
Guides for North Carolina Appeals

BLOG | DECEMBER 12, 2019

Part 1: Five-Star Briefs, One Citation at a Time

Throughout my relatively brief legal career, I have had the opportunity to analyze hundreds of briefs and compare their strengths and weaknesses while working for four judges and justices in the North Carolina Supreme Court, Court of Appeals, and Business Court, as well as a federal district court. From my variety of judicial experiences, I have come to the following conclusions:

The best briefs were the ones that (1) clearly and concisely outlined a simple and logical solution for the Court to grant the briefing party's requested relief; while (2) directing the Court to the precise locations of all applicable record evidence and legal authority necessary for the Court to more easily verify whether the proposed solution adhered to all binding legal authority and was properly supported by the evidence.

The following post offers five citation tips to help ensure that you are offering up five-star appellate briefs.

Befriend *The Bluebook*. The North Carolina Rules of Appellate Procedure (the "Appellate Rules") dictates that "[c]itations should be made according to the most recent edition of *The Bluebook: A Uniform System of Citation*." N.C. R. App. P. at Appendix B. It is important to note that the operative phrase here is "most recent." Although it may be difficult to replace the well-loved copy of *The Bluebook* that you have cherished since law school, the 20th Edition is now the controlling authority on legal citations. There have been significant modifications between the various editions, so it is import to refresh your citation skills by cozying up with a crisp new copy of the 20th Edition. Alternatively, there is now also a digital version of *The Bluebook*, which has the added benefit of quick keyword searches.

Summarize accurately. You will likely lose the Court's trust if you misstate the applicable law, blatantly misinterpret case law, or exaggerate the precedential authority of a prior decision (or worse, wholly fail to recognize directly applicable precedent). Even if done unintentionally, any inaccurate statements of law will most likely chip away at the credibility, and thereby, persuasiveness of your argument. The best practice is to directly quote—rather than summarize—any pivotal points of law. That being said, the regular use of block quotes has become somewhat of a controversial topic. While some view block quotes as the best way to ensure an accurate recitation of the law, others believe that many readers will skim over any block quotes. Although the use of block quotes has not quite reached the same level of notoriety as the Oxford comma, there is enough controversy over the effectiveness of block quotes to warrant caution. Therefore, although the best practice is to directly quote the applicable law to ensure accuracy, the safer option is to utilize block quotes sparingly. When you choose to insert a block quote, be sure to identify its relevance to your overall analysis.

Be Consistent. For example, underline *or* italicize *all* of your case names. Once you choose one formatting style or

abbreviation, use it consistently throughout the brief. Although consistent formatting and technically correct citations may seem like trivial matters, these minor details can impact a brief's overall persuasiveness. As previously discussed, inaccurate statements of law (or evidence) can destroy the credibility, and thereby, persuasiveness of a brief. If a brief is riddled with inconsistencies and inaccurate citations due to lack of attention to detail, then the reader may question whether the brief also fails to accurately summarize the applicable facts and law. Although some judges may not think twice about these minor formatting/technical details, it is better to be safe than sorry.

Cite often. The rule of thumb is that every fact should be supported by a record citation and every statement of law should cite to authority. In other words, most sentences should contain or be followed by one or more citations. If you have any doubt as to the importance of including citations whenever possible, here's a list of the top three reasons why you're wrong:

- (1) First and foremost, the Appellate Rules specifically require citations to the record and/or legal authorities. *See, e.g.*, N.C. R. App. P. 28(b)(5) (noting that the Statement of Facts section of the Appellant's brief "should be . . . supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be"); N.C. R. App. P. 28(b)(6) ("The body of the argument and the statement of applicable standard(s) of review [of the Appellant's brief] shall contain citations of the authorities upon which the appellant relies."). Failure to do so may result in the Court's dismissal of all or part of your appeal. *See, e.g., State v. Velazquez-Perez*, 233 N.C. App. 585, 595, 756 S.E.2d 869, 876, *disc. rev. denied*, 367 N.C. 509, 758 S.E.2d 881 (2014) ("Failure to cite to supporting authority is a violation of Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, and constitutes abandonment of th[e] argument.").
- (2) For the oral argument enthusiasts out there, further note that the Appellate Rules dictate that "[a]uthorities not cited in the briefs" or in a filed memorandum of additional authorities, as prescribed under Appellate Rule 28(g), "may not be cited and discussed in oral argument." N.C. R. App. P. 28(g).
- (3) You should generally assume that your panel of judges has had no or limited exposure to the area of applicable law governing your issue(s) on appeal. Therefore, your argument section will be much more persuasive if you begin by providing a "crash course" of the applicable area of law and precedential authorities. When available, it is helpful to cite to resources that provide additional background information or a more thorough explanation of the applicable law. For example, cite to a recent case that provides helpful summaries of the seminal decisions and/or string of the prior case law governing the applicable legal issue—even if the case has no or limited precedential value. Alternatively, consider including a footnote that cites to particularly helpful sections of a law review article or common treatise. Either way, make sure you also explain *why* you are referring the Court to these non-binding resources (*e.g.*, "For a detailed summary of the applicable case law governing this issue, see [case citation]").

Cite Specifically. Here is a chart to demonstrate:

Do NOT do this...	In
<p>x Ms. Smith testified at trial that it was exceptionally sunny, cold, and windy at the time of the accident. (T pp 22-36).</p>	<p>✓ GOLD OPTIC exceptional the accident</p> <p>✓ PLATINUM it was excep 22:14-15), a the accident</p>
<p>x Appellant was convicted of five counts of assault . . . [insert seven sentences of facts here with no citations] On March 25, 2019, Appellant was sentenced to ten years imprisonment. (R p 1).</p>	<p>✓ Include cita specific pag numbers to you're shoo up with mul the above e</p>

Stay tuned for additional blog posts in this series for more tips and tricks to improving the persuasiveness of your appellate briefs.

Caitlin A. Mitchell is a litigator and appellate practitioner who handles a variety of product liability, premises liability, and complex business and employment matters. [Read More.](#)

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