

Citing Unpublished Federal Appellate Opinions Issued Before 2007

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Federal Rule of Appellate Procedure 32.1 permits attorneys to cite to federal courts of appeals their unpublished opinions issued in 2007 or later. Unpublished opinions issued before 2007 may be cited to the courts if permitted by the courts' local rules. Following is a summary table of the federal courts of appeals' local rules on citations to their unpublished opinions issued before 2007.

All federal courts of appeals permit citation to their unpublished opinions in related cases to show *res judicata*, law of the case, and the like. But before 2007, federal appellate courts differed on the extent to which they permitted citations to their unpublished opinions in unrelated cases.

Seven courts—courts of appeals for the First, Third, Fifth, Sixth, Tenth, Eleventh, and District of Columbia Circuits—are considered “permissive” courts, in that they do not restrict citation to their unpublished opinions. But the court of appeals for the District of Columbia Circuit only permits citations to their unpublished opinions issued in 2002 or later.

Three courts—courts of appeals for the Fourth, Eighth, and Federal Circuits—are considered “discouraging” courts, in that they permit but discourage citation to their unpublished opinions issued before 2007, generally permitting such citations only when there is no published authority on point.

Three courts—courts of appeals for the Second, Seventh, and Ninth Circuits—are considered “restrictive” courts, in that they prohibit citations to their unpublished opinions issued before 2007 in unrelated cases.

The courts' rules in the following table are arranged so that similar rules appear together.

Citation Rules in Permissive Courts

Circuit	Citation Rules	Citation Rule Excerpts	Citations to Unpublished Opinions Issued in Unrelated Cases Before 2007	Note
First	1st Cir. R. 32.1.0	“An unpublished judicial opinion, order, judgment or other written disposition of this court may be cited regardless of the date of issuance.” 1st Cir. R. 32.1.0(a).	Permitted.	Formerly discouraging courts.
Sixth	6th Cir. R. 28(g)	“Citation of unpublished opinions is permitted.” 6th Cir. R. 28(g).		
Tenth	10th Cir. R. 32.1	“Unpublished decisions are not precedential, but may be cited for their persuasive value.” 10th Cir. R. 32.1(A).		
Eleventh	11th Cir. R. 36-2	“Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2.		
Third	3d Cir. I.O.P. 5.7	“The court by tradition does not cite to its not precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing.” 3d Cir. I.O.P. 5.7.		
Fifth	5th Cir. R. 47.5.3, 47.5.4	<p>“Unpublished opinions issued before January 1, 1996, are precedent. Although every opinion believed to have precedential value is published, an unpublished opinion may be cited pursuant to Fed. R. App. P. 32.1(a).” 5th Cir. R. 47.5.3.</p> <p>“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, notice, sanctionable conduct, entitlement to attorney’s fees, or the like). An unpublished opinion may be cited pursuant to Fed. R. App. P. 32.1(a).” 5th Cir. R. 47.5.4.</p>	Unpublished opinions issued before 1996 were considered precedent, but their citation was discouraged.	
District of Columbia	D.C. R. 32.1	<p>“Unpublished orders or judgments of this court, including explanatory memoranda and sealed opinions, entered before January 1, 2002, are not to be cited as precedent. Counsel may refer to an unpublished disposition, however, when the binding (i.e., the res judicata or law of the case) or preclusive effect of the disposition, rather than its quality as precedent, is relevant.” D.C. R. 32.1(b)(1)(A).</p> <p>“All unpublished orders or judgments of this court, including explanatory memoranda (but not including sealed opinions), entered on or after January 1, 2002, may be cited as precedent.” D.C. R. 32.1(b)(1)(B).</p>	Permitted if issued 2002 or later and not sealed.	Unpublished opinions in unrelated cases issued before 2002 may not be cited.

Citation Rules in Discouraging Courts

Circuit	Citation Rules	Citation Rule Excerpts	Citations to Unpublished Opinions Issued in Unrelated Cases Before 2007	Note
Federal	Fed. Cir. R. 32.1	<p>“Parties are not prohibited or restricted from citing nonprecedential dispositions issued after January 1, 2007. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, and the like based on a nonprecedential disposition issued before that date.” Fed. Cir. R. 32.1(c).</p> <p>“The court may refer to a nonprecedential disposition in an opinion or order and may look to a nonprecedential disposition for guidance or persuasive reasoning, but will not give one of its own nonprecedential dispositions the effect of binding precedent.” Fed. Cir. R. 32.1(d).</p>	Discouraged.	Formerly a restrictive court.
Fourth	4th Cir. R. 32.1	<p>“Citation of this Court’s unpublished dispositions issued prior to January 1, 2007, in briefs and oral arguments in this Court and in the district courts within this Circuit is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case. If a party believes, nevertheless, that an unpublished disposition of this Court issued prior to January 1, 2007, has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well, such disposition may be cited if the requirements of FRAP 32.1(b) are met.” 4th Cir. R. 32.1.</p>	Discouraged, but permitted if there is no published opinion on point.	If “there is no published opinion that would serve as well.”
Eighth	8th Cir. R. 32.1A	<p>“Unpublished opinions are decisions which a court designates for unpublished status. They are not precedent. Unpublished opinions issued on or after January 1, 2007, may be cited in accordance with FRAP 32.1. Unpublished opinions issued before January 1, 2007, generally should not be cited. 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.” 8th Cir. R. 32.1A.</p>	Discouraged, but permitted if there is no published opinion on point.	If “no published opinion of this or another court would serve as well.”

Citation Rules in Restrictive Courts

Circuit	Citation Rules	Citation Rule Excerpts	Citations to Unpublished Opinions Issued in Unrelated Cases Before 2007	Note
Ninth	9th Cir. R. 36-3	<p>“Unpublished dispositions and orders of this Court issued before January 1, 2007, may not be cited to the courts of this circuit, except in the following circumstances. (i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion. (ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys’ fees, or the existence of a related case. (iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.” 9th Cir. R. 36-3(c).</p>	Prohibited.	Permitted to request publication or rehearing.
Second	2d Cir. R. § 0.23(c)(2)	<p>“Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.” 2d Cir. R. § 0.23(c)(2).</p>		
Seventh	7th Cir. R. 32.1	<p>“Orders, which are unsigned, are released in photocopied form, are not published in the Federal Reporter, and are not treated as precedents.” 7th Cir. R. 32.1(b).</p> <p>“No order of this court issued before January 1, 2007, may be cited except to support a claim of preclusion (res judicata or collateral estoppel) or to establish the law of the case from an earlier appeal in the same proceeding.” 7th Cir. R. 32.1(d).</p>		