printed as a slip opinion when it has precedential or institutional value.”</p> <p>3d Cir. I.O.P. 5.3 Opinions that appear to have value only to the trial court or the parties are designated as not precedential and are not printed as slip opinions.</p>	<p>3d Cir. I.O.P. 5.7 “The court by tradition does not cite to its not precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing.”</p>
Fourth	<p>4th Cir. R. 36(a) An opinion will be published if it establishes or affects a rule of law within the Circuit; involves a legal issue of continuing public interest; criticizes existing law; contains an original historical review of a legal rule or resolves a conflict between panels of the Court; or creates a conflict with a decision in another circuit.</p> <p>4th Cir. R. 36(b) Counsel may move for publication of an unpublished opinion; if the motion is granted, the opinion will be published without any change in the result.</p>	<p>4th Cir. R. 36(c) “Citation of this Court’s unpublished dispositions. . . in this Court and in the district courts within this Circuit is disfavored.” If counsel believes that an unpublished disposition of any court has precedential value and that there is no published opinion that would serve as well, such disposition may be cited.</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Fifth	<p>5th Cir. R. 47.5.1 “[O]pinions that may in any way interest persons other than the parties to a case should be published.” Criteria include establishing a new rule of law; affecting an existing rule; applying an established rule to significantly different facts from those in published opinions; creating or resolving a conflict within the circuit or between circuits; or discussing a factual or legal issue of significant public interest.</p>	<p>5th Cir. R. 47.5.3 Unpublished opinions issued before January 1, 1996, are precedent. Because opinions believed to have precedential value are published, unpublished opinions should not normally be cited.</p> <p>5th Cir. R. 47.5.4 Unpublished opinions issued on or after January 1, 1996, are not precedent. Unpublished opinions may be persuasive and may be cited.</p>
Sixth	<p>6th Cir. R. 206(a) Criteria considered by panels in determining publication include whether a new rule of law is established; an existing rule is affected or applied to a novel fact situation; a conflict is created or resolved within the circuit or between circuits; a legal or factual issue of continuing public interest is discussed; or a published lower court decision is addressed.</p>	<p>6th Cir. R. 28(g) “Citation of unpublished decisions in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored.” If a party believes that an unpublished disposition has precedential value and that no published opinion would serve as well, it may be cited.</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Seventh	<p>7th Cir. R. 53(b) The court may dispose of an appeal by unpublished order or published opinion.</p> <p>7th Cir. R. 53(c)(1) Criteria for publication include establishing a new rule of law or affecting an existing rule; involving an issue of continuing public interest; criticizing or questioning existing law; or constituting a significant and non-duplicative contribution to legal literature.</p>	<p>7th Cir. R. 53(b)(2)(iv) Unpublished orders shall not be cited or used as precedent except to support a claim of res judicata, collateral estoppel, or law of the case.</p> <p>7th Cir. R. 53(e) “Except to the purposes set forth in Circuit Rule 53(b)(2)(iv), no unpublished opinion or order of any court may be cited in the Seventh Circuit if citation is prohibited in the rendering court.”</p>
Eighth	<p>8th Cir. R. App. I(4) An opinion should be published when it establishes a new rule of law or affects an existing rule; newly interprets or conflicts with a decision of a federal or state appellate court; applies an established rule of law to facts significantly differing from those in published opinions; involves a legal or factual issue of continuing public or legal interest; rejects the rationale of a previously published opinion in the same case; or is a significant contribution to legal literature.</p>	<p>8th Cir. R. 28A(i) Unpublished opinions “are not precedent and parties generally should not cite them. . . . Parties may . . . cite an unpublished opinion of this court if the opinion has persuasive value on a material issue and no published opinion of this or another court would serve as well.”</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Ninth	<p>9th Cir. R. 36-1 Written dispositions of the court are designated as opinions, memoranda, or orders. All opinions are published; no memoranda are published; orders are not published except by direction of the court.</p> <p>9th Cir. R. 36-2 Criteria for designating dispositions as opinions include establishing or affecting a rule of law; criticizing existing law; or involving a legal or factual issue of unique or substantial public interest.</p>	<p>9th Cir. R. 36-3 Unpublished dispositions and orders are not binding precedent and may not be cited. A provisional exception allows citation of unpublished opinions in limited circumstances.⁹</p>
Tenth	<p>10th Cir. R. 36.1, 36.2 The court writes opinions only in cases requiring application of new points of law that would make the decision a valuable precedent. When the opinion below has been published, the court ordinarily designates its disposition for publication. If the disposition is by order and judgment, the court will publish only the result of the appeal.</p>	<p>10th Cir. R. 36.3 Unpublished orders and judgments are not binding precedents. While citation of unpublished decisions is disfavored, an unpublished decision may be cited if it has persuasive value regarding a material issue not addressed in a published opinion and its use would assist the court in its disposition of the present case.</p>

9. This rule was adopted for a limited period beginning July 1, 2000. It has been extended for another limited period ending July 1, 2005.

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Eleventh	<p>11th Cir. R. 36-1, 36-2 When the court determines that an opinion would have no precedential value and the record below supports affirmance, the judgment or order may be affirmed or enforced without opinion. An opinion is unpublished unless a majority of the panel decides to publish it.</p>	<p>11th Cir. R. 36-2 Unpublished opinions are not considered binding precedent; however, they may be cited as persuasive authority.</p> <p>11th Cir. R. 36-3, I.O.P. 5 The court does not favor reliance on unpublished opinions.</p>
District of Columbia	<p>D.C. Cir. R. 36(a) The policy of the court is to publish opinions of general public interest. Publication criteria include whether it is a case of first impression; whether it alters, affects, criticizes, or questions existing law; or whether it resolves an apparent conflict within the circuit or creates a conflict between circuits.</p>	<p>D.C. Cir. R. 28(c)(1)(a) Unpublished dispositions of the court entered before January 1, 2002, are not to be cited as precedent.</p> <p>D.C. Cir. R. 28(c)(1)(b) Unpublished dispositions of the court entered on or after January 1, 2002, may be cited as precedent.</p> <p>D.C. Cir. R. 36(c)(2) “[A] panel’s decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition.”</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Federal	<p>Fed. Cir. R. 47.6(a) Disposition of an appeal may be announced in an opinion or in a judgment of affirmance without opinion. Dispositions not to be cited as precedent are issued specifically stating that fact.</p> <p>Fed. Cir. I.O.P. 10 The court’s policy is to limit precedential opinions. Criteria for publication include issues of first impression; cases that establish a new rule of law; cases that affect or criticize existing law; cases that apply existing rules to significantly different fact situations; cases that create or resolve conflicts in the circuit or between circuits; or cases treating legal issues of substantial public interest, a new constitutional or statutory issue, or a previously overlooked rule of law.</p>	<p>Fed. Cir. R. 47.6(b) An opinion or order designated as nonprecedential may not be cited.</p>

TABLE 2: RULES IN STATE COURTS

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Alabama	<p>Ala. R. App. P. 53 All Supreme Court and Court of Civil Appeals opinions are published in the official reports of Alabama decisions. Trial court judgments or orders may be affirmed without opinion when the court determines that an opinion would serve no significant precedential purpose and one of the following applies: the judgment appealed from is based on findings of fact that are not clearly erroneous or the judgment is sufficiently supported by the evidence. Such dispositions are designated as “No Opinion” cases and are not published.</p> <p>Ala. R. App. P. 54 All Court of Criminal Appeals opinions are published in the official reports of Alabama decisions. The Court of Criminal Appeals may affirm a judgment or order of a trial court without opinion if a court determines that an opinion would serve no significant precedential purpose. In “no opinion” affirmances, the court must issue a memorandum explaining its rejection of the appellant’s contentions.</p>	<p>Ala. R. App. P. 53(d) “No opinion” affirmances of the Supreme Court and Court of Civil Appeals are not precedential and may not be cited.”</p> <p>Ala. R. App. P. 54(d) “No opinion” affirmances or memoranda issued by the Court of Criminal Appeals are not precedential and may not be cited.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Alaska	Alaska R. App. P. 214(a) The Supreme Court and the Court of Appeals “may determine that an appeal shall be disposed of by summary order and without formal written opinion.”	Alaska R. App. P. 214(d) “Summary decisions under this rule are without precedential effect and may not be cited in the courts of this state.” ¹⁰
Arizona	Ariz. Sup. Ct. R. 111(a)-(b); Ariz. R. Civ. App. P. 28(a)-(b) An opinion is a written disposition intended for publication. A memorandum decision is a written disposition not intended for publication. Publication standards include establishing, criticizing, or affecting existing law; calling attention to rules of law which appear to have been generally overlooked; involving issues of unique interest or substantial public importance; or if the author of a concurrence or dissent requests publication.	Ariz. Sup. Ct. R. 111(c); Ariz. R. Civ. App. P. 28(c) Memorandum decisions are not precedent and may not be cited in any court. An exception allows citation to inform the appellate court of “other memorandum decisions so that the court can decide whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review.”
Arkansas	Ark. Sup. Ct. & Ct. App. R. 5-2(a), (c) All signed opinions of the Supreme Court are published. Court of Appeals opinions may be in conventional or memorandum form. ¹¹ Court of	Ark. Sup. Ct. & Ct. App. R. 5-2(d) Court of Appeals opinions not designated for publication are not published in the official reporter and “shall not be cited, quoted or referred to by any

10. *But see McCoy v. State*, 80 P.3d 757, 764 (Alaska App. 2002) (holding that Rule 214(d) “forbids citation of unpublished decisions as precedent [but] . . . does not forbid judges and lawyers from relying on unpublished decisions for whatever persuasive power those decisions might have”).

11. See *In re Memorandum Opinions*, 700 S.W.2d 63 (Ark. App. 1985) (per curiam) for standards governing issuance of memorandum opinions.

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Arkansas, <i>cont'd</i>	Appeals opinions resolving novel or unusual issues will be published. Unpublished opinions are marked "Not Designated for Publication."	court or in any argument, brief, or other materials presented to any court."
California	<p>Cal. R. Ct. 976(a) All opinions of the Supreme Court are published in the Official Reports.</p> <p>Cal. R. Ct. 976(b) Opinions of the Court of Appeals or appellate departments of the superior court are not published unless the opinion establishes a new rule of law; applies an existing rule to novel facts; criticizes or affects an existing rule; resolves or creates a conflict in the law; involves a legal issue of continuing public interest; or makes a significant contribution to legal literature.¹²</p>	<p>Cal. R. Ct. 977 Opinions of a Court of Appeal or an appellate department of the superior court that are not certified for publication or ordered published may not be cited or relied on by a court or a party in any other action or proceeding.</p>
Colorado	<p>All Supreme Court opinions are published; the Court does dispose of some issues by unpublished order.¹³</p> <p>Colo. App. R. 35(f) A Court of Appeals opinion is not published unless it</p>	<p>Unpublished orders of the Supreme Court may not be cited.¹⁴</p> <p>Colo. App. R. 35(f) "Those opinions selected for official publication shall be followed as precedent by the</p>

12. California has a rule on partial publication, Cal. R. Ct. 976.1, and a rule on duplication, Cal. R. Ct. 979.

13. Telephone Interview with Susan Festag, Colo. Sup. Ct. Chief Deputy Clerk (Jan. 14, 2005).

14. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Colorado, <i>cont'd</i>	<p>establishes a new rule of law; affects an existing rule; applies an established rule to a novel fact situation; involves a legal issue of continuing public interest; “directs attention to the shortcomings of existing common law or inadequacies in statutes”; or resolves an apparent conflict of authority.</p> <p>Unpublished opinions bear the legend, “Not Selected for Publication.”</p>	<p>trial judges of the State of Colorado.”</p> <p>Policy of the Colorado Court of Appeals Concerning Citation of Unpublished Opinions</p> <p>Citation of unpublished opinions is forbidden, except in limited circumstances.¹⁵</p>
Connecticut	<p>Conn. Gen. Stat. § 51-212(b) “The reporter or the person appointed to perform his duties shall make reports of [all] the cases argued and determined in the Supreme Court, [and] prepare the reports for publication.”</p> <p>Conn. Gen. Stat. § 51-215a(b) The Clerk of the Appellate Court files copies of memoranda of decisions in Appellate Court cases with the Reporter of Judicial Decisions. The Reporter prepares all of the decisions for publication.</p>	<p>Conn. R. App. P. 67-9</p> <p>Unreported decisions from other jurisdictions may be cited before the court if the person making reference to the decision provides the court and opposing counsel with copies.</p>

15. James S. Casebolt, *Policies and Procedures of the Court of Appeals*, <http://www.courts.state.co.us/coa/forms/proceduresandpolicies.htm> (visited Jan. 13, 2005; copy on file with Journal of Appellate Practice and Process).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Delaware	<p>Del. Sup. Ct. R. 17(a) “All decisions finally determining or terminating a case shall be made by written opinion, or by written order, as determined by the Court.”</p> <p>Del. Sup. Ct. R. 93(c) Published opinions should: “address issues of first impression; establish, alter or explain (for the first time) a rule of law; review the law in this or other jurisdictions (for the first time or for the first time in recent years); provide a scholarly critique of existing law; involve unique, but important, factual situations or holdings; or involve newsworthy cases.”</p> <p>Del. Sup. Ct. I.O.P. XI(2) A case may be finally determined or terminated by written order if the issue on appeal is controlled by settled Delaware law, is factual and there is sufficient evidence to support the jury verdict or findings of fact below, or there was no abuse of judicial discretion.</p>	<p>Del. Sup. Ct. I.O.P. X(8) “Supreme Court Rule 17 has been amended to permit orders of the Delaware Supreme Court to be cited as precedent. <i>See New Castle County v. Goodman</i>, 461 A.2d 1012, 1013 (Del. 1983) (citing rule change). Even though both published opinions and case dispositive judgment orders have precedential value, the Court avoids citing to its orders as authority.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
District of Columbia	<p>D.C. Ct. App. R. 36(c) “An opinion may be either published or unpublished. A party or other interested person may request that an unpublished opinion be published by filing a motion within 30 days after issuance of the opinion, stating why publication is merited. The court sua sponte may also publish any previously issued unpublished opinion.”</p>	<p>D.C. Ct. App. R. 28(g) “Any published opinion or order of this court may be cited in any brief. Unpublished opinions or orders of this court shall not be cited in any brief.”</p>
Florida	<p>All Supreme Court opinions are published. Disposition orders are published in table form. In the District Courts of Appeal, full opinions are generally published; many cases are disposed of as per curiam affirmances without written opinion.¹⁶</p>	<p><i>Dept. of Legal Affairs v. Dist. Ct. App.</i>, 434 So. 2d 310 (Fla. 1983). Per curiam affirmances without written opinion have no precedential value and should not be cited; however, an affirmance may be cited to the issuing court for its persuasive value.</p>
Georgia	<p>Ga. Sup. Ct. R. 59 The Supreme Court may affirm without opinion when one or more of the following circumstances exists and is dispositive of the appeal: the judgment is supported by the evidence; there is no harmful error of law requiring reversal; or an opinion would have no precedential value because the judgment below contains an</p>	<p>Affirmations without opinion pursuant to Rule 59 may not be cited.¹⁷ Ga. Ct. App. R. 33(a) A judgment fully concurred in by all judges in a division or a full concurrence by a majority in an appeal decided by a seven- or twelve-judge court is a binding precedent. A judgment made by special concurrence,</p>

16. Telephone Interview with James Logue, Fla. Rptr. of Decisions (Dec. 3, 2004).

17. Telephone interview with Ginger Wade, Editor of Supreme Court and Court of Appeals Advance Sheets, Georgia Supreme Court (Jan. 7, 2005).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Georgia, <i>cont'd</i>	<p>adequate explanation of the decision.</p> <p>Ga. Ct. App. R. 34 “Opinions are reported except as otherwise designated by the court.”</p> <p>Ga. Ct. App. R. 36 Court of Appeals cases may be affirmed without opinion when the evidence supports the judgment; there is no reversible error of law and an opinion would have no precedential value; the judgment below contains an adequate explanation of the decision; and/or “the issues are controlled adversely to the appellant for the reasons and authority given in the appellee’s brief.”</p>	<p>concurrence in the judgment only, or concurrence by less than a majority is a physical precedent only.</p> <p>Ga. Ct. App. R. 33(b) An unreported opinion establishes the law of the case, but is neither a physical nor binding precedent.</p> <p>Ga. Ct. App. R. 36 Rule 36 cases have no precedential value.</p>
Hawaii	<p>Haw. R. App. P. 35 (a)-(b) Dispositions of the Supreme Court and Court of Appeals may take the form of published, per curiam or memorandum opinions or dispositional orders. Memorandum opinions and dispositional orders are not published except when ordered by the court.</p> <p>Haw. Intermediate Ct. App. R. 2(a) “A full opinion of the intermediate court of appeals</p>	<p>Haw. R. App. P. 35(c); Haw. Intermediate Ct. App. R. 2(b) A memorandum opinion or unpublished dispositional order may not be cited.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
<p>Hawaii, <i>cont'd</i></p>	<p>shall be published in a manner authorized by the supreme court. The supreme court, however, may order that a full opinion be changed to a memorandum opinion.”</p>	
<p>Idaho</p>	<p>Idaho Sup. Ct. Internal R. 15(f) “At or after the oral conference following the presentation of oral argument or the submission of the case to the Court on the briefs, the Court, by unanimous consent of all justices, may determine not to publish the final opinion of the Court.”</p> <p>Idaho Ct. of App. Internal R. for Publication of Opinions (2) An opinion will only be published if it establishes a new rule of law or alters or modifies an existing rule; involves an issue of continuing public interest; criticizes or explains existing law; applies an established rule to a significantly different fact situation; resolves an apparent conflict; or makes a significant contribution to legal literature by an historical review or a legislative history.</p>	<p>Idaho Sup. Ct. Internal R. 15(f) “If an opinion is not published, it may not be cited as authority or precedent in any court.”</p> <p>Idaho Ct. of App. Internal R. for Publication of Opinions (4) Opinions that do not satisfy the publication criteria in section 2 of this rule shall be marked “This Is An Unpublished Opinion and Shall Not Be Cited As Authority.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Illinois	<p>All Supreme Court opinions are published.¹⁸</p> <p>Ill. Sup. Ct. R. 23 Decisions of the Appellate Court may be in the form of a full opinion, a written order or a summary order. Only opinions will be published. Opinions are issued only when the decision establishes a new rule of law, criticizes or affects an existing rule, or resolves, creates, or avoids an apparent conflict within the Appellate Court.</p>	<p>Ill. Sup. Ct. R. 23(e) “An unpublished order is not precedential and may not be cited by any party.”</p>
Indiana	<p>Ind. R. App. P. 65(A) All Supreme Court opinions are published. Court of Appeals opinions are published if the case establishes, affects or criticizes a rule of law or discusses “a legal or factual issue of unique interest or substantial public importance.” Other Court of Appeals cases are decided by memorandum decisions designated as not-for-publication.</p>	<p>Ind. R. App. P. 65(D) “Unless later designated for publication, a not-for-publication memorandum decision shall not be regarded as precedent and shall not be cited to any court.”</p>

18. Telephone Interview with Brian Ervin, Ill. Sup. Ct. Rptr. of Jud. Decisions (Dec. 3, 2004).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Iowa	<p>Iowa Code § 602.4106 All Supreme Court decisions and opinions shall be in writing. Only those decisions deemed of sufficient general importance by the court are published.</p> <p>Iowa Code Ann. § 602.5111 Court of Appeals opinions are published in accordance with rules prescribed by the Supreme Court. Section 602.4106 applies to Court of Appeals decisions.</p> <p>Iowa Ct. R. 21.29(1) Memorandum opinions may be used by the Court of Appeals and Supreme Court to dispose of cases when appropriate. A short memorandum opinion may be used in any of the following situations: application of well-settled rules of law to recurring fact situations; the evidence is sufficient to support the holding below; disposition is clearly controlled by a prior published holding of the deciding court or of a higher court; the record includes an opinion of the court or agency whose decision is being reviewed that identifies and considers all the issues presented and the appellate court approves of the reasons and conclusions in that opinion; or a full opinion would not augment or clarify existing case law.</p>	<p>Iowa R. App. P. 6.14(5)(b) “An unpublished opinion of the Iowa appellate courts or of any other appellate court may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Iowa, cont'd	<p>Iowa Ct. R. 21.30(2) An opinion of the Court of Appeals may be published only when at least one of the following criteria is satisfied: the case resolves an important legal issue, concerns a factual situation of broad public interest, or involves legal issues which have not been previously decided by the Iowa Supreme Court.</p>	
Kansas	<p>Kan. Sup. Ct. R. 7.04 Opinions of the appellate courts may be memorandum or formal opinions. Memorandum opinions are normally marked "Not Designated for Publication." Opinions are published in the official reports only when they meet certain standards such as establishing a new rule of law; affecting or criticizing existing law; involving a legal issue of continuing public interest; applying an established rule of law to a novel fact situation; resolving an apparent conflict of authority; or contributing significantly to legal literature. Otherwise, memorandum opinions are issued.</p> <p>Kan. Stat. Ann. § 60-2106(a) A memorandum opinion may be prepared when a case decides no new question of law or otherwise has no precedential value.</p>	<p>Kan. Sup. Ct. R. 7.04 Unpublished memorandum opinions are not binding precedents, and are not favored for citation. But they may be cited if they have persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court and they would assist the court in its disposition.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Kentucky	<p>Ky. Rev. Stat. Ann. § 21A.070 All Supreme Court opinions are published. The Supreme Court determines which opinions of the Court of Appeals and lower courts are published.</p> <p>Ky. R. Civ. P. 76.28(4)(a) Opinions of the appellate courts will be published as directed by the court issuing the opinion. Every opinion shall be marked either “To Be Published” or “Not To Be Published.”</p> <p>Ky. R. Crim. P. 12.02 Ky. R. Civ. P. 76 also applies in criminal actions.</p>	<p>Ky. R. Civ. P. 76.28(4)(c) Opinions designated “Not to Be Published” may not be cited or used as authority in any other case in any court of this state.</p>
Louisiana	<p>The types of opinions issued by the Louisiana Supreme Court include signed opinions, per curiam opinions and summary orders. All opinions are public record and are published.¹⁹</p> <p>La. Unif. R. Ct. App. 2-16 Appellate Court decisions may be full opinions, concise memorandum opinions, or summary dispositions.</p> <p>La. Unif. R. Ct. App. 2-16.1 A formal opinion may be issued when at least one of the following criteria is satisfied:</p>	<p>All Louisiana Supreme Court opinions may be cited.²⁰</p> <p>La. Unif. R. Ct. App. 2-16.3 “Opinions marked ‘Not Designated for Publication’ shall not be cited, quoted, or referred to by any counsel, or in any argument, brief, or other materials presented to any Court, except in continuing or related litigation.”</p>

19. E-mail from John Tarlton Olivier, La. Sup. Ct. Clerk of Court, to Melissa Serfass (Dec. 9, 2004) (copy on file with authors).

20. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
<p>Louisiana, <i>cont'd</i></p>	<p>The decision involved establishes a new rule of law or affects an existing rule; involves a legal issue of continuing public interest; criticizes or explains existing law; applies an established rule of law to a novel fact situation; resolves an apparent conflict of authority; or constitutes a significant and non-duplicative contribution to legal literature such as an historical review of law, a review of legislative history, or a review of conflicting decisions among the courts or other jurisdictions.</p> <p>When the panel agrees that the above criteria are not met, a case may be disposed of with a concise memorandum opinion.</p> <p>La. Unif. R. Ct. App. 2-16.2 When a panel unanimously determines that no jurisprudential purpose is served by a written opinion and certain circumstances exist—for example, that the disposition is clearly controlled by case law, involves an application of well-settled rules to recurring fact situations, there is no abuse of discretion, or there was no error on the record—the decision of the court may be by summary disposition.</p>	

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Maine	<p>4 Me. Rev. Stat. Ann. § 702 The Reporter of Decisions reports cases at his discretion, under the supervision of the Chief Justice of the Supreme Judicial Court.</p>	<p>Admin. Orders Sup. Jud. Ct.—New Citation Form (Aug. 20, 1996) “Memorandum Decisions and Summary Orders shall not be published in the Atlantic Reporter and shall not be cited as precedent for a matter addressed therein.”</p>
Maryland	<p>Md. Cts. & Jud. Proceedings Code Ann. § 13-203 The State Reporter prepares reports of cases designated for publication by the Court of Appeals and the Court of Special Appeals.</p> <p>Md. R. 8-605.1(a) The Court of Special Appeals shall designate for reporting only those opinions that are of substantial interest as precedents.</p>	<p>Md. R. 1-104 “An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority,” but may be cited in either court for any other purpose.</p>
Massachusetts	<p>All Supreme Judicial Court opinions are published²¹</p> <p>Mass. Ann. Laws ch. 221 § 64 The reporter of the Supreme Judicial Court has discretion to report the cases more or less at large according to their relative importance.</p> <p>Mass. Ann. Laws ch. 211A § 9 All decisions of the Appeals Court shall be in writing, except</p>	<p>Unpublished Appeals Court decisions pursuant to Rule 1:28 of the Appeals Court are not to be cited as precedent in briefs to the appellate courts.²²</p>

21. E-mail from Clifford Allen, Mass. Sup. Jud. Ct. Rptr. of Decisions, to Melissa Serfass (Dec. 16, 2004) (copy on file with authors).

22. *Id.*; see also *Horner v. Boston Edison Co.*, 695 N.E.2d 1093 (Mass. App. 1998).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Massachusetts, <i>cont'd</i>	<p>that in appropriate cases an order, direction, judgment, or decree may be entered without stating reasons. The reporter of decisions publishes opinions of the Appeals Court.</p> <p>Mass. App. Ct. R. 1:28 “[A] panel of the justices of this court may determine that no substantial question of law is presented by the appeal or that some clear error of law has been committed . . . and may, by its written order, affirm, modify or reverse the action of the court below.”</p>	
Michigan	<p>All Michigan Supreme Court opinions are published. Some orders are not published.²³</p> <p>Mich. Ct. R. 7.215(A)-(B) Court of Appeals opinions must be written in the form of a signed opinion, a per curiam opinion, or a memorandum opinion. Memorandum opinions are not published; per curiam opinions are not published unless one of the deciding judges directs the reporter to do so. Circumstances when an opinion must be published include if it</p>	<p>All Supreme Court opinions are binding precedent. Supreme Court orders, regardless of whether they are published or unpublished, are binding as well.²⁴</p> <p>Mich. Ct. R. 7.215(C) An unpublished Court of Appeals opinion is not binding precedent under the rule of stare decisis, but may be cited if a copy is provided to the court and to opposing parties. A published opinion of the Court of Appeals has precedential</p>

23. E-mail from Danilo Anselmo, Mich. Sup. Ct. Rptr. of Jud. Decisions, to Melissa Serfass (Dec. 13, 2004) (copy on file with authors).

24. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Michigan, <i>cont'd</i>	establishes a new rule of law; construes a constitutional or statutory provision or court rule; affects or criticizes existing law; extends existing law in a new factual context; reaffirms a legal principle; or creates or resolves an apparent conflict of authority.	effect under the rule of stare decisis.
Minnesota	<p>All Supreme Court opinions are published.²⁵</p> <p>Minn. R. Civ. App. P. 136.01 Court of Appeals dispositions may be in the form of published, unpublished or order opinions.</p> <p>Minn. Stat. Ann. § 480A.08(3)(c) & Spec. R. of Prac. Minn. Ct. App. R. 4 The Court of Appeals publishes only those decisions that establish a new rule of law; overrule a previous Court of Appeals’s decision not reviewed by the Supreme Court; provide important procedural guidelines in interpreting statutes or administrative rules; involve a significant legal issue; or that would significantly aid in the administration of justice.</p>	<p>Minn. R. Civ. App 136.01(b) “Unpublished opinions and order opinions are not precedential . . . and may be cited only as provided in Minn. Stat. § 480A.08, subd. 3.”</p> <p>Minn. Stat. Ann. § 480A.08(3) & Spec. R. of Prac. Minn. Ct. App. R. 4 Unpublished opinions are not precedential. Unpublished opinions may be cited if copies are provided to all parties.</p>

25. Telephone Interview with Janet Chapdelaine, Minn. Sup. Ct. Rptr. of Jud. Decisions (Dec. 17, 2004).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Mississippi	<p>Miss. R. App. P. 35-A(a), B(a) The Supreme Court or Court of Appeals “may write opinions on all cases heard by that Court and shall publish all such written opinions. In cases where the judgment of the trial court is affirmed, an opinion will be written in all cases where the . . . Court assesses damages for a frivolous appeal and in other cases if a majority of the justices deciding the case determine that a written opinion will add to the value of the jurisprudence of this state or be useful to the parties or to the trial court.”</p> <p>Miss. R. App. P. 35-A(c), 35-B(d) If all participating justices concur, the court may affirm the trial court action without issuing a formal opinion if an opinion would have no precedential value and one of the following circumstances is dispositive of the appeal: the court concurs in the facts as found by the trial court; the jury verdict is supported by material evidence, or there is no reversible error of law.</p>	<p>Miss. R. App. P. 35-A(b), 35-B(b) “Opinions in cases decided prior to the effective date of this rule [Nov. 1, 1998] which have not been designated for publication shall not be cited, quoted or referred to by any court or in any argument, brief or other materials presented to any court.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Missouri	<p>Mo. Sup. Ct. R. 84.16(b) In the Supreme Court and the Court of Appeals, when all judges in a case agree to affirm and believe that an opinion would have no precedential value, disposition may be by memorandum decision or written order. A memorandum decision or written order may be entered when the appellate court unanimously determines that any of the following circumstances exists and is dispositive: the trial court judgment is supported by substantial evidence and is based on findings that are not clearly erroneous; the evidence sufficiently supports a jury verdict; an administrative agency order is supported by the evidence; or no error of law appears.</p> <p>Mo. Sup. Ct. R. 30.25(b) In a unanimous decision in a criminal case when all judges believe no jurisprudential purpose would be served by a written opinion, disposition may be by written summary order. Summary orders are not reported.</p>	<p>Mo. Sup. Ct. R. 84.16(b) “A written statement may be attached to the memorandum decision or written order setting out the basis for the court’s decision. The statement shall be unanimous, shall not constitute a formal opinion of the court, shall not be reported, and shall not be cited or otherwise used in any case before any court.”</p> <p>Mo. Sup. Ct. R. 30.25(b) Summary orders may not be cited or otherwise used in any case before any court.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Montana	<p>Mont. I.O.R. § I(3)(c) Appeals that present no constitutional issues or issues of first impression, or do not establish new precedent, modify existing precedent, or, in the opinion of the Court, will not provide future guidance for citation purposes, may be classified by the court as noncitable opinions. Such decisions will not include a detailed statement of facts or law.</p>	<p>Mont. I.O.R. § I(3)(c) Appeals disposed of under this section shall not be citable as precedent but shall be filed as public documents with the clerk, and shall be reported by result only.</p>
Nebraska	<p>Neb. Sup. Ct. R. 2(E)(1); Neb. Sup. Ct. R. 12 The Supreme Court and Court of Appeals prepare written opinions in cases believed to require explanation or believed to have precedential value.</p> <p>Neb. Rev. Stat. § 24-208 The Supreme Court will report decisions which reverse or modify a district court judgment, and other decisions which determine or modify any previously unsettled or new and important question of law, or construe any provision of the Constitution or a statute not construed before, and other decisions deemed interesting or important.</p> <p>Neb. Sup. Ct. R. 7(A) A summary disposition by the Supreme Court is appropriate</p>	<p>Neb. Sup. Ct. R. 9(C)(4) “Nebraska cases shall be cited by the state reports, but may include citation to such other reports as may contain such cases.” The implication is that only reported cases may be cited.</p> <p>Neb. Sup. Ct. R. 2(E)(4)-(5) Court of Appeals opinions which have been designated “For Permanent Publication” are precedential and may be cited in any court; other opinions and memorandum opinions may be cited only when related by identity between the parties or the causes of action.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
<p>Nebraska, <i>cont'd</i></p>	<p>when one of the following circumstances is dispositive: the judgment is based on findings of fact not clearly erroneous or is supported by substantial evidence; there is sufficient evidence in support of a jury verdict; or no error of law appears; and the court also determines that a detailed opinion would have no precedential value.</p> <p>Neb. Rev. Stat. § 24-1104 Court of Appeals decisions are issued in the form of an order that may be accompanied by a memorandum opinion. Memorandum opinions are not published unless ordered by the Court.</p> <p>In determining whether to publish a memorandum opinion, the Court of Appeals may take into consideration one or more of the following factors: whether the decision enunciates a new rule of law or applies an established rule of law to a novel factual situation; resolves or identifies a conflict between prior Court of Appeals decisions; contributes to legal literature by collecting case law or reciting legislative history; or involves a case of substantial and continuing public interest.</p>	

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Nevada	<p>There are no established rules governing when an opinion is written. Opinions are published; unpublished dispositions are framed as orders.²⁶</p> <p>Nev. Rev. Stat. § 2.160 “All opinions and decisions rendered by the supreme court shall be in writing”</p>	<p>Nev. Sup. Ct. R. 123 Unpublished opinions are not precedential and may not be cited as legal authority.</p>
New Hampshire	<p>N.H. Sup. Ct. R. 25(1) The Supreme Court may dispose of cases summarily. An order of summary affirmance may be entered in those circumstances when no substantial question of law exists and the court does not disagree with the result below; the opinion of the lower court identifies and discusses the issues presented and the Supreme Court does not disagree with them; or no substantial question of law is presented in an administrative agency appeal and the court does not find the decision unjust or unreasonable; or for other just cause, in which case a succinct statement of the reason for affirmance must be included. An order of summary dismissal or summary reversal for just cause must also contain a succinct statement of the reason for dismissal or reversal.</p>	<p>N.H. Sup. Ct. R. 25(5) “Cases summarily disposed of under this rule shall not be regarded as establishing precedent or be cited as authority.”</p> <p>N.H. Sup. Ct. R. 12-D(3) An order issued by a three-judge panel pursuant to this rule shall have no precedential value and shall not be cited in any pleadings or rulings in any court in this state.</p>

26. E-mail from Janette Bloom, Nev. Sup. Ct. Clerk of Ct., to Melissa Serfass (Dec. 17, 2004) (copy on file with authors).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
<p>New Jersey</p>	<p>N.J. R. Gen. App. 1:36-2 All opinions of the Supreme Court are published unless the Court directs otherwise. Appellate Division opinions are published only when the issuing panel directs their publication. Publication guidelines for opinions include whether the decision involves a substantial question of U.S. or New Jersey constitutional law; determines a new and important question of law; affects or criticizes existing law; determines a substantial question with no New Jersey case law after Sept. 15, 1948; is of continuing public interest; resolves an apparent conflict of authority; or contributes significantly to legal literature.</p> <p>N.J. Ct. R. 2:11-3(e)(1)-(2) In a civil appeal, the judgment or order under appeal may be affirmed without opinion when the Appellate Division determines that any one or more of the following circumstances is dispositive: the evidence adequately supports findings of fact made by a trial court, a jury verdict, or an administrative agency decision; there was no manifest denial of justice on a motion for a new trial; or some or all of the arguments made lack sufficient merit to warrant discussion. If in criminal, quasi-</p>	<p>N.J. R. Gen. App. 1:36-3 “No unpublished opinion shall constitute precedent or be binding upon any court. . . .No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all other relevant unpublished opinions known to counsel including those adverse to the position of the client.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
New Jersey, <i>cont'd</i>	criminal or juvenile appeals, the Appellate Division determines that some of the arguments made are without sufficient merit to warrant discussion, the court may affirm without an opinion.	
New Mexico	N.M. R. App. P. 12-405 All formal opinions of the appellate courts are published. A formal opinion is not always necessary. An order, decision, or memorandum opinion is appropriate when the issues have previously been decided by the supreme court or court of appeals; the issue is disposed of by the presence or absence of substantial evidence; a statute or court rule is controlling; the asserted error is not prejudicial; or the issues are manifestly without merit.	N.M. R. App. P. 12-405(C) “An order, decision, or memorandum opinion, because it is unreported and not uniformly available to all parties, shall not be published nor shall it be cited as precedent in any court.”
New York	N.Y. Jud. Law § 431 The Law Reporting Bureau is required to publish every opinion, memorandum, and motion transmitted to it by the Court of Appeals and the Appellate Divisions.	There is no official court rule or statute prohibiting citation of unpublished opinions. ²⁷

27. E-mail from Gary Spivey, N.Y. Ct. App. State Rptr., to Melissa Serfass (Dec. 15, 2004) (copy on file with authors). Regarding the precedential value of unpublished New York Supreme Court opinions, in *Eaton v. Chahal*, 553 N.Y.S.2d 642, 646 (Sup. Ct. 1990), the court commented on “the practice of citing to this court unreported decisions issued by judges of coordinate jurisdiction. Such decisions, although entitled to respectful consideration, are not binding precedent upon this court.”

State	Publication Standards	Citation Rule
New York, <i>cont'd</i>	The State Reporter also selectively publishes Appellate Term and Trial Court opinions in the Miscellaneous Reports. ²⁸	
North Carolina	<p>All Supreme Court opinions are published, some as per curiam orders.²⁹</p> <p>N.C. R. App. P. 30(e)(1) The Court of Appeals is not required to publish an opinion in every decision. If the deciding panel determines that the appeal involves no new legal principles and that a published opinion would have no precedential value, it may direct that no opinion be published.</p>	<p>N.C. R. App. P. 30(e)(3) An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority, and citation of unpublished opinions in briefs, memoranda, and oral arguments in the trial and appellate divisions is disfavored. However, if a party believes that an unpublished opinion has precedential value to a material issue in the case and that no published opinion would serve as well, the party may cite the unpublished opinion. When citing an unpublished opinion, a party must indicate that the opinion is unpublished.</p>

28. *Id.* For details on selection criteria for the Miscellaneous Reports, see the New York State Law Reporting Bureau web site, <http://www.courts.state.ny.us/reporter/Selection.htm> (visited Jan. 7, 2005). Under a program approved by the Court of Appeals in 2001, lower court opinions not selected for publication in the Miscellaneous Reports may be selected for publication in the New York Slip Opinion Service (www.courts.state.ny.us/reporter/Decisions.htm) and the New York Official Reports (NY-ORCSU) on Westlaw. *Id.*

29. Telephone Interview with Phyllis Goodwin, N.C. Sup. Ct. Editorial Assistant (Dec. 17, 2004).

State	Publication Standards	Citation Rule
North Dakota	<p>N.D. R. App. P. 35.1 The Supreme Court may affirm by summary opinion in any case in which no reversible error of law occurred and one of the following situations exists: the appeal is frivolous and completely without merit; the judgment of the trial court is based on findings of facts that are not clearly erroneous; the jury verdict is substantially supported by evidence; the trial court did not abuse its discretion; the administrative agency order is supported by a preponderance of the evidence; the summary judgment, directed verdict, or judgment on the pleadings is supported by the record; or a previous controlling appellate decision is dispositive of the appeal. The court may also reverse by summary opinion when a previous controlling appellate decision is dispositive.³⁰</p>	<p>Rule 35.1 summary dispositions may be cited as precedent.³¹</p>

30. The North Dakota Court of Appeals is not a permanent sitting court. It receives assignments from the Supreme Court mainly to alleviate the Supreme Court's workload. Although the rules establishing the Court of Appeals allow for discretionary publication, Court of Appeals opinions have not been numerous, and all of its opinions are published in a manner similar to that used by the Supreme Court. Telephone Interview with Penny Miller, Clerk of N.D. Sup. Ct. (Dec. 15, 2004).

31. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Ohio	<p>Ohio Sup. Ct. R. for Reporting Op. 1(A) All Supreme Court opinions are reported in the Ohio Official Reports.</p> <p>Ohio Sup. Ct. R. for Reporting Op. 5 Court of Appeals and trial court opinions which construe, apply, or clarify recently enacted statutory or administrative law; affect an existing rule of law; apply an established rule of law to novel facts; or significantly contribute to the development of the law may be designated for print publication.</p>	<p>Ohio Sup. Ct. R. for Reporting Op. 4 “All court of appeals opinions issued after the effective date of these rules [May 1, 2002] may be cited as legal authority and weighted as deemed appropriate by the courts.” All former rules creating distinctions between “controlling” and “persuasive” opinions of the courts of appeals based upon whether they have been published in the Ohio Official Reports have been abolished.</p>
Oklahoma	<p>Okla. Sup. Ct. R. 1.200(a) Supreme Court and Court of Civil Appeals opinions are issued in memorandum form unless they establish, criticize, or affect a rule of law; involve a legal issue of continuing public interest; apply an established rule to a novel fact situation; resolve an apparent conflict; or contribute a historical legal review or description of legislative history to legal literature.</p> <p>Okla. Ct. Crim. App. R. 3.13 (A) “Opinions may be by Summary Opinion form, memorandum, or</p>	<p>Okla. Sup. Ct. R. 1.200(b)(5)-(8) Memorandum opinions, unless otherwise required to be published, are marked: “Not for Official Publication.” These opinions shall not be considered as precedent by any court or cited in any brief or other document. They shall neither be published in the unofficial or official reporter, nor on the Supreme Court web site. Supreme Court and Court of Civil Appeals dispositions in which there are no published opinions will be reported by brief reference in the unofficial</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Oklahoma, <i>cont'd</i>	of such length and detail as the Court determines. ³²	<p>reporter, the, Oklahoma Bar Journal. Opinions designated "For Publication in O.B.J. Only" are not precedential.</p> <p>Okla. Ct. Crim. App. R. 3.5(C)(3) "In all instances, an unpublished opinion is not binding on this Court. However, parties may cite and bring to the Court's attention the unpublished opinions of this Court provided counsel states that no published case would serve as well the purpose of which counsel cites it"</p>
Oregon	All opinions of the Supreme Court and Court of Appeals are published. Court of Appeals decisions affirmed without opinion are published by case caption and number only. ³³	<p>Or. R. App. P. 5.20(5) "Cases affirmed without opinion by the Court of Appeals should not be cited as authority."</p> <p>No precedential value is accorded to Court of Appeals decisions published by case caption and number only.³⁴</p>

32. Specific publication standards for the Court of Criminal Appeals were not found. Standards for the Emergency Appellate Division of the Court of Criminal Appeals are found at Okla. Ct. Crim. App. R. 12.12(C).

33. Email from Mary Bauman, Or. Sup. Ct. Rptr. of Jud. Decisions, to Melissa Serfass (Dec. 21, 2004) (copy on file with authors).

34. *Id.*

State	Publication Standards	Citation Rule
<p>Pennsylvania</p>	<p>Pa. R. Sup. Ct. I.O.P. III (Notes) A per curiam order may be used when the Court’s decision does not establish a new rule of law, does not affect or criticize an existing rule; does not apply an established rule to novel facts; does not constitute the only, or only recent, binding precedent on an issue; does not involve a legal issue of continuing public interest; or whenever the Court decides it is appropriate.</p> <p>Pa. R. Cmmw. Ct. I.O.P. § 412 (210 Pa. Code § 67.53) The author of a Commonwealth Court opinion of a panel or the court en banc recommends whether it is reported. Generally a decision should be published when any of the following apply: it establishes a new rule of law, applies an existing rule to novel facts, affects or criticizes an existing rule, or resolves an apparent conflict of authority; it involves a legal issue of continuing public interest; or it constitutes a significant, non-duplicative contribution to law by way of an historical legal review, a review of legislative history, or a review of</p>	<p><i>Commonwealth v. Tilghman</i>, 673 A.2d 898 (Pa. 1996). The court in <i>Tilghman</i> attempted to clear up the “confusion within the Bar of this Commonwealth regarding the precedential value of orders of this Court affirming (or reversing) per curiam an order of a lower court.” <i>Tilghman</i>, 673 A.2d at 903. “If a majority of the Justices of this Court, after reviewing an appeal before us . . . join in issuing an opinion, our opinion becomes binding precedent on the courts of this Commonwealth.” <i>Tilghman</i>, 673 A.2d at 903 (citing <i>Commonwealth v. Mason</i>, 322 A.2d 357 (Pa. 1974)).</p> <p>When a per curiam opinion of the Supreme Court affirms on the basis of the opinion of the lower court, the holding and reasoning of that opinion become Supreme Court precedent. When a per curiam Supreme Court affirmance says nothing more, the lower court rationale is not adopted and is not precedential.³⁵</p>

35. Richard B. Cappalli, *What Is Authority? Creation and Use of Case Law by Pennsylvania’s Appellate Courts*, 72 Temple L. Rev. 303, 362-365 (1999). This article provides an outline of the “rules” set forth in *Tilghman* and a discussion of each rule’s precedential value.

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Pennsylvania, <i>cont'd</i>	<p>conflicting decisions among courts of other jurisdictions.</p> <p>Pa. R. Cmmw. Ct. I.O.P. § 413 (210 Pa. Code § 67.54) Each reported opinion is designated an "opinion." An unreported opinion is designated a "memorandum opinion."</p> <p>Pa. R.App. P. 3519 In a brief to the Superior Court, either party may request publication of the court's disposition. Reasons for publication may include that the lower court has decided a question of substance not previously determined by the Superior Court or the Supreme Court, or has rendered a decision conflicting with another lower court decision on the same question, or the question involves an issue of substantial public importance.</p>	<p>Pa. R. Cmmw. Ct. I.O.P. § 414 (210 Pa. Code § 67.55) Unreported opinions of the court shall not be relied upon or cited by a Court or party in any other action or proceeding. . . . A single judge opinion, even if reported, shall be cited only for its persuasive value, not as a binding precedent."</p> <p>Pa. R. Super. Ct. I.O.P. 65.37(A) (210 Pa. Code § 65.37) An unpublished memorandum decision may not be relied upon or cited.</p>
Rhode Island	<p>R.I. Gen. Laws § 8-1-3 "The supreme court shall render written opinions in all cases decided by it wherein points of law, pleading, or practice have arisen which are novel or of sufficient importance to warrant written opinions."</p> <p>R.I. Gen. Laws § 8-1-6 "The reporter shall make true reports of all cases in which written opinions have been</p>	<p>R.I. Sup. Ct. R. 16(j) "Unpublished orders will not be cited by the Court in its opinions and such orders will not be cited by counsel in their briefs. Unpublished orders shall have no precedential effect."</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
<p>Rhode Island, <i>cont'd</i></p>	<p>rendered, and of all decisions and rescripts of the court which he or she may deem to be important and useful, and also all such matters as the court may order to be reported.”</p>	
<p>South Carolina</p>	<p>S. C. App. Ct. R. 220 The Supreme Court or Court of Appeals shall make its decisions in writing either by published or memorandum opinion. Published opinions shall appear in the official reports; memorandum opinions shall not be published. The Supreme Court may file a memorandum opinion when the Court unanimously decides that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive: the judgment of the trial court is based on findings of fact which either are or are not clearly erroneous; the evidence to support a jury verdict is or is not insufficient; an administrative agency order meets or does not meet the standard of review; or that no error of law appears. “The Court of Appeals need not address a point which is manifestly without merit.”</p>	<p>S. C. App. Ct. R. 220(a) Memorandum opinions have no precedential value.</p> <p>S. C. App. Ct. R. 239(d)(2) “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
South Dakota	<p>S.D. R. App. P. 15-26A-87.1 The Supreme Court may affirm or reverse a judgment or order of a trial court by order or memorandum opinion when it is clear from the record that the issues are clearly controlled by settled law; findings of fact or jury verdict are clearly supported by sufficient evidence; an issue of material fact made summary judgment inappropriate; or the issue was one of judicial discretion and abuse is clearly present or absent.</p>	<p>S.D. R. App. P. 15-26A-87.1(E) Orders or memorandum opinions issued under this section shall not be cited or relied on as authority in any court.</p>
Tennessee	<p>Tenn. R. Sup. Ct. 4(A)(2) All opinions of the Supreme Court are published in the official reporter unless explicitly designated "Not for Publication."</p> <p>Tenn. Ct. App. R. 10 The Court of Appeals may affirm, reverse, or modify the trial court by memorandum opinion when a formal opinion would have no precedential value. Publication of intermediate appellate court opinions does not go forward until the issue of appeal to the Supreme Court has been resolved. The individual rules provide specific publication guidelines when application for permission to appeal has been filed, granted, or denied.</p>	<p>Tenn. R. Sup. Ct. 4(H)(1) Unless designated "Not for Citation" under subsection (F) of this rule, unpublished Supreme Court opinions are persuasive authority.</p> <p>Tenn. R. Sup. Ct. 4(F)(1)-(2) Opinions with a 'Not for Citation' designation have no precedential value and may not be cited by any judge or by any litigant.</p> <p>Tenn. Ct. App. R. 10 Court of Appeals memorandum opinions shall not be cited or relied on for any reason.</p> <p>Tenn. Ct. App. R. 12 (a); Tenn. Ct. Crim. App. R. 19(4) When unpublished opinions are cited, copies must be provided.</p>

State	Publication Standards	Citation Rule
<p>Tennessee, <i>cont'd</i></p>	<p>Tenn. R. Sup. Ct. 4(F)(1)-(2) If an application for permission to appeal is denied by [the Supreme] Court with a 'Not for Citation' designation, the opinion is not published in any official reporter.</p>	
<p>Texas</p>	<p>Tex. R. App. P. 63 The Supreme Court hands down a written opinion in every case in which it renders a judgment.</p> <p>Tex. R. App. P. 47.2 Each opinion of the court must be designated either an "Opinion" or a "Memorandum Opinion. Each opinion in a criminal case must bear the notation "publish" or "do not publish."</p> <p>Tex. R. App. P. 47.4 A Court of Appeals opinion should be published only when it establishes, affects, or criticizes a rule of law; applies an existing rule to a new fact situation; involves a legal issue of continuing public interest; involves constitutional law issues; or resolves an apparent conflict of authority.</p> <p>Tex. R. App. P. 77.2 A majority of judges will determine when Court of Criminal Appeals opinions will be published.</p>	<p>Tex. R. App. P. 47.7 "Opinions not designated for publication by the court of appeals under these or prior rules have no precedential value but may be cited."</p> <p>Tex. R. App. P. 77.3 Unpublished opinions of the Court of Criminal Appeals have no value as precedent and must not be cited as authority.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Utah	<p>Supreme Court opinions are published. The Court of Appeals may issue opinions, memorandum decisions, or per curiams. Full opinions are published. Memorandum and per curiam decisions generally are not officially published.³⁶</p> <p>Utah R. App. P. 30(c), (d) When a judgment, decree or order of the Supreme Court or Court of Appeals is reversed or modified, the reasons shall be given in writing. The court may dispose of a case by expedited decision without written opinion if it satisfies the criteria of Rule 31(b).</p> <p>Utah R. App. P. 31(b), (d) Cases qualifying for expedited decision without opinion include appeals involving uncomplicated factual issues primarily based on documents; summary judgments; dismissals for failure to state a claim or lack of jurisdiction; and cases based on uncomplicated issues of law. Expedited appeal will not be granted when a case raises a substantial constitutional issue, an issue of significant public interest, an issue of first impression, or a complicated issue of fact or law.</p>	<p>Utah R. App. P. 30(f) Unpublished decisions may be cited.</p> <p>Utah R. App. P. 31(f) “Appeals decided under this rule will not stand as precedent, but, in other respects, will have the same force and effect as other decisions of the court.”</p> <p>Utah R. Crim. P. 37 Unpublished decisions may be cited as precedent.</p>

36. E-mail from Matty Branch, Utah App. Cts. Administrator, to Melissa Serfass (Jan. 7, 2005) (copy on file with authors).

State	Publication Standards	Citation Rule
Vermont	<p>Vt. R. App. P. 33.2 A full opinion may be appropriate when the Court is establishing a new rule of law, affecting or criticizing an existing rule, or applying an established rule to a novel fact situation; the appeal involves a legal issue of substantial public interest; or the Court may be resolving a conflict or apparent conflict between panels of the Court. In other instances, an entry order or per curiam opinion may be appropriate.</p>	<p>Vt. R. App. P. 33.1(c) An entry order decision issued by a three-justice panel under the guidelines set forth in Rule 33.2 that is not published in the Vermont Reports may be cited as persuasive authority but is not considered controlling precedent.</p>
Virginia	<p>The Supreme Court determines by judicial discretion during conference which cases will be decided by order and which will be decided by a published opinion.³⁷</p> <p>Va. Sup. Ct. R 5:42(i) “A written opinion of the Supreme Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion will be sent by the clerk under the seal of the Supreme Court to the certifying court and to counsel for the parties and shall be published in the Virginia Reports.”</p>	<p>There is no prohibition against citing unpublished orders of the Supreme Court, though their value is probably just as persuasive authority.³⁸</p> <p><i>Grajales v. Commonwealth</i>, 353 S.E.2d 789, 790 n. 1 (Va. App. 1987): “Unpublished memorandum opinions of [the Court of Appeals] are not to be cited or relied upon as precedent.”</p> <p><i>Fairfax County Sch. Bd. v. Rose</i>, 509 S.E.2d 525, 528 n. 3 (1999): “Although an unpublished opinion of the Court [of Appeals] has no precedential value [citing <i>Grajales</i>] a court</p>

37. Telephone Interview with Patricia Harrington, Clerk of Va. Sup. Ct. (Jan. 7, 2005).

38. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Virginia, <i>cont'd</i>	<p>Va. Code Ann. § 17.1-413(A) The Court of Appeals in its discretion may render its decision by order or memorandum opinion. All orders and opinions of the Court are preserved with the record of the case. Opinions the Court designates as having precedential value or other legal significance are reported in separate Court of Appeals Reports in the same manner as decisions and opinions of the Supreme Court.</p>	<p>or the commission does not err by considering the rationale and adopting it to the extent it is persuasive.”</p>
Washington	<p>All Washington Supreme Court opinions are published.³⁹</p> <p>Wash. R. App. P. 12.3(d) Whether an opinion will be printed in the Washington Appellate Reports or be filed for public record only will be determined by a majority of the issuing panel pursuant to Wash. Rev. Code § 2.06.040. In making this determination the panel will use at least the following criteria: whether a case decides an unsettled or new question of law or constitutional principle; affects or reverses an established principle of law; is of general public interest or importance or is in conflict with a prior opinion of the Court of Appeals.</p>	<p>Wash. R. App. P. 10.4(h) An unpublished opinion of the Court of Appeals may not be cited as authority. Unpublished opinions are defined as those not published in the Washington Appellate Reports.</p>

39. Telephone Interview with Tim Fuller, Wash. Sup. Ct. Rptr. of Decisions (Dec. 17, 2004).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
West Virginia	<p>W.Va. Const. art. VIII, § 4 The state constitution requires the Court “to prepare a syllabus of the points adjudicated in each case in which an opinion is written . . . which shall be prefixed to the published report of the case.” Thus, all opinions are published.</p> <p>Memorandum orders in administrative appeals and certain per curiam orders are not published.⁴⁰</p>	<p><i>Walker v. Doe</i>, 558 S.E.2d 290, 296 (W.V. 2001). Per curiam opinions may be cited in support of legal arguments. “While per curiam opinions differ from signed opinions based on the absence of new syllabus points, per curiam opinions nonetheless have precedential value as an application of settled principles of law to facts necessarily differing from those at issue in signed opinions. . . [W]e hereby renounce any prior statements of this Court to the effect that per curiam opinions are not legal precedent.” Unpublished memorandum and per curiam orders have no persuasive or precedential value.⁴¹</p>
Wisconsin	<p>All Supreme Court opinions are published; the Court disposes of some issues by unpublished order.⁴²</p> <p>Wis. Stat. § 809.23(1)(a) In the Court of Appeals, criteria for publication in the official reports include whether the opinion states a new rule of law or affects or criticizes an existing</p>	<p>Per curiam opinions and authored opinions may be cited as precedent; unpublished orders may not.⁴³</p> <p>Wis. Stat. § 809.23(3) An unpublished opinion is of no precedential value and may not be cited as precedent or authority.</p>

40. Telephone Interview with Rory L. Perry II, W.V. Sup. Ct. App. Clerk of Ct. (Dec. 17, 2004).

41. *Id.*

42. Telephone Interview with Cornelia Clark, Wis. Sup. Ct. Rptr. of Jud. Decisions (Dec. 17, 2004).

43. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Wisconsin, <i>cont'd</i>	rule; applies an established rule to a novel fact situation; resolves or identifies a conflict of authority; contributes to the legal literature by reviewing case law or legislative history; or decides a case of substantial and continuing public interest.	
Wyoming	<p>Wyo. R. App. P. 9.01 Appellate court decisions are set forth in a written opinion or order.</p> <p>Wyo. R. App. P. 9.06 The appellate court may issue a ruling without a published decision when all parties to an appeal stipulate in writing that they so desire. Such abbreviated opinions provide the ultimate disposition without a detailed statement of facts or law.</p>	<p>Wyo. R. App. P. 9.06 Abbreviated opinions are not published or generally disseminated and do not constitute precedent of the appellate court.</p>