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### Precedential Effect of Unpublished Opinions

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The rules and holdings of many state and federal courts provide that unpublished opinions cannot be considered to have precedential effect. The court in *Hart v. Massanari*, 266 F.3d 1155, Unempl. Ins. Rep. (CCH) ¶16685B, 105 A.L.R.5th 747 (9th Cir. 2001), held that Ninth Circuit Rule 36-3, providing that unpublished dispositions and orders of the Ninth Circuit are not binding precedent, is constitutional, and disagreed with the holding of *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000). This annotation collects and analyzes the cases in which the courts have discussed the precedential effect of unpublished opinions.

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P.B., In re, 427 N.J. Super. 176, 47 A.3d 777 (App. Div. 2012) —<sup>2.5</sup>  
Raymond v. New Jersey State Parole Bd., 221 N.J. Super. 381, 534 A.2d 741 (App. Div. 1987) —<sup>4</sup>  
State v. Cruz Const. Co., Inc., 279 N.J. Super. 241, 652 A.2d 741 (App. Div. 1995) —<sup>4</sup>  
State v. Merola, 365 N.J. Super. 203, 838 A.2d 543 (Law Div. 2002) —<sup>4</sup>

State v. Robertson, 438 N.J. Super. 47, 102 A.3d 381 (App. Div. 2014) — <sup>2.5</sup>  
303, Inc. v. City of North Wildwood, 21 N.J. Tax 376, 2004 WL 1542273 (2004) — <sup>4</sup>

#### **New Mexico**

Anaya, State ex rel. v. Jaramillo, 1979-NMSC-026, 92 N.M. 617, 593 P.2d 58 (1979) — <sup>3</sup>  
Romero v. City of Santa Fe, 139 N.M. 440, 2006-NMCA-055, 134 P.3d 131 (Ct. App. 2006) — <sup>4</sup>  
Winrock Inn Co. v. Prudential Ins. Co. of America, 122 N.M. 562, 1996-NMCA-113, 928 P.2d 947 (Ct. App. 1996) — <sup>3, 4</sup>

#### **New York**

Eaton v. Chahal, 146 Misc. 2d 977, 553 N.Y.S.2d 642 (Sup 1990) — <sup>4</sup>  
Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh, 123 A.D.3d 51, 993 N.Y.S.2d 275 (1st Dep't 2014) — <sup>3</sup>

#### **North Carolina**

Freeman v. Rothrock, 189 N.C. App. 31, 657 S.E.2d 389 (2008) — <sup>4</sup>  
Inland Harbor Homeowners Ass'n, Inc. v. St. Josephs Marina, LLC, 219 N.C. App. 348, 724 S.E.2d 92 (2012) — <sup>2.5</sup>  
Long v. Harris, 137 N.C. App. 461, 528 S.E.2d 633 (2000) — <sup>4</sup>  
Magnolia Mfg. of North Carolina, Inc. v. Erie Ins. Exchange, 179 N.C. App. 267, 633 S.E.2d 841 (2006) — <sup>4</sup>  
State v. Leaks, 771 S.E.2d 795 (N.C. Ct. App. 2015) — <sup>2.5</sup>  
State v. Mabry, 217 N.C. App. 465, 720 S.E.2d 697 (2011) — <sup>2.5</sup>  
State v. McKnight, 767 S.E.2d 689 (N.C. Ct. App. 2015) — <sup>2.5</sup>  
State v. Pritchard, 186 N.C. App. 128, 649 S.E.2d 917 (2007) — <sup>4</sup>  
Sullivan v. Pender County, 196 N.C. App. 726, 676 S.E.2d 69 (2009) — <sup>2.5</sup>  
Zurosky v. Shaffer, 236 N.C. App. 219, 763 S.E.2d 755 (2014) — <sup>3</sup>

#### **North Dakota**

State v. Birchfield, 2015 ND 6, 858 N.W.2d 302 (N.D. 2015) — <sup>3.5</sup>

#### **Ohio**

Beder v. Cleveland Browns, Inc., 129 Ohio App. 3d 188, 717 N.E.2d 716 (8th Dist. Cuyahoga County 1998) — <sup>4</sup>  
Graves, State ex rel. v. State, 9 Ohio App. 3d 260, 459 N.E.2d 913 (10th Dist. Franklin County 1983) — <sup>4</sup>  
Miller v. Barry, 81 Ohio App. 3d 393, 611 N.E.2d 357 (10th Dist. Franklin County 1992) — <sup>4</sup>  
New York Life Ins. Co. v. Wittman, 813 F. Supp. 1287 (N.D. Ohio 1993) (applying Ohio law) — <sup>4</sup>  
State v. Parker, 66 Ohio Misc. 2d 1, 642 N.E.2d 66 (Mun. Ct. 1994) — <sup>4</sup>

#### **Oklahoma**

Bilbrey v. Cingular Wireless, L.L.C., 2007 OK 54, 164 P.3d 131 (Okla. 2007) — <sup>4</sup>  
Howard v. State, 1987 OK CR 116, 738 P.2d 543 (Okla. Crim. App. 1987) — <sup>4</sup>  
Porter v. Oklahoma Farm Bureau Mut. Ins. Co., 2014 OK 50, 330 P.3d 511 (Okla. 2014) — <sup>2.5</sup>

#### **Pennsylvania**

Boring v. Erie Ins. Group, 434 Pa. Super. 40, 641 A.2d 1189 (1994) — <sup>4</sup>  
Coleman v. Wyeth Pharmaceuticals, Inc., 2010 PA Super 158, 6 A.3d 502 (2010) — <sup>2.5</sup>  
Com. v. Booth, 1999 PA Super 71, 729 A.2d 1187 (1999) — <sup>4</sup>  
Com. v. Dennis, 421 Pa. Super. 600, 618 A.2d 972 (1992) — <sup>4</sup>  
Com. v. Mathis, 317 Pa. Super. 226, 463 A.2d 1167 (1983) — <sup>4</sup>  
Com. v. Phinn, 761 A.2d 176 (Pa. Super. Ct. 2000) — <sup>4</sup>  
Com. v. Sperry, 395 Pa. Super. 400, 577 A.2d 603 (1990) — <sup>4</sup>  
Com. v. Swinson, 426 Pa. Super. 167, 626 A.2d 627 (1993) — <sup>4</sup>  
Glover, In re Estate of, 447 Pa. Super. 509, 669 A.2d 1011 (1996) — <sup>4</sup>  
Keyes, In re, 2013 PA Super 326, 83 A.3d 1016 (2013) — <sup>3.5</sup>  
Liberty Mut. Ins. Co. v. Domtar Paper Co., 2013 PA Super 262, 77 A.3d 1282 (2013) — <sup>4</sup>  
Ridley ex rel. Ridley v. State Farm Mut. Auto. Ins. Co., 745 A.2d 7 (Pa. Super. Ct. 1999) — <sup>4</sup>  
Vetter v. Fun Footwear Co., 447 Pa. Super. 84, 668 A.2d 529 (1995) — <sup>4</sup>

#### **South Carolina**

Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000) —<sup>4</sup>  
Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38, 152 Ed. Law Rep. 347 (Ct. App. 2001) —<sup>4</sup>

### Tennessee

Board of Com'rs of Union City v. Obion County, 188 Tenn. 666, 222 S.W.2d 7 (1949) —<sup>4</sup>  
Cook v. State, 506 S.W.2d 955 (Tenn. Crim. App. 1973) —<sup>4</sup>  
Del-Met Corp., In re, 322 B.R. 781 (Bankr. M.D. Tenn. 2005) (applying Tennessee law) —<sup>4</sup>  
D.Y.H., In re, 226 S.W.3d 327 (Tenn. 2007) —<sup>4</sup>  
Edwards v. City of Memphis, 342 S.W.3d 12 (Tenn. Ct. App. 2010) —<sup>2.5</sup>  
McConnell v. State, 12 S.W.3d 795 (Tenn. 2000) —<sup>4</sup>  
Southern Ry. Co. v. Foote Mineral Co., 384 F.2d 224 (6th Cir. 1967) (applying Tennessee law) —<sup>4</sup>  
State v. Franklin, 919 S.W.2d 362 (Tenn. Crim. App. 1995) —<sup>4</sup>

### Texas

Barnett v. State, 344 S.W.3d 6 (Tex. App. Texarkana 2011) —<sup>4</sup>  
Barrios v. State, 389 S.W.3d 382 (Tex. App. Texarkana 2012) —<sup>2.5</sup>  
Carrillo v. State, 98 S.W.3d 789 (Tex. App. Amarillo 2003) —<sup>4</sup>  
Douglas v. State, 489 S.W.3d 613 (Tex. App. Texarkana 2016) —<sup>2.5</sup>  
Frizzell v. Cook, 790 S.W.2d 41 (Tex. App. San Antonio 1990) —<sup>4</sup>  
Gonzales v. State, 672 S.W.2d 618 (Tex. App. Amarillo 1984) —<sup>4</sup>  
Hare v. State, 713 S.W.2d 396 (Tex. App. El Paso 1986) —<sup>4</sup>  
Juarez v. State, 461 S.W.3d 283 (Tex. App. Texarkana 2015) —<sup>2.5</sup>  
Just Energy Texas I Corp. v. Texas Workforce Commission, 472 S.W.3d 437 (Tex. App. Dallas 2015) —<sup>2.5</sup>  
Marsh v. State, 343 S.W.3d 475 (Tex. App. Texarkana 2011) —<sup>2.5</sup>  
State v. Mechler, 123 S.W.3d 449 (Tex. App. Houston 14th Dist. 2003) —<sup>4</sup>  
Texas Vital Care v. State, 323 S.W.3d 609 (Tex. App. Texarkana 2010) —<sup>4</sup>  
Wheeler v. Aldama-Luebbert, 707 S.W.2d 213 (Tex. App. Houston 1st Dist. 1986) —<sup>4</sup>  
Wilson v. State, 391 S.W.3d 131 (Tex. App. Texarkana 2012) —<sup>4</sup>

### Utah

Essentail Botanical Farms, LC v. Kay, 2011 UT 71, 270 P.3d 430 (Utah 2011) —<sup>2.5</sup>  
Schultz v. State, 2006 UT App 105, 132 P.3d 701 (Utah Ct. App. 2006) —<sup>3</sup>  
State v. Gambrell, 814 P.2d 1136 (Utah Ct. App. 1991) —<sup>4</sup>

### Virginia

Brandau v. Brandau, 52 Va. App. 632, 666 S.E.2d 532 (2008) —<sup>2.5</sup>  
Christian v. Com., 59 Va. App. 603, 721 S.E.2d 809 (2012) —<sup>2.5</sup>  
Johnson v. Paul Johnson Plastering and National Surety Corporation, 37 Va. App. 716, 561 S.E.2d 40 (2002) —<sup>4</sup>  
Kidder v. Virginia Birth-Related Neurological Injury Compensation Program, 37 Va. App. 764, 560 S.E.2d 907 (2002) —<sup>4</sup>  
Portsmouth (City of) School Bd. v. Harris, 58 Va. App. 556, 712 S.E.2d 23 (2011) —<sup>2.5</sup>  
Robdau v. Com., 35 Va. App. 128, 543 S.E.2d 602 (2001) —<sup>4</sup>  
Samartino v. Fairfax County Fire and Rescue, 64 Va. App. 499, 769 S.E.2d 692 (2015) —<sup>2.5</sup>  
Stokes v. Com., 61 Va. App. 388, 736 S.E.2d 330 (2013) —<sup>2.5</sup>

### Washington

Davis, In re, 95 Wash. App. 917, 977 P.2d 630 (Div. 1 1999) —<sup>4</sup>  
Johnson v. Allstate Ins. Co., 126 Wash. App. 510, 108 P.3d 1273 (Div. 2 2005) —<sup>4</sup>  
Kitsap County v. Allstate Ins. Co., 136 Wash. 2d 567, 964 P.2d 1173 (1998) —<sup>4</sup>  
Marriage of Schweitzer, Matter of, 132 Wash. 2d 318, 937 P.2d 1062 (1997) —<sup>4</sup>  
Martin v. Wilbert, 162 Wash. App. 90, 253 P.3d 108 (Div. 1 2011) —<sup>3</sup>  
Oltman v. Holland America Line USA, Inc., 136 Wash. App. 110, 148 P.3d 1050 (Div. 1 2006) —<sup>3</sup>  
State v. Acrey, 97 Wash. App. 784, 988 P.2d 17 (Div. 1 1999) —<sup>4</sup>  
State v. Bays, 90 Wash. App. 731, 954 P.2d 301 (Div. 2 1998) —<sup>4</sup>  
State v. Fitzpatrick, 5 Wash. App. 661, 491 P.2d 262 (Div. 2 1971) —<sup>4</sup>  
State v. Nolan, 98 Wash. App. 75, 988 P.2d 473 (Div. 1 1999) —<sup>4</sup>

State v. Nysta, 168 Wash. App. 30, 275 P.3d 1162 (Div. 1 2012) —<sup>2.5</sup>  
State v. Sanchez, 74 Wash. App. 763, 875 P.2d 712 (Div. 3 1994) —<sup>4</sup>

### West Virginia

Pugh v. Workers' Compensation Com'r, 188 W. Va. 414, 424 S.E.2d 759 (1992) —<sup>4</sup>

### Wisconsin

Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co., 32 F. Supp. 2d 1059 (E.D. Wis. 1999) (applying Wisconsin law) —<sup>4</sup>  
Horace Mann Ins. Co. v. Wauwatosa Bd. of Ed., 88 Wis. 2d 385, 276 N.W.2d 761 (1979) —<sup>4</sup>  
Morrison v. Rankin, 2007 WI App 186, 305 Wis. 2d 240, 738 N.W.2d 588 (Ct. App. 2007) —<sup>4</sup>  
Roy v. St. Lukes Medical Center, 2007 WI App 218, 305 Wis. 2d 658, 741 N.W.2d 256 (Ct. App. 2007) —<sup>4</sup>  
Sheboygan, City of v. Nytsch, 2008 WI 64, 310 Wis. 2d 337, 750 N.W.2d 475 (2008) —<sup>4</sup>  
Showers Appraisals, LLC v. Musson Bros., 2013 WI 79, 835 N.W.2d 226 (Wis. 2013) —<sup>2.5</sup>  
State v. Obrecht, 2014 WI App 42, 353 Wis. 2d 542, 846 N.W.2d 479 (Ct. App. 2014) —<sup>2.5</sup>  
State v. Swope, 2008 WI App 175, 315 Wis. 2d 120, 762 N.W.2d 725 (Ct. App. 2008) —<sup>2.5</sup>  
Tamminen v. Aetna Cas. and Sur. Co., 109 Wis. 2d 536, 327 N.W.2d 55 (1982) —<sup>4</sup>

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## § 1[a] Introduction—Scope

This annotation collects and discusses the federal and state cases adjudicating the precedential effect of unpublished opinions in subsequent cases concerning different parties and facts.

The issue of whether an unpublished opinion can be cited is not within the scope of this annotation.

A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein, including those listed in the Jurisdictional Table of Cases and Statutes.

## § 1[b] Introduction—Related annotations

Related Annotations are located under the [Research References](#) heading of this Annotation.

## § 2[a] Summary and comment—Generally

### [Cumulative Supplement]

The nationwide proliferation of “unpublished” opinions—which are, in fact, promptly published in West’s national reporters and other legal publications—is both confusing and troubling.<sup>1</sup> Indeed, in September 2001 West Group launched its Federal Appendix, a new case-reporter series in West’s National Reporter System that consists entirely of “unpublished” opinions from the federal circuit courts of appeals (except, currently, the Fifth and Eleventh Circuits).<sup>2</sup> Generally, unpublished decisions or opinions have no precedential value other than the persuasiveness of their reasoning,<sup>3</sup> as an opinion that is not published is written primarily for the parties who are already knowledgeable of the facts of the particular case, and for this reason, most unpublished decisions do not contain a comprehensive analysis of the legal issues decided by the court.<sup>4</sup>

It thus is generally held that unpublished opinions have no binding precedential value (§<sup>4</sup>), but a recent opinion of a panel of the Eighth Circuit, [Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86

[A.F.T.R.2d 2000-5724 \(8th Cir. 2000\)](#), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), on remand to, [2002-1 U.S. Tax Cas. \(CCH\) ¶50168](#), 89 A.F.T.R.2d 448, [2001 WL 1750760 \(E.D. Mo. 2001\)](#), may indicate a reversal of this trend, as there is now a constitutional ground that unpublished opinions do have binding precedential value (<sup>§ 3</sup>). Also, effective January 1, 2002, the District of Columbia Circuit abandoned its no-citation rule and declared that all unpublished opinions issued on or after that date “may be cited as precedent.”<sup>5</sup> Thus, while challenges to court rules denying precedential status to unpublished opinions have been both successful<sup>6</sup> and unsuccessful, the courts may ultimately decide the issue without third party litigation.

## CUMULATIVE SUPPLEMENT

### Cases:

District court can rely on an unpublished opinion to the extent its reasoned analysis is persuasive in the case before it. [Chavez v. County of Bernalillo](#), 3 F. Supp. 3d 936 (D.N.M. 2014).

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[END OF SUPPLEMENT]

§ 2[b] [Summary and comment— Practice pointers](#)

[\[Cumulative Supplement\]](#)

It has been held that a court could cite and use as precedent an unpublished opinion where both suits involved the same defendant and the same issue, and the defendant used the same legal counsel to litigate identical issues in the suits.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Unpublished opinions of the Eleventh Circuit Court of Appeals are not considered binding precedent, but they may be cited as persuasive authority. [In re Alonso](#), 495 B.R. 53 (Bankr. M.D. Fla. 2013).

Under the court rule precluding citation of a nonpublished decision except as “relevant under the doctrines of law of the case, res judicata, or collateral estoppel,” limited citation to a nonpublished decision was permissible as necessary to explain the published rulings in an opinion on a subsequent appeal in the same case, where the published opinion expressly relied on the statement of facts and legal reasoning of the nonpublished decision without reiterating either. [Cal. Rules of Court, rule 8.1115\(a\), \(b\)\(1\)](#). [Millview County Water District v. State Water Resources Control Board](#), 2014 WL 4467819 (Cal. App. 1st Dist. 2014).

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[END OF SUPPLEMENT]

§ 2.5. [Rule holding no precedential effect](#)

[Cumulative Supplement]

Attorneys must ascertain with precision whether or not a particular jurisdiction, by statute or court rule, accords any precedential value to unpublished decisions, as suggested by the following Virginia case.

CUMULATIVE SUPPLEMENT

Cases:

Unpublished cases from the Court of Appeals of Minnesota are not precedential but may be persuasive. M.S.A. § 480A.08(3)(c). [Burns v. Bank of America](#), 655 F. Supp. 2d 240 (S.D. N.Y. 2008), *aff'd*, 2010 WL 106715 (2d Cir. 2010).

Unpublished opinions of Delaware courts may be cited in Delaware, although not as binding precedent. [VICI Racing, LLC v. T-Mobile USA, Inc.](#), 763 F.3d 273 (3d Cir. 2014).

District courts are not bound by non-precedential opinions issued by a circuit court. [U.S. v. Barney](#), 792 F. Supp. 2d 725 (D.N.J. 2011).

A federal district court has discretion to consider the rationale of an unpublished decision of the Superior Court of Pennsylvania when doing so assists the court's task in correctly ascertaining and applying the law of Pennsylvania. [Tristani v. Richman](#), 609 F. Supp. 2d 423 (W.D. Pa. 2009).

Court of Appeals' unpublished decisions are not binding upon it. [Minor v. Bostwick Laboratories, Inc.](#), 669 F.3d 428, 18 Wage & Hour Cas. 2d (BNA) 1248, 161 Lab. Cas. (CCH) P 35987 (4th Cir. 2012).

Unpublished decisions of the Court of Appeals are ordinarily not accorded precedential value; rather, such opinions are entitled only to the weight they generate by the persuasiveness of their reasoning. [Minor v. Bostwick Laboratories, Inc.](#), 654 F. Supp. 2d 433 (E.D. Va. 2009).

Unpublished opinions are not binding precedent in the Fourth Circuit. [Twisdale v. Paulson](#), 595 F. Supp. 2d 686 (S.D. W. Va. 2009).

Unpublished opinions, although not precedential, may be considered persuasive authority. [U.S. v. Torres-Jaime](#), 821 F.3d 577 (5th Cir. 2016).

An unpublished opinion, though not controlling precedent, may be considered as persuasive authority. [U.S. v. Weatheron](#), 567 F.3d 149 (5th Cir. 2009).

An unpublished opinion of the court of appeals is not binding precedent. [Graiser v. Visionworks of America, Inc.](#), 819 F.3d 277 (6th Cir. 2016).

Neither dicta in a court of appeals opinion nor an unpublished decision by the court of appeals is binding precedent. [Scarber v. Palmer](#), 808 F.3d 1093 (6th Cir. 2015).

An unpublished opinion of a court of appeals does not constitute binding precedent. [Gunner v. Welch](#), 749 F.3d 511 (6th Cir. 2014).

Although unpublished decisions of the court of appeals are not binding precedent on subsequent panels, their reasoning may be instructive or helpful, especially where there are no published decisions which will serve as well. [U.S. v. Stafford](#), 721 F.3d 380 (6th Cir. 2013).

Unpublished decisions in the Sixth Circuit are not binding precedent on subsequent panels, but their reasoning may be instructive or helpful. [Crump v. Lafler](#), 657 F.3d 393 (6th Cir. 2011).

Although unpublished decisions do not have precedential authority, they may be considered for their persuasive value in analysis of the concept of reasonable suspicion, which does not permit of precise judicial definition and is dependent on circumstances. [U.S.C.A. Const.Amend. 4. U.S. v. Keith](#), 559 F.3d 499 (6th Cir. 2009).

Unpublished decisions of the Sixth Circuit are not binding under the doctrine of stare decisis and are to be considered for their persuasive value only. [King v. Household Finance Corp. II](#), 593 F. Supp. 2d 958 (E.D. Ky. 2009).

Michigan Court of Appeals panels are not bound by unpublished decisions of that same court, regardless of when they were issued. [MCR 7.215\(J\)\(1\). Lakeland Regional Health System v. Walgreens Health Initiatives, Inc.](#), 604 F. Supp. 2d 983 (W.D. Mich. 2009).

Michigan Court of Appeals panels are not bound by unpublished decisions of that same court, regardless of when they were issued; nonetheless, federal court may consider and follow unpublished state-court decisions, so long as they do not contradict published decisions of the Michigan Supreme Court or Michigan Court of Appeals. [MCR 7.215\(J\)\(1\). Ellis v. Kaye-Kibbey](#), 581 F. Supp. 2d 861 (W.D. Mich. 2008).

Court of Appeals' unpublished opinions are not precedentially binding under doctrine of stare decisis, but may be considered for their persuasive value. [Bailey v. City of Broadview Heights, Ohio](#), 721 F. Supp. 2d 653 (N.D. Ohio 2010).

An unpublished decision by the Court of Appeals lacks binding precedential value. [Schumacher v. State Automobile Mut. Ins. Co.](#), 47 F. Supp. 3d 618 (S.D. Ohio 2014).

Unpublished opinions are not controlling precedent. [U.S. v. Jordan](#), 812 F.3d 1183 (8th Cir. 2016).

Unpublished opinions are not binding precedent, but they are relevant insofar as they have persuasive value. [White v. National Football League](#), 756 F.3d 585, 199 L.R.R.M. (BNA) 3802, 2014-1 Trade Cas. (CCH) ¶ 78820 (8th Cir. 2014).

An unpublished decision is not precedent for a panel of the Court of Appeals. [Pedroza v. BRB](#), 583 F.3d 1139 (9th Cir. 2009).

Although federal district court is not bound by unpublished decisions of intermediate state courts with respect to state-law issues, unpublished opinions that are supported by reasoned analysis may be treated as persuasive authority. [CarMax Auto Superstores California LLC v. Hernandez](#), 94 F. Supp. 3d 1078 (C.D. Cal. 2015).

Although federal court determining state law matter is not bound by unpublished decisions of intermediate state courts, unpublished opinions that are supported by reasoned analysis may be treated as persuasive authority. [U.S. v. Boyce](#), 38 F. Supp. 3d 1135, 114 A.F.T.R.2d 2014-5552 (C.D. Cal. 2014), appeal dismissed, (9th Cir. 14-56610)(Nov. 13, 2014).

Federal court may consider unpublished state decisions, even though such opinions have no precedential value. [Hardin v. Wal-Mart Stores, Inc.](#), 813 F. Supp. 2d 1167 (E.D. Cal. 2011).

Unpublished Court of Appeals panel opinion could not have overruled or declared invalid precedential opinion of prior panel. [In re Apple iPhone Antitrust Litigation](#), 874 F. Supp. 2d 889, 82 Fed. R. Serv. 3d 1226 (N.D. Cal. 2012).



Pursuant to Ninth Circuit rule, defendant was precluded from citing to an unpublished decision in his opposition to plaintiff's motion for summary judgment, since none of the rule's exceptions for citing unpublished dispositions applied to case. *U.S.Ct. of App. 9th Cir.Rule 36-3*, 28 U.S.C.A. *Roth v. Prudential Ins. Co. of America*, 752 F. Supp. 2d 1160 (D. Or. 2010).

Although unpublished orders and opinions generally are not considered binding precedent, except under doctrines of law of the case, *res judicata*, and collateral estoppel, such order or opinion may be relied on for purpose of disposing of issue presented if it has persuasive value with respect to material issue in case and would assist court in its disposition. *U.S. v. Engles*, 779 F.3d 1161 (10th Cir. 2015).

Although unpublished orders and judgments do not establish binding precedent in the Tenth Circuit, they may occasionally be referenced for illustrative purposes. *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F.3d 1151, 49 Employee Benefits Cas. (BNA) 2345 (10th Cir. 2010).

Unpublished orders are not binding precedent and citation to unpublished opinions is not favored; however, if an unpublished opinion or order and judgment has persuasive value with respect to a material issue in a case and would assist the court in its disposition, a citation to that decision is allowed. *Los Reyes Firewood v. Martinez*, 121 F. Supp. 3d 1186 (D.N.M. 2015).

Unpublished orders are not binding precedent, and citation to unpublished opinions is not favored; however, if an unpublished opinion has persuasive value with respect to a material issue in a case and would assist the court in its disposition, citation to that decision is allowed. *U.S. v. Courtney*, 960 F. Supp. 2d 1152 (D.N.M. 2013).

Unpublished decisions of Court of Appeals are not binding authority, and they are persuasive only to the extent that a subsequent panel finds the rationale expressed in that opinion to be persuasive after an independent consideration of the legal issue. *Collado v. J. & G. Transport, Inc.*, 820 F.3d 1256 (11th Cir. 2016).

Unpublished opinions are not binding precedent. *U.S. v. Izurieta*, 710 F.3d 1176 (11th Cir. 2013).

Eleventh Circuit Court of Appeals is not bound by unpublished decisions of that circuit. *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 113 Fair Empl. Prac. Cas. (BNA) 734, 32 I.E.R. Cas. (BNA) 1424, 18 Wage & Hour Cas. 2d (BNA) 208 (11th Cir. 2011).

Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants. *Ray v. Sun Life & Health Ins. Co.*, 752 F. Supp. 2d 1229 (N.D. Ala. 2010).

Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants. *Mixon v. Nationstar Mortg., LLC*, 62 F. Supp. 3d 1321 (S.D. Ala. 2014).

Unpublished opinions are not binding, but they may be considered persuasive authority. *Hinson v. Titan Insurance Company*, 127 F. Supp. 3d 1249 (N.D. Fla. 2015).

While unpublished opinions are not considered binding precedent, they may be considered as persuasive authority. *E.E.O.C. v. West Customer Management Group, LLC*, 899 F. Supp. 2d 1241, 116 Fair Empl. Prac. Cas. (BNA) 332 (N.D. Fla. 2012).

A limited and unpublished opinion, is at best persuasive, not binding on district court. *Milliken & Co. v. Haima Group Corp.*, 654 F. Supp. 2d 1374 (S.D. Fla. 2009).

Although the District of Columbia Circuit does not have a local rule directly on point, unpublished dispositions should not strictly bind panels of the court of appeals and do not constrain a panel of the court from reaching a contrary conclusion in a published opinion after full consideration of the issue. *U.S. v. Epps*, 707 F.3d 337 (D.C. Cir. 2013).

Unpublished orders may be considered persuasive authority, but they do not constrain a panel of the court from reaching a contrary conclusion in a published opinion after full consideration of the issue. *In re Grant*, 635 F.3d 1227 (D.C. Cir. 2011).

Unpublished opinions are not controlling in the Sixth Circuit. *Thorpe v. Breathitt County Bd. of Educ.*, 8 F. Supp. 3d 932

(E.D. Ky. 2014).

Citation to unpublished federal district court decision as authority on appeal is generally prohibited. [McMurtry v. Weatherford Hotel, Inc.](#), 293 P.3d 520 (Ariz. Ct. App. Div. 1 2013).

A motion to strike is a proper vehicle for attacking citation to unpublished authority. [Calpine Const. Finance Co. v. Arizona Dept. of Revenue](#), 221 Ariz. 204, 211 P.3d 1228 (Ct. App. Div. 1 2009).

Under California Rules of Court generally prohibiting the citation of unpublished opinions of California state courts, the Court of Appeal would disregard unpublished superior court opinions cited and relied upon by customer appealing from trial court's order denying class certification in customer's putative class action against merchant. [Cal. R. Ct. 8.1115\(a\). Aguirre v. Amscan Holdings, Inc.](#), 2015 WL 1010804 (Cal. App. 3d Dist. 2015).

It is improper to cite or rely upon unpublished opinions except in limited circumstances. [Cal. R. Ct. 8.1115\(a, b\). People v. Gray](#), 2014 WL 4251381 (Cal. App. 5th Dist. 2014).

While unpublished federal District Court opinions are citable, they do not constitute binding authority. [Gong v. City of Rosemead](#), 2014 WL 2094271 (Cal. App. 2d Dist. 2014).

The court rule prohibiting citation of unpublished opinions does not prevent the citation of unpublished federal opinions. [California Rules of Court, rule 8.1115. Coleman v. Medtronic, Inc.](#), 223 Cal. App. 4th 413, 2014 WL 286096 (2d Dist. 2014).

Unpublished opinions of the Court of Appeal may be cited under the doctrines of law of the case and collateral estoppel. [Cal. R. Ct. 8.1115\(b\) Hendleman v. Los Altos Apartments, L.P.](#), 2013 WL 4446225 (Cal. App. 2d Dist. 2013).

Nonpublished California opinions have no precedential value. [Cal. R. Ct. 8.1115\(a\). Farmers Insurance Exchange v. Superior Court](#), 218 Cal. App. 4th 96, 2013 WL 3818502 (2d Dist. 2013).

An opinion is no longer considered published if the Supreme Court grants review, and may not be relied on or cited. [Cal. Rules of Court, Rules 8.1105\(e\)\(1\), 8.1115\(a\). People v. Kennedy](#), 2012 WL 4040700 (Cal. App. 6th Dist. 2012).

Prior unpublished Court of Appeal opinion which vacated disabilities imposed upon a Lanterman–Petris–Short (LPS) Act conservatee was citable to explain the factual background of the present case and not as legal authority, in other conservatees' appeal from the denial of their petition for declaratory and writ relief challenging county public guardian's alleged practice of obtaining court orders that deprived conservatees of the right to consent to or refuse treatment in nonemergency situations without a judicial determination of incapacity. [West's Ann. Cal. Welf. & Inst. Code § 5357; Cal. Rules of Court, Rule 8.1115\(a\). K.G. v. Meredith](#), 2012 WL 745621 (Cal. App. 1st Dist. 2012).

Court of Appeal could appropriately cite an unpublished decision to explain the factual background of the current case and not as legal authority. [Cal. Rules of Court, Rule 8.1115\(b\)\(1\). Pacific Gas and Elec. Co. v. City and County of San Francisco](#), 204 Cal. App. 4th 652, 2012 WL 988065 (1st Dist. 2012).

While not binding, a nonpublished federal district court case can be citable as persuasive authority. [Balsam v. Trancos, Inc.](#), 203 Cal. App. 4th 1083, 2012 WL 593703 (1st Dist. 2012), opinion modified on denial of reh'g, [Balsam v. Trancos, Inc.](#), 2012 WL 944517 (Cal. App. 1st Dist. 2012).

Court of Appeal may not rely on unpublished California cases. [Gomes v. Countrywide Home Loans, Inc.](#), 192 Cal. App. 4th 1149, 2011 WL 566737 (4th Dist. 2011).

Although not binding precedent on the Court of Appeal, the Court may consider relevant, unpublished federal district court opinions as persuasive. [Futrell v. Payday California, Inc.](#), 190 Cal. App. 4th 1420, 2010 WL 5117629 (2d Dist. 2010).

Although the Court of Appeal may not rely on unpublished state court cases, the rules of court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive, although not binding, authority. [Cal. Rules of Court](#),

[Rule 8.1115. Tichinin v. City of Morgan Hill, 2009 WL 2992567 \(Cal. App. 6th Dist. 2009\).](#)

Ready availability of depublished and unpublished decisions thanks to the Internet and technologically savvy legal research programs does not excuse violations of rules of court prohibiting reference to such authority. [Cal.Rules of Court, Rule 8.1115\(a, b\). People v. Williams, 2009 WL 2606239 \(Cal. App. 3d Dist. 2009\).](#)

Although unpublished federal cases may be cited as persuasive, they are not precedent. [DeJung v. Superior Court, 169 Cal. App. 4th 533, 87 Cal. Rptr. 3d 99, 105 Fair Empl. Prac. Cas. \(BNA\) 23 \(1st Dist. 2008\).](#)

Although the Court of Appeals' published policy forbids the citation of unpublished cases, parties may cite cases decided between January 1, 1970 and November 1, 1975 that appear in the Pacific Second Reporter; however, trial courts are not required to follow those cases as precedent. [Woods v. Delgar Ltd., 226 P.3d 1178 \(Colo. App. 2009\), cert. denied, 2010 WL 893820 \(Colo. 2010\).](#)

Unpublished dispositions have no precedential value. [Gawker Media, LLC v. Bollea, 170 So. 3d 125 \(Fla. 2d DCA 2015\).](#)

Under procedural principles of Florida law, a per curiam affirmance with no written opinion has no precedential value and does not constitute an adjudication on the merits. [Shelton v. Secretary, Dept. of Corrections, 802 F. Supp. 2d 1289 \(M.D. Fla. 2011\) \(applying Florida law\).](#)

Unreported federal court decisions do not have precedential value. [Citizens Property Ins. Corp. v. Ashe, 50 So. 3d 645 \(Fla. Dist. Ct. App. 1st Dist. 2010\).](#)

Unpublished orders serve as neither binding nor physical precedent. [Spurlock v. Department of Human Resources, 286 Ga. 512, 690 S.E.2d 378 \(2010\).](#)

Unpublished federal decision is not binding or precedential in state courts, but state courts may follow the same reasoning if they find it persuasive. [Morris v. Union Pacific R. Co., 396 Ill. Dec. 330, 39 N.E.3d 1156 \(App. Ct. 5th Dist. 2015\).](#)

Unreported decisions have no precedential value, and this is even more true for decisions from foreign jurisdictions. [Burnette v. Stroger, 329 Ill. Dec. 101, 905 N.E.2d 939 \(App. Ct. 1st Dist. 2009\).](#)

Unpublished federal decisions are not binding or precedential in Illinois courts; however, nothing prevents Appellate Court from using the same reasoning and logic as that used in an unpublished federal decision, should it so choose. [CitiMortgage, Inc. v. Parille, 2016 IL App \(2d\) 150286, 49 N.E.3d 869 \(Ill. App. Ct. 2d Dist. 2016\).](#)

Unreported decisions have no precedential value, and this is even more true for decisions from foreign jurisdictions. [State Farm Mut. Auto. Ins. Co. v. Progressive Northern Ins. Co., 2015 IL App \(1st\) 140447, 30 N.E.3d 440 \(Ill. App. Ct. 1st Dist. 2015\).](#)

Unreported decisions have no precedential value, and this is even more true for decisions from foreign jurisdictions. [American Family Mut. Ins. Co. v. Plunkett, 2014 IL App \(1st\) 131631, 14 N.E.3d 676 \(Ill. App. Ct. 1st Dist. 2014\).](#)

Unpublished federal decisions are not binding or precedential in Illinois courts. [King's Health Spa, Inc. v. Village of Downers Grove, 2014 IL App \(2d\) 130825, 11 N.E.3d 489 \(Ill. App. Ct. 2d Dist. 2014\).](#)

Unpublished federal decisions are not binding or precedential in Illinois courts; however, nothing prevents the appellate court from using the same reasoning and logic as that used in an unpublished federal decision where it finds it to be persuasive. [Solargenix Energy, LLC v. Acciona, S.A., 2014 IL App \(1st\) 123403, 17 N.E.3d 171 \(Ill. App. Ct. 1st Dist. 2014\).](#)

Neither an appellant nor appellee can use an unpublished order to support any claim or argument in his or her brief. [Sup.Ct.Rules, Rule 23\(e\). Voris v. Voris, 2011 IL App \(1st\) 103814, 961 N.E.2d 475 \(Ill. App. Ct. 1st Dist. 2011\).](#)

Unpublished order in a federal district court case interpreting state law was not precedential and should not have been cited in

briefs of parties in a different case, where unpublished case was not cited to support contentions of double jeopardy, res judicata, collateral estoppel, or law of the case. [Sup.Ct.Rules, Rule 23\(e\)](#). [Napleton v. Great Lakes Bank, N.A., 945 N.E.2d 111 \(Ill. App. Ct. 1st Dist. 2011\)](#).

An unpublished decision of a federal court is not binding on Illinois courts. [Horwitz v. Sonnenschein Nath and Rosenthal LLP, 926 N.E.2d 934 \(Ill. App. Ct. 1st Dist. 2010\)](#).

It is the policy of the Court of Special Appeals in its opinions not to cite for persuasive value any unreported federal or state court opinion. [Margolis v. Sandy Spring Bank, 110 A.3d 784, 85 U.C.C. Rep. Serv. 2d 962 \(Md. Ct. Spec. App. 2015\)](#).

It is the policy of the Court of Special Appeals in its opinions not to cite for persuasive value any unreported federal or state court opinion. [Wagner v. State, 102 A.3d 900 \(Md. Ct. Spec. App. 2014\)](#).

Although Michigan Court of Appeals panels are not bound by unpublished decisions of that same court, regardless of when they were issued, the federal court may consider unpublished state-court decisions, so long as they do not contradict published decisions of the Michigan Supreme Court or Michigan Court of Appeals. [MCR 7.215\(J\)\(1\)](#). [Griffin v. Reznick, 609 F. Supp. 2d 695 \(W.D. Mich. 2008\) \(applying Michigan law\)](#).

Although, under Michigan law, an unpublished opinion is not precedentially binding under the rule of stare decisis, such an opinion can be cited as persuasive authority. [MCR 7.215\(C\)\(1\)](#). [In re Johnson, 439 B.R. 416 \(Bankr. E.D. Mich. 2010\) \(applying Michigan law\)](#).

Although unpublished opinions of Court of Appeals are not binding precedent, they may be considered instructive or persuasive. [MCR 7.215\(C\)\(1\)](#). [Adam v. Bell, 311 Mich. App. 528, 879 N.W.2d 879 \(2015\)](#).

Unpublished court opinions are not binding, but may be persuasive. [People v. Daniels, 311 Mich. App. 257, 874 N.W.2d 732 \(2015\)](#).

Unpublished opinions may be of persuasive interest, but have no binding authority. [Eddington v. Torrez, 311 Mich. App. 198, 874 N.W.2d 394 \(2015\)](#), appeal denied, [498 Mich. 951, 872 N.W.2d 474 \(2015\)](#).

Although unpublished opinions of the Court of Appeals are not binding precedent, they may be considered instructive or persuasive. [Richards v. Richards, 310 Mich. App. 683, 874 N.W.2d 704 \(2015\)](#).

Although unpublished opinions are not binding on the Court of Appeals, the Court may consider them for their persuasive value. [Lech v. Huntmore Estates Condominium Ass'n, 310 Mich. App. 258, 2015 WL 1737651 \(2015\)](#).

Although unpublished opinions of Court of Appeals are not binding precedent, they may be considered instructive or persuasive. [In re S. Kanjia, 308 Mich. App. 660, 866 N.W.2d 862 \(2014\)](#).

Unpublished decisions of the Court of Appeals are not binding on future panels of the Court. [MCR 7.215\(C\)\(1\)](#). [People v. Gonzalez-Raymundo, 308 Mich. App. 175, 862 N.W.2d 657 \(2014\)](#), appeal denied, [861 N.W.2d 617 \(Mich. 2015\)](#).

The Court of Appeals is not bound by decisions of lower federal courts or unpublished opinions of the Court of Appeals. [Stephens v. Worden Ins. Agency, LLC, 307 Mich. App. 220, 859 N.W.2d 723 \(2014\)](#).

Unpublished opinions of the Court of Appeals have no precedential effect, but may be considered persuasive. [MCR 7.215\(C\)\(1\)](#). [Niederhouse v. Palmerton, 300 Mich. App. 625, 836 N.W.2d 176 \(2013\)](#).

While an unpublished opinion is not precedentially binding under the rule of stare decisis, unpublished opinions can be instructive or persuasive. [MCR 7.215\(C\)\(1\)](#). [Usitalo v. Landon, 299 Mich. App. 222, 829 N.W.2d 359 \(2012\)](#).

Although not binding, the Court of Appeals may consider unpublished opinions to be persuasive. [MCR 7.215\(C\)\(1\)](#). [Visser v. Visser, 299 Mich. App. 12, 829 N.W.2d 242 \(2012\)](#).

Although an unpublished opinion has no precedential value, the Court of Appeals may follow the opinion if it finds the reasoning persuasive. [MCR 7.215\(C\)\(1\)](#). [People v. Minch](#), 295 Mich. App. 92, 2011 WL 6375594 (2011).

Unpublished cases are not binding on the appellate court, but may be viewed as persuasive when there is limited caselaw on the issue. [MCR 7.215\(C\)\(1\)](#). [Attorney General v. Merck Sharp & Dohme Corp.](#), 292 Mich. App. 1, 807 N.W.2d 343 (2011), appeal denied, 490 Mich. 878, 803 N.W.2d 696 (2011).

Although unpublished opinions of the Court of Appeals are not binding precedent, they may be considered instructive or persuasive. [MCR 7.215\(C\)\(1\)](#). [Paris Meadows, LLC v. City of Kentwood](#), 287 Mich. App. 136, 783 N.W.2d 133 (2010).

While an unpublished opinion has no precedential value, the Court of Appeals may follow an unpublished opinion if it finds the reasoning persuasive. [MCR 7.215\(C\)\(1\)](#). [Zaremba Equipment, Inc. v. Harco Nat'l Ins. Co.](#), 280 Mich. App. 16, 761 N.W.2d 151 (2008).

Under Minnesota law, while unpublished decisions are not precedential, they can be of persuasive value. M.S.A. § 480A.08. [Grinnell Mut. Reinsurance Co. v. Schwieger](#), 685 F.3d 697 (8th Cir. 2012) (applying Minnesota law).

Unpublished opinions carry no precedential value. [In re C.D.G.D.](#), 800 N.W.2d 652 (Minn. Ct. App. 2011).

Unpublished cases are not binding authority, although they may have persuasive value. M.S.A. § 480A.08. [City of Saint Paul v. Eldredge](#), 788 N.W.2d 522 (Minn. Ct. App. 2010).

Although unpublished opinions of the Court of Appeals are not precedential, the Court may consider them for their persuasive value. [State v. Ferguson](#), 786 N.W.2d 640 (Minn. Ct. App. 2010).

Unpublished opinions are of persuasive value at best and not precedential. M.S.A. § 480A.03. [Skyline Village Park Ass'n v. Skyline Village L.P.](#), 786 N.W.2d 304 (Minn. Ct. App. 2010).

Unpublished opinions are not precedential. M.S.A. § 480A.08(3)(c). [State v. Lopez](#), 764 N.W.2d 605 (Minn. Ct. App. 2009).

Unpublished decisions of the courts of other states are not persuasive authority in the Court of Appeals. [Mackey v. Smith](#), 438 S.W.3d 465 (Mo. Ct. App. W.D. 2014).

Unpublished opinions from the Supreme Court are not to be cited as precedent. [Arnold v. Sullivan](#), 2010 MT 30, 355 Mont. 177, 226 P.3d 594 (2010).

Unpublished orders and opinions from the Supreme Court are not to be cited as precedent. [State v. Ferre](#), 2014 MT 96, 322 P.3d 1047 (Mont. 2014).

Unpublished decisions of the appellate court do not carry precedential weight. [State v. Laflin](#), 23 Neb. App. 839, 875 N.W.2d 919 (2016).

Unpublished opinions do not constitute precedent and are not to be cited by any court. [Committee to Recall Robert Menendez From the Office of U.S. Senator v. Wells](#), 204 N.J. 79, 7 A.3d 720 (2010).

Although citation to unpublished opinions is generally prohibited, appellate court would cite unpublished appellate court opinions for evidential and not precedential purposes. [N.J. Ct. R. 1:36-3](#). [State v. Robertson](#), 102 A.3d 381 (N.J. Super. Ct. App. Div. 2014).

Rule prohibiting courts from citing unpublished opinion applies even in so specialized a subject matter as proceedings against sex offenders under Megan's Law. [N.J.S.A. 2C:7-1 et seq.](#); [R. 1:36-3](#). [In re P.B.](#), 427 N.J. Super. 176, 47 A.3d 777 (App. Div. 2012).

A court may disregard arguments based on an unpublished opinion. [Mesivta OHR Torah of Lakewood v. Township of Lakewood](#), 24 N.J.Tax 314.

Unpublished decisions are not controlling precedent. [State v. Leaks](#), 771 S.E.2d 795 (N.C. Ct. App. 2015).

Unpublished decisions of the Court of Appeals do not constitute controlling legal authority. [Rules App.Proc., Rule 30\(e\)\(3\). State v. McKnight](#), 767 S.E.2d 689 (N.C. Ct. App. 2015).

Citation to unpublished authority is expressly disfavored by the appellate rules but permitted if a party, in pertinent part, believes there is no published opinion that would serve as well as the unpublished opinion. [Inland Harbor Homeowners Ass'n, Inc. v. St. Josephs Marina, LLC](#), 2012 WL 696227 (N.C. Ct. App. 2012).

Unpublished opinions are not controlling authority and cannot bind later panels of the Court of Appeals. [State v. Mabry](#), 720 S.E.2d 697 (N.C. Ct. App. 2011).

Once an appellate court has ruled on a question, that decision becomes the “law of the case” and governs the question both in subsequent proceedings in a trial court and on subsequent appeal; even unpublished opinions, which are normally without precedential value, or an erroneous decision by the Court of Appeals, becomes the law of the case for that case only. [Sullivan v. Pender County](#), 676 S.E.2d 69 (N.C. Ct. App. 2009).

An opinion of the Court of Civil Appeals not ordered for publication by the Supreme Court constitutes persuasive authority only. Sup.Ct.Rules, Rule 1.200(c)(2), 12 O.S.A. Ch. 15, App. 1. [Porter v. Oklahoma Farm Bureau Mut. Ins. Co.](#), 2014 OK 50, 330 P.3d 511 (Okla. 2014).

An unpublished Superior Court memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding. [Coleman v. Wyeth Pharmaceuticals, Inc.](#), 2010 PA Super 158, 6 A.3d 502, Prod. Liab. Rep. (CCH) P 18492 (2010).

While it is true that unpublished opinions are not controlling, rule specifically states that unpublished cases constitute persuasive authority. Sup.Ct.Rules, Rule 4(G). [Edwards v. City of Memphis](#), 342 S.W.3d 12 (Tenn. Ct. App. 2010), appeal denied, (Apr. 13, 2011).

Although unpublished cases have no precedential value, the Court of Appeals may take guidance from them as an aid in developing reasoning that may be employed. [Douglas v. State](#), 489 S.W.3d 613 (Tex. App. Texarkana 2016).

Unpublished Court of Appeals opinion from before January 1, 2003 had no precedential value. [Tex. R. App. P. 47.7\(b\). Just Energy Texas I Corp. v. Texas Workforce Commission](#), 472 S.W.3d 437, Unempl. Ins. Rep. (CCH) P 8493 (Tex. App. Dallas 2015).

Although unpublished cases have no precedential value, courts may take guidance from them as an aid in developing reasoning that may be employed. [Juarez v. State](#), 461 S.W.3d 283 (Tex. App. Texarkana 2015).

Although an unpublished case has no precedential value, Court of Appeals may take guidance from it as an aid in developing reasoning that may be employed. [Barrios v. State](#), 389 S.W.3d 382 (Tex. App. Texarkana 2012).

Although unpublished cases have no precedential value, an appellate court may take guidance from them as an aid in developing reasoning that may be employed. [Marsh v. State](#), 343 S.W.3d 475 (Tex. App. Texarkana 2011).

While unpublished opinions from the Supreme Court may be cited for their persuasive value, they are not binding on the Supreme Court. [Rules App.Proc., Rule 30\(f\). Essentail Botanical Farms, LC v. Kay](#), 2011 UT 71, 270 P.3d 430 (Utah 2011).

Unpublished opinions of the Court of Appeals, while having no precedential value, are nevertheless persuasive authority. [Samartino v. Fairfax County Fire and Rescue](#), 64 Va. App. 499, 769 S.E.2d 692 (2015).

Although an unpublished opinion of the Court of Appeals has no precedential value, a court does not err by considering the rationale and adopting it to the extent it is persuasive. [Stokes v. Com.](#), 61 Va. App. 388, 736 S.E.2d 330 (2013).

Unpublished opinions are merely persuasive authority and not binding precedent. [Christian v. Com.](#), 59 Va. App. 603, 721 S.E.2d 809 (2012).

While an unpublished case has no precedential value, courts do not err by considering the rationale and adopting it to the extent it is persuasive. Sup.Ct.Rules, Rule 5A:1(f). [Portsmouth \(City of\) School Bd. v. Harris](#), 58 Va. App. 556, 712 S.E.2d 23 (2011).

Unpublished opinions have no precedential value. [Brandau v. Brandau](#), 52 Va. App. 632, 666 S.E.2d 532 (2008).

No matter how well reasoned, unpublished opinions of the Court of Appeals lack precedential value, in part because they merely restate well established principles. [West's RCWA 2.06.040](#); GR 14.1(a). [State v. Nysta](#), 275 P.3d 1162 (Wash. Ct. App. Div. 1 2012).

Unpublished per curiam opinions of the Court of Appeals may not be cited as precedent or authority in any court of the state, except to support claims of issue preclusion, claim preclusion, or law of the case. [W.S.A. 809.23\(3\)\(a, b\)](#). [State v. Obriecht](#), 2014 WI App 42, 353 Wis. 2d 542, 846 N.W.2d 479 (Ct. App. 2014).

Statute that limits use of unpublished opinions does not prohibit Supreme Court's discussion of unpublished decisions when such discussion relies on the opinion solely to demonstrate that courts have used particular language from other cases, and does not rely on the decision for authoritative or persuasive value. [W.S.A. 809.23\(3\)](#). [Showers Appraisals, LLC v. Musson Bros.](#), 2013 WI 79, 835 N.W.2d 226 (Wis. 2013).

Statute providing that an unpublished opinion may not be cited in any Wisconsin court as precedent or authority except to support certain claims does not prohibit the Court of Appeals from citing unpublished opinions from other jurisdictions. [W.S.A. 809.23\(3\)](#). [State v. Swope](#), 2008 WI App 175, 762 N.W.2d 725 (Wis. Ct. App. 2008).

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## [END OF SUPPLEMENT]

### § 3. [Precedential effect found](#)

[\[Cumulative Supplement\]](#)

The following authority held or recognized that unpublished opinions have binding precedential effect.

#### US

[U.S. v. Don B. Hart Equity Pure Trust](#), 818 F.2d 1246 (5th Cir. 1987) (unpublished opinions issued before January 1, 1996, are binding precedent in the Fifth Circuit under 5th Cir. R. 47.5.3)

[U.S. v. Andrews](#), 918 F.2d 1156 (5th Cir. 1990) (overruled on other grounds by, [U.S. v. Bachynsky](#), 934 F.2d 1349 (5th Cir. 1991)) (unpublished opinions issued before January 1, 1996, are binding precedent in the Fifth Circuit under 5th Cir. R.

47.5.3)

[Macktal v. U.S. Dept. of Labor](#), 171 F.3d 323, 14 I.E.R. Cas. (BNA) 1825 (5th Cir. 1999) (unpublished opinions issued before January 1, 1996, are binding precedent in the Fifth Circuit under 5th Cir. R. 47.5.3)

[Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000)

[U.S. v. Goldman](#), 228 F.3d 942 (8th Cir. 2000)

[Gordon ex rel. Gordon v. Ottumwa Community School Dist.](#), 115 F. Supp. 2d 1077 (S.D. Iowa 2000)

[Snell v. Allianz Life Ins. Co. of North America](#), 2000 WL 1336640 (D. Minn. 2000)

[Harris v. U.S.](#), 769 F.2d 718 (11th Cir. 1985) (unpublished opinions are binding precedent)<sup>8</sup>

[In re Arzt](#), 252 B.R. 138, 36 Bankr. Ct. Dec. (CRR) 174, 44 Collier Bankr. Cas. 2d (MB) 1552 (B.A.P. 8th Cir. 2000)

#### **Del**

[Oglesby v. Penn Mut. Life Ins. Co.](#), 877 F. Supp. 872 (D. Del. 1994), as supplemented on denial of reargument, (Feb. 16, 1995) (applying Delaware law)

#### **Guam**

[People of Territory of Guam v. Yang](#), 800 F.2d 945 (9th Cir. 1986), reh'g granted, 833 F.2d 1379 (9th Cir. 1987) and on reh'g, 850 F.2d 507 (9th Cir. 1988) (applying Guam law) (court of appeals was required to defer to Guam court's treatment of its unpublished decisions as authoritative)

#### **NM**

[State ex rel. Anaya v. Jaramillo](#), 92 N.M. 617, 593 P.2d 58 (1979)

The court in [Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), held that unpublished opinions have precedential effect. The court held that the portion of [Eighth Cir. R. 28A\(i\)](#)<sup>9</sup> that declares that unpublished opinions are not precedent is unconstitutional under Article III of the United States Constitution, because it purports to confer on the federal courts a power that goes beyond the "judicial." The court, citing [Marbury v. Madison](#), 5 U.S. 137, 2 L. Ed. 60 (1803), noted that inherent in every judicial decision is a declaration and interpretation of a general principle or rule of law. The court further noted that this declaration of law is authoritative to the extent necessary for the decision and must be applied in subsequent cases to similarly situated parties. The court, noting that these principles, which form the doctrine of precedent, were well established and well regarded at the time this nation was founded, and that the framers of the Constitution considered these principles to derive from the nature of judicial power and intended that they would limit the judicial power delegated to the courts by Article III of the Constitution, concluded that [Eighth Circuit Rule 28A\(i\)](#), insofar as it would allow the court to avoid the precedential effect of its prior decisions, purports to expand the judicial power beyond the bounds of Article III and is therefore unconstitutional. Since [Rule 28A\(i\)](#) expands the judicial power beyond the limits set by Article III by allowing the court complete discretion to determine which judicial decisions will bind and which will not, insofar as the rule limits the precedential effect of the court's prior decisions the rule is unconstitutional.

#### **Comment**

The court in [Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), further noted that the case was not about whether opinions should be published, whether that means printed in a book or available in some other accessible form to the public in general. While courts may decide, for one reason or another, that some of their cases are not important enough to take up pages in a printed report, and such decisions may be eminently practical and defensible, in the court's view they have nothing to do with the authoritative effect of any court decision, as the question presented was not whether opinions ought to be published, but whether they ought to have precedential effect, whether published or not. The court also found fault with the rationale that the volume of appeals is so high that it is simply unrealistic to ascribe precedential value to every decision, as the remedy, instead, is to create enough judgeships to handle the volume, or, if that is not practical, for each judge to take enough time to do a competent job with each case.

#### **Caution**

On rehearing en banc, the Eighth Circuit in [Anastasoff v. U.S.](#), 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86



A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), held that the tax dispute on which there was conflicting precedent, and on which a rehearing en banc was sought, became moot when the government paid the taxpayer's refund claim and announced its acquiescence in the rule of caselaw favoring the taxpayer's position; the continuing dispute regarding the circuit court panel's procedural determination was no longer relevant to the resolution of case and its determination would, in any case, be vacated due to the case's mootness. The en banc court thus noted that the constitutionality of that portion of [Rule 28A\(i\)](#) which says that unpublished opinions have no precedential effect remains an open question in the Eighth Circuit.

### Comment

The court in [Encore Video, Inc. v. City of San Antonio](#), 2000 WL 33348240 (W.D. Tex. 2000), as dicta, respectfully requested, in light of [Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2000-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), that the Fifth Circuit consider the validity of 5th Cir. R. 47.5.4, which provides that unpublished opinions issued on or after January 1, 1996, are not precedent, except under the doctrine of res judicata, collateral estoppel or law of the case (or similarly to show double jeopardy, abuse of the writ, notice, sanctionable conduct, entitlement to attorney's fees, or the like). Given the similarities in the rules of the Fifth and Eighth Circuits, the district court noted the beginning of a possible trend and found the discussion of the issue worth consideration by the circuit.

The court in [U.S. v. Goldman](#), 228 F.3d 942 (8th Cir. 2000), held that even an unpublished opinion of a panel of the Eighth Circuit Court of Appeals was binding precedent on another panel, which had to follow until the time, if ever, that the decision was overturned by the Eighth Circuit en banc.

The court in [Oglesby v. Penn Mut. Life Ins. Co.](#), 877 F. Supp. 872 (D. Del. 1994), as supplemented on denial of reargument, (Feb. 16, 1995) (applying Delaware law), noted that unpublished orders of the Delaware Supreme Court have precedential effect in Delaware.

The court in [State ex rel. Anaya v. Jaramillo](#), 92 N.M. 617, 593 P.2d 58 (1979), held that, since there was no rule as to the precedential effect of unpublished opinions of the New Mexico Supreme Court in effect at the time the case, involving a transfer of a liquor license, was on appeal, the unpublished opinion of the New Mexico Supreme Court involving the same issue, which was legally correct and in which the court had set forth the ultimate facts, had precedential value.

### Caution

See [Winrock Inn Co. v. Prudential Ins. Co. of America](#), 122 N.M. 562, 1996 -NMCA- 113, 928 P.2d 947 (Ct. App. 1996), § 4, in which the court, citing [NMRA 1996, 12-405\(c\)](#), held that unpublished decisions are not meant to be used as precedent, as they are written solely for the benefit of the parties.

## CUMULATIVE SUPPLEMENT

### Cases:

Delaware permits the citation of unpublished decisions as precedent. [First Marblehead Corp. v. House](#), 473 F.3d 1, 25 I.E.R. Cas. (BNA) 823 (1st Cir. 2006).

The Court of Appeals does not prohibit citation to unpublished, nonprecedential opinions, but the Court regards them for what they are worth, the opinions of three members of the court in a particular case. [In re Grand Jury Investigation](#), 445 F.3d 266 (3d Cir. 2006).

Unpublished case that was the only Fourth Circuit case specifically addressing applicable statute of limitations for Title IX

employment discrimination claims arising in South Carolina had high precedential value in addressing issue of which statute of limitations applied to Title IX employment discrimination claims arising in South Carolina. Education Amendments of 1972, § 901 et seq., [20 U.S.C.A. § 1681 et seq. \*Martin v. Clemson University\*, 654 F. Supp. 2d 410 \(D.S.C. 2009\)](#).

Citation of unpublished opinion was warranted where there was no published opinion on point. U.S.Ct. of App. 4th Cir.Rule 36(c), 28 U.S.C.A. [Allen v. Greenville Hotel Partners, Inc.](#), 409 F. Supp. 2d 672 (D.S.C. 2006).

Vacated opinions may be cited for precedential effect when they have been validated by the Court of Appeals. [RLI Ins. Co. v. Conseco, Inc.](#), 477 F. Supp. 2d 741 (E.D. Va. 2007).

The court in [Weaver v. Ingalls Shipbuilding, Inc.](#), 282 F.3d 357 (5th Cir. 2002), held that the fact a prior Fifth Circuit decision was unpublished did not alter its precedential status, where it was decided before January 1, 1996, based upon U.S. Ct. of App. 5th Cir. Rule 47.5.3, 28 U.S.C.A. The court noted that although Rule 47.5.3 is framed to limit citations to unpublished opinions (“normally ... cited only when the doctrine of res judicata, collateral estoppel or law of the case is applicable”), it has been interpreted to render unpublished decisions before January 1, 1996, precedential. The court noted that of all the cases citing this rule, only one interprets the “normally” clause of the rule to limit citations of pre-January 1, 1996, unpublished opinions as precedent to the specifically enumerated exceptions to the rule, and all other references treat the rule as making unpublished decisions before the effective date precedential.

When the facts of an unpublished decision are similar to the case at hand and the reasoning is sound and persuasive, citation to and reliance on the unpublished opinion is appropriate. [Lindstrom v. AC Products Liability Trust](#), 264 F. Supp. 2d 583 (N.D. Ohio 2003).

District court may cite unpublished California appellate decisions as persuasive authority. [Washington v. California City Correction Center](#), 871 F. Supp. 2d 1010 (E.D. Cal. 2012).

Unpublished opinions could be cited for factual purpose of showing notice, i.e., what defendant prison officials reasonably might have believed the law to require at time they were making their decisions, on claim to qualified immunity in civil rights case under Eighth Amendment. U.S.C.A. Const.Amend. 8; U.S.Ct. of App. 9th Cir.Rules App. D, [Rule 34–3\(c\)\(ii\)](#), 28 U.S.C.A.; 42 U.S.C.A. § 1983. [Walker v. Woodford](#), 593 F. Supp. 2d 1140 (S.D. Cal. 2008).

In absence of any rule, practice, or order to contrary, any district court opinion, published or unpublished, may be cited for persuasive purposes. [Arakaki v. Cayetano](#), 299 F. Supp. 2d 1090 (D. Haw. 2002).

District court can rely on an unpublished opinion of the Court of Appeals to the extent its reasoned analysis is persuasive in the case before it. [U.S. v. Barela](#), 102 F. Supp. 3d 1212 (D.N.M. 2015).

The District Court can rely on an unpublished opinion to the extent its reasoned analysis is persuasive in the case before it. [S.E.C. v. Goldstone](#), 301 F.R.D. 593 (D.N.M. 2014).

District Court can rely on an unpublished opinion to extent its reasoned analysis is persuasive in the case before it. [U.S. v. Rodella](#), 59 F. Supp. 3d 1331 (D.N.M. 2014).

Under Delaware law, unpublished opinions of Delaware courts have precedential value. [Scrushy v. Tucker](#), 70 So. 3d 289 (Ala. 2011).

Unpublished federal district court cases are citable as persuasive authority. [Kan v. Guild Mortgage Company](#), 2014 WL 5192710 (Cal. App. 2d Dist. 2014), as modified, (Oct. 15, 2014).

Unpublished federal district court decisions may be persuasive authority. [Khani v. Ford Motor Company](#), 215 Cal. App. 4th 916, 155 Cal. Rptr. 3d 532 (2d Dist. 2013).

Although not binding, unpublished federal district court cases are citable as persuasive authority. [Aleman v. AirTouch Cellular](#), 2011 WL 6382127 (Cal. App. 2d Dist. 2011).

Unpublished opinions may have some weight; sound opinions are the heart of the common law tradition and deserve respect. [Silvaco Data Systems v. Intel Corp.](#), 184 Cal. App. 4th 210, 2010 WL 1713241 (6th Dist. 2010), opinion modified on denial of reh'g, [Silvaco Data Systems v. Intel Corp.](#), 2010 WL 2114962 (Cal. App. 6th Dist. 2010).

Court of Appeal may consider the opinions of federal courts when construing federal statutes, and even unpublished federal opinions have persuasive value, as they are not subject to state court rule that bars citation of unpublished California opinions. [Cal. Rules of Court, Rule 977](#). [Harris v. Investor's Business Daily, Inc.](#), 138 Cal. App. 4th 28, 41 Cal. Rptr. 3d 108 (2d Dist. 2006).

Rule that unpublished opinion may not be cited or relied upon applies only to opinions originating in California; opinions from other jurisdictions can be cited without regard to their publication status. [Cal. Rules of Court, Rule 977](#). [Lebrilla v. Farmers Group, Inc.](#), 119 Cal. App. 4th 1070, 16 Cal. Rptr. 3d 25 (4th Dist. 2004), as modified on other grounds on denial of reh'g, (July 19, 2004) and review filed, (Aug. 3, 2004).

On appeal of judgment entered after trial court sustained a demurrer, Court of Appeal could rely on unpublished opinion involving same parties and same claims, notwithstanding court rule prohibiting citation to unpublished opinions; unpublished opinion was relevant under doctrine of res judicata and was therefore excepted from general rule. [Cal. Rules of Court, Rule 977\(a\), \(b\)\(1\)](#). [Pollock v. University of Southern California](#), 112 Cal. App. 4th 1416, 6 Cal. Rptr. 3d 122 (2d Dist. 2003).

Decision of Supreme Court of Territory of Hawai'i published in a section of the Hawai'i Reports titled "Decisions Announced without Opinions During the Period Covered by this Volume" was binding precedent notwithstanding rule of appellate procedure providing that a memorandum opinion or unpublished dispositional order filed before July 1, 2008 shall not be cited except in certain limited circumstances. [Rules App.Proc., Rule 35](#). [Hall v. Laroya](#), 238 P.3d 714 (Haw. Ct. App. 2010).

Denial of the State's motion to cite additional authority, which sought to cite an unpublished order that involved an appeal from a trial court order finding patient subject to continued involuntary admission six months prior to the order at issue here, was warranted; unpublished authority could only be cited to support claims of double jeopardy, res judicata, collateral estoppel, or law of the case, and patient's arguments were not barred by res judicata or collateral estoppel because the evidence adduced and the factual determinations made were not the same. [U.S.C.A. Const.Amend. 5](#). [In re Michael H.](#), 392 Ill. App. 3d 965, 332 Ill. Dec. 216, 912 N.E.2d 703 (5th Dist. 2009).

Unpublished memorandum opinions 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 if they would assist the court in its disposition. [Sup.Ct.Rules, Rule 7.04\(f\)\(2\)](#). [Casco v. Armour Swift-Eckrich](#), 34 Kan. App. 2d 670, 128 P.3d 401 (2005), as modified, (Dec. 19, 2005) and review granted, (May 9, 2006) and aff'd on other grounds, 2007 WL 858848 (Kan. 2007).

Citing unpublished appellate court opinion in appellate brief did not violate Court of Appeal's rule prohibiting citing of opinions and dispositions marked "Not Designated for Publication" and thus would not give rise to imposition of sanctions in action involving buyers' claim to rescind purchase of business and sellers' reconventional demand for breach of contract; cited opinion was released for publication, although subject to revision when it was cited, and had since been published. [Uniform Rules, Courts of Appeal, Rule 2-16.3, 8 LSA-R.S.](#) [Hill v. Lopez](#), 929 So. 2d 80 (La. Ct. App. 1st Cir. 2006).

In determining an issue of Michigan law, a federal district court sitting in diversity may consider and follow unpublished state-court decisions, so long as they do not contradict published decisions of the Michigan Supreme Court or Michigan Court of Appeals. [MCR 7.215\(C\)\(2\), \(J\)\(1\)](#). [Mid-Century Ins. Co. v. Fish](#), 749 F. Supp. 2d 657 (W.D. Mich. 2010) (applying Michigan law).

Dissenting opinion by Court of Appeals judge in case involving affirmative defenses in a medical malpractice action constituted binding precedent despite originally having been unpublished, where Supreme Court reversed decision of Court of Appeals for the reasons stated in that judge's dissenting opinion. [MCR 7.215\(C\)\(1\)](#). [Tyra v. Organ Procurement Agency Of Michigan](#), 302 Mich. App. 208, 840 N.W.2d 730 (2013).

When a party chooses to cite an unpublished opinion, the Court of Appeals may follow that decision if it finds the reasoning persuasive. [Department of Environmental Quality v. Waterous Co.](#), 279 Mich. App. 346, 760 N.W.2d 856 (2008), appeal denied, 759 N.W.2d 888 (Mich. 2009).

In resolving appeal of dispute between insureds and their workers' compensation insurance carrier involving California law, New York appellate court would afford persuasive weight to unreported California appellate court decision that was directly on point, even though the California Rules of Court would not have allowed citation to the unpublished opinion; New York court was not bound by the California Rules of Court, the New York Rules of Court did not contain any prohibition against citing to unpublished opinions, New York state courts routinely cited unreported cases of other jurisdictions, and the courts of other jurisdictions had also considered unpublished California Court of Appeal cases. [Cal.Rules of Court, Rule 8.1115](#); 22 NYCRR 600.10. [Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh](#), 993 N.Y.S.2d 275 (App. Div. 1st Dep't 2014).

An unpublished opinion may be used as persuasive authority at the appellate level if the case is properly submitted and discussed and there is no published case on point. [Zurosky v. Shaffer](#), 763 S.E.2d 755 (N.C. Ct. App. 2014).

Although it is generally inappropriate to cite unpublished cases as authority, discussion of unpublished case in opinion was necessary where defendant relied on case in his brief. [Schultz v. State](#), 2006 UT App 105, 132 P.3d 701 (Utah Ct. App. 2006).

The appellate court may rely on unpublished opinions as evidence of the facts established in earlier proceedings in the same case or in a different case involving the same parties; it may also consider unpublished opinions in examining issues such as the law of the case, collateral estoppel, and res judicata. [Martin v. Wilbert](#), 253 P.3d 108 (Wash. Ct. App. Div. 1 2011).

Trial court did not abuse its discretion by permitting attorney representing defendant in civil action to submit six federal court decisions, four of which were not published, in support of motion for summary judgment; applicable rule of appellate procedure provided that parties could not cite as authority unpublished opinion of the Court of Appeals, and defendant's attorney did not cite unpublished appellate court decisions as authority. [Oltman v. Holland America Line USA, Inc.](#), 148 P.3d 1050 (Wash. Ct. App. Div. 1 2006).

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[END OF SUPPLEMENT]

§ 3.5. [Precedential effect permitted to extent rules of rendering court allow](#)

[Cumulative Supplement]

The following authority expressed the view that unpublished opinions may be cited as legal authority to the extent permitted by the rules of the rendering court.

CUMULATIVE SUPPLEMENT

Cases:

Federal court may rely on unpublished opinions of California Court of Appeal to “lend support” to contention that particular published case accurately represents California law, although they are not precedent under California Rule of Court. [Beeman v. Anthem Prescription Management, LLC](#), 689 F.3d 1002 (9th Cir. 2012).

District Court can rely on an unpublished opinion to extent its reasoned analysis is persuasive in the case before the Court. [U.S. v. Ornelas-Yanez](#), 77 F. Supp. 3d 1083 (D.N.M. 2014).

Court can rely on unpublished opinion to extent its reasoned analysis is persuasive in case before it. [Griffin v. Bryant](#), 30 F. Supp. 3d 1139 (D.N.M. 2014).

District Court can rely on an unpublished opinion to extent its reasoned analysis is persuasive in the case before it. [U.S. v. Harry](#), 927 F. Supp. 2d 1185 (D.N.M. 2013).

Unpublished decisions of the federal Court of Appeals have persuasive value, aside from any precedential value or lack thereof. [United States v. Bikundi](#), 73 F. Supp. 3d 51 (D.D.C. 2014).

Unpublished federal district court decisions are citable and may be persuasive authority. [Akopyan v. Wells Fargo Home Mortgage, Inc.](#), 215 Cal. App. 4th 120, 2013 WL 1352018 (2d Dist. 2013).

Court of Appeal could appropriately cite an unpublished decision to explain the factual background of the current case and not as legal authority. [Cal.Rules of Court, Rule 8.1115\(b\)\(1\)](#). [Pacific Gas and Elec. Co. v. City & County of San Francisco](#), 2012 WL 1949369 (Cal. App. 1st Dist. 2012).

California Rules of Court do not prohibit citation to unpublished federal cases, which may be properly cited as persuasive authority. [Nungaray v. Litton Loan Servicing, LP](#), 200 Cal. App. 4th 1499, 2011 WL 5843092 (2d Dist. 2011), as modified, (Dec. 1, 2011).

Unpublished federal opinions have persuasive value when construing federal statutes, and they are not subject to the state court rule that bars citation of unpublished California opinions. [Rose v. Bank of America, N.A.](#), 200 Cal. App. 4th 1441, 2011 WL 5831324 (2d Dist. 2011).

In California courts, unpublished federal cases are not binding authority but they may be cited as persuasive. [Kight v. CashCall, Inc.](#), 200 Cal. App. 4th 1377, 2011 WL 5829678 (4th Dist. 2011).

Court of Appeal’s summary denial of a petition for judicial review of a decision of the Workers’ Compensation Appeals Board (WCAB) was not subject to rule of court generally prohibiting citation of unpublished Court of Appeal opinions. [Cal.Rules of Court, Rule 8.1115](#). [Esquivel v. Workers’ Comp. Appeals Bd.](#), 2009 WL 3285360 (Cal. App. 4th Dist. 2009).

Unpublished decisions of other courts may be cited as legal authority to the extent the rules of the rendering court allow. [Greater Missoula Area Federation of Early Childhood Educators v. Child Start, Inc.](#), 2009 MT 362, 353 Mont. 201, 219 P.3d 881 (2009).

Unpublished decisions of other courts may be cited as legal authority to the extent the rules of the rendering court allow. [McDonald v. Department of Environmental Quality](#), 2009 MT 209, 351 Mont. 243, 214 P.3d 749, 21 A.D. Cas. (BNA) 1848 (2009).

The Supreme Court could consider unpublished cases, to the extent that such opinions contain sufficient information that they are meaningful for purposes of comparative proportionality review, when conducting comparative proportionality review of a death penalty sentence. [N.H. Rev. Stat. Ann. § 630:5, XI\(c\)](#). [State v. Addison](#), 116 A.3d 551 (N.H. 2015).

Unpublished decisions from other jurisdictions have value if they are persuasive. [State v. Birchfield](#), 2015 ND 6, 858 N.W.2d 302 (N.D. 2015).

An unpublished memorandum decision of the Superior Court may be relied upon or cited only under extremely limited

circumstances. Pa.Super.Ct.R. 65.37. *In re Keyes*, 2013 PA Super 326, 83 A.3d 1016 (2013).

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[END OF SUPPLEMENT]

§ 4. Precedential effect not found

[Cumulative Supplement]

The following authority held or recognized that unpublished opinions have no binding precedential value.

US

*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68 (D. Me. 1993)

*Maine v. Shalala*, 81 F. Supp. 2d 91 (D. Me. 1999)

*Sacramona v. Bridgestone/Firestone, Inc.*, 152 F.R.D. 428, 27 Fed. R. Serv. 3d 929 (D. Mass. 1993)

*U.S. v. Goldberg*, 67 F.3d 1092 (3d Cir. 1995)

*Drinker by Drinker v. Colonial School Dist.*, 78 F.3d 859, 15 A.D.D. 182, 107 Ed. Law Rep. 530 (3d Cir. 1996)

*Fallon Elec. Co., Inc. v. Cincinnati Ins. Co.*, 121 F.3d 125 (3d Cir. 1997)

*Wade v. U.S.*, 865 F. Supp. 216, 73 A.F.T.R.2d 94-1400 (D. N.J. 1994)

*Smith v. School Dist. of Philadelphia*, 158 F. Supp. 2d 599 (E.D. Pa. 2001) (unpublished opinions have no precedential value)

*Prudential Property and Cas. Ins. Co. v. Jefferson*, 185 F. Supp. 2d 495 (W.D. Pa. 2002) (an “unreported—not precedential” opinion of the Court of Appeals is not binding authority, but may be cited as persuasive authority)

*In re Mays*, 256 B.R. 555, 37 Bankr. Ct. Dec. (CRR) 30, Bankr. L. Rep. (CCH) ¶78325 (Bankr. D. N.J. 2000)

*In re Clayton*, 198 B.R. 878 (Bankr. E.D. Pa. 1996)

*Hupman v. Cook*, 640 F.2d 497 (4th Cir. 1981)

*Hogan v. Carter*, 85 F.3d 1113 (4th Cir. 1996), cert. denied, 519 U.S. 974, 117 S. Ct. 408, 136 L. Ed. 2d 321 (1996)

*Mueller v. Angelone*, 181 F.3d 557 (4th Cir. 1999), cert. denied, 527 U.S. 1065, 120 S. Ct. 37, 144 L. Ed. 2d 839 (1999)

*U.S. v. Ruhe*, 191 F.3d 376 (4th Cir. 1999)

*Lane v. Wal-Mart Stores East, Inc.*, 69 F. Supp. 2d 749, 10 A.D. Cas. (BNA) 471 (D. Md. 1999)

*In re Adams*, 254 B.R. 857 (D. Md. 2000), summarily aff’d, 4 Fed. Appx. 209 (4th Cir. 2001)

*Hicks v. Heckler*, 586 F. Supp. 853, 5 Soc. Sec. Rep. Serv. 837, Unempl. Ins. Rep. (CCH) ¶15781 (W.D. Va. 1984) and judgment rev’d on other grounds, 756 F.2d 1022, 9 Soc. Sec. Rep. Serv. 94, Unempl. Ins. Rep. (CCH) ¶15918 (4th Cir. 1985)

*Martin Oil Co. v. Philadelphia Life Ins. Co.*, 827 F. Supp. 1236 (N.D. W. Va. 1993)

*U.S. v. Torain*, 77 F. Supp. 2d 749 (S.D. W. Va. 1999)

*In re Bast*, 212 B.R. 499, 31 Bankr. Ct. Dec. (CRR) 458, Bankr. L. Rep. (CCH) ¶77547 (Bankr. D. Md. 1997), appeal decided, 178 F.3d 1282 (4th Cir. 1999)

*In re TechDyn Systems Corp.*, 235 B.R. 857, 34 Bankr. Ct. Dec. (CRR) 825 (Bankr. E.D. Va. 1999)

*Lebron v. U.S.*, 279 F.3d 321, 51 Fed. R. Serv. 3d 1345 (5th Cir. 2002) (unreported decisions generally lack precedential value)

*Dardeau v. West Orange-Grove Consolidated Independent School Dist.*, 43 F. Supp. 2d 722 (E.D. Tex. 1999)<sup>10</sup>

*U.S. v. Ables*, 167 F.3d 1021, 1999 FED App. 52P (6th Cir. 1999), cert. denied, 527 U.S. 1027, 119 S. Ct. 2378, 144 L. Ed. 2d 781 (1999)

*Key v. Grayson*, 179 F.3d 996, 9 A.D. Cas. (BNA) 822, 1999 FED App. 210P (6th Cir. 1999), reh’g and suggestion for reh’g en banc denied, (July 30, 1999) and cert. denied, 120 S. Ct. 944, 145 L. Ed. 2d 821 (U.S. 2000)

*U.S. v. Webber*, 208 F.3d 545, 2000 FED App. 114P (6th Cir. 2000), cert. denied, 121 S. Ct. 197 (U.S. 2000)

*Salamalekis v. Commissioner of Social Sec.*, 221 F.3d 828, 71 Soc. Sec. Rep. Serv. 29, Unempl. Ins. Rep. (CCH) ¶16405B, 2000 FED App. 238P (6th Cir. 2000)

*McMeans v. Brigano*, 228 F.3d 674, 2000 FED App. 353P (6th Cir. 2000)

*Fonseca v. Consolidated Rail Corp.*, 246 F.3d 585 (6th Cir. 2001) (unpublished opinions are never controlling authority)

*E.E.O.C. v. Harbert-Yeargin, Inc.*, 266 F.3d 498, 86 Fair Empl. Prac. Cas. (BNA) 1387 (6th Cir. 2001) (unpublished Sixth Circuit decision was only of persuasive value at most)

*Kaufman v. Carter*, 952 F. Supp. 520, 20 A.D.D. 1187 (W.D. Mich. 1996)

*In re Slygh*, 244 B.R. 410 (Bankr. N.D. Ohio 2000)

*In re Hammermeister*, 270 B.R. 863 (Bankr. S.D. Ohio 2001) (although unpublished decisions of the Sixth Circuit are not binding precedent, they can be cited if persuasive, especially where there are no published decisions that will serve as well)

*Bankers Trust Co. v. Old Republic Ins. Co.*, 7 F.3d 93 (7th Cir. 1993)

*In re Leimer*, 724 F.2d 744, 11 Bankr. Ct. Dec. (CRR) 618, 10 Collier Bankr. Cas. 2d (MB) 97, Bankr. L. Rep. (CCH) ¶69598 (8th Cir. 1984) (unpublished opinions are not intended to create binding precedent)<sup>11</sup>

*Federal Deposit Ins. Corp. v. Newhart*, 892 F.2d 47, 10 U.C.C. Rep. Serv. 2d 257 (8th Cir. 1989) (precedential weight is not given to unpublished opinions)<sup>12</sup>

*In re Jones*, 112 B.R. 975 (Bankr. W.D. Mo. 1989) (unpublished opinions of United States Court of Appeals for the Eighth Circuit are not intended to create binding precedent)<sup>13</sup>

*People of Territory of Guam v. Yang*, 850 F.2d 507 (9th Cir. 1988) (overruled on other grounds by, *U.S. v. Keys*, 133 F.3d 1282 (9th Cir. 1998))

*Reynolds Metals Co. v. Ellis*, 202 F.3d 1246, 24 Employee Benefits Cas. (BNA) 1471 (9th Cir. 2000), petition for cert. filed, 68 U.S.L.W. 3713 (U.S. May 10, 2000)

*Sorchini v. City of Covina*, 250 F.3d 706 (9th Cir. 2001) (unpublished dispositions are neither persuasive nor controlling authority, and limited exceptions to the noncitation principle contained in provision of Ninth Circuit Rule which permits the citation of unpublished dispositions for factual purposes is not intended to change that)

*Hart v. Massanari*, 266 F.3d 1155, Unempl. Ins. Rep. (CCH) ¶16685B, 105 A.L.R.5th 747 (9th Cir. 2001)

*State of Cal. ex rel. Mueller v. Walgreen Corp.*, 175 F.R.D. 631 (N.D. Cal. 1997)

*GTE Wireless, Inc. v. Qualcomm, Inc.*, 192 F.R.D. 284 (S.D. Cal. 2000)

*In re Mortgage & Realty Trust*, 123 B.R. 626, 21 Bankr. Ct. Dec. (CRR) 470, Bankr. L. Rep. (CCH) ¶73821 (Bankr. C.D. Cal. 1991)

*Elephant Butte Irrigation Dist. of New Mexico v. U.S. Dept. of Interior*, 269 F.3d 1158 (10th Cir. 2001) (an unpublished opinion has no precedential value except as it relates to the doctrines of the law of the case, collateral estoppel, and res judicata)

*Stephens v. City of Topeka, Kan.*, 33 F. Supp. 2d 947, 77 Empl. Prac. Dec. (CCH) ¶46272 (D. Kan. 1999), aff'd on other grounds, 189 F.3d 478 (10th Cir. 1999)

*Maggard v. Gammon*, 197 F. Supp. 2d 1321 (D. Kan. 2002) (unpublished circuit opinions are not binding on the district court)

*U.S. v. Futrell*, 209 F.3d 1286 (11th Cir. 2000)

*U.S. Steel, LLC, v. Tieceo, Inc.*, 261 F.3d 1275, 57 Fed. R. Evid. Serv. 1350 (11th Cir. 2001), reh'g and reh'g en banc denied, 277 F.3d 1381 (11th Cir. 2001) (an affirmance by an unpublished opinion pursuant to Circuit Rule has no precedential value, U.S. Ct. of App. 11th Cir. Rule 36-1, 28 U.S.C.A.)

*Slinger Drainage, Inc. v. E.P.A.*, 244 F.3d 967 (D.C. Cir. 2001)

*In re Hess*, 209 B.R. 79, Bankr. L. Rep. (CCH) ¶77432 (Bankr. 6th Cir. 1997)

*In re Dolph*, 215 B.R. 832, Bankr. L. Rep. (CCH) ¶77607 (B.A.P. 6th Cir. 1998)

*In re Gibson*, 219 B.R. 195, Bankr. L. Rep. (CCH) ¶77681 (B.A.P. 6th Cir. 1998)

*In re Booth*, 260 B.R. 281, 37 Bankr. Ct. Dec. (CRR) 165, 25 Employee Benefits Cas. (BNA) 2289, 2001 FED App. 1P (B.A.P. 6th Cir. 2001)

*In re Miller*, 262 B.R. 499, 37 Bankr. Ct. Dec. (CRR) 284, 46 Collier Bankr. Cas. 2d (MB) 762 (B.A.P. 9th Cir. 2001) (unpublished dispositions and orders of Bankruptcy Appellate Panel (BAP) are not binding precedent, except when relevant under doctrines of law of the case, res judicata, and collateral estoppel)

## Cal

*Barber v. Superior Court*, 234 Cal. App. 3d 1076, 285 Cal. Rptr. 668 (3d Dist. 1991)

*People v. McDaniels*, 21 Cal. App. 4th 1560, 27 Cal. Rptr. 2d 245 (1st Dist. 1994), review denied, (Apr. 21, 1994)

*Santa Ana Hospital Medical Center v. Belshe*, 56 Cal. App. 4th 819, 65 Cal. Rptr. 2d 754 (3d Dist. 1997)

*In re Antablian*, 140 B.R. 534 (Bankr. C.D. Cal. 1992) (applying California law)

## **Ga**

[Southern Guar. Ins. Co. v. Cotton States Mut. Ins. Co.](#), 176 Ga. App. 140, 335 S.E.2d 598 (1985), cert. denied, (Oct. 30, 1985)

## **Hawaii**

[Chun v. Board of Trustees of Employees' Retirement System of State of Hawaii](#), 92 Haw. 432, 992 P.2d 127 (Haw. 2000) (unpublished decisions of trial courts have no precedential value)

## **Ill**

[Lonigro v. Lockett](#), 253 Ill. App. 3d 308, 192 Ill. Dec. 305, 625 N.E.2d 265 (1st Dist. 1993), appeal allowed, 153 Ill. 2d 560, 191 Ill. Dec. 620, 624 N.E.2d 808 (1993)

[Norton v. City of Chicago](#), 293 Ill. App. 3d 620, 228 Ill. Dec. 810, 690 N.E.2d 119 (1st Dist. 1997), appeal denied, 177 Ill. 2d 572, 232 Ill. Dec. 453, 698 N.E.2d 544 (1998)

[People v. Schambow](#), 305 Ill. App. 3d 763, 239 Ill. Dec. 525, 714 N.E.2d 83 (2d Dist. 1999)

[People v. Petty](#), 311 Ill. App. 3d 301, 244 Ill. Dec. 171, 724 N.E.2d 1059 (2d Dist. 2000)

## **Ind**

[Horn v. A.O. Smith Corp.](#), 50 F.3d 1365 (7th Cir. 1995) (applying Indiana law)

[Allstate Ins. Co. v. Dana Corp.](#), 737 N.E.2d 1177 (Ind. Ct. App. 2000), transfer granted, opinion vacated, IN RAP 58(A), (May 4, 2001) and aff'd in part, vacated in part on other grounds, 759 N.E.2d 1049 (Ind. 2001)

[Indiana High School Athletic Ass'n, Inc. v. Durham](#), 748 N.E.2d 404, 154 Ed. Law Rep. 279 (Ind. Ct. App. 2001) (unpublished trial court decisions do not serve as precedent and may only be considered for their persuasive value)

## **Kan**

[Taco Bell v. City of Mission](#), 234 Kan. 879, 678 P.2d 133 (1984)

## **La**

[Roberts v. Sewerage and Water Bd. of New Orleans](#), 634 So. 2d 341 (La. 1994)

## **Mass**

[Langton v. Commissioner of Correction](#), 34 Mass. App. Ct. 564, 614 N.E.2d 1002 (1993), review denied, 416 Mass. 1101, 618 N.E.2d 71 (1993)

[Horner v. Boston Edison Co.](#), 45 Mass. App. Ct. 139, 695 N.E.2d 1093 (1998), review denied, 428 Mass. 1104, 705 N.E.2d 276 (1998)

## **Mich**

[Ray Industries, Inc. v. Liberty Mut. Ins. Co.](#), 728 F. Supp. 1310 (E.D. Mich. 1989) and judgment aff'd in part, rev'd in part on other grounds, 974 F.2d 754, 23 Env'tl. L. Rep. 20145 (6th Cir. 1992), reh'g denied, (Sept. 10, 1992) (applying Michigan law)

[Stine v. Continental Cas. Co.](#), 419 Mich. 89, 349 N.W.2d 127 (1984)

[W.E. Westfall, Inc. v. Michigan Bell Telephone Co.](#), 129 Mich. App. 301, 341 N.W.2d 514 (1983)

[Forgach v. George Koch & Sons Co.](#), 167 Mich. App. 50, 421 N.W.2d 568 (1988)

[Cardinal Mooney High School v. Michigan High School Athletic Ass'n](#), 179 Mich. App. 267, 445 N.W.2d 483, 55 Ed. Law Rep. 1129 (1989), appeal granted, (July 13, 1990) and judgment rev'd on other grounds, 437 Mich. 75, 467 N.W.2d 21, 66 Ed. Law Rep. 771 (1991)

[Makowski v. Towles](#), 195 Mich. App. 106, 489 N.W.2d 133 (1992)

[People v. Vincent](#), 215 Mich. App. 458, 546 N.W.2d 662 (1996), appeal granted in part, 453 Mich. 952, 557 N.W.2d 309 (1996) and judgment rev'd on other grounds, 455 Mich. 110, 565 N.W.2d 629 (1997), reh'g denied, 456 Mich. 1201, 568 N.W.2d 670 (1997) and cert. denied, 522 U.S. 972, 118 S. Ct. 424, 139 L. Ed. 2d 325 (1997)

[People v. Reid](#), 233 Mich. App. 457, 592 N.W.2d 767 (1999), appeal denied, 603 N.W.2d 781 (Mich. 1999)

## **Minn**

[Acton Const. Co. v. Commissioner of Revenue](#), 391 N.W.2d 828 (Minn. 1986)

[Dynamic Air, Inc. v. Bloch](#), 502 N.W.2d 796, 8 I.E.R. Cas. (BNA) 1051 (Minn. Ct. App. 1993)

[Gergen v. Commissioner of Public Safety](#), 548 N.W.2d 307 (Minn. Ct. App. 1996), review denied, (Aug. 6, 1996)

[Landico, Inc. v. American Family Mut. Ins. Co.](#), 559 N.W.2d 438 (Minn. Ct. App. 1997), review denied, (Apr. 27, 1997)

[Becker v. State Farm Mut. Auto. Ins. Co.](#), 596 N.W.2d 697 (Minn. Ct. App. 1999), review granted, (Sept. 28, 1999) and rev'd on other grounds, 611 N.W.2d 7 (Minn. 2000)

[Nathe Bros., Inc. v. American Nat. Fire Ins. Co.](#), 597 N.W.2d 587 (Minn. Ct. App. 1999), review granted, (Oct. 21, 1999) and rev'd on other grounds, 615 N.W.2d 341 (Minn. 2000)

[Geske v. Marcolina](#), 624 N.W.2d 813 (Minn. Ct. App. 2001)

[Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.](#), 625 N.W.2d 178 (Minn. Ct. App. 2001)



*Teffeteller v. University of Minnesota*, 626 N.W.2d 201 (Minn. Ct. App. 2001), review granted, (July 24, 2001) and rev'd on other grounds, 645 N.W.2d 420 (Minn. 2002)

*State ex rel. Hatch v. Employers Ins. of Wausau*, 644 N.W.2d 820 (Minn. Ct. App. 2002) (unpublished court of appeals opinions are at best of persuasive value and are not controlling)

**Miss**

*Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995), reh'g denied, (Dec. 21, 1995)

**Mont**

*Worts v. Hardy Const. Co.*, 249 Mont. 477, 817 P.2d 231 (1991)

**Neb**

*State v. James*, 6 Neb. App. 444, 573 N.W.2d 816 (1998), review overruled, (Mar. 25, 1998) and (disapproved of on other grounds by, *State v. Carlson*, 260 Neb. 815, 619 N.W.2d 832 (2000))

**NJ**

*Morris v. Siemens Components, Inc.*, 938 F. Supp. 277 (D. N.J. 1996) (applying New Jersey law) (unpublished state court opinions have no precedential value in federal district court and are not controlling or binding in any way in the New Jersey State Courts as well under New Jersey Rules of Court 1:36-3)

*Charatan v. Board of Review*, 200 N.J. Super. 74, 490 A.2d 352, 24 Ed. Law Rep. 300 (App. Div. 1985)

*Raymond v. New Jersey State Parole Bd.*, 221 N.J. Super. 381, 534 A.2d 741 (App. Div. 1987)

*Kingwood Tp. Volunteer Fire Co. No. One v. Board of Adjustment of Tp. of Kingwood*, 272 N.J. Super. 498, 640 A.2d 356 (Law Div. 1993)

*State v. Cruz Const. Co., Inc.*, 279 N.J. Super. 241, 652 A.2d 741 (App. Div. 1995)

*Higgins v. Swiecicki*, 315 N.J. Super. 488, 719 A.2d 166 (App. Div. 1998)

*Newark Ins. Co. v. Acupac Packaging, Inc.*, 328 N.J. Super. 385, 746 A.2d 47 (App. Div. 2000)

**NM**

*Winrock Inn Co. v. Prudential Ins. Co. of America*, 122 N.M. 562, 1996 -NMCA- 113, 928 P.2d 947 (Ct. App. 1996)

**NY**

*Eaton v. Chahal*, 146 Misc. 2d 977, 553 N.Y.S.2d 642 (Sup 1990)

**NC**

*Long v. Harris*, 528 S.E.2d 633 (N.C. Ct. App. 2000)

**Ohio**

*New York Life Ins. Co. v. Wittman*, 813 F. Supp. 1287 (N.D. Ohio 1993) (applying Ohio law)

*State ex rel. Graves v. State*, 9 Ohio App. 3d 260, 459 N.E.2d 913 (10th Dist. Franklin County 1983)

*Miller v. Barry*, 81 Ohio App. 3d 393, 611 N.E.2d 357 (10th Dist. Franklin County 1992), jurisdictional motion overruled, 65 Ohio St. 3d 1457, 602 N.E.2d 253 (1992)

*Beder v. Cleveland Browns, Inc.*, 129 Ohio App. 3d 188, 717 N.E.2d 716 (8th Dist. Cuyahoga County 1998), appeal not allowed, 84 Ohio St. 3d 1438, 702 N.E.2d 1215 (1998)

*State v. Parker*, 66 Ohio Misc. 2d 1, 642 N.E.2d 66 (Mun. Ct. 1994)

**Okla**

*Howard v. State*, 1987 OK CR 116, 738 P.2d 543 (Okla. Crim. App. 1987)

**Pa**

*Com. v. Mathis*, 317 Pa. Super. 226, 463 A.2d 1167 (1983)

*Com. v. Sperry*, 395 Pa. Super. 400, 577 A.2d 603 (1990)

*Com. v. Dennis*, 421 Pa. Super. 600, 618 A.2d 972 (1992), appeal denied, 535 Pa. 654, 634 A.2d 218 (1993)

*Com. v. Swinson*, 426 Pa. Super. 167, 626 A.2d 627 (1993)

*Boring v. Erie Ins. Group*, 434 Pa. Super. 40, 641 A.2d 1189 (1994)

*Vetter v. Fun Footwear Co.*, 447 Pa. Super. 84, 668 A.2d 529 (1995), appeal denied, 544 Pa. 658, 676 A.2d 1199 (1996)

*In re Estate of Glover*, 447 Pa. Super. 509, 669 A.2d 1011 (1996), appeal denied, 547 Pa. 728, 689 A.2d 233 (1997)

*Com. v. Booth*, 1999 PA Super 71, 729 A.2d 1187 (Pa. Super. Ct. 1999), appeal granted, 561 Pa. 651, 747 A.2d 897 (1999) and order rev'd on other grounds, 564 Pa. 228, 766 A.2d 843 (2001)

*Ridley ex rel. Ridley v. State Farm Mut. Auto. Ins. Co.*, 745 A.2d 7 (Pa. Super. Ct. 1999), reargument denied, (Feb. 17, 2000)

*Com. v. Phinn*, 761 A.2d 176 (Pa. Super. Ct. 2000), appeal denied, 567 Pa. 712, 785 A.2d 89 (2001)

**SC**

*Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000), reh'g denied, (Apr. 1, 2000) and cert. granted, (Jan. 11, 2001) and aff'd as modified on other grounds, 349 S.C. 356, 563 S.E.2d 331 (2002)

*Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001), reh'g denied, (Mar. 26, 2001)

### **Tenn**

[Southern Ry. Co. v. Foote Mineral Co.](#), 384 F.2d 224 (6th Cir. 1967) (applying Tennessee law)

[Board of Com'rs of Union City v. Obion County](#), 188 Tenn. 666, 222 S.W.2d 7 (1949)

[McCConnell v. State](#), 12 S.W.3d 795 (Tenn. 2000)

[Cook v. State](#), 506 S.W.2d 955 (Tenn. Crim. App. 1973)

[State v. Franklin](#), 919 S.W.2d 362 (Tenn. Crim. App. 1995), appeal denied, (Mar. 4, 1996)

### **Tex**

[Gonzales v. State](#), 672 S.W.2d 618 (Tex. App. Amarillo 1984)

[Wheeler v. Aldama-Luebbert](#), 707 S.W.2d 213 (Tex. App. Houston 1st Dist. 1986) (unpublished opinion of any court has no authoritative value)

[Hare v. State](#), 713 S.W.2d 396 (Tex. App. El Paso 1986), petition for discretionary review refused, (Nov. 12, 1987)

[Frizzell v. Cook](#), 790 S.W.2d 41 (Tex. App. San Antonio 1990), writ denied, (Oct. 24, 1990) and reh'g of writ of error overruled, (Jan. 9, 1991) (unpublished opinion of an appellate court is of no precedential value)

### **Utah**

[Kingsford v. Salt Lake City School Dist.](#), 247 F.3d 1123, 153 Ed. Law Rep. 68 (10th Cir. 2001) (under Utah law, unpublished district court order has no precedential value)

[State v. Gambrell](#), 814 P.2d 1136 (Utah Ct. App. 1991) (unpublished decisions have no precedential value and cannot be cited or used except for purposes of applying the doctrines of law of the case, res judicata, or collateral estoppel)

### **Va**

[Robdau v. Com.](#), 35 Va. App. 128, 543 S.E.2d 602 (2001)

[Johnson v. Paul Johnson Plastering and National Surety Corporation](#), 37 Va. App. 716, 561 S.E.2d 40 (2002) (An unpublished opinion of the Court of Appeals is not to be cited or relied upon as precedent except for the purpose of establishing res judicata, estoppel, or the law of the case)

[Kidder v. Virginia Birth-Related Neurological Injury Compensation Program](#), 37 Va. App. 764, 560 S.E.2d 907 (2002) (The Court of Appeals is not bound by its prior unpublished decisions)

### **Wash**

[Matter of Marriage of Schweitzer](#), 132 Wash. 2d 318, 937 P.2d 1062 (1997)

[Kitsap County v. Allstate Ins. Co.](#), 136 Wash. 2d 567, 964 P.2d 1173 (1998)

[State v. Fitzpatrick](#), 5 Wash. App. 661, 491 P.2d 262 (Div. 2 1971), review denied, 80 Wash. 2d 1003, 1972 WL 39865 (1972)

[State v. Sanchez](#), 74 Wash. App. 763, 875 P.2d 712 (Div. 3 1994), as amended on denial of reconsideration, (Aug. 19, 1994) and review denied, 125 Wash. 2d 1022, 890 P.2d 463 (1995)

[State v. Bays](#), 90 Wash. App. 731, 954 P.2d 301 (Div. 2 1998)

[In re Davis](#), 95 Wash. App. 917, 977 P.2d 630 (Div. 1 1999), review granted, (Sept. 28, 1999) and aff'd on other grounds, 142 Wash. 2d 165, 12 P.3d 603 (2000)

[State v. Acrey](#), 97 Wash. App. 784, 988 P.2d 17 (Div. 1 1999)

[State v. Nolan](#), 98 Wash. App. 75, 988 P.2d 473 (Div. 1 1999), decision aff'd on other grounds, 141 Wash. 2d 620, 8 P.3d 300 (2000)

### **W Va**

[Pugh v. Workers' Compensation Com'r](#), 188 W. Va. 414, 424 S.E.2d 759 (1992)

### **Wis**

[Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co.](#), 32 F. Supp. 2d 1059 (E.D. Wis. 1999), judgment rev'd on other grounds, 200 F.3d 479 (7th Cir. 2000) (applying Wisconsin law) (Wis. Stat. Ann. § 809.23(3) provides that an unpublished opinion is of no precedential value)

[Horace Mann Ins. Co. v. Wauwatosa Bd. of Ed.](#), 88 Wis. 2d 385, 276 N.W.2d 761 (1979)

[Tamminen v. Aetna Cas. and Sur. Co.](#), 109 Wis. 2d 536, 327 N.W.2d 55 (1982)

See [C.I.R. v. McCoy](#), 484 U.S. 3, 108 S. Ct. 217, 98 L. Ed. 2d 2, 87-2 U.S. Tax Cas. (CCH) ¶13736, 60 A.F.T.R.2d 87-6150 (1987), reh'g denied, 484 U.S. 982, 108 S. Ct. 496, 98 L. Ed. 2d 495 (1987), in which the Supreme Court noted that the fact that the court of appeals order under challenge was unpublished carried no weight in its decision to review the case, as the court of appeals' grant of the taxpayer's request to forgive interest on a determined deficiency and to forgive the late payment penalty exceeded its jurisdiction regardless of nonpublication, and regardless of any assumed lack of precedential effect of the ruling that was unpublished.

The court in [Wade v. U.S.](#), 865 F. Supp. 216, 73 A.F.T.R.2d 94-1400 (D. N.J. 1994), noted that an unpublished decision has

no precedential effect.

The court in *In re Mays*, 256 B.R. 555, 37 Bankr. Ct. Dec. (CRR) 30, Bankr. L. Rep. (CCH) ¶78325 (Bankr. D. N.J. 2000), noting that attorneys may rely on unpublished opinions, held that such opinions are not binding, but there is an underlying presumption that they have precedential effect. The debtor sought to avoid the involuntary preferential transfer of the debtor's wages during the 90-day period preceding the petition filing under 11 U.S.C.A. §§ 522(h) and 547(b). In response, the creditor relied on the unpublished decision in *In re Gomez*, No. 97-27459 (Bankr. D. N.J. Dec. 8, 1997). In *Gomez*, the court addressed the identical issue in this case and determined that the New Jersey statutory scheme for wage garnishment creates a continuing lien. The court noted that generally, courts treat the reliance on and the precedential value of unreported or unpublished cases somewhat differently than those cases which are published. For example, 3RD CIR. IOP 5.8 (2001) states, "[b]ecause the court historically has not regarded unreported opinions as precedents that bind the court, as such opinions do not circulate to the full court before filing, the court by tradition does not cite to its unreported opinions as authority." While the court noted that Third Circuit Rules do not apply to it, and although this rule does not appear to bar a party's reliance on unpublished decisions, it still left room for the court to consider these opinions in their decision-making process. The court noted that the local rules of the bankruptcy and district courts in New Jersey presently fail to address unpublished opinions, and in the absence of any local rules prohibiting otherwise, attorneys may rely on unpublished opinions. The court noted that there is at least one court that has taken a further step—that is, finding that not only may unpublished opinions be cited, but also that they are necessarily binding on other courts, as the United States Court of Appeals for the Eighth Circuit decided in *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2000-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), § 3, that unpublished opinions have binding precedential effect. The court noted that in the Third Circuit it is clear that a decision by a trial court judge is not binding on other judges within the same court. Although cases decided within its district are not binding on other judges within the district, the court noted that there remains an underlying presumption that precedent should be followed, as although the unpublished opinion in *Gomez* is not binding on the court, stare decisis might suggest that it should be followed. The court noted, however, that the United States Supreme Court in *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991), has stated that stare decisis is a "principle of policy, and not an inexorable command." Thus, to the extent that an earlier unreported decision of a bankruptcy court in the Third Circuit addresses the identical issue in a case, the court held that the earlier opinion is precedent that may be persuasive but is not binding and need not be followed.

The court in *In re Bast*, 212 B.R. 499, 31 Bankr. Ct. Dec. (CRR) 458, Bankr. L. Rep. (CCH) ¶77547 (Bankr. D. Md. 1997), appeal decided, 178 F.3d 1282 (4th Cir. 1999), held that an unpublished opinion has no binding precedential effect in unrelated matters as to the legal principles applied, but is, nonetheless, a binding disposition of the disputes resolved.

The court in *In re TechDyn Systems Corp.*, 235 B.R. 857, 34 Bankr. Ct. Dec. (CRR) 825 (Bankr. E.D. Va. 1999), held that an unpublished federal court of appeals opinion, while suggestive, was without precedential effect.

The court in *McMeans v. Brigano*, 228 F.3d 674, 2000 FED App. 353P (6th Cir. 2000), held that unpublished federal court of appeals cases have limited precedential force.

The Ninth Circuit in *Hart v. Massanari*, 266 F.3d 1155, Unempl. Ins. Rep. (CCH) ¶16685B, 105 A.L.R.5th 747 (9th Cir. 2001), held that 9th Cir. R. 36-3, providing that unpublished dispositions and orders of the Ninth Circuit are not binding precedent, is constitutional, and disagreed with the holding of *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), § 3. The appellant had cited an unpublished disposition as precedent based upon the authority of *Anastasoff*. The court noted that *Anastasoff*, while vacated, continues to have persuasive force. The court noted that *Anastasoff* held that Eighth Circuit Rule 28A(i), which provides that unpublished dispositions are not precedential—and hence not binding on future panels of that court, violates Article III of the Constitution. According to *Anastasoff*, exercise of the "judicial Power" precludes federal courts from making rulings that are not binding in future cases. Or, to put it differently, federal judges are not merely required to follow the law, they are also required to make law in every case. To do otherwise, *Anastasoff* argued, would invite judicial tyranny by freeing courts from the doctrine of precedent. The Ninth Circuit stated that *Anastasoff* overstates the case. The court noted that rules that empower courts of appeals to issue nonprecedential decisions do not cut those courts free from all legal rules and precedents, but such rules have a much more limited effect of allowing panels of the courts of appeals to

determine whether future panels, as well as judges of the inferior courts of the circuit, will be bound by particular rulings. The court noted that this is hardly the same as turning its back on all precedents, or on the concept of precedent altogether, but rather, it is an effort to deal with precedent in the context of a modern legal system, which has evolved considerably since the early days of common law, and even since the time the Constitution was adopted. The court noted that the only constitutional provision on which *Anastasoff* relies is that portion of Article III that vests the “judicial Power” of the United States in the federal courts, U.S. Const. art. III, § 1, cl. 1. The court noted that *Anastasoff* may be the first case in the history of the Republic to hold that the phrase “judicial Power” encompasses a specific command that limits the power of the federal courts, and it stated that the judicial power clause has never before been thought to encompass a constitutional limitation on how courts conduct their business. Unlike the *Anastasoff* court, the Ninth Circuit court was unable to find within Article III of the Constitution a requirement that all case dispositions and orders issued by appellate courts be binding authority. On the contrary, the court stated that an inherent aspect of its function as Article III judges is managing precedent to develop a coherent body of circuit law to govern litigation in its court and the other courts of this circuit. The court also noted that the common law has long recognized that certain types of cases do not deserve to be authorities, and that one important aspect of the judicial function is separating the cases that should be precedent from those that should not, and that without clearer guidance than that offered in *Anastasoff*, it saw no constitutional basis for abdicating this important aspect of its judicial responsibility. The court thus concluded that [Rule 36-3](#) is constitutional.

The court in [Barber v. Superior Court](#), 234 Cal. App. 3d 1076, 285 Cal. Rptr. 668 (3d Dist. 1991), held that an unpublished appellate court decision was without any precedential value or binding force, and could not be relied upon, though the decision was twice printed in the advance pamphlet for tracking purposes.

See [Schmier v. Supreme Court](#), 78 Cal. App. 4th 703, 93 Cal. Rptr. 2d 580 (1st Dist. 2000), reh’g denied, (Mar. 22, 2000) and review denied, (May 24, 2000) and cert. denied, 2000 WL 1279314 (U.S. 2000), in which the court noted that the broad constitutional and legislative authority that grants the California Supreme Court selective publication discretion for appellate opinions manifests the policy that the state’s highest court, with its supervisory powers over lower courts, should oversee the orderly development of decisional law, giving due consideration to such factors as the expense, unfairness to many litigants, and chaos in precedent research if all California Court of Appeal opinions were published, and whether unpublished opinions would have the same precedential value as published opinions; the court thus held that the California rules of court that govern the publication of appellate opinions are consistent with the statutory scheme they were intended to represent, under which the California Supreme Court is given selective publication discretion to allow the court to oversee the orderly development of decisional law, and thus do not violate the provision of the California Constitution, [Cal. Const. art. VI, § 14](#), giving the Judicial Council power to adopt rules for court administration, practice, and procedure.

### Comment

Under [Cal. Rules of Court, Rule 977](#), an opinion that is not certified for publication cannot subsequently be cited as legal authority or precedent, except as relevant to the doctrines of law of the case, res judicata, or collateral estoppel, or as relevant to a criminal or disciplinary action because the opinion states reasons for a decision that affects the same defendant or respondent in another action.

The court in [Pannone v. City of Brisbane](#), 2002 WL 86908 (Cal. App. 1st Dist. 2002), unpublished/nonciteable, held that the court rule forbidding giving precedential effect to unpublished opinions in civil cases unless they fall within the doctrines of law of the case, res judicata or collateral estoppel, [Cal. Rules of Court, Rule 977](#), was not unconstitutional as violating the judicial–powers clause of the federal constitution, U.S. Const. art. 3, § 1, cl. 1. The plaintiffs urged that the court adopt the maverick view of the federal Eighth Circuit panel holding, in [Anastasoff v. U.S.](#), 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh’g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), §<sup>3</sup>, that a similar rule for that circuit was unconstitutional as violating the judicial–powers clause of article III, section 1, clause 1, of the federal Constitution. The court declined to take that view. The court noted that the Eighth Circuit, sitting en banc, has since ordered *Anastasoff* vacated as moot ([Anastasoff v. U.S.](#), 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000)); a Ninth Circuit panel has vigorously debunked *Anastasoff* ([Hart v. Massanari](#), 266 F.3d 1155, [Unempl. Ins. Rep.](#) (CCH) ¶16685B, 105 A.L.R.5th 747 (9th Cir. 2001), §<sup>4</sup>); and the California Supreme Court has not yet addressed *Anastasoff*, but has consistently adhered to the nonprecedent rule of this state.

### Comment

The court in [Pannone v. City of Brisbane](#), 2002 WL 86908 (Cal. App. 1st Dist. 2002), nonpublished/nonciteable, noted that a newly created website for the temporary posting of unpublished California Court of Appeal opinions ([www.courtinfo.ca.gov/opinions/nonpub.htm](http://www.courtinfo.ca.gov/opinions/nonpub.htm)) begins, consistently, as follows: “Unpublished opinions of the California Courts of Appeal are posted here for 60 days solely as public information about actions taken by the Courts of Appeal.”

### Caution

[Rule 977\(a\)](#), [California Rules of Court](#), prohibits courts and parties from citing or relying on any unpublished opinion in any action or proceeding, except in limited circumstances specified by [Rule 977\(b\)](#). Availability of unpublished opinions on this Web site does not constitute publication under [California Rules of Court, Rules 976, 976.1, 977, or 978](#) ... “and that a similar caution about [Rule 977](#) appears near the top of each posted opinion.”

The court in [Skidmore v. Gateway Western Ry. Co.](#), 333 Ill. App. 3d 947, 267 Ill. Dec. 196, 776 N.E.2d 333 (5th Dist. 2002), held that supervisory orders of the Illinois Supreme Court are not precedential, because they are unpublished, recite no facts, and provide no rationale upon which the principles of stare decisis may attach.

The court in [Allstate Ins. Co. v. Dana Corp.](#), 737 N.E.2d 1177 (Ind. Ct. App. 2000), transfer granted, opinion vacated, [IN RAP 58\(A\)](#), (May 4, 2001) and aff'd in part, vacated in part on other grounds, 759 N.E.2d 1049 (Ind. 2001), held that unpublished judicial decisions have minimal persuasive authority.

The court in [Cardinal Mooney High School v. Michigan High School Athletic Ass'n](#), 179 Mich. App. 267, 445 N.W.2d 483, 55 Ed. Law Rep. 1129 (1989), appeal granted, (July 13, 1990) and judgment rev'd on other grounds, 437 Mich. 75, 467 N.W.2d 21, 66 Ed. Law Rep. 771 (1991), noted that unpublished opinions of the state court of appeals have no precedential effect.

The court in [Dynamic Air, Inc. v. Bloch](#), 502 N.W.2d 796, 8 I.E.R. Cas. (BNA) 1051 (Minn. Ct. App. 1993), held that, at best, unpublished opinions can be of persuasive value; for example, a party may cite an unpublished opinion affirming a trial court's exercise of discretion to persuade a trial court to exercise discretion in the same manner. The court held that it is, however, improper to rely on unpublished opinions as binding precedent. The court also noted that the use of such opinions has the potential to result in profound unfairness. Attorneys who have access to computerized research systems are able to find unpublished opinions with facts apparently similar to their case. Attorneys who cannot afford these services are at a disadvantage, as they are unable to find those unpublished opinions supporting their cases. Because the full fact situation is seldom set out in unpublished opinions, the danger of miscitation is great. Since the Minnesota Legislature has unequivocally provided that unpublished opinions are not precedential, [Minn. Stat. § 480A.08 \(3\)\(c\) \(1992\)](#), the court reminded the bench and bar firmly that neither the trial courts nor practitioners are to rely on unpublished opinions as binding precedent.

## CUMULATIVE SUPPLEMENT

### Cases:

Unpublished opinions of Court of Appeals have no precedential force. U.S.Ct. of App. 1st Cir.Rule 32.3(a)(2), 28 U.S.C.A. [In re Merrimac Paper Co., Inc.](#), 420 F.3d 53 (1st Cir. 2005).

If an unpublished opinion addresses a “material issue” on appeal that is not been addressed in any published opinions, then the court will consider the opinion persuasive, but not precedential. [Hoilett v. Allen](#), 365 F. Supp. 2d 110 (D. Mass. 2005).

District court should treat holdings of unpublished opinions of Court of Appeals with great care and respect, even though Court of Appeals itself does not accord those opinions precedential weight. [Coggon v. Barnhart](#), 354 F. Supp. 2d 40 (D.

Mass. 2005).

Unpublished opinions carry no precedential weight and have no binding effect other than on parties in case. [RGJ Associates, Inc v. Stainsafe, Inc.](#), 300 F. Supp. 2d 250 (D. Mass. 2004).

Unpublished appellate opinions should not vitiate published case law that firmly supports a constitutional right. [Aceto v. Kachajian](#), 240 F. Supp. 2d 121 (D. Mass. 2003).

Court of Appeals is not bound by a district court decision affirmed by unpublished summary order. [Norex Petroleum Ltd. v. Access Industries, Inc.](#), 416 F.3d 146 (2d Cir. 2005).

Unpublished memorandum decision, while not binding legal authority, may be persuasive, particularly where there are no existing published decisions which provide as much guidance. [In re O'Brien](#), 299 B.R. 725 (Bankr. S.D. N.Y. 2003).

An unpublished opinion does not have any precedential weight. [In re Naranjo](#), 768 F.3d 332 (4th Cir. 2014).

As a general matter, unpublished opinions should not be relied upon, but like any other writing on a point of law, an unpublished opinion was entitled to the weight it generated by the persuasiveness of its reasoning. [U.S. v. Fentress](#), 241 F. Supp. 2d 526 (D. Md. 2003).

Unpublished Fourth Circuit cases were not binding precedent. [U.S. v. Foreman](#), 269 F. Supp. 2d 683 (E.D. Va. 2003).

Unpublished opinions of the Court of Appeals are not binding precedent in the Fourth Circuit. [In re Davis](#), 352 B.R. 758 (Bankr. D. S.C. 2006).

Unpublished opinions are not binding precedent in the Fourth Circuit. [In re Sampath](#), 314 B.R. 73 (Bankr. E.D. Va. 2004).

Fifth Circuit Court of Appeals panel decision that was vacated had no precedential value. [Lopez v. U.S. Immigration and Customs Enforcement](#), 455 Fed. Appx. 427 (5th Cir. 2011).

Unpublished opinion issued pursuant to Fifth Circuit rule after January 1, 1996 had no precedential value. U.S.Ct. of App. 5th Cir. Rule 47, 28 U.S.C.A. [Cavalier ex rel. Cavalier v. Caddo Parish School Bd.](#), 403 F.3d 246 (5th Cir. 2005), as amended on denial of reh'g and reh'g en banc, (Mar. 29, 2005).

Unpublished Court of Appeals opinion was not precedent that was basis for overturning published Court of Appeals decision which held that prohibiting a felon from possessing "any other dangerous weapon" during supervised release was a standard condition. U.S.Ct. of App. 5th Cir. Rule 47.5.4, 28 U.S.C.A. [U.S. v. Santillana](#), 109 Fed. Appx. 665 (5th Cir. 2004).

Unpublished Court of Appeals opinion was not controlling law with respect to an issue before the bankruptcy court. [In re Ruth](#), 505 B.R. 804 (Bankr. S.D. Tex. 2014).

An unpublished decision is not precedentially binding under the doctrine of stare decisis, but is considered for its persuasive value only. [U.S. v. Sanford](#), 476 F.3d 391, 2007 FED App. 0055P (6th Cir. 2007).

Unpublished decisions of the Sixth Circuit are not binding under the doctrine of stare decisis and are considered for their persuasive value only. [C.A. ex rel. G.A. v. Morgan County Board of Educ.](#), 577 F. Supp. 2d 886 (E.D. Ky. 2008).

Unpublished decisions may be considered for their persuasive value. [Peguese v. PNC Bank, N.A.](#), 2015 WL 2125399 (E.D. Mich. 2015).

When there is a conflict between two published decisions of the Court of Appeals that were both issued after November 1, 1990, Michigan courts must follow the first opinion that addressed the matter at issue; by contrast, Michigan Court of Appeals panels are not bound by unpublished decisions of that same court, regardless of when they were issued. [MCR 7.215\(J\)\(1\). Harshaw v. Bethany Christian Services](#), 714 F. Supp. 2d 751 (W.D. Mich. 2010).

Unpublished decisions of the United States Court of Appeals for the Sixth Circuit do not bind anyone except the parties to those particular cases, and the same is true of district court decisions, whether published in the Federal Supplement books or not. [Smith v. Astrue](#), 639 F. Supp. 2d 836 (W.D. Mich. 2009).

Unpublished decision is not binding for stare decisis purposes, and thus does not create conflict with published, binding decision. [Alexander v. Davis](#), 282 F. Supp. 2d 609 (W.D. Mich. 2003).

Unpublished opinions of the Court of Appeals are not binding authority, but can be persuasive. [Hall v. ITT Automotive](#), 362 F. Supp. 2d 952 (N.D. Ohio 2005).

Court of Appeals' unreported decision does not constitute binding precedent. [Waldron v. Jackson](#), 348 F. Supp. 2d 877 (N.D. Ohio 2004).

A court can look to the reasoning employed in an unpublished decision for guidance. [Bradford Co. v. Afco Mfg.](#), 560 F. Supp. 2d 612 (S.D. Ohio 2008).

Unpublished opinions of the Sixth Circuit are not binding authority. [Collins v. U.S. Playing Card Co.](#), 466 F. Supp. 2d 954, 153 Lab. Cas. (CCH) P 35218 (S.D. Ohio 2006).

Unpublished decisions of the Sixth Circuit do not constitute binding precedent. [In re Storey](#), 392 B.R. 266 (B.A.P. 6th Cir. 2008).

Although unpublished decisions of the Sixth Circuit do not constitute binding precedent, they may constitute persuasive authority, especially where there are no published decisions which will serve as well. [In re Storey](#), 392 B.R. 266 (B.A.P. 6th Cir. 2008).

Michigan Court of Appeals panels are not bound by unpublished decisions of that court, regardless of when they were issued. [MCR 7.215\(C\)\(2\), \(J\)\(1\)](#). [Wolters v. Flagstar Bank FSB](#), 429 B.R. 587 (Bankr. W.D. Mich. 2010).

Generally, unpublished authority is without precedential value, except for purpose of establishing res judicata, estoppel or the law of the case. [In re Diguilio](#), 303 B.R. 144 (Bankr. N.D. Ohio 2003).

Unpublished decisions of the court of appeals have no weight as precedent. [Cimino v. Fleetwood Enterprises, Inc.](#), 542 F. Supp. 2d 869 (N.D. Ind. 2008).

An unpublished case is not precedent. [U.S. v. Kanatzar](#), 370 F.3d 810 (8th Cir. 2004).

Pursuant to Iowa Rule of Appellate Procedure providing that unpublished opinions or decisions were not controlling legal authority, and Eighth Circuit rule providing that unpublished opinions were not precedent, unpublished decisions of Iowa state courts were not binding in Eighth Circuit. U.S.Ct. of App. 8th Cir.Rule 32.1A, 28 U.S.C.A. ; [I.C.A. Rule 6.904\(2\)\(c\)](#). [Brunk v. Graybar Elec. Co., Inc.](#), 713 F. Supp. 2d 814 (S.D. Iowa 2010).

Unpublished opinions are not precedent. U.S.Ct. of App. 8th Cir.Rule 28A(i), 28 U.S.C.A. [In re Baycol Products Litigation](#), 214 F.R.D. 542 (D. Minn. 2003).

Unpublished opinions from the Third Circuit are not binding on that court but may be cited as persuasive authority. [U.S. v. Gonzalez](#), 739 F.3d 420 (9th Cir. 2013).

An unpublished decision is not precedent for a panel of the Court of Appeals. [Pedroza v. BRB](#), 624 F.3d 926 (9th Cir. 2010).

District court's refusal to reconsider its grant of summary judgment to trademark infringement defendant following appellate reversal of case it had relied upon was not abuse of discretion; court's reasoning and legal conclusions had been supported by other case law, and unpublished appellate case was not binding precedent. [Fed.Rules Civ.Proc.Rule 59\(e\)](#), 28 U.S.C.A. M2

[Software, Inc., a Delaware corporation v. Madacy Entertainment, a corporation](#), 421 F.3d 1073, 76 U.S.P.Q.2d 1161 (9th Cir. 2005), cert. denied, 126 S. Ct. 1772 (U.S. 2006).

District court should not have relied on an unpublished decision in determining motion. [U.S. v. Daychild](#), 357 F.3d 1082 (9th Cir. 2004).

See [Schmier v. U.S. Court of Appeals for Ninth Circuit](#), 279 F.3d 817 (9th Cir. 2002), in which the court held that an attorney alleging that circuit rules prohibiting citation to unpublished opinions violated his rights under Article III, the First Amendment, the Due Process and Equal Protection Clauses, and the separation-of-powers doctrine, failed to allege a legally cognizable injury, as required by the standing doctrine, where the attorney appeared to allege an injury on behalf of all lawyers practicing within the Ninth Circuit, and not that he personally had suffered sanctions or harm from the inability to rely on an unpublished opinion in a live litigation, nor could he establish standing based solely on his interest in seeing the federal courts “perform [their] duties.”

Although district court is not bound by unpublished decisions of intermediate state courts, unpublished opinions that are supported by reasoned analysis may be treated as persuasive authority. [Aboulhosn v. Merrill Lynch, Pierce, Fenner & Smith Inc.](#), 940 F. Supp. 2d 1203 (C.D. Cal. 2013).

Habeas court may consider an unpublished opinion in determining whether the state consistently applies a procedural rule so as to render the petitioner sufficiently “apprised” of the rule’s meaning. [Bennett v. Mueller](#), 364 F. Supp. 2d 1160 (C.D. Cal. 2005).

The court in [Ileto v. Glock, Inc.](#), 194 F. Supp. 2d 1040 (C.D. Cal. 2002), held that a district court cannot rely on a summary conclusion in an unpublished opinion as precedent because it does not know what allegations were asserted in the plaintiffs’ complaint, what arguments were made by the parties in their briefing, and what analysis was undertaken by the court.

Ninth Circuit rule governing citation of unpublished dispositions or orders did not bar district court from considering unpublished decisions of other federal district courts; however, such decisions were not binding, and at most were persuasive authority. U.S. Ct. of App. 9th Cir. Rule 36–3, 28 U.S.C.A. [Herring v. Teradyne, Inc.](#), 256 F. Supp. 2d 1118 (S.D. Cal. 2002).

Unpublished decision of Court of Appeals was not precedent and thus could not be relied upon by district court. [McHenry v. PacificSource Health Plans](#), 643 F. Supp. 2d 1236, 46 Employee Benefits Cas. (BNA) 2472 (D. Or. 2009).

Unpublished opinion within circuit, though not binding precedent, was entitled to persuasive authority on same basis as opinion from another circuit because of its reasoned analysis. [U.S. v. Lyons](#), 510 F.3d 1225 (10th Cir. 2007).

Unpublished decisions are not binding authority. [Gamble v. Calbone](#), 375 F.3d 1021 (10th Cir. 2004).

In disability insurance benefits (DIB) and supplemental security income (SSI) case, ALJ’s decision rejecting judge’s holding, in remand order, that discrepancy existed between claimant’s mental residual functional capacity (RFC) and level three reasoning requirement specified in Dictionary of Occupational Titles (DOT) was not based on substantial evidence or correct legal standards; ALJ provided no relevant case law or other authority supporting his conclusions, instead relying on unpublished case that had no precedential value and could not be followed to extent it disagreed with published Tenth Circuit case. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g). [Duran v. Astrue](#), 654 F. Supp. 2d 1298 (D. Colo. 2009).

Unpublished case is not binding precedent. [Procter & Gamble Co. v. Haugen](#), 627 F. Supp. 2d 1287, 2008-2 Trade Cas. (CCH) ¶ 76274 (D. Utah 2008).

Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants. [Bonilla v. Baker Concrete Const., Inc.](#), 487 F.3d 1340, 12 Wage & Hour Cas. 2d (BNA) 1100 (11th Cir. 2007).

Reliance on unpublished opinions is not favored; although litigants may cite unpublished opinions to the Eleventh Circuit as persuasive authority provided that a copy of the opinion is attached to a brief, they are not considered binding precedent. U.S.Ct. of App. 11th Cir. Rule 36.2, 28 U.S.C.A. [Association for Disabled Americans, Inc. v. Integra Resort Management](#),



Inc., 385 F. Supp. 2d 1272 (M.D. Fla. 2005).

An unpublished decision is not controlling authority and is persuasive only insofar as its legal analysis warrants. [Penzer v. Transportation Ins. Co.](#), 509 F. Supp. 2d 1278 (S.D. Fla. 2007).

Court of Civil Appeals' decision was not precedential authority, where such decision affirmed trial court's judgment without an opinion. Rules App.Proc., Rule 53(d). [State ex rel. Tyson v. Ted's Game Enterprises](#), 893 So. 2d 355 (Ala. Civ. App. 2002), reh'g denied, (Mar. 21, 2003) and judgment aff'd, 893 So. 2d 376 (Ala. 2004).

Unpublished opinions do not create precedent. [Coffman v. State](#), 172 P.3d 804 (Alaska Ct. App. 2007).

Appellate Rule which provided that unpublished decisions were without precedential effect and could not be cited in the courts of the state did not strictly forbid attorneys or judges from mentioning unpublished opinions during argument in court. Rules App. Proc., Rule 214. [McCoy v. State](#), 80 P.3d 757 (Alaska Ct. App. 2002), hearing denied, (Apr. 3, 2003).

It is improper to cite out-of-state, unpublished memorandum decisions. [Hall v. Smith](#), 152 P.3d 1192 (Ariz. Ct. App. Div. 2 2007).

Unpublished decisions shall not be regarded as precedent nor cited in any court, and this prohibition extends to federal district court memorandum decisions. 17B A.R.S. Civil Appellate Proc.Rules, Rule 28(c). [Hourani v. Benson Hosp.](#), 122 P.3d 6 (Ariz. Ct. App. Div. 2 2005).

Unpublished opinions will not be considered as authority and should not be cited to the Supreme Court. [Thomas v. State](#), 367 Ark. 478, 241 S.W.3d 247 (2006).

Application of rule prohibiting citation to unpublished court of appeals' opinions did not violate defendant's right to due process of law by depriving him of access to available law to support his arguments on appeal that evidence was insufficient to sustain his drug convictions; there were ample published opinions setting forth test for sufficiency of the evidence, as well as its application, and, even if defendant were allowed to cite to unpublished opinions, there was no requirement that the Supreme Court agree with his assessment that a particular case constituted persuasive authority. [U.S. Const. Amend. XIV](#); Sup. Ct. Rules, Rule 5-2(d). [Weatherford v. State](#), 101 S.W.3d 227 (Ark. 2003).

Unpublished federal opinions may be cited as persuasive, although not binding, authority. [Cal. R. Ct. 8.1115. Aguirre v. Amscan Holdings, Inc.](#), 2015 WL 1010804 (Cal. App. 3d Dist. 2015).

Court of Appeal's unpublished action in dismissing an appeal because the appellant was not an aggrieved party was not citable authority. [Earl v. State Personnel Board](#), 2014 WL 5866894 (Cal. App. 3d Dist. 2014).

Unpublished opinion was not citable as precedent, where the opinion was not within the narrow set of circumstances in which the California Rules of Court authorized reference to unpublished opinions. [Cal. R. Ct. 8.1115\(b\) Humane Society of the United States v. Superior Court of Yolo County](#), 214 Cal. App. 4th 1233, 2013 WL 1233270 (3d Dist. 2013).

Unpublished federal cases are not binding authority but they may be cited as persuasive. [Hall v. Goodwill Industries of Southern California](#), 193 Cal. App. 4th 718, 111 Fair Empl. Prac. Cas. (BNA) 1502, 2011 WL 893222 (2d Dist. 2011).

The Court of Appeal would not consider an unpublished memorandum and order issued by a federal district court, in determining whether wage statements which listed the total number of regular hours and the total number of overtime hours worked by the employee satisfied the Labor Code requirement to show the "total hours worked," where the order was not published in the Federal Supplement nor was it available through Lexis or Westlaw. [West's Ann.Cal.Labor Code § 226\(a\)\(2\). Morgan v. United Retail Inc.](#), 186 Cal. App. 4th 1136, 16 Wage & Hour Cas. 2d (BNA) 637, 2010 WL 2510125 (2d Dist. 2010).

Although the Court of Appeal may not rely on unpublished California cases, the California Rules of Court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive, although not binding, authority. [Cal.Rules](#)

of Court, Rule 8.1115. *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP*, 183 Cal. App. 4th 238, 2010 WL 1176494 (6th Dist. 2010).

Defense counsel's citation of one nonpublished opinion and one depublished opinion, in arguing that defendant should not be subjected to mandatory sex offender registration, was not justified by collateral estoppel, and thus the citations violated rule of court generally prohibiting citation of unpublished opinions. *Cal. Rules of Court, Rule 8.1115. People v. Manchel*, 163 Cal. App. 4th 1108, 78 Cal. Rptr. 3d 194 (2d Dist. 2008).

While a party may cite unpublished federal opinions if they are available by computer, such authority is not binding or precedential. *Ticconi v. Blue Shield of California Life & Health Ins. Co.*, 153 Cal. App. 4th 1123, 63 Cal. Rptr. 3d 698 (2d Dist. 2007).

Unpublished federal opinions are citable as persuasive, although not precedential, authority. *Cal. Rules of Court, Rule 977. Pacific Shore Funding v. Lozo*, 42 Cal. Rptr. 3d 283 (Cal. App. 2d Dist. 2006).

Although unpublished opinion may not be cited or relied upon, an unpublished opinion can be considered for the value and persuasiveness of its analysis or reasoning. *Cal. Rules of Court, Rule 977(a). Modern Development Co. v. Navigators Ins. Co.*, 111 Cal. App. 4th 932, 4 Cal. Rptr. 3d 528 (2d Dist. 2003), as modified, (Aug. 29, 2003) and as modified, (Sept. 18, 2003).

California Rules of Court do not prohibit citation to unpublished federal cases; rather, state courts may properly cite those cases as persuasive, although not precedential, authority. *Cal. Rules of Court, Rule 8.1115(c). Monarch Consulting, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 993 N.Y.S.2d 275 (App. Div. 1st Dep't 2014) (applying California law).

Per curiam appellate affirmance without written opinion has no precedential value. *TRW Automotive U.S. LLC v. Papandopoulos*, 949 So. 2d 297 (Fla. Dist. Ct. App. 4th Dist. 2007).

Per curiam affirmance without written opinion, even one with a written dissent, has no precedential value and should not be relied on for anything other than res judicata. *St. Fort ex rel. St. Fort v. Post, Buckley, Schuh & Jernigan*, 902 So. 2d 244 (Fla. Dist. Ct. App. 4th Dist. 2005).

Landlords and trial court, in lead poisoning case brought against landlords by guardian of estate of two minor children, violated Supreme Court Rule providing that an unpublished order of an Illinois appellate court could not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case; landlords submitted unpublished order in hearing on their summary judgment motion for the stated purpose of showing the standard by which courts were allegedly judging liability on lead-based contamination cases, and, when guardian objected, trial court responded that considering the unpublished order was no different that considering treatise that guardian had submitted to the trial court. *Sup.Ct. Rules, Rule 23. Price ex rel. Massey v. Hickory Point Bank & Trust, Trust No. 0192*, 299 Ill. Dec. 352, 841 N.E.2d 1084 (App. Ct. 4th Dist. 2006).

The fact one court has used certain reasoning in an unpublished opinion does not bar courts in Illinois from using the same reasoning in their decisions; while parties are restricted from citing unpublished orders of Illinois Appellate Courts, that does not bar the parties from using the reasoning and logic that an Illinois Appellate Court used in its unpublished decision, but rather it bars parties from citing that unpublished decision as authority. *Sup.Ct. Rules, Rule 23(e). Osman v. Ford Motor Co.*, 295 Ill. Dec. 805, 833 N.E.2d 1011 (App. Ct. 4th Dist. 2005).

Unpublished orders are not precedential and may not be cited by parties except to support contentions of double jeopardy, res judicata, collateral estoppel, or law of the case. *Sup.Ct. Rules, Rule 23. People v. Wilder*, 292 Ill. Dec. 640, 826 N.E.2d 1076 (App. Ct. 1st Dist. 2005), reh'g denied, (Apr. 29, 2005).

An unpublished federal decision is not precedential in federal courts, let alone state courts. *U.S. Bank Nat. Ass'n v. Clark*, 283 Ill. Dec. 268, 807 N.E.2d 1109 (App. Ct. 1st Dist. 2004).

It is error for a trial court to rely on an unpublished order of an appellate court other than in those cases involving double

jeopardy, res judicata, collateral estoppel, or law of the case. Sup. Ct. Rules, Rule 23(e). [In re Donald R.](#), 277 Ill. Dec. 584, 796 N.E.2d 670 (App. Ct. 3d Dist. 2003).

Portion of husband's reply brief in appeal of judgment of dissolution that cited an unpublished order had to be struck, where the order was not cited to support contentions of double jeopardy, res judicata, collateral estoppel, or law of the case. Sup.Ct.Rules, Rule 23(e). [In re Marriage of Schmitt](#), 909 N.E.2d 221 (Ill. App. Ct. 2d Dist. 2009).

It was improper for defense counsel to cite, and for the trial court to consider, an unpublished order as precedential authority since rule stated that an unpublished order of the court was not precedential and could not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case and defense counsel was not citing the unpublished order to support a contention of double jeopardy, res judicata, collateral estoppel, or law of the case. U.S.C.A. Const.Amend. 5; Sup.Ct.Rules, Rule 23(e). [People v. Matous](#), 886 N.E.2d 1278 (Ill. App. Ct. 3d Dist. 2008).

Unpublished Court of Appeals decisions do not constitute controlling legal authority for the Supreme Court. [State v. Murray](#), 796 N.W.2d 907 (Iowa 2011).

Unpublished opinions of the Court of Appeals are not binding precedents, except under the doctrines of law of the case, res judicata, and collateral estoppel. Sup.Ct.Rules, Rule 7.04(f)(2)(i). [Riverside Drainage Dist. of Sedgwick County v. Hunt](#), 99 P.3d 1135 (Kan. Ct. App. 2004).

Supreme Court is not bound by the opinions of the Court of Appeals, particularly by unpublished opinions of the Court of Appeals. [Ky. R. Civ. P. 76.28\(4\)\(c\)](#). [Beaumont v. Zeru](#), 460 S.W.3d 904 (Ky. 2015).

Appellant's citation to non-final unpublished Court of Appeals opinion that was not final, in that Supreme Court had accepted discretionary review, was improper, as while rule permitted citation of certain unpublished appellate opinions, the rule did not extent to opinions that were not final, in that there could be no precedential value to a holding that was still being considered. Rules Civ.Proc., Rule 76.28(4)(c). [State Farm Ins. Co. v. Edwards](#), 339 S.W.3d 456 (Ky. 2011).

Unreported opinions do not constitute law, even in the jurisdictions whose courts issued them. [Thompson v. UBS Financial Services, Inc.](#), 443 Md. 47, 115 A.3d 125 (2015).

An unpublished opinion has no binding precedential effect in unrelated matters as to the legal principles applied. [Zimmer-Rubert v. Board of Educ. of Baltimore County](#), 179 Md. App. 589, 947 A.2d 135, 103 Fair Empl. Prac. Cas. (BNA) 768 (2008).

A reported decision of the Court of Special Appeals constitutes binding precedent, and an unreported decision does not, except as to the parties involved. [Archers Glen Partners, Inc. v. Gamer](#), 933 A.2d 405 (Md. Ct. Spec. App. 2007).

Unpublished decisions of the Appeals Court are not accorded precedential weight. [Regulation of Appellate Practice Rule 1:28. Com. v. Gray](#), 80 Mass. App. Ct. 98, 951 N.E.2d 931 (2011).

Unpublished opinions are not binding on Court of Appeals. [Findley v. DaimlerChrysler Corp.](#), 289 Mich. App. 483, 797 N.W.2d 175 (2010).

Unpublished cases are not precedential authority. [Howell Ed. Ass'n, MEA/NEA v. Howell Bd. of Ed.](#), 287 Mich. App. 228, 789 N.W.2d 495, 30 I.E.R. Cas. (BNA) 594, 188 L.R.R.M. (BNA) 2054 (2010).

Neither unpublished opinions of the Court of Appeals, nor decisions from foreign jurisdictions, are binding precedent. [Minneapolis Grand, LLC v. Galt Funding LLC](#), 791 N.W.2d 549 (Minn. Ct. App. 2010).

Unpublished opinions of Court of Appeals are not precedential, and at best may be of persuasive value. M.S.A. § 480A.08, 3(c). [State v. Timberlake](#), 726 N.W.2d 509 (Minn. Ct. App. 2007).

Unpublished opinions are of limited value in deciding an appeal. M.S.A. § 480A.08, subd 3(c). [Dyrdal v. Golden Nuggets](#),

Inc., 672 N.W.2d 578 (Minn. Ct. App. 2003).

Trial courts are not free to decide issues according to authority found in unpublished trial court opinions. [In re Guardianship of Duckett](#), 991 So. 2d 1165 (Miss. 2008).

Law of case doctrine did not apply in proceeding by ex-wife requesting chancellor to enforce Court of Appeals' prior judgment finding that ex-wife, who resumed living with ex-husband following divorce, was entitled to payment for her domestic services, where prior opinion of Court of Appeals was unpublished, and thus, prior opinion was not public policy and whether trial court followed such prior opinion would not affect other subsequent parties or negate trial court's ability to set precedent. [Wooldridge v. Wooldridge](#), 856 So. 2d 446 (Miss. Ct. App. 2003), cert. granted, (Sept. 5, 2003).

Unpublished opinions are neither binding nor persuasive precedent in the Court of Appeals. [Executive Bd. of Missouri Baptist Convention v. Windermere Baptist Conference Center](#), 280 S.W.3d 678 (Mo. Ct. App. W.D. 2009), reh'g and/or transfer denied, (Mar. 31, 2009) and transfer denied, (May 5, 2009).

Memorandum opinions are unpublished and may not be relied on as authority. [Weer v. State](#), 2010 MT 232, 358 Mont. 130, 244 P.3d 311 (2010).

Unpublished orders and opinions from the Supreme Court are not to be cited as precedent. [State v. Oie](#), 2007 MT 328, 340 Mont. 205, 174 P.3d 937 (2007).

Unpublished decision in which one trial court dismissed palimony action on ground that cohabitation was an essential element of the claim was not "legal authority in the controlling jurisdiction" that attorney who represented plaintiff in that action was required under professional conduct rule to call to the attention of trial and appellate courts in another palimony action in which same attorney represented a plaintiff who had not cohabited with individual against whose estate she asserted claim, and in which trial court denied estate's motion to dismiss and appellate court denied estate's motion for leave to appeal. RPC 3.3(a)(3). [Brundage v. Estate of Carambio](#), 951 A.2d 947 (N.J. 2008).

An unpublished opinion does not constitute precedent nor is it binding unless it is required to be followed by reason of res judicata, collateral estoppel, the single controversy doctrine, or similar principle of law. R. 1:36-3. [Morella v. Grand Union/New Jersey Self-Insurers Guar. Ass'n](#), 917 A.2d 826 (N.J. Super. Ct. App. Div. 2007).

Unpublished opinions do not constitute precedent, and, subject to limited exceptions, shall not be cited by a court. R. 1:36-3. [Espinal v. Arias](#), 391 N.J. Super. 49, 916 A.2d 1081 (App. Div. 2007).

An unpublished Appellate Division opinion has no stare decisis effect and cannot, therefore, be regarded as signaling the clarification or change of law. R. 1:36-3. [State v. Merola](#), 365 N.J. Super. 203, 838 A.2d 543 (Law Div. 2002), aff'd on other grounds, 365 N.J. Super. 82, 838 A.2d 470 (App. Div. 2003).

No unpublished opinion shall constitute precedent or be binding upon any court. [303, Inc. v. City of North Wildwood](#), 21 N.J. Tax 376, 2004 WL 1542273 (2004).

Unpublished decisions are not meant to be used as precedent; they are written solely for the benefit of the parties. [Romero v. City of Santa Fe](#), 139 N.M. 440, 2006-NMCA-055, 134 P.3d 131 (Ct. App. 2006).

Unpublished opinions are not binding upon the Court of Appeals. [Freeman v. Rothrock](#), 657 S.E.2d 389 (N.C. Ct. App. 2008).

Court of Appeals is not bound by a prior unpublished decision of another panel of the Court of Appeals. [State v. Pritchard](#), 649 S.E.2d 917 (N.C. Ct. App. 2007).

Unpublished opinions are not controlling authority. [Magnolia Mfg. of North Carolina, Inc. v. Erie Ins. Exchange](#), 633 S.E.2d 841 (N.C. Ct. App. 2006).

Oklahoma judicial decisions that are not published in the permanent law reports have neither persuasive nor precedential value in Oklahoma, and the Oklahoma Supreme Court is not inclined to treat unpublished decisions from other jurisdictions differently. Sup.Ct.Rules, Rule 1.200, 12 O.S.A. Ch. 15, App. 1. [Bilbrey v. Cingular Wireless, L.L.C., 2007 OK 54, 164 P.3d 131 \(Okla. 2007\)](#).

An unpublished Superior Court memorandum is non-precedential. 210 Pa.Code § 65.37. [Liberty Mut. Ins. Co. v. Domtar Paper Co., 2013 PA Super 262, 77 A.3d 1282 \(2013\)](#).

Under Tennessee law, while unpublished appellate decisions are binding only on parties, courts' reasoning in unpublished appellate decisions may be highly persuasive. [In re Del-Met Corp., 322 B.R. 781 \(Bankr. M.D. Tenn. 2005\) \(applying Tennessee law\)](#).

While unpublished opinions are not controlling authority except between the parties to the case, they are persuasive authority. Sup.Ct.Rules, Rule 4(H)(1). [In re D.Y.H., 226 S.W.3d 327 \(Tenn. 2007\)](#).

Although an unpublished case has no precedential value, Court of Appeals may take guidance from it as an aid in developing reasoning that may be employed. [Wilson v. State, 391 S.W.3d 131 \(Tex. App. Texarkana 2012\)](#).

Although unpublished cases have no precedential value, the Court of Appeals may take guidance from them as an aid in developing reasoning that may be employed. [Barnett v. State, 344 S.W.3d 6 \(Tex. App. Texarkana 2011\)](#).

While unpublished, or memorandum, opinions are not binding precedent, such opinions may be considered as persuasive authority. [Texas Vital Care v. State, 323 S.W.3d 609 \(Tex. App. Texarkana 2010\)](#).

Effect of rule of appellate procedure which provides for citation to unpublished opinions even if they are of no precedential value, is to afford parties more flexibility in pointing out such opinions and reasoning employed in them, rather than simply arguing, without reference, that same reasoning. Rules App. Proc., Rule 47.7. [State v. Mechler, 123 S.W.3d 449 \(Tex. App. Houston 14th Dist. 2003\)](#), reh'g overruled, (Nov. 25, 2003) and petition for discretionary review filed, (Jan. 14, 2004).

Under rule of appellate procedure providing that unpublished opinions may be cited, but have no precedential value, court to whom unpublished opinion is cited has no obligation to follow opinion or to specifically distinguish such opinion. Rules App. Proc., Rule 47.7. [Carrillo v. State, 98 S.W.3d 789 \(Tex. App. Amarillo 2003\)](#), petition for discretionary review filed, (Apr. 7, 2003).

### Comment

The court in [Carrillo v. State, 98 S.W.3d 789 \(Tex. App. Amarillo 2003\)](#), petition for discretionary review filed, (Apr. 7, 2003), noting that the intent of the rule of state appellate procedure that unpublished opinions may be cited, but have no precedential value, is that court has no obligation to follow such opinions, and that the effect of the rule is to afford parties more flexibility in pointing out such opinions and reasoning employed in them, rather than simply arguing, without reference, that same reasoning, nevertheless noted that neither the rule of appellate procedure providing that unpublished opinions may be cited, but have no precedential value, nor the prior version of the rule, justify unreasoned inconsistency on the part of an appellate court.

Defendant and trial court improperly relied on unpublished opinion by Court of Appeals despite defendant's claim that it did not submit the opinion as controlling authority. [West's RCWA 2.06.040](#); RAP 10.4(h). [Johnson v. Allstate Ins. Co., 108 P.3d 1273 \(Wash. Ct. App. Div. 2 2005\)](#).

By analyzing and effectively overruling unpublished case when it determined that unpublished case relied upon by trial was wrongly decided, Court of Appeals impermissibly gave persuasive effect to unpublished case that had no precedential or persuasive authority. [W.S.A. 809.23. City of Sheboygan v. Nytsch, 2008 WI 64, 750 N.W.2d 475 \(Wis. 2008\)](#).

Citation of unpublished opinions may be subject to sanction. [W.S.A. 809.23\(3\). Roy v. St. Lukes Medical Center, 2007 WI App 218, 741 N.W.2d 256 \(Wis. Ct. App. 2007\)](#).

A party may not cite to an unpublished opinion as precedent or authority. W.S.A. 809.23(3). *Morrison v. Rankin*, 2007 WI App 186, 738 N.W.2d 588 (Wis. Ct. App. 2007).

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[Medford, White, Medford, Anastosoff v. U.S.: The Controlling Controversy Over The Precedential Effect of Unpublished Opinions, 20-NOV Am. Bankr. Inst. J. 26 \(2001\)](#)

[Miller, Chipping Away at the Dam: Anastosoff v. United States and the Future of Unpublished Opinions in the United States Courts of Appeals and Beyond, 50 Drake L. Rev. 181 \(2001\)](#)

[Schiavoni, Who's Afraid of Precedent?: The Debate Over the Precedential Value of Unpublished Opinions, 49 UCLA L. Rev. 1859 \(2002\)](#)

[Shuldberg, Digital Influence: Technology and Unpublished Opinions in the Federal Courts of Appeals, 85 Cal L. Rev. 541](#)

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#### Footnotes

- <sup>1</sup> See *Giese v. Pierce Chemical Co.*, 43 F. Supp. 2d 98, 50 U.S.P.Q.2d (BNA) 1810 (D. Mass. 1999).
- <sup>2</sup> See Barnett, *From Anastasoff To Hart To West's Federal Appendix: The Ground Shifts Under Nocitation Rules*, 4 *J. App. Prac. & Process* 1 (2002).
- <sup>3</sup> CJS, *Courts* § 165.
- <sup>4</sup> See *Dardeau v. West Orange-Grove Consolidated Independent School Dist.*, 43 F. Supp. 2d 722 (E.D. Tex. 1999).
- <sup>5</sup> D.C. Cir. R. 28(c)(12)(B); see, generally, Barnett, *From Anastasoff To Hart To West's Federal Appendix: The Ground Shifts Under Nocitation Rules*, 4 *J. App. Prac. & Process* 1 (2002).
- <sup>6</sup> Note, though, that *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), was vacated upon mootness grounds.
- <sup>7</sup> See *Cajun Contractors, Inc. v. Lafayette Consol. Government*, 715 So. 2d 588 (La. Ct. App. 3d Cir. 1998), writ granted in part, judgment rev'd in part on other grounds, 723 So. 2d 968 (La. 1998).
- <sup>8</sup> The continuing validity of the statement in *Harris v. U.S.*, 769 F.2d 718 (11th Cir. 1985), that unpublished opinions are binding precedent is doubtful in light of the statement in *U.S. v. Futrell*, 209 F.3d 1286 (11th Cir. 2000), <sup>§ 4</sup>, that under 11th Cir. R. 36-2 unpublished opinions are not binding on the court.
- <sup>9</sup> The Rule provides: "Unpublished opinions are not precedent and parties generally should not cite them. When relevant to establishing the doctrines of res judicata, collateral estoppel, or the law of the case, however, the parties may cite any unpublished opinion. Parties may also 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."
- <sup>10</sup> See *Macktal v. U.S. Dept. of Labor*, 171 F.3d 323, 14 I.E.R. Cas. (BNA) 1825 (5th Cir. 1999), <sup>§ 3</sup>, in which the court noted that unpublished opinions issued in the Fifth Circuit before January 1, 1996, are binding precedent in the Fifth Circuit under Fifth Cir. R. 47.5.3.
- <sup>11</sup> The continuing validity of the statement in *In re Leimer*, 724 F.2d 744, 11 *Bankr. Ct. Dec.* (CRR) 618, 10 *Collier Bankr. Cas.* 2d (MB) 97, *Bankr. L. Rep.* (CCH) ¶69598 (8th Cir. 1984) that unpublished opinions are not intended to create binding precedent, is subject to question in light of *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), on remand to, 2002-1 U.S. Tax Cas. (CCH) ¶50168, 89 A.F.T.R.2d 448, 2001 WL 1750760 (E.D. Mo. 2001), <sup>§ 3</sup>.
- <sup>12</sup> The continuing validity of the Eighth Circuit's statement that precedential weight is not given to unpublished opinions in *Federal Deposit Ins. Corp. v. Newhart*, 892 F.2d 47, 10 *U.C.C. Rep. Serv.* 2d 257 (8th Cir. 1989), is subject to question in light of *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d 2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), <sup>§ 3</sup>.
- <sup>13</sup> The continuing validity of the statement in *In re Jones*, 112 B.R. 975 (*Bankr. W.D. Mo.* 1989), that unpublished opinions of United States Court of Appeals for the Eighth Circuit are not intended to create binding precedent, is subject to question in light of *Anastasoff v. U.S.*, 223 F.3d 898, 56 U.S.P.Q.2d (BNA) 1621, 2000-2 U.S. Tax Cas. (CCH) ¶50705, 86 A.F.T.R.2d 2000-5724 (8th Cir. 2000), opinion vacated as moot on reh'g en banc, 235 F.3d 1054, 2001-1 U.S. Tax Cas. (CCH) ¶50136, 86 A.F.T.R.2d

2000-7275, 86 A.F.T.R.2d 2000-7277 (8th Cir. 2000), [§ 3](#).

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