

The Scrivener: Modern Legal Writing



Cross-references, As Stated Above



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Often one argument in your brief may share common elements with another. Have you ever attempted to save space and time by simply referring your readers to another argument in a brief with “as stated above” or a similar cross-reference? This article provides tips for helping your readers follow such cross-references with ease.

Three Ways of Clarifying Cross-references

Cross-references are efficient. When an element transfers from one claim to another, readers do not want to wade through the full argument a second time, citations and all. A brief can be structured so that this one element is fully argued in just one section. The difficulty arises when the element comes up again and you want to refer to it. If you allude to an argument, remember that your readers are trying to understand the brief on the first reading. Help them out.

First, at the very least, identify the specific argument being referenced. Vague wording may make sense to you because you prepared the brief and you know which of perhaps several arguments you made above is the one you intend to reference. However, your readers are not in the same position. Give them a label so they will recognize which particular argument is being addressed.

Example: *Based on the analysis above . . .*

Revision: *Based on the “knew or should have known” analysis above . . .*

Second, remember that your audience is busy. Judges and clerks are conscientious readers, but if you expect them to flip back and forth from one part of the brief to another, at least make it easier for them. Provide the specific section and page numbers in the brief to show where the argument you are referencing appears.

Example: *Based on the “knew or should have known” analysis above . . .*

Revision: *Based on the “knew or should have known” analysis on pages 5-6 above . . .*

Third, the best solution is to give your readers a choice. In addition to a label and page reference, provide them with an encapsulated summary of the argument. This reminds readers of the salient points and gives them the option of flipping back to the complete argument if they feel they need additional clarification or of continuing to read without the interruption.

Example: *The claim of false light invasion of privacy also requires public disclosure as discussed above.*

Revision: *The claim of false light invasion of privacy also requires public disclosure, that is, communication to the public in general or to a large number of persons, as discussed in Section I above.*

Example: *The same test as used in Section I applies here.*

Revision: *The same three-part negligence test as used in Section I applies here. Thus, defendant (1) had a duty; (2) breached that duty; and (3) caused plaintiff’s injury.*

Avoiding Legalese in Cross-references

When using cross-references, avoid using “as argued supra” or “as argued infra.” Although this phrasing is tempting for those of us who studied Latin throughout high school and who want to put this knowledge to use, it only adds the obscurity of legalese¹ to the strain of a cross-reference.

Conclusion

It is the writer’s job to structure briefs to minimize unnecessary repetition. Cross-references can be an effective tool in this process. Gain your readers’ good graces by summarizing an argument to avoid requiring them to flip back and forth throughout a document. And, if they choose to check a cross-reference, make it easy for your readers to do so.

NOTE

1. DuVivier, “Be Plain,” 21 *The Colorado Lawyer* 909 (May 1992). ■

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkdುವಿವಿ@law.du.edu or call her at (303) 871-6281.

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