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Appellate Court Rules Governing Publication, Citation, and Precedential Value of Opinions: An Update

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APPELLATE COURT RULES GOVERNING PUBLICATION, CITATION, AND PRECEDENTIAL VALUE OF OPINIONS: AN UPDATE

David R. Cleveland*

INTRODUCTION

In the mid-1970s, the federal courts of appeals began to issue opinions designated “unpublished” that were not typically published, citable, or accorded any precedential value. Many states followed suit. A great debate ensued questioning the practice, which has consumed considerable academic attention and appellate rulemaking time.¹ States continue to vary in their treatment of unpublished opinions and even in the wake of Federal Rule of Appellate Procedure 32.1, intended to provide uniformity, the federal circuits remain inconsistent.²

Scholars, judges, and practitioners have found previous surveys of practice regarding these opinions useful.³ The authors

*Professor of Law, Valparaiso University. Professor Cleveland is grateful to Alyssa Spartz for her excellent research assistance. Additionally, Professor Cleveland would like to thank Michael Schmier, whose inquiry into the current state of publication rules nationwide led to the realization that there was no recent survey of state practices.

1. David R. Cleveland, *Overturning the Last Stone: The Final Step in Returning Precedential Status to All Opinions*, 10 J. APP. PRAC. & PROCESS 61, 62 n.5 (2009) (collecting law review articles); Patrick J. Schiltz, *Much Ado About Little: Explaining the Sturm und Drang Over the Citation of Unpublished Opinions*, 62 Wash. & Lee L. Rev. 1429, 1429–30 (2005) (“On the day that I became Reporter, the issue of unpublished opinions was the most controversial issue on the Advisory Committee’s agenda. Eight years later, the issue of unpublished opinions continues to be the most controversial issue on the Advisory Committee’s agenda. I have devoted more attention to the unpublished-opinions issue than to all of the other issues the Advisory Committee has faced—combined.”)

2. David R. Cleveland, *Local Rules in the Wake of Federal Rule of Appellate Procedure 32.1*, 11 J. APP. PRAC. & PROCESS 19, 19–20 (2010). This article remains an accurate survey of federal rules on these issues.

3. Two that appeared in early issues of this journal are particularly valuable. See Melissa M. Serfass & Jessie Wallace Cranford, *Federal and State Court Rules Governing*

of those early studies noted a trend toward increased citability, even between 2001 and 2004. This increase in citability continues, and increasingly, states are according all decisions precedential value or no longer issuing opinions designated as either “unpublished” or “non-precedential.” More than half the states now either permit citation of, or do not issue, unpublished opinions. Since the last major survey in 2004, seven additional states—Alaska, Hawaii, Kansas, New Mexico, North Carolina, Pennsylvania, and Wisconsin—have begun to permit citation of unpublished opinions, and one—Louisiana—has accorded precedential value to unpublished opinions. Five additional states—Arkansas, Ohio, Texas, Utah, and Wyoming—have stopped issuing unpublished appellate opinions.

Earlier surveys, much like earlier debate on the issue, tended to look only at publication and citation practices.⁴ This survey seeks not only to update the information on these issues, but also to provide information about various jurisdictions’ rules on the precedential value accorded to decisions. The charts that follow, like those in prior surveys, attempt to convey the essence of each jurisdiction’s rules. The goal is to provide a quick reference to the rules from each jurisdiction and a source for comparison of jurisdictions. The survey describes the rules from each jurisdiction as written, but readers should remember that the extent to which courts fastidiously follow them may vary.⁵ And, of course, this area of law continues to develop, largely in the direction of greater official publication and citation.⁶

Publication and Citation of Opinions: An Update, 6 J. APP. PRAC. & PROCESS 349 (2004) [hereinafter *Serfass-Cranford Update*]; Melissa M. Serfass & Jessie Wallace Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 3 J. APP. PRAC. & PROCESS 251 (2001) [hereinafter *Serfass-Cranford*].

4. See generally *Serfass-Cranford*, *supra* note 3; *Serfass-Cranford Update*, *supra* note 3; see also Patrick J. Schiltz, *The Citation of Unpublished Opinions in the Federal Courts of Appeals*, 74 FORDHAM L. REV. 23, 30 (2005) (noting that the eight-year rulemaking process culminating in Rule 32.1 was focused on citation rather than precedential value).

5. See Cleveland, *supra* note 1, at 165–72 (collecting evidence that the rules of the various federal courts of appeals regarding publication are not well followed, and that despite federal rules prohibiting the citation of unpublished opinions before 2007, both attorneys and judges regularly researched, considered, and cited unpublished opinions).

6. Should the reader find the rules of publication or citation in any state changed from those published here, the author would welcome that information. He can be contacted at david.cleveland@valpo.edu.

| Rules Governing Publication, Citation, and Precedential Value of Opinions—2016 Update | | | |
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| State | Publication Guidelines | Citation Rule | Precedent Limitations |
| Alabama | <p>Ala. R. App. P. 53(c), (d): All Supreme Court and Court of Civil Appeals opinions published, but no-opinion cases appear only in “Table of Decisions Without Published Opinions.” If concurring or dissenting opinion is issued in no-opinion case, it shall be published with a statement addressing the special circumstances.</p> <p>Ala. R. App. P. 53, cmt.: Rule “intended to allow the courts to omit opinions in most cases” that don’t involve situations enumerated in the rule.</p> <p>Ala. R. App. P. 54(c), (d): Similar provisions for the Court of Criminal Appeals.</p> | <p>Ala. R. App. P. 53(d), 54(d): Unpublished opinions should not be cited unless for “law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar.”</p> | <p>Ala. R. App. P. 53(d), 54(d): Unpublished opinions have no precedential value.</p> |
| Alaska | <p>Alaska R. App. P. 214(a), (b): A civil court can determine whether to issue a written opinion, but a criminal court must issue a summary order that should contain a statement of the issues considered.</p> <p>Alaska R. App. P. 214(a): All parties may request “in writing” that case be decided by summary disposition without order; request “shall be signed by all parties and may be filed any time after the filing of the notice of appeal.”</p> | <p>Alaska R. App. P. 214(d) Unpublished opinions may be cited in briefs and oral arguments for res judicata, estoppel, or law of the case. Other use is not encouraged. A party may cite an unpublished opinion if there is persuasive value or if no published opinion is helpful. A party citing an unpublished opinion must cite the electronic database where the opinion appears or provide a copy for the court if it is not available electronically.</p> | <p>Alaska R. App. P. 214(d): No indication that unpublished opinions are precedential, but “persuasive” use is permitted.</p> |

| State | Publication Guidelines | Citation Rule | Precedent Limitations |
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| Arizona | <p>Ariz. R. Civ. App. P. 28(a), (g): An opinion is written, published, and intended to be precedential. A memorandum decision is written but not intended for publication. Orders may be partially published. Courts will treat motion for publication of memorandum as motion for reconsideration. Motion and any response must comply with the requirements of Ariz. R. Civ. App. P. 22, which describes contents and timing of motions.</p> | <p>Ariz. Sup. Ct. R. 111(c)(1), (3): Unpublished opinions may be cited for claim preclusion, issue preclusion, or law of the case; to assist court in issuing opinions; or for persuasive value. Party citing memorandum must provide either a copy of the decision or “a hyperlink to the decision where it may be obtained without charge.”</p> <p>Rule 111(c)(4) “A party has no duty to cite a memorandum decision.”</p> | <p>Ariz. Sup. Ct. R. 111(c)(1): Only opinions designated for publication are precedential. Memoranda are not precedential, except for res judicata, issue preclusion, or law of the case; determining whether to publish an opinion; for persuasive value (if issued after Jan. 1, 2015); or if no published opinion adequately addresses the issue.</p> |
| Arkansas | <p>Ark. S. Ct. R. 5-2(a): Every Supreme Court and Court of Appeals opinion issued after February 14, 2009, to be posted on Arkansas Judiciary website and made searchable.</p> | <p>Ark. S. Ct. R. 5-2(d)(3): “Opinions issued before February 14, 2009, shall be cited by referring to the case name, the appellate docket number, the abbreviated name of the issuing court and the complete date of the opinion in the first parenthetical, and including ‘unpublished’ in a second parenthetical. Opinions issued after February 14, 2009, and before July 1, 2009, shall be cited by referring to the case name, the year of the decision, the abbreviated court name, the appellate decision number, and including “unpublished in a parenthetical. Parallel citations to unofficial sources, including unofficial electronic databases, may be provided.”</p> | <p>Ark. S. Ct. R. 5-2 (c) All opinions issued after July 1, 2009, are precedential “and may be cited by any party in any proceeding. Opinions of the Supreme Court and Court of Appeals issued before July 1, 2009, and not designated for publication shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case).”</p> |

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| California | <p>Cal. Ct. R. 8.1120(a): Anyone may ask court to publish unpublished opinion, giving reasons in writing why it should be published.</p> <p>Cal Ct. R. 8.1105(a)–(c): Supreme Court opinions are all published. Appellate Court opinions published if they establish new law; apply law to significantly different facts from other published opinions; modify or explain law; give new interpretation to law; highlight conflict in the law; involve public interest; make a significant contribution to legal literature; invoke overlooked rule of law; or make significant contribution to law development.</p> <p>Cal. Ct. R. 8.1110: Court may decide that publication of only part of an opinion is appropriate.</p> | <p>Cal. Ct. R. 8.1115(c) : An unpublished opinion must be available in an electronic database or given to all parties and attached to the document citing the case. If the case is to be cited at oral argument, citing party must produce a letter “within a reasonable time in advance of citation.”</p> | <p>Cal. Ct. R. 8.1115(a)(1), (2): An unpublished opinion may be relied on for law of the case, res judicata, or collateral estoppel; or in criminal or disciplinary cases, if the opinion affects the same defendant or respondent and citation is necessary to ensure similar outcomes.</p> |
| Colorado | <p>Colo. App. R. 35(f): Court of Appeals decides which opinions to publish. Opinions designated for official publication only if opinion lays down new rule, alters or modifies existing rule, or applies established rule to novel facts; involves legal issue of continuing public interest; either majority, dissent, or special concurrence directs attention to shortcomings of common law or inadequacies in statutes; opinion resolves conflict of authority. If certiorari granted, unpublished Court of Appeals opinion will not be published unless Supreme Court orders it.</p> | <p>No rule.</p> | <p>Colo. App. R. 35(f): Officially published opinions are precedential for trial courts.</p> |

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| Connecticut | Conn. R. App. P. 71-4 (d) The opinions in “the bound volumes of the Connecticut Reports and the Connecticut Appellate Reports are the official opinions.” | <p>Former Conn. R. App. P. 67-9, requiring party to provide copies of unreported cases cited in brief, has been repealed as to cases filed on or after July 1, 2013.</p> <p>Conn. R. App. P. 67-11(c): A case available only in database to be cited using identifiers appropriate to the particular database. If the case is published between filing of brief and either oral argument day or submission on record and briefs, party citing unreported case must inform the chief clerk of print citation.</p> | No rule. |
| Delaware | <p>Del. S. Ct. R. 17(a): “All decisions finally determining or terminating a case shall be made by written opinion, or by written order, as determined by the Court.”</p> <p>Del. S. Ct. I.O.P. XIV: Cases may be determined by judgment order as well as by opinion.</p> | Del. S. Ct. R. 14(g)(ii): Unreported opinions shall be cited in “Delaware Citation Form,” such as <i>Fox v. Fox</i> , Del., No. 510, 1997, Berger, J. (May 14, 1998). | Del. S. Ct. R. 17, cmt.: “[O]rders of this Court may be cited as precedent in unrelated cases in this Court and in any other Delaware Court.” |
| District of Columbia | <p>D.C. Ct. App. R. 36(c): Opinions may be either published or unpublished, and parties may move to have unpublished opinion published. Court may also publish any unpublished opinion.</p> <p>D.C. Ct. App. I.O.P. IX “All opinions . . . will be published. Memorandum Opinions and Judgments . . . will not be published.”</p> | D.C. Ct. App. R. 28(g): Unpublished opinions should not be cited in briefs. | <p>D.C. Ct. App. R. 28(g): Citable for law, res judicata, or collateral estoppel, or in a criminal or disciplinary case involving same defendant or respondent.</p> <p>D.C. Ct. App. I.O.P. IX: Court opinions do not cite or rely on unpublished opinions.</p> |

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| Florida | <p>Courts can issue per curiam decisions without opinion, which are not precedential, and citation to them can be prohibited by appellate courts unless the decision is cited only to “suggest to the court how it previously viewed a proposition.” Dept. of Leg. Affairs v. Dist. Ct. of App., 434 So. 2d 310, 311, 313 (Fla. 1983).</p> <p>Fla. R. App. P. 9.330: If a decision is entered without opinion, but a written opinion would provide a legitimate basis for supreme court review, a party may request issuance of a written opinion.</p> | <p>No rule.</p> <p>But citation of a non-precedential opinion may be acceptable if the case is cited only to “suggest to the court how it previously viewed a proposition.” Dept. of Leg. Affairs, 434 So. 2d at 313.</p> | <p>No rule.</p> |
| Georgia | <p>Ga. R. App. Ct. 34: “Opinions are reported except as otherwise designated by the Court. The official reports shall list the cases in which opinions were written but not officially reported and shall indicate the authors and participants in the opinions.”</p> | <p>Ga. Sup. Ct. R. 22: If cases that are not reported in an official reporter are cited in briefs, they should be cited by their case numbers and dates of decision.</p> | <p>Ga. R. App. Ct. 33(b): “An unreported opinion is neither a physical nor binding precedent but establishes the law of the case.”</p> <p>Ga. S. Ct. R. 59: Affirmances without opinion “have no precedential value.”</p> |
| Guam | <p>Guam R. App. P. 27(b)(1): Opinions by the Supreme Court shall be published. Memorandum opinions shall not be published.</p> | <p>Guam R. App. P. 27(b)(1): “Opinions that are not published shall not be cited in any other action or proceeding except to establish res judicata or collateral estoppel, or in a continuing criminal action.”</p> | <p>Guam R. App. P. 27(b)(1): Unpublished opinions allowed precedent only when establishing res judicata or collateral estoppel, or in a continuing criminal action.</p> |

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| Hawaii | Haw. R. App. P. 35(b): “Memorandum opinions shall not be published. Dispositional orders shall not be published except upon the order of the appellate court . . . an opinion or order is published when the appellate court designates it for publication in <i>West’s Hawai’i Reports</i> or the <i>Pacific Reporter</i> .” | <p>Haw. R. App. P. 35(c)(1): A memorandum opinion or unpublished dispositional order filed before July 1, 2008 shall not be cited in any other action or proceeding except for law of the pending case, res judicata, collateral estoppel, or, in a criminal action or proceeding, involves the same respondent.</p> <p>Haw. R. App. P. 35(c)(2): “Any disposition filed in this jurisdiction on or after July 1, 2008 may be cited in any proceeding. A party or attorney has no duty to cite an unpublished disposition. Memorandum opinions and unpublished dispositional orders are not precedent, but may be cited for persuasive value; provided that a memorandum opinion or unpublished dispositional order that establishes the law of the pending case or that has res judicata or collateral estoppel effect shall be honored. Notwithstanding any other rule, a copy of a cited unpublished disposition shall be appended to the brief or memorandum in which the unpublished disposition is cited.”</p> | Haw. R. App. P. 35(c)(2): “Memorandum opinions and unpublished dispositional orders are not precedent, but may be cited for persuasive value; provided that a memorandum opinion or unpublished dispositional order that establishes the law of the pending case or that has res judicata or collateral estoppel effect shall be honored.” |
| Idaho | Idaho S. Ct. R. 15(f) The Court can decide not to publish opinions if the justices are unanimous. | Idaho S. Ct. R. 15(f): “If an opinion is not published, it may not be cited as authority or precedent in any court.” | Idaho S. Ct. R. 15(f): “If an opinion is not published, it may not be cited as authority or precedent in any court.” |

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| Illinois | Ill. S. Ct. R. 23(a), (f): Appellate courts may dispose of cases by “a full opinion, a concise written order, or a summary order.” A majority of the panel can agree to dispose of the case via opinion only if the decision modifies or explains a new part of law or if the decision settles a conflict in the law. If appeal is disposed of by order, any party may move within 21 days of entry to have it published, but motion must show that order satisfies criteria in 23(a). | Ill. S. Ct. R. 23(e): Unpublished opinions are not precedential and cannot be cited unless supporting claims of double jeopardy, res judicata, collateral estoppel, or law of the case. | Ill. S. Ct. R. 23(e) Unpublished opinions (“written orders” and “summary orders”) are not precedential and cannot be cited except for double jeopardy, res judicata, collateral estoppel, or law of the case. |
| Indiana | Ind. R. App. P. 65(A), (B): All Supreme Court cases should be published. Court of Appeals opinions are publishable and citable if the case establishes, modifies, criticizes, or clarifies a rule of law, or if the case “involves a legal or factual issue of unique interest or substantial public importance.” Within 15 days of entry, party may move court to publish any memorandum meeting criteria in Ind. R. App. P. 65(A). | Ind. R. App. P. 65(A), (D): Unpublished memorandum opinions of Court of Appeals are not citable unless meeting exception of res judicata, collateral estoppel, or law of the case. | Ind. R. App. P. 65(D): Memorandum opinion is not precedential unless establishing res judicata, collateral estoppel, or law of the case. |
| Iowa | Iowa R. App. P. 6.1209: All per curiam decisions and those rendered under 6.1203 published in list form, except those “specially” ordered published as usual. Iowa R. App. P. 6.1203: Judgment may be affirmed without opinion if questions presented are not of sufficient importance to justify opinion, and opinion would not have precedential value, if case otherwise meets stated requirements. | Iowa R. App. P. 6.904(2)(c): Unpublished opinion or decision may be cited if accessible electronically. Party citing unpublished opinion “shall include an electronic citation indicating where the opinion may be readily accessed online.” | Iowa R. App. P. 6.904(2)(c): “Unpublished opinions or decisions shall not constitute controlling legal authority.” |

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| Kansas | <p>Kan. Stat. Ann. § 60-2106(a): Memorandum opinion is default. Formal opinion issued when case involves new rule or modification of existing rule; issue of continuing public interest; criticism or explanation of existing law; application of established rule to significantly different factual situation; resolves apparent conflict of authority; or constitutes significant and nonduplicative contribution to legal literature by historical review of law or description of legislative history.</p> <p>Kan. S. Ct. R. 7.04(e): Party or other interested person may move publication if requirements for publication are met or opinion otherwise has “substantial” precedential value.</p> | <p>Kan. S. Ct. R. 7.04(g)(2)(B) Citation of unpublished opinions “not favored.” Unpublished opinion may be cited only if it has persuasive value with respect to a material issue not addressed in a published Kansas opinion and would assist court in disposition of the issue.</p> <p>Kan. S. Ct. R. 7.04(g)(2)(C): Unpublished opinions must be attached to any document, pleading, or brief that cites them.</p> | <p>Kan. S. Ct. R. 7.04(a): Memorandum opinion indicates that case contains no new point of law or is otherwise without value as precedent.</p> <p>Kan. S. Ct. R. 7.04(g)(2)(A): Unpublished opinions are not binding precedent “except under the doctrines of law of the case, res judicata, and collateral estoppel.”</p> |
| Kentucky | <p>Ky. R. Civ. P. 76.28(4)(a): Court of Appeals designates opinions either “To Be Published” or “Not to Be Published.” But if further review is sought in Supreme Court, its action on motion for discretionary review determines whether Court of Appeals opinion is published.</p> | <p>Ky. R. Civ. P. 76.28(4)(c): Unpublished opinions should not be cited. However, Kentucky Appellate decisions from after January 1, 2003, may be cited if no published opinion exists to address the issue. If used, the party must furnish all parties with a copy of the unpublished case.</p> | <p>Ky. R. Civ. P. 76.28(4)(c): Unpublished opinions hold no precedential value, but appellate decisions from after January 1, 2003 may be considered.</p> |
| Louisiana | <p>La. Code Civ. P. Art. 2168(A): “The unpublished opinions of the supreme court and the courts of appeal shall be posted by such courts on the Internet websites of such courts.”</p> | <p>La. Code Civ. P. Art 2168(B): Unpublished opinions “shall be cited by use of the case name and number assigned by the posting court.”</p> | <p>La. Code. Civ. P. Art. 2168(B): Unpublished opinions may be cited as authority.</p> |

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| Maine | <p>4 Me. Rev. Stat. Ann. § 702: Reporter of decisions decides which opinions get published “according to his judgment of their importance,” with direction and advice from Chief Justice of Supreme Judicial Court.</p> <p>Me. R. Civ. P. 12(c): Memorandum opinions shall not be published on the website or in Maine Reports.</p> | Me. R. Civ. P. 12(c): A memorandum of decision cannot be cited. | Me. R. Civ. P. 12(c): A memorandum decides a case, but does not establish precedent. |
| Maryland | <p>Md. R. App. P. 8-113(a): Clerks to send opinions to be reported to State Reporter for publication in State Reports.</p> <p>Md. R. App. P. 8-605.1(a): “The Court of Special Appeals shall designate for reporting only those opinions that are of substantial interest as precedents.”</p> | Md. R. App. P. 1-104(b) Unreported opinions citable in Court of Appeals or Supreme Court except as precedent. In any other court, they may be cited to show law of the case, res judicata, or collateral estoppel, or in a criminal or disciplinary action or related proceeding involving the same defendant or respondent. Party citing unreported opinion shall attach a copy to the document in which it is cited. | Md. R. App. P. 1-104(a) “An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.” |
| Massachusetts | Mass. Gen. Laws 221 § 64: Reporter of Decisions has discretion on whether to publish opinions “according to their relative importance.” The reporter should not unnecessarily increase the size of the reports. | Mass. App. Court R. 1:28: Summary orders may be issued by Court of Appeals if no substantial question of law is presented or a clear error of law has been committed affecting substantial rights of appellant. Party citing such an order shall cite certain identifying information, and shall include the full text of the order in the brief or other filing. But “[n]o such order issued before February 26, 2008, may be cited.” | “[U]npublished decisions of this court are not to be relied upon or cited as authority in unrelated cases.” <i>Lyons v. Lab. Rel. Comm’n</i> , 476 N.E.2d 243, 246 (Mass. App. 1985), <i>rev’d on other grounds</i> , 492 N.E.2d 343 (Mass. 1986). |

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| Michigan | Mich. Ct. R. 7.215(A), (D): Signed opinions are published by the reporter of decisions. “A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk.” Party may request publication within 21 days of opinion by filing and serving letter stating reasons why opinion should be published. | Mich. Ct. R. 7.215(C)(1): A party citing an unpublished opinion must provide copies to the court and all parties. | Mich. Ct. R. 7.215(C)(1): “An unpublished opinion is not precedentially binding under the rule of stare decisis.” |
| Minnesota | Minn. Stat. § 480A.08(c): Opinions published only in cases that establish new rule; overrule previous decision not reviewed by Supreme Court; provide procedural guidelines in interpreting statutes or rules; involve significant legal issue; or would significantly aid administration of justice. Minn. R. App. P. 136.01(1)(a): Court of Appeals shall issue either a “published opinion, unpublished opinion, or an order opinion.” Minn. Spec. R. P. Ct. App. 4: Panel decides whether to publish, guided by Minn. Stat. § 480A.08. | Minn. Stat. § 480A.08(3)(b): “Unpublished opinions must not be cited unless the party citing the unpublished opinion provides a full and correct copy to all other counsel at least 48 hours before its use.” Minn. Spec. R. P. Ct. App. 4: If unpublished opinion is cited in brief instead of in hearing, copy must be attached to brief. | Minn. Stat. § 480A.08(3)(b): Unpublished opinions are not precedential. Minn. R. App. P. 136.01(1)(b): “Unpublished opinions and order opinions are not precedential except as law of the case, res judicata, or collateral estoppel.” |
| Mississippi | Miss. R. App. P. 35-A(a), 35-B(a): All written opinions published. Per curiam decisions unpublished. | Miss. R. App. P. 35-A(b), 35-B(b): Unpublished opinions may not be cited in any communication with the court, unless the unpublished opinion falls under an exception. (Applies even to unpublished cases prior to Nov. 1998 when old policy was abolished.) | Miss. R. App. P. 35-A(b), 35-B(b): Unpublished opinions before Nov. 1998 not precedential except in continuing or related litigation for res judicata, collateral estoppel, or law of case. |

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| Missouri | <p>Mo. S. Ct. R. 84.16(b): When judges believe that a case will not have precedential value, then a written order or memorandum opinion may be entered and not published.</p> <p>Mo. S. Ct. R. 84.17(a)(3): Party may move for publication, explaining why disposition of appeal has precedential value, either in whole or in part.</p> | Mo. S. Ct. R. 84.16(b): Written orders and memorandum decisions may not be cited or used before the court. | Mo. S. Ct. R. 84.16(b): Written orders and memorandum orders carry no precedential weight. |
| Montana | <p>Mont. S. Ct. I.O.R. I(3)(c)(i), (ii), (iii): Supreme Court may issue memorandum opinion, which is not to be published, but only listed in Pacific Reporter table.</p> <p>Mont. S. Ct. I.O.R. I(3)(d)(iii): "After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion reversing the judgment or order of the trial court."</p> | Mont. S. Ct. I.O.R. I(3)(c): If case presents no constitutional issues or issues of first impression, does not establish or modify precedent, or would otherwise not be of future guidance, appeal may be classified as one for a noncitable opinion. | Mont. S. Ct. I.O.R. I(3)(c): If case presents no constitutional issues or issues of first impression, does not establish or modify precedent, or would otherwise not be of future guidance, appeal may be classified as one for a noncitable opinion. |
| Nebraska | Neb. Ct. R. § 2-112(A), § 2-102(A): "The court will prepare a written opinion in cases where the court believes explanation of its decision is required or that the case is of value as a precedent." (Identical rules applying to Supreme Court and Court of Appeals.) | Neb. Ct. R. § 2-102(E)(4): Only Court of Appeals opinions designated "for permanent publication" can be cited. Other opinions and memorandum opinions can only be cited "when such case is related, by identity between the parties or causes of action, to the case then before the court." | Neb. Ct. R. § 2-112(A), § 2-102(A): Opinion written only if necessary to explain decision or case deemed to be "of value as a precedent," suggesting that written opinions may be precedential. |

| State | Publication Guidelines | Citation Rule | Precedent Limitations |
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| Nevada | Nev. R. App. P. 36(c)(1), 36(f): Opinions are printed in Nevada Reports if they present issues of first impression, significantly change understanding of law, or involve issue of public importance. Any interested person may move court to “reissue” unpublished disposition or order as “opinion to be published.” | Nev. Sup. Ct. R. 123: Unpublished opinions cannot be cited unless falling under one of the precedent exceptions. Nev. R. App. P. 36(c)(3): Unpublished opinions citable for persuasive value, but citing party must cite database, if available, and docket number and filing date. Citing party must serve copy on party without counsel. | Nev. R. App. P. 36(c)(5): Unpublished opinion not precedent except in later proceeding of same case, in related case, or elsewhere for issue or claim preclusion or to establish law of the case. |
| New Hampshire | N.H. S. Ct. R. 25(1): Supreme Court can issue a summary disposition without publication when there is no substantial issue of law, the trial court sufficiently explained the issues, and the like. | N.H. S. Ct. R. 20(2): Orders in cases decided without opinion citable, but must be identified as non-precedential and also identified by court, docket number, and date. N.H. S. Ct. R. 12-D(3): Orders in cases decided without opinion as part of expedited-docket process are citable, but must be identified as non-precedential and must also be identified by court, docket number, and date. | N.H. S. Ct. R. 25(5): “Cases summarily disposed of under this rule shall not be regarded as establishing precedent” N.H. S. Ct. R. 20(2): Non-precedential order controlling as to claim preclusion, law of the case and similar issues involving parties or facts of case in which non-precedential order issued. |

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| New Jersey | N.J. Ct. R. 1:36-2(a), (c), (d): All Supreme Court opinions published, but opinions of Appellate Division published only upon direction of issuing panel. Any person may request publication by letter to Committee on Opinions explaining basis of request by showing that opinion involves substantial constitutional question; determines important new question; changes, reverses, questions, or criticizes established principle; determines question not recently considered; is based on procedure never before determined; is of continuing public interest and importance; resolves apparent conflict; or constitutes significant contribution to legal literature as historical review, description of legislative history, or collection of cases. | N.J. Ct. R. 1:36-3: Courts generally do not cite unpublished opinions unless reported in administrative reporter or if required by concerns of res judicata, collateral estoppel, single-controversy doctrine or similar principle. Counsel shall not cite an unpublished opinion without serving court and all parties with copies of opinion and all contrary unpublished opinions known to counsel | N.J. Ct. R. 1:36-3: “No unpublished opinion shall constitute precedent or be binding on any court.” But unpublished opinions may be used for res judicata, collateral estoppel, or similar principle. |
| New Mexico | N.M. R. App. P. 12-405(A) The appellate court does not have to publish opinions, but may use unpublished orders, decisions, or memorandum opinions instead. | N.M. R. App. P. 12-405(A), (D) Non-precedential cases may be used persuasively, but any citation to a non-precedential disposition from any jurisdiction shall indicate that the disposition is non-precedential or unpublished, and if a party cites a non-precedential disposition that is unavailable in a publically accessible electronic database, the party shall separately file and serve a copy with paper in which it is cited. | N.M. R. App. P. 12-405(C) Unpublished orders, decisions, or memorandum opinions are not precedential. |

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| New York | <p>N.Y. Ct. R. § 7300.6: Published opinions should be concisely written and add to the legal discussion of matters beyond those of interest only to the parties.</p> <p>N.Y. C.P.L.R. 5522(a): “A court reversing or modifying a judgment or order without opinion shall briefly state the grounds of its decision.”</p> | No rule. | No rule. |
| North Carolina | <p>N.C. R. App. P. 30(e)(1), (2), (4): Court of Appeals does not have to publish all opinions. If the case has no value as precedent, it need not be published. Unpublished opinions are posted on the court system’s website and listed by only caption and decision in the official reporter. Any party may move to request publication.</p> | N.C. R. App. P. 30(e)(3): Citation of unpublished opinions is disfavored. Party citing unpublished opinion must provide a copy of the unpublished opinion to other parties and indicate that it is unpublished. | N.C. R. App. P. 30(e)(3): Unpublished Court of Appeals decisions are not “controlling legal authority,” but may be used for claim preclusion, issue preclusion, or law of the case, and may also be used if no published opinion is available. |
| North Dakota | <p>N.D. Sup. Ct. Admin. R. 27(14)(c): Court of Appeals opinion may be published only if it establishes new rules of law, impacts public policy, explains existing law, has a different fact pattern, resolves conflict, or is a valuable contribution to legal literature. Published opinions include concurrences and dissents.</p> <p>N.D. R. App. P. 35.1: Court may issue summary opinions, which are published in table form only.</p> | No rule. | No rule. |

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| Ohio | Ohio Rep. Op. R. 2.1, 3.3: All opinions shall be reported in the bound volumes and on the Supreme Court's website. | Ohio Rep. Op. R. 3.4: Unpublished opinions issued after May 1, 2002, may be cited as legal authority. | Ohio Rep. Op. R. 3.4: Opinions issued after May 1, 2002, may be cited as legal authority. Courts will give them appropriate weight "without regard to whether they are published." Ohio Rep. Op. R. 3.1: Orders on procedural matters, orders without opinions, and judgment entries are not "opinions." |
| Oklahoma | Okla. S. Ct. R. 1.200(b)(2), (c), (e): Party or other interested person who believes that opinion not designated for publication has substantial precedential value may move for publication. Opinions published only if they add to or clarify existing law and if a majority of judges involved decide that case should be published. Memorandum opinions marked "not for official publication," and are not published in bar journal or on state court network's website, which is official publisher of opinions. | Okla. S. Ct. R. 1.200(c)(5): Unpublished opinions may not be cited except to support res judicata, collateral estoppel, or law of the case. Okla. Ct. Crim. App. R. 3.5(C)(3): Parties may cite to unpublished cases if no published case is available. Citing party must provide copies of the unpublished opinion to all parties involved. | Okla. S. Ct. R. 1.200(c)(5): Unpublished opinions are not precedent, and can be used only for res judicata, collateral estoppel, or law of the case. Okla. Ct. Crim. App. R. 3.5(C)(3): "In all instances, an unpublished decision is not binding on this Court." |
| Oregon | Or. Rev. Stat. § 19.435: Supreme Court and Court of Appeals may decide when to issue full opinions or memorandum opinions. | Or. R. App. P. 5.20(5): "Cases affirmed without opinion by the Court of Appeals should not be cited as authority." | Or. R. App. P. 5.20(5): "Cases affirmed without opinion by the Court of Appeals should not be cited as authority." |

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| Pennsylvania | <p>Pa. S. Ct. I.O.P. § 3(c): Supreme Court may issue per curiam order when decision does not establish new rule; does not alter, modify, criticize or clarify an existing rule; does not apply established rule to novel facts; does not constitute only binding precedent on particular point; does not involve a legal issue of continuing public interest; or if court decides it appropriate in other circumstances.</p> <p>Pa. S. Ct. I.O.P. § 5(a): Same provisions as 3(c), but specifically applicable to non-capital direct appeals.</p> <p>210 Pa. Code § 65.37(B): A party may seek conversion of unpublished order to published opinion by motion; trial judge may request publication by appellate panel; or appellate panel may publish sua sponte.</p> <p>Supreme Court does not issue unpublished opinions, but can cite memorandum opinions issued by other courts. <i>See, e.g., Commonwealth v. Noel</i>, 104 A.3d 1156, 1170 (Pa. 2014) (citing Superior Court case reported only in table form).</p> | Pa. R. App. P. 2133: If citing an unpublished case, citing party to “reproduce a copy thereof, giving the name of the judge or other official who rendered opinion or other determination and the date of its filing.” | Pa. S. Ct. I.O.P. § 65.37(a): Unreported opinions may be cited under the law of the case, res judicata, or collateral estoppel; or in a later proceeding involving the same defendant. |
| Puerto Rico | No rule. | No rule. | No rule. |

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| Rhode Island | R.I. Pub. Laws § 8-1-3: Supreme Court to write opinions in all cases involving novel points of law, procedure, or practice, or of sufficient importance to warrant written opinions. Opinions posted on Supreme Court website. | R.I. S. Ct. R. 16(j) “Unpublished orders will not be cited by the Court in its opinions and such orders will not be cited by counsel in their briefs.” | R.I. S. Ct. R. 16(j) “Unpublished orders shall have no precedential effect.” |
| South Carolina | <p>S.C. R. App. Practice 220(a): The Supreme Court may use published opinions or memorandum opinions. Published opinions appear in official reports.</p> <p>S.C. R. App. Practice 220(b)(1): Supreme Court may issue memorandum opinion granting appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and judgment of trial court is based on findings of fact which are or are not clearly erroneous; evidence to support a jury verdict is or is not insufficient; order of administrative agency is or is not supported by such quantum of evidence as prescribed by law; or no error of law appears.”</p> | S.C. R. App. Practice 268(d)(2): Memorandum opinions and unpublished orders should not be cited except in proceedings in which they are directly involved. | <p>S.C. R. App. P. 220(a): Memorandum opinions have no precedential value.</p> <p>S.C. R. App. P. 268(d)(2): Memorandum opinions and unpublished orders have no precedential value.</p> |
| South Dakota | S.D. R. App. P. 15-26A-87.1 (A): Supreme court decides whether to publish opinion or issue a memorandum opinion or order. | S.D. R. App. P. 15-26A-87.1(E): Memorandum decisions and orders shall not be cited in briefs or court documents unless under one of several enumerated exceptions. | S.D. R. App. P. 15-26A-87.1(E): Memorandum decision is precedential only when it establishes “law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same person.” |

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| Tennessee | <p>Tenn. R. Ct. Crim. App. 19(1): Opinion published only if it establishes new rule, impacts public policy, explains existing law, has a different fact pattern, resolves conflict, or is a valuable contribution to legal literature.</p> <p>Tenn. S. Ct. R. 4(A)(2): “Unless explicitly designated ‘Not For Publication,’ all opinions of the Tennessee Supreme Court shall be published in the official reporter. Concurring and dissenting opinions shall be published along with the majority opinion.”</p> <p>Tenn. Ct. App. R. 10: Memorandum opinions of Court of Appeals “shall not be published.”</p> | <p>Tenn. R. Ct. Crim. App. 19 (4): “The citation to an unpublished opinion shall include either a notation that no appeal to the Tennessee Supreme Court has been filed or a notation of the date and action taken by the Tennessee Supreme Court in ruling upon an application for permission to appeal.”</p> <p>Tenn. S. Ct. R. 4(E)(2): Unpublished opinions generally not to be cited by judges or litigants.</p> <p>Tenn. Ct. App. R. 10: Memorandum opinions of Court of Appeals “shall not be cited.”</p> | <p>Tenn. R. Ct. Crim. App. 19 (4): Unpublished opinions may be cited in briefs and court documents.</p> <p>Tenn. S. Ct. R. 4(G)(1): Unpublished opinions controlling on law of the case, res judicata, collateral estoppel, or in a post-conviction criminal case for the same defendant. Otherwise, unpublished opinions are persuasive.</p> <p>Tenn. Ct. App. R. 10: Memorandum opinions of Court of Appeals “shall not be cited or relied on for any reason in any unrelated case.”</p> |
| Texas | <p>Tex. R. App. P. 47: Every case decided by either opinion or memorandum. All opinions and memoranda in civil cases decided after Jan. 1, 2003, shall be published. Court must decide whether to publish opinions and memoranda in criminal cases decided after Jan. 1, 2003.</p> | <p>Tex. R. App. P. 47, cmt.: No prohibition against the citation of opinions or memoranda issued after Jan. 1, 2003.</p> | <p>Tex. R. App. P. 47, cmt.: “All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value. The provisions governing citation of unpublished opinions in criminal cases are substantively unchanged. “</p> |

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| Utah | Utah R. App. P. 30(c): “When a judgment, decree, or order is reversed, modified, or affirmed, the reasons shall be stated concisely in writing and filed with the clerk. Any justice or judge concurring or dissenting may likewise give reasons in writing and file the same with the clerk. The entry by the clerk in the records of the court shall constitute the entry of the judgment of the court.” | Utah R. App. P. 30(f): Unpublished opinions may be cited if all parties receive a copy. | Utah R. App. P. 30(f): “[U]npublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State.” |
| Vermont | Vt. R. App. P. 36: “The Supreme Court clerk must prepare, sign, and enter the judgment after receiving the Court’s opinion,” but “[i]f a judgment is rendered without an opinion, the clerk must prepare, sign, and enter the judgment as the Court instructs.” | Vt. R. App. P. 28.2(d)(1), (2): Party may cite unpublished opinion or other written disposition notwithstanding that it may have been designated as “unpublished,” “not precedent,” or the like. Party citing unpublished opinion must provide copies to all parties. | Vt. R. App. P. 33.1(d)(1), (2): Unpublished opinions by three-justice panel are not precedential, but may be cited as persuasive authority. Unpublished opinions precedential for claim preclusion, issue preclusion, the law of the case, or similar issues. |
| Virgin Islands | V.I. S. Ct. I.O.P. R. 5.3: Opinion is published “when it has precedential or institutional value.” Memorandum may be used in case that may have little or no precedential value. All opinions published unless they state that they are not to be published. | V.I. S. Ct. I.O.P. R. 5.7.1(a), (b), (c): Unpublished opinion, order, judgment or other written disposition may be cited regardless of the date of issuance, but party citing unpublished opinion must indicate that cited disposition is unpublished. Party citing unpublished opinion must furnish all parties with a copy if it is not readily available electronically. | V.I. S. Ct. I.O.P. R. 5.7(a), (b): Unpublished opinions are only considered for persuasive value unless used to show claim preclusion, issue preclusion, law of the case, double jeopardy, abuse, or similar doctrines. |

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| Virginia | Va. Code Ann. § 17.1-413(A): Court of Appeals has discretion to issue either written opinion or memorandum opinion. Clerk maintains list and brief summary of unpublished opinions. | Va. S. Ct. R. 5A:1(f): “Citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as ‘unpublished,’ ‘not for publication,’ ‘non precedential,’ or the like, is permitted as informative, but shall not be received as binding authority.” If cited opinion is not available in publicly accessible electronic database, copy must be filed with brief or paper in which it is cited. | Va. S. Ct. R. 5A:1(f): Unpublished opinions are not precedent, but can be used for persuasive value. |
| Washington | <p>Wash. R. App. P. 12.3(d): Majority of panel determines whether opinion will be printed in Washington Appellate Reports or filed for public record only. Criteria include “at least the following”: whether decision determines unsettled or new question of law or constitutional principle; whether decision modifies, clarifies, or reverses established principle; whether decision is of general public interest or importance, or whether decision conflicts with prior opinion of the Court of Appeals.</p> <p>Wash. R. App. P. 12.3(e): Any interested person may file motion for publication within 20 days of issuance, describing interest in case and asserting grounds enumerated in Rule 12.3(d).</p> | <p>Wash. Rev. Code Gen. R. 14.1(a): Unpublished opinions cannot be cited as authority.</p> <p>Wash. Rev. Code Gen. R. 14.1(b): Unpublished opinions from other jurisdictions may be cited if citation is allowed in the jurisdiction in which they are issued. Party citing unpublished opinion must file and serve copies.</p> | Wash. Rev. Code Gen. R. 14.1(a) Unpublished opinions cannot be cited as authority. |

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| West Virginia | <p>W.Va. R. App. P. 21(a), (b), (e): A court may issue a memorandum opinion addressing merits, or party may move that case be disposed of by memorandum. Memorandum opinions not published in West Virginia Reports, but are posted to court’s website.</p> | <p>W.Va. R. App. P. 21(e): Memorandum decisions are fully citable, but citations must clearly show that the citation is to a memorandum opinion.</p> | <p>No rule.</p> |
| Wisconsin | <p>Wis. Stat. Ann. 809.23(1), (2), (4): Opinion should not be published when issues involve only application of settled law; issue is sufficiency of evidence, which is shown; issues decided on unquestioned controlling precedent; decision by one judge; opinion is per curiam addressing beyond appellate jurisdiction or procedure; or no significant value as precedent. Judges typically make publication recommendation. But any person may request publication, subject to some procedural limitations.</p> <p>Wis. S. Ct. R. 80.003 (1), (2), (3): Order published if it explains grounds; explains, clarifies, or modifies opinion; resolves recusal or disqualification request; concerns important legal, factual, jurisdictional, or procedural issue; Explains constitution, law, or rule; enhances access to or transparency of court’s work. Majority of court determines whether order should be published.</p> | <p>Wis. Stat. Ann. 809.23(3)(a): Unpublished opinion to be cited as authority only for claim preclusion, issue preclusion, or the law of the case, but unpublished opinion issued on or after July 1, 2009, may be cited for persuasive value. Per curiam opinion, memorandum opinion, summary disposition order, or other order is not an “opinion” and not precedent, so is not binding.</p> <p>Wis. Stat. Ann. 809.23(3)(b): “A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.”</p> <p>Wis. Stat. Ann. 809.23(3)(c): Party citing unpublished opinion must file and serve copy with brief or document in which it is cited.</p> | <p>Wis. Stat. Ann. 809.23(3)(b): “A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.”</p> |

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| Wyoming | Wyo. R. App. P. 9.01: Appellate court opinions and orders to be written. Wyo. R. App. P. 9.06 (a), (b): Court may issue “abbreviated opinions” that do not provide “detailed statement of facts or law.” Abbreviated opinions shall be published. | No rule. | No rule. |

