

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON TECHNOLOGY AND INFORMATION SYSTEMS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association will facilitate discussion with organizations currently developing legal citation formats to create a universal American citation standard that reflects both existing ABA recommended citation formats and other formats proposed and adopted in U.S. jurisdictions;

FURTHER RESOLVED, That the American Bar Association urges cooperation among Federal and state entities, law schools, research and writing organizations, and technology standards groups and others, to create a uniform citation standard that reflects the wide range of experience and research, as evidenced by the Association's own citation resolution, and that can be implemented in legislatures, agencies, and courts.

FURTHER RESOLVED, That the American Bar Association urges all American jurisdictions to participate in the creation of an American universal system of citation for case reports, statutes, administrative documents, and other resources upon which the legal profession relies.

REPORT

The American Bar Association House of Delegates passed a uniform citation resolution in 1996 that addressed the need for a uniform method of citing to American case law in a vendor- and media-neutral way. Since that time, technological and practical changes have led to a variety of citation efforts by legal and non-legal organizations. The ABA's case citation format, as described in the 1996 resolution, is now one of many competing for adoption in United States courts. The continued fragmentation of effort requires a change of ABA policy to supplement the original resolution and facilitate the creation of a universal citation format that will consider, but may not adopt, the ABA's preferred format.

The American Bar Association created a special committee to review the universal citation issue in 1995. The Committee sought input from throughout the legal profession, legal publishers, and other interested groups. The result of their extraordinary efforts was the resolution that the House of Delegates considered, and passed, in 1996.¹ The resolution stated a preferred format for citing to an American judicial opinion, expressing a vendor-neutral and medium-neutral set of terms to identify the court, page, and date the opinion was published. The ABA led the way in universal

¹ RESOLVED, That the American Bar Association recommends that:

All jurisdictions adopt a system for official citation to case reports that is equally effective for printed case reports and for case reports electronically published on computer disks or network services, that system consisting of the following key elements: The court should include the distinctive sequential decision number described in paragraph C in each decision at the time it is made available to the public.

The court should number the paragraphs in the decision.

The court should require all case authorities to be cited by stating the year, a designator of the court, the sequential number of the decision, and where reference is to specific material within the decision, the paragraph number at which that material appears.

Until electronic publications of case reports become generally available to and commonly relied upon by courts and lawyers in the jurisdiction, the court should strongly encourage parallel citations, in addition to the primary citation described in paragraph C, to commonly used printed case reports. When a cited authority is not available in those printed case reports, the court should require counsel to provide printed copies to opposing counsel and to the court. The parallel citation should only be to the first page of the report and parallel pinpoint citations should not be required.

The standard form of citation, shown for a decision in a federal court of appeals, should be:

Smith v. Jones, 1996 5Cir 15, ¶ 18, 22 F.3d 955.

1996 is the year of the decision; 5Cir refers to the United States Court of Appeals for the 5th Circuit; 15 indicates that this citation is to the 15th decision released by the court in the year; 18 is the paragraph number where the material referred to is located, and the remainder is the parallel citation to the volume and page in the printed case report where the decision may also be found.

citation and this resolution acted as a spark for other organizations that were also considering the issue of uniformity.

It is worth taking a moment to explain the difference between universal citation formats – whether applied to cases, statutes, or other legal materials – and citation systems. The Bluebook: a Uniform System of Citation, commonly referred to as the “Bluebook”, describes the mechanics of citing to a variety of materials. Other citation systems include the Association of Legal Writing Directors’ (ALWD) and the University of Chicago’s Maroon Book. These systems do not create a citation format but rather they describe how to implement a specific format developed by others. For example, the state of Montana has created a uniform method of citing to all cases.² This citation format is included in the Bluebook and ALWD manual because that is the official citation format for Montana courts. The format does not change the mechanical process that the Bluebook and other systems attempt to impart.

Since 1996, a number of groups have addressed the universal citation issue. The American Association of Law Libraries’ (AALL) Citation Formats committee developed a similar case citation format, although not identical.³ The AALL committee has also developed prototype citation formats for statutes and administrative rules. Parallel to these efforts, some states have attempted to create their own citation formats. Fifteen state jurisdictions have addressed the issue of uniform case citation since the ABA resolution was passed.⁴ Some jurisdictions, like Montana and Louisiana, adopted a uniform case citation format. Other states, like Arkansas and Tennessee, rejected citation efforts. Singularly, the Tennessee Supreme Court noted that they would invite a new proposal when there existed a consensus on the issue of universal citation among citation experts and national legal organizations.⁵

While the citation format efforts in the United States have progressed, other common law countries have adopted universal citation wholesale. Australia, Canada, and the United Kingdom have all moved ahead with universal citation systems within their respective jurisdictions. Admittedly, they face fewer hurdles in that they do not have the large number of distinct jurisdictions the United States has. However, their lead has encouraged non-lawyer groups to consider the universal citation issue.

LegalXML, Inc., a non-profit dedicated to the development of extensible markup language (XML) standards for lawyers, created a technical team to look at making a citation standard. XML is a way of describing the contents of a Web page or database.

² Montana Supreme Court Order Adopting Public Domain and Neutral Format Citation
< <http://www.lawlibrary.state.mt.us/dscqi/ds.py/View/Collection-3818> >

³ American Association of Law Libraries Universal Citation Guide
< <http://www.aallnet.org/committee/citation/ucg/index.html> >

⁴ ABA Legal Technology Resource Center Universal citation Online Resources
< <http://www.lawtechnology.org/research/citation/uscourts.html> >

⁵ Order, Supreme Court of Tennessee, In Re: Petition of Tennessee Bar Association for the Approval of Citation System for Tennessee Appellate Decisions
< <http://www.tsc.state.tn.us/OPINIONS/TSC/PDF/003/TBA.pdf> >

This technology did not exist when the House of Delegates passed the 1996 resolution. In 1996, a court opinion that appeared online might have used a programming tag that described how the judge's name should look, in this case, that it should use boldface type:

Judge Wilkie Collins

A person reading that opinion would see that the judge's name was darker, and would know that this was the judge's name because it says so. A computer is not able to make that distinction.

The revolution wrought by XML is that the judge's name can now be described in two ways: how it will look, and what it is. In this case, the programming tags indicate that this is the name of the opinion's judge and it should appear in boldface type:

<presiding_judge>Judge Wilkie Collins</presiding_judge>

A computer program can now "read" this document and identify which piece of information is the name of the presiding judge. The creation of a standard list of programming tags for citation requires development of citation format standards. LegalXML, Inc., which joined the larger OASIS XML standards organization in 2001, has begun looking at universal citation activities and attempting to create a standard set of citation format elements – how to describe the court, date, docket number, and so on – in order to start creating an XML citation standard for legal materials.

The passage of time since the ABA's 1996 resolution has yielded a splintering of opinion about the most appropriate way to create universal citation format. The American Bar Association must once again take the lead in developing a universal citation format that can be adopted by all American jurisdictions. The promise of new technologies such as XML and of refinements to case and other citation formats requires a change of Association policy. The 1996 resolution was ahead of its time but it created a specific citation format that is no longer necessarily the best format for a universal system. A resolution by the House of Delegates that allows the Association members and staff to work jointly with other organizations to develop a universal standard – that may or may not incorporate the 1996 resolution format – can dramatically change the universal citation format landscape in the United States. A universal citation system, reflecting the consensus of the experts and organizations marshaled by the ABA, will benefit the legal profession and the public as technology makes increasing amounts of information available electronically.

Respectfully submitted:

Don Bivens, Chair
Standing Committee on Technology and Information Systems
February 2003

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Standing Committee on Technology and Information Systems

Submitted By: Don Bivens, Chair, Standing Committee on Technology and Information Systems

1. Summary of Recommendation(s).

The American Bar Association House of Delegates passed a uniform citation resolution in 1996 that addressed the need for a uniform method of citing to American case law in a vendor- and media-neutral way. Since that time, technological and practical changes have led to a variety of citation efforts by legal and non-legal organizations. The ABA's case citation format, as described in the 1996 resolution, is now one of many competing for adoption in United States courts. The continued fragmentation of effort requires a change of ABA policy to supplement the original resolution and facilitate the creation of a universal citation format that will consider, but may not adopt, the ABA's preferred format.

2. Approval by Submitting Entity.

Unanimous vote at the Standing Committee on Technology and Information Systems fall meeting, held in Chicago, IL, on December 3, 2002.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The 1996 uniform citation is affected by this recommendation, although it will primarily be supplemented rather than replaced. The 1996 resolution propounds a specific citation format. This recommendation seeks to allow the ABA to create consensus for a universal citation format, which may or may not incorporate the 1996 resolution's format. This recommendation is also supported by the 1997 Legal Data Interchange resolution passed by the House of Delegates, in that the Association has already

established the position of encouraging courts and other organizations to make information easier to share and access.

5. What urgency exists which requires action at this meeting of the House?

The universal citation issue remains at an impasse until the many groups looking at it coordinate their efforts. The sooner the Association can take on this role, the faster work can begin on a universal citation system.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both direct and indirect costs.)

Implementation of universal citation will primarily involve indirect costs. The staff of the ABA's Legal Technology Resource Center have been responsible for implementation of the 1996 resolution and would be the group facilitating ABA member entities interactions with outside organizations. The indirect costs would not require any additional general revenue funding. Potential direct costs could arise should the ABA host forums involving interested organizations but they would not extend beyond refreshment costs as the Association's headquarters offers sufficient meeting space for any activities. These costs would initially come from general revenue funds although it is anticipated that there are sponsorship opportunities to offset the costs of universal citation activities.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referrals.

All participants on the 1996 resolution were contacted on April 2d, 2002.

Executive Committee, Judicial Division

- Offered some word changes, but decided to remain neutral as to the recommendation.

Committee on Databases, Section of Intellectual Property Law

- Voted to support the recommendation, with the expectation that they would be one of the groups asked to participate. The committee will forward their report to the Section Council to seek the Section's support for the recommendation.

Section of Science and Technology Law
- No response

Additionally, ongoing contacts have been made with the American Association of Law Libraries Citation Formats committee and the Association of Legal Writing Directors. Both groups were supportive of the ABA becoming involved in universal citation issues.

10. Contact Person. (Prior to the meeting.)

David Whelan, 541 N. Fairbanks Court, Mail Stop 15.3, Chicago, IL 60611, (312) 988-5026

11. Contact Person. (Who will present the report to the House.)

Don Bivens