

FEDERAL AND STATE COURT RULES GOVERNING PUBLICATION AND CITATION OF OPINIONS

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Since publication of last summer's *Anastasoff*¹ decision by a panel of the Eighth Circuit, there has been renewed interest in and debate over the issue of unpublished appellate court opinions and their precedential value. However, this controversy is certainly not new. Many articles have analyzed the practice of using unpublished opinions and the rationale behind their limited precedential value.² Other works have surveyed or compiled court publication and citation rules.³

Many jurisdictions have publication standards similar to those proposed in the *Model Rules on Publication of Judicial*

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1. *Anastasoff v. U.S.*, 223 F.3d 898 (8th Cir. 2000), *vacated as moot*, 235 F.3d 1054 (8th Cir. 2000) (en banc).

2. See e.g. Danny J. Boggs & Brian P. Brooks, *Unpublished Opinions and the Nature of Precedent*, 4 Green Bag 2d 17 (2000); Martha J. Dragich, *Will the Federal Courts of Appeal Perish if They Publish? Or Does the Declining Use of Opinions to Explain and Justify Judicial Decisions Pose a Greater Threat?* 44 Am. U. L. Rev. 757 (1995); Deborah Jones Merritt & James J. Brudney, *Stalking Secret Law: What Predicts Publication in the Untied States Courts of Appeals*, 54 Vand. L. Rev. 71 (2001); Robert J. Martineau, *Restrictions on Publication and Citation of Judicial Opinions: A Reassessment*, 28 U. Mich. J.L. Reform 119 (1994) (see n. 39 for extensive compilation of articles discussing issue).

3. Carol R. Flango & David B. Rottman, *Appellate Court Procedures* 139 tbl. 3.7 (National Ctrs. for State Cts. 1998); Jane Williams, *Survey of State Court Opinion Writing and Publication Practices*, 83 Law. Lib. J. 21 (1991); Fed. Proc. L.Ed. vol. 2A §§ 3:826-3:827 (1994).

*Opinions.*⁴ Some jurisdictions have no publication criteria at all, while others fall somewhere between the two extremes. Most publication guidelines are contained in court rules, which also often provide that unpublished opinions cannot be cited as precedent.

This article provides updated information in chart form for ease of accessibility and comparison. It focuses on the basic guidelines for publishing opinions and citing unpublished opinions in the federal courts of appeal and the appellate courts of the fifty states and the District of Columbia. We have sought to convey the essence of the rules; however, the format and scope of this piece does not allow for extensive analysis or procedural detail. In most instances, we have provided rules or standard practices for the court of last resort and the intermediate appellate court.⁵ When we found a court rule, we cited it. When no court rule governed, we looked to internal operating procedures, statutes, and cases. When we found no criteria for full published opinions, we cited standards for disposition by summary order or memorandum opinions. In listing publication criteria, we have used the term “affects” to encompass the terms “alter,” “modify,” “clarify,” “explain,” or “call attention to” existing law. When a phrase such as “criteria include” introduces a list, it may be illustrative, rather than all-inclusive.

4. Comm. on Use of Appellate Court Energies, Advisory Council on Appellate Justice, *Standards for Publication of Judicial Opinions* 22-23 (1973). The model rule proposes that an opinion should not be published unless it establishes a new rule of law, alters, modifies or criticizes an existing rule, involves a legal issue of continuing public interest or resolves an apparent conflict of authority.

5. Delaware, the District of Columbia, Maine, Montana, Nevada, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming do not have intermediate appellate courts. *Directory of State and Federal Courts, Judges, and Clerks*, xi-xiv (Catherine A. Kitchell, comp., 2001 ed., BNA 2000).

TABLE 1: PUBLICATION RULES IN FEDERAL COURTS

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
First	1st Cir. R. 36(b) The general policy is that opinions be published and available for citation. An exception may be made if an opinion would not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or would “serve otherwise as a significant guide to future litigants.”	1st Cir. R. 36(b)(2)(F) “Unpublished opinions may be cited only in related cases . . . Unpublished means the opinion is not published in the printed West reporter.”
Second	2d Cir. R. 0.23 “[I]n those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition will be made in open court or by summary order.”	2d Cir. R. 0.23 The court may append a brief written statement to dispositions by summary order. These statements shall not be cited or otherwise used in unrelated cases before this or any other court.
Third	3d Cir. I.O.P. 5.2 “An opinion, whether signed or per curiam, is published when it has precedential or institutional value.” 3d Cir. I.O.P. 5.3 Opinions which appear to have value only to the trial court or the parties are designated as unreported and are not sent for publication.	3d Cir. I.O.P. 5.3 Unreported opinions are not precedential. 3d Cir. I.O.P. 5.8 “Because 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.”
Fourth	4th Cir. R. 36(a) An opinion will be published if it establishes or affects a rule of law within the circuit, involves a legal issue of continuing public interest, criticizes existing law, contains an original historical review of a legal rule or resolves a conflict between panels of the court, or creates a conflict with a decision in another circuit.	4th Cir. R. 36(c) “Citation of this Court’s unpublished dispositions. . . 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 counsel believes that an unpublished disposition of any court has precedential value and that there is no published opinion that would serve as well, such disposition may be cited.

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Fifth	<p>5th Cir. R. 47.5.1 “[O]pinions that may in any way interest persons other than the parties to a case should be published.” Criteria include establishing a new rule of law, affecting an existing rule, applying an established rule to significantly different facts from those in published opinions, creating or resolving a conflict within the circuit or between circuits, or discussing a factual or legal issue of significant public interest.</p>	<p>5th Cir. R. 47.5.3 Unpublished opinions issued before January 1, 1996 are precedent. Because opinions believed to have precedential value are published, unpublished opinions should normally be cited only in the limited circumstances of res judicata, collateral estoppel or law of the case.</p> <p>5th Cir. R. 47.5.4 Unpublished opinions issued on or after January 1, 1996 are not precedent except in limited circumstances of res judicata, collateral estoppel or law of the case. Unpublished opinions may be cited as persuasive authority.</p>
Sixth	<p>6th Cir. R. 206(a) Criteria considered by panels in determining publication include whether a new rule of law is established, an existing rule is affected or applied to a novel fact situation, a conflict is created or resolved within the circuit or between circuits, or a legal or factual issue of continuing public interest is discussed.</p>	<p>6th Cir. R. 28(g) “Citation of unpublished decisions 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 that an unpublished disposition has precedential value and that no published opinion would serve as well, it may be cited.</p>
Seventh	<p>7th Cir. R. 53(b) The court may dispose of an appeal by unpublished order or published opinion.</p> <p>7th Cir. R. 53(c)(1) Criteria for publication include establishing a new rule of law or affecting an existing rule, involving an issue of continuing public interest, criticizing or questioning existing law, or constituting a significant and non-duplicative contribution to legal literature.</p>	<p>7th Cir. R. 53(b)(2)(iv) Unpublished orders shall not be cited or used as precedent except to support a claim of res judicata, collateral estoppel, or law of the case.</p>

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Eighth	<p>8th Cir. R. App. I(4) An opinion should be published when it establishes a new rule of law or affects an existing rule, newly interprets or conflicts with a decision of a federal or state appellate court, applies an established rule of law to facts significantly differing from those in published opinions, involves a legal or factual issue of continuing public or legal interest, rejects the rationale of a previously published opinion in the same case, or is a significant contribution to legal literature.</p>	<p>8th Cir. R. 28A(i) “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.”</p>
Ninth	<p>9th Cir. R. 36-1 Written dispositions of the court are designated as opinions, memoranda, or orders. All opinions are published; no memoranda are published; orders are not published except by order of the court.</p> <p>9th Cir. R. 36-2 Criteria for designating dispositions as opinions include establishing or affecting a rule of law, criticizing existing law, or involving a legal or factual issue of unique or substantial public interest.</p>	<p>9th Cir. R. 36-3 Unpublished opinions are not binding precedent except when relevant under the doctrines of law of the case, res judicata and collateral estoppel and they may only be cited in those circumstances or for factual purposes⁶</p>

6. This rule has been adopted for a limited 30-month period, beginning July 1, 2000. Litigants are invited to submit comments, after which the Circuit Advisory Committee on Rules will report to the court not only the frequency of citation of unpublished dispositions, but also any problems or concerns, and will issue its recommendation whether the rule should be permanent. Unless the court extends the rule by December 31, 2002, it will automatically expire on that date, and its former version, prohibiting citation of unpublished dispositions, will be reinstated.

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Tenth	10th Cir. R. 36.1-2 The court writes opinions only in cases requiring application of new points of law that would make the decision a valuable precedent. When the opinion below has been published, the court ordinarily designates its disposition for publication. If the disposition is by order and judgment, the court will publish only the result of the appeal.	10th Cir. R. 36.3 Unpublished orders and judgments are not binding precedents, except under the doctrines of law of the case, res judicata, and collateral estoppel. While citation of unpublished decisions is disfavored, an unpublished decision may be cited if it has persuasive value regarding a material issue not addressed in a published opinion and its use would assist the court in its disposition of the present case.
Eleventh	11th Cir. R. 36-1, 36-2 When the court determines that an opinion would have no precedential value and the record below supports affirmance, the judgment or order may be affirmed or enforced without opinion. An opinion is unpublished unless a majority of the panel decides to publish it.	11th Cir. R. 36-2 Unpublished opinions are not considered binding precedent; however they may be cited as persuasive authority. 11th Cir. R. 36-3, I.O.P. 5 The court does not favor reliance on unpublished opinions.
District of Columbia	D.C. Cir. R. 36(a) The policy of the court is to publish opinions of general public interest. Publication criteria include whether it is a case of first impression; whether it alters, affects, criticizes, or questions existing law; or whether it resolves an apparent conflict within the circuit or creates a conflict between circuits.	D.C. Cir. R. 28(c) Unpublished orders or judgments of the court may not be cited as precedent. Counsel may refer to an unpublished disposition when its binding or preclusive effect, rather than its quality as precedent, is relevant.

<i>Circuit</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Federal	<p>Fed. Cir. R. 47.6(a) Disposition of an appeal may be announced in an opinion or in a judgment of affirmance without opinion. Dispositions not to be cited as precedent are issued specifically stating that fact.</p> <p>Fed. Cir. R. App. V I.O.P. 10 The court's policy is to limit precedential opinions. Criteria for publication include issues of first impression; cases that establish a new rule of law, affect, or criticize existing law; cases that apply existing rules to novel fact situations; cases that create or resolve conflicts in the circuit or between circuits; or cases treating legal issues of substantial public interest, a new constitutional or statutory issue, or a previously overlooked rule of law.</p>	<p>Fed. Cir. R. 47.6(b) An opinion designated as nonprecedential may not be cited except in relation to a claim of res judicata, collateral estoppel or law of the case.</p>

TABLE 2: PUBLICATION RULES IN STATE COURTS

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Alabama	Ala. R. App. P. 53, 54 All supreme court, court of civil appeals and court of criminal appeals opinions are published in the official reports of Alabama decisions. Trial court judgments or orders may be affirmed without opinion when the court determines that an opinion would serve no significant precedential purpose (such dispositions are designated as "No Opinion" cases and are not published).	Ala. R. App. P. 53(d), 54(d) Unpublished decisions of the supreme court, court of civil appeals and court of criminal appeals "have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for . . . establishing the application of the doctrines of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."
Alaska	Alaska R. App. P. 214(a) "The court may determine that an appeal shall be disposed of by summary order and without formal written opinion. To assist the court in making this determination, the parties may request in writing that an appeal be so decided." This rule applies to both the supreme court and the court of appeals. Alaska R. App. P. 201.	Alaska R. App. P. 214(d) "Summary decisions under this rule are without precedential effect and may not be cited in the courts of this state."
Arizona	Ariz. Sup. Ct. R. 111(a)-(b); Ariz. R. Civ. App. P. 28(a)-(b) An opinion is a written disposition intended for publication. A memorandum decision is a written disposition not intended for publication. Publication standards include establishing, criticizing, or affecting existing law; calling attention to rules of law which appear to have been generally overlooked, or involving issues of unique interest or substantial public importance.	Ariz. Sup. Ct. R. 111(c); Ariz. R. Civ. App. P. 28(c) Memorandum decisions are neither regarded as precedent nor cited in any court except to establish defenses of res judicata, collateral estoppel, or law of the case. Cases may be cited to inform the appellate court of other memorandum decisions so that the court can decide whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review.

State	Publication Standards	Citation Rule
Arkansas	<p>Ark. S. Ct. & Ct. App. R. 5-2(a), (c) All signed opinions of the supreme court are published. Court of appeals opinions may be in conventional or memorandum form. Court of appeals opinions resolving novel or unusual issues will be published. Unpublished opinions are marked "Not Designated for Publication."</p> <p>See <i>In Re Memorandum Opinions</i>, 700 S.W.2d 63 (Ark. 1985) (per curiam) for standards governing issuance of memorandum opinions.</p>	<p>Ark. S. Ct. & Ct. App. R. 5-2(d) Court of appeals opinions not designated for publication are not published in the official reporter and "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>
California	<p>Cal. R. Ct. 976(a) All opinions of the supreme court are published in the official reports.</p> <p>Cal. R. Ct. 976(b) Opinions of the court of appeals or appellate departments of the superior court are not published unless the opinion establishes a new rule of law, applies an existing rule to novel facts, criticizes or affects an existing rule, resolves or creates a conflict in the law, involves a legal issue of continuing public interest, or makes a significant contribution to legal literature.</p> <p>California has a rule on partial publication, Cal. R. Ct. 976.1, and a rule on depublishation, Cal. R. Ct. 979.</p>	<p>Cal. R. Ct. 977 Opinions of a court of appeal or appellate departments of the superior court that are not certified for publication or ordered published may not be cited or relied on by a court or a party in any other action or proceeding except when it is relevant under the doctrines of law of the case, res judicata or collateral estoppel or it affects the same defendant in another criminal or disciplinary proceeding.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Colorado	<p>Although all supreme court opinions are published, the court does dispose of some issues by unpublished order.⁷</p> <p>Colo. App. R. 35(f) A court of appeals opinion is not published unless it establishes a new rule of law, affects an existing rule, applies an established rule to a novel fact situation, involves a legal issue of continuing public interest, "directs attention to the shortcomings of existing common law or inadequacies in statutes," or resolves an apparent conflict of authority. Unpublished opinions bear the legend, "Not Selected for Publication."</p>	<p>Unpublished orders of the supreme court may not be cited.⁸</p> <p>Colo. App. R. 35(f) "Those opinions selected for official publication shall be followed as precedent by the trial judges of the State of Colorado."</p>
Connecticut	<p>Conn. Gen. Stat. § 51-212(b) "The reporter or the person appointed to perform his duties shall make reports of [all] the cases argued and determined in the Supreme Court, [and] prepare the reports for publication."</p> <p>Conn. Gen. Stat. § 51-215a(b) The clerk of the appellate court files copies of memoranda of decisions in appellate court cases with the reporter of judicial decisions. The reporter prepares all of the decisions for publication.</p>	<p>Conn. R. App. P. 67-9 Unreported decisions from other jurisdictions may be cited before the court if the person making reference to the decision provides the court and opposing counsel with copies.</p>

7. Telephone interview with Susan Festag, Chief Deputy Clerk, Colo. Sup. Ct. (May 11, 2001).

8. *Id.*

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Delaware	<p>Del. Sup. 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>See Del. Sup. Ct. I.O.P. XI(2) for criteria on disposition by order.</p> <p>Del. Sup. Ct. R. 93(b)(i) Each opinion of the supreme court is reported for official publication in full text. All final orders of the supreme court are reported for publication only in table form.</p>	<p>Del. Sup. Ct. R. 14(b)(vi)(4) Unreported opinions or orders may be cited, but a copy must be provided.</p> <p>Del. Sup. Ct. R. I.O.P. X(8) “Supreme Court Rule 17 has been amended to permit orders of the Delaware Supreme Court to be cited as precedent⁹. . . . Even though both published opinions and case dispositive judgment orders have precedential value, the Court avoids citing to its orders as authority.”</p>
District of Columbia	<p>D.C. Ct. App. R. 36(c) “An opinion may be either published or unpublished. Any party or other interested person may request that an unpublished opinion be published by filing a motion . . . stating why publication is merited. Publication shall be granted by a vote of two or more members . . . but a motion filed by a non-party shall not be granted except on a showing of good cause. The court sua sponte may also publish at any time a previously issued but unpublished opinion.”</p>	<p>D.C. Ct. App. R. 28(h) “Any published opinion or order of this court may be cited in any brief. Unpublished opinions or orders of this court shall not be cited in any brief, except when they are relevant under the doctrines of the law of the case, res judicata, or collateral estoppel, or in a criminal action or proceeding involving the same defendant.”</p>
Florida	<p>All Supreme Court opinions are published unless the file is sealed. Disposition orders are published in table form. In the District Courts of Appeal, full opinions are generally published; many cases are disposed of as per curiam affirmances without written opinion.¹⁰</p>	<p><i>Dept. of Legal Affairs v. Dist. Ct. of App., Fifth Cir.</i>, 434 S.2d 310 (Fla. 1983): Per curiam affirmances without written opinion have no precedential value and should not be cited.</p>

9. See *New Castle County v. Goodman*, 461 A.2d 1012, 1013 (Del. 1983) (citing rule change).

10. Telephone interview with James Logue, Florida Reporter of Decisions (Apr. 16, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Georgia	<p>Ga. Sup. Ct. R. 59 The supreme court may affirm without opinion when one or more of the following circumstances exists and is dispositive of the appeal: the judgment is supported by the evidence; there is no harmful error of law requiring reversal; or an opinion would have no precedential value because the judgment below contains an adequate explanation of the decision.</p> <p>Ga. Ct. App. R. 34 "Opinions are reported except as otherwise designated by the court."</p> <p>Ga. Ct. App. R. 36 Court of appeals cases may be affirmed without opinion when the evidence supports the judgment; there is no reversible error of law and an opinion would have no precedential value; the judgment below contains an adequate explanation of the decision; and/or "the issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief."</p>	<p>Unpublished supreme court opinions may not be cited.¹¹</p> <p>Ga. Ct. App. R. 36 "Rule 36 cases have no precedential value."</p> <p>Ga. Ct. App. R. 33(a) A judgment fully concurred in by all judges in a division, or a full concurrence by a majority in an appeal decided by a seven- or twelve-judge court is a binding precedent.</p> <p>Ga. Ct. App. R. 33(b) An unreported opinion establishes the law of the case, but is neither a "physical" nor binding precedent.</p> <p>Under Ga. Ct. App. R. 33(a), a "physical precedent" is: [a] judgment which is fully concurred in by all judges of the Division is a binding precedent; if there is a special concurrence without a statement of agreement with all that is said in the opinion or a concurrence in the judgment only, the opinion is a physical precedent only. If the appeal is decided by a seven or twelve judge Court, a full concurrence by a majority of judges is a binding precedent, but if the judgment is made only by special concurrences without a statement of agreement with all that is said in the opinion or by concurrence in the judgment only, there being general concurrence by less than a majority of the Judges, it is a physical precedent only.</p>

11. Telephone interview with Ginger Wade, Editor of Supreme Court Advance Sheets, Ga. Sup. Ct. (May 18, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Hawaii	<p>Haw. R. App. P. 35 (a)-(b) Dispositions may take the form of published, per curiam or memorandum opinions or dispositional orders. Memorandum opinions and dispositional orders are not published except when ordered by the court.</p> <p>Haw. Intermediate Ct. App. R. 2(a) “A full opinion of the intermediate court of appeals shall be published in a manner authorized by the supreme court. The supreme court, however, may order that a full opinion be changed to a memorandum opinion.”</p> <p>The Hawaii Rules of Appellate Procedure govern all proceedings in the Hawaii appellate courts unless otherwise provided by statute or supreme court rules. Haw. R. App. P. 1.</p>	<p>Haw. R. App. P. 35(c); Haw. Intermediate Ct. App. R. 2(b) A memorandum opinion or unpublished dispositional order may not be cited except to establish the law of the pending case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same respondent.</p>
Idaho	<p>Idaho Sup. Ct. Internal R. 13(f) “At or after the oral conference following the presentation of oral argument or the submission of the case to the Court on the briefs, the Court, by unanimous consent of all justices, may determine not to publish the final opinion of the Court.”¹²</p>	<p>Idaho Sup. Ct. Internal R. 13(f) “If an opinion is not published, it may not be cited as authority or precedent in any court.”</p>

12. The Idaho Court of Appeals follows this rule as well. E-mail from Fred Lyon, Reporter of Judicial Decisions, Idaho Sup. Ct., to Melissa Serfass (Mar. 26, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Illinois	<p>All Supreme Court opinions are published.¹³</p> <p>Ill. Sup. Ct. R. 23 Decisions of the Appellate Court may be in the form of a full opinion, a written order or a summary order.¹⁴ Only opinions will be published. Opinions are issued only when the decision establishes a new rule of law, criticizes or affects an existing rule, or resolves, creates, or avoids an apparent conflict within the Appellate Court.</p> <p>Publication of opinions is subject to limitations contained in Supreme Court Administrative Order MR No. 10343 (1994). This order limits the total number of opinions each district appellate court may file annually.</p>	<p>Ill. Sup. Ct. R. 23(e) “An unpublished order is not precedential and may not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case.”</p>
Indiana	<p>Ind. R. App. P. 65(A) All supreme court opinions are published. Court of appeals opinions are published if the case establishes, affects or criticizes a rule of law or discusses “a legal or factual issue of unique interest or substantial public importance.” Other court of appeals cases are decided by memorandum decisions designated as not-for-publication.</p>	<p>Ind. R. App. P. 65(D) “Unless later designated for publication, a not-for-publication memorandum decision shall not be regarded as precedent and shall not be cited to any court except by the parties to the case to establish res judicata, collateral estoppel, or law of the case.”</p>
Iowa	<p>Iowa Code Ann. § 602.4106 All supreme court decisions and opinions shall be in writing. Only those decisions deemed of sufficient general importance by the court are published.</p> <p>Iowa Sup. Ct. R. 10 The court of appeals writes full opinions only in those cases that do not meet the criteria for disposition by memorandum opinion.</p> <p>For criteria, see Iowa Sup. Ct. R. 9.</p>	<p>Iowa R. App. P. R. 14(e) “Unpublished opinions of the Iowa appellate courts or any other court may not be cited as authority.”</p> <p>Iowa Sup. Ct. R. 10(f) Unpublished court of appeals decisions may not be cited except when establishing the law of the case, res judicata or collateral estoppel, or in a criminal action involving the same defendant.</p>

13. Telephone interview with Brian Ervin, Reporter of Judicial Decisions, Illinois Supreme Court (May 11, 2001).

14. Specific publication criteria for Illinois Supreme Court opinions were not found.

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Kansas	<p>Kan. Sup. Ct. R. 7.04 Opinions of the appellate courts may be memorandum opinions or formal opinions. Memorandum opinions are normally marked "Not Designated for Publication." Opinions are published in the official reports only when they meet certain standards such as establishing a new rule of law, affecting or criticizing existing law, involving a legal issue of continuing public interest, applying an established rule of law to a novel fact situation, resolving an apparent conflict of authority, or contributing significantly to legal literature.</p> <p>A memorandum opinion may be prepared when a case decides no new question of law or is otherwise considered to have no precedential value. Kan. Stat. Ann. § 60-2106(a).</p>	<p>Kan. Sup. Ct. R. 7.04 Unpublished opinions are deemed to be without value as precedent and are not uniformly available to all parties. Opinions marked "Not Designated for Publication" shall not be cited as precedent, except to support a claim of res judicata, collateral estoppel, or law of the case.</p>
Kentucky	<p>Ky. Rev. Stat. § 21A.070 All supreme court opinions are published. The supreme court determines which opinions of the court of appeals and lower courts are published.</p> <p>Ky. R. Civ. P. 76.28(4)(a) Opinions of the appellate courts will be published as directed by the court issuing the opinion. Every opinion shall be marked either "To Be Published" or "Not To Be Published."</p> <p>Rule 76 also applies in criminal actions. Ky. R. Crim. P. 12.02.</p>	<p>Ky. R. Civ. P. 76.28(4)(c) Unpublished opinions shall not be cited or used as authority in any other case in any court of this state.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Louisiana	<p>The types of opinions issued by the Louisiana Supreme Court include signed opinions, per curiam opinions and summary orders. All opinions are public record and are published in the Southern Reporter.¹⁵</p> <p>La. Unif. R. Ct. App. 2-16.2 Court of appeals opinions are published when a majority of the panel decide that the opinion establishes a new rule of law or affects an existing rule; involves a legal issue of continuing public interest; criticizes existing law; resolves an apparent conflict of authority; or will serve as a useful reference, such as one reviewing case law or legislative history.</p> <p>See La. Unif. R. Ct. App. 12-16.1 for the standards for issuance of memorandum and per curiam opinions as well as full opinions.</p>	<p>All supreme court opinions may be cited.¹⁶</p> <p>La. Unif. R. Ct. App. 2-16.3 “Opinions marked ‘Not Designated for Publication’ shall not be cited, quoted, or referred to by any counsel, or in any argument, brief, or other materials presented to any Court, except in continuing or related litigation.”</p>
Maine	<p>4 Me. Rev. Stat. Ann. § 702 The reporter of decisions reports cases at his discretion, under the supervision of the chief justice of the supreme judicial court.</p>	<p>Admin. Orders Sup. Jud. Ct.—New Citation Form, 8/20/1996 “Memorandum Decisions and Summary Orders shall not be published in the Atlantic Reporter and shall not be cited as precedent for a matter addressed therein.”</p>
Maryland	<p>Md. Cts. & Jud. Proceedings Code Ann. § 13-203 (2000) The state reporter prepares reports of cases designated for publication by the court of appeals and the court of special appeals.</p> <p>Md. R. App. Rev. 8-113 The court of special appeals designates for publication only those opinions that have substantial general interest as precedent.</p>	<p>Md. R. App. Rev. 8-114 An unreported opinion of the court of appeals or court of special appeals is neither precedent nor persuasive authority, but may be cited in either court for other purposes. In any other court, an unreported opinion of either court may be cited only when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, in a criminal action or related proceeding involving the same defendant, or in a disciplinary action involving the same respondent.</p>

15. E-mail from John Tarlton Olivier, Clerk of La. Sup. Ct., to Melissa Serfass (May 4, 2001).

16. *Id.*

State	Publication Standards	Citation Rule
<p>Massachusetts</p>	<p>Mass. Ann. Laws ch. 221 § 64 The reporter of the supreme judicial court has discretion to report the cases more or less at large according to their relative importance.</p> <p>Mass. Ann. Laws ch. 211A § 9 All decisions of the appeals court shall be in writing, except that in appropriate cases an order, direction, judgment, or decree may be entered without stating reasons. The reporter of decisions publishes opinions of the appeals court.</p> <p>Mass. App. Ct. R. 1:28 The court may affirm, modify or reverse the lower court's action by written order upon determination that no substantial question of law is presented by the appeal or that no clear error of law was committed.</p>	<p><i>Lyons v. Labor Relations Commn.</i>, 476 N.E.2d 243 (Mass. App. 1985). "This court's summary decisions pursuant to Rule 1:28 of the Appeals Court . . . are without precedential value and may not be relied upon or cited as authority in unrelated cases. . . [T]he so called summary decisions, while binding on the parties, may not disclose fully the facts of the case or the rationale of the panel's decision. . . . Summary decisions, although open to public examination, are directed to the parties and to the tribunal which decided the case, that is, only to persons who are cognizant of the entire record."</p> <p>A recent case, <i>Horner v. Boston Edison Co.</i>, 695 N.E.2d 1093 (Mass. App. 1998) affirms this principle, stating, "We have never suggested that summary decisions of this court issued pursuant to rule 1:28 . . . may be relied upon or cited as authority in other cases. In fact, we reached the opposite conclusion in at least two other cases." <i>Id.</i> n. 7.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Michigan	<p>All supreme court opinions and orders are published.¹⁷</p> <p>Mich. Ct. R. 7.215(A)-(B) Court of appeals opinions must be written in the form of a signed opinion, a per curiam opinion, or a memorandum opinion. Memorandum opinions are not published; per curiam opinions are not published unless one of the deciding judges directs the reporter to do so. Circumstances when an opinion must be published include if it establishes a new rule of law, construes a constitutional or statutory provision or court rule, affects or criticizes existing law, extends existing law in a new factual context, reaffirms a legal principle or creates or resolves an apparent conflict of authority.</p> <p>Rule 7.215(A) was amended by Mich. Sup. Ct. Order 99-35, 99-56 issued December 13, 2000, and effective April 1, 2001. Prior to this amendment, publication of a per curiam or memorandum opinion required a majority of the judges to direct its publication.</p>	<p>Mich. Ct. R. 7.215(C) An unpublished opinion is not binding precedent under the rule of stare decisis, but may be cited if a copy is provided to the court and to opposing parties. A published opinion of the court of appeals has precedential effect under the rule of stare decisis.</p>

17. Telephone interview with Brian Draper, Assistant to the Reporter of Decisions, Mich. Sup. Ct. (May 11, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Minnesota	<p>All supreme court opinions are published.¹⁸</p> <p>Minn. R. Civ. App. P. 136.01 Court of Appeals dispositions may be in the form of published, unpublished or order opinions.</p> <p>Minn. Stat. Ann. § 480A.08(3)(c) The court of appeals publishes only those decisions that establish a new rule of law, overrule a previous court of appeals' decision not reviewed by the supreme court, provide important procedural guidelines in interpreting statutes or administrative rules, involve a significant legal issue, or that would significantly aid in the administration of justice.</p> <p>This rule is restated in Minn. Ct. App. Spec. R. of Prac. 4.</p>	<p>Minn. R. Civ. App 136.01(b) "Unpublished opinions and order opinions are not precedential except as law of the case, res judicata or collateral estoppel, and may be cited only as provided in Minn. Stat. § 480A.08, subd. 3."</p> <p>Minn. Stat. Ann. §480A.08(3) Unpublished opinions are not precedential except as law of the case, res judicata or collateral estoppel. Unpublished opinions may be cited if copies are provided to all parties.</p> <p>This rule is restated in Minn. Ct. App. Spec. R. of Prac. 4.</p>
Mississippi	<p>Miss. R. App. P. 35-A(a); Miss. R. App. P. 35-B(a) The supreme court or court of appeals "may write opinions on all cases heard by that Court and shall publish all such written opinions. In cases where the judgment of the trial court is affirmed, an opinion will be written in all cases where the . . . Court assesses damages for a frivolous appeal and in other cases if a majority of the justices deciding the case determine that a written opinion will add to the value of the jurisprudence of this state or be useful to the parties or to the trial court."</p> <p>See Miss. R. App. P. 35-A(c) and Miss. R. App. P. 35-B(d) for standards on per curiam affirmance without formal opinion when an opinion would have no precedential value.</p>	<p>Miss. R. App. P. 35-A(b); Miss. R. App. P. 35-B(b) "Opinions in cases decided prior to the effective date of this rule [Nov. 1, 1998] which have not been 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>

18. Telephone interview with Janet Chapdelaine, Reporter of Judicial Decisions, Minn. Sup. Ct. (May 11, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Missouri	<p>Mo. Sup. Ct. R. 84.16(b) In the supreme court and the court of appeals, when all judges in a case agree to affirm and believe that an opinion would have no precedential value, disposition may be by memorandum decision or written order. A memorandum decision or written order may be entered when the appellate court unanimously determines that any of the following circumstances exists and is dispositive: the trial court judgment is supported by substantial evidence and is based on findings that are not clearly erroneous, the evidence sufficiently supports a jury verdict, an administrative agency order is supported by the evidence, or no error of law appears.</p> <p>See Mo. Sup. Ct. R. 30.25 for the rule governing summary orders in criminal cases.</p>	<p>Mo. Sup. Ct. R. 84.16(b) "A written statement may be attached to the memorandum decision or written order setting out the basis for the court's decision. The statement shall be unanimous, shall not constitute a formal opinion of the court, shall not be reported, and shall not be cited or otherwise used in any case before any court."</p>
Montana	<p>Mont. Code Ann. § 3-2-601 All decisions of the supreme court must be in writing, stating the grounds of the decision.</p> <p>Mont. Internal Op. R. § I(c) Appeals that present no constitutional issues or issues of first impression, or do not establish new precedent, modify existing precedent, or, in the opinion of the court, will not provide future guidance for citation purposes, may be classified by the court as noncitable opinions. Such decisions will not include a detailed statement of facts or law.</p>	<p>Mont. Internal Op. R. § I(c) Appeals disposed of under this section shall not be citeable as precedent but shall be filed as a public document with the clerk, and shall be reported by result only.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Nebraska	<p>Neb. Sup. Ct. R. 2(E)(1); Neb. Sup. Ct. R. 12 The supreme court and court of appeals prepare written opinions in cases believed to require explanation or believed to have precedential value.</p> <p>Neb. Rev. Stat. § 24-208 The supreme court reports decisions which reverse or modify a district court judgment, and other decisions which determine or modify any previously unsettled or new and important question of law, or construe any provision of the constitution or a statute not construed before, and other decisions deemed interesting or important.</p> <p>Neb. Rev. Stat. § 24-1104(1) Court of appeals decisions are issued in the form of an order that may be accompanied by a memorandum opinion. Memorandum opinions are not published unless ordered by the court.</p> <p>Neb. Rev. Stat. § 24-1104(2) provides criteria for determining when memorandum opinions are appropriate.</p>	<p>Neb. Sup. Ct. R. 9(C)(4) “Nebraska cases shall be cited by the state reports, but may include citation to such other reports as may contain such cases.” The implication is that only reported cases may be cited. Some Nebraska Supreme Court cases may be disposed of by summary disposition under Neb. Sup. Ct. R. 7.</p> <p>Neb. Sup. Ct. R. 2(E)(4)-(5) Court of appeals opinions which have been designated “For Permanent Publication” are precedential and may be cited in any court; other opinions and memorandum opinions may be cited only when related by identity between the parties or the causes of action.</p>
Nevada	<p>There are no established rules governing when an opinion is written. Opinions are published; dispositions that are not published are framed as orders.¹⁹</p> <p>Nev. Rev. Stat. § 2.160 “All opinions and decisions rendered by the supreme court shall be in writing”</p>	<p>Nev. Sup. Ct. R. 123 Unpublished opinions are not precedential and may not be cited as legal authority except when relevant under the doctrines of law of the case, res judicata or collateral estoppel or relevant in a criminal or disciplinary proceeding affecting the same individual.</p>

19. Telephone interview with Janette Bloom, Clerk of the Court, Nev. Sup. Ct. (May 11, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
New Hampshire	<p>N.H. Sup. Ct. R. 25(1) The supreme court may dispose of cases summarily. An order of summary affirmance may be entered in those circumstances when no substantial question of law exists and the court does not disagree with the result below, the opinion of the lower court identifies and discusses the issues presented and the supreme court does not disagree with them, or no substantial question of law is presented in an administrative agency appeal and the court does not find the decision unjust or unreasonable, or for other just cause, in which case a succinct statement of the reason for affirmance must be included. An order of summary dismissal or summary reversal for just cause must also contain a succinct statement of the reason for dismissal or reversal.</p>	<p>N.H. Sup. Ct. R. 25(5) "Cases summarily disposed of under this rule shall not be regarded as establishing precedent or be cited as authority."</p>
New Jersey	<p>N.J. R. Gen. App. 1:36-2 All opinions of the supreme court are published unless the court directs otherwise. Appellate division opinions are published only when the issuing panel directs their publication. Publication guidelines for opinions include whether the decision involves a substantial question of U.S. or N.J. constitutional law, determines a new and important question of law, affects or criticizes existing law, determines a substantial question with no N.J. case law after Sept. 15, 1948, is of continuing public interest, resolves an apparent conflict or authority, or contributes significantly to legal literature.</p> <p>N.J. Ct. R. 2:11-3(e)(1)-(2) sets out the guidelines for affirmance without opinion in civil, criminal, quasi-criminal, and juvenile appeals.</p>	<p>N.J. R. Gen. App. 1:36-3 Unpublished opinions do not constitute precedent and are not binding on any court. Unpublished opinions may be cited for purposes of res judicata, collateral estoppel, the single controversy doctrine, or any other similar principle of law only.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
New Mexico	<p>N.M. R. App. P. 12-405 All formal opinions of the appellate court are published. A formal opinion is not always necessary. An order, decision, or memorandum opinion is appropriate when the issues have previously been decided by the supreme court or court of appeals; the issue is disposed of by the presence or absence of substantial evidence; a statute or court rule is controlling; the asserted error is not prejudicial; or the issues are manifestly without merit.</p> <p>This rule applies to both the supreme court and the court of appeals. N.M. R. App. P. 12-101.</p>	<p>N.M. R. App. P. 12-405(C) “An order, decision, or memorandum opinion, because it is unreported and not uniformly available to all parties, shall not be published nor shall it be cited as precedent in any court.”</p>
New York	<p>N.Y. CLS Jud. § 431 The Law Reporting Bureau is required to publish every opinion, memorandum, and motion transmitted to it by the court of appeals and the appellate divisions. The state reporter also selectively publishes appellate term and trial court opinions in the Miscellaneous Reports.²⁰</p>	<p>There is no official court rule or statute prohibiting citation of unpublished opinions.²¹</p>
North Carolina	<p>All supreme court opinions are published, some as per curiam orders.²²</p> <p>N.C. R. App. P. 30(e)(1) The Court of Appeals is not required to publish an opinion in every decision. If the deciding panel determines that the appeal involves no new legal principles and that a published opinion would have no precedential value, it may direct that no opinion be published.</p>	<p>N.C. R. App. P. 30(e)(3) “A decision without a published opinion is authority only in the case in which such decision is rendered and should not be cited in any other case in any court for any purpose, nor should any court consider any such decision for any purpose except in the case in which such decision is rendered.”</p>

20. Telephone interview with Gary Spivey, State Reporter, N.Y. Ct. App. (Apr. 27, 2001). For details on selection criteria for the Miscellaneous Reports, see the New York State Law Reporting Bureau web site at <<http://www.courts.state.ny.us/reporter/Selection.htm>> (visited Apr. 27, 2001).

21. Spivey interview, *supra* n. 20. Regarding the precedential value of unpublished New York Supreme Court opinions, in *Eaton v. Chahal*, 553 N.Y.S.2d 642, 646 (Sup. Ct. 1990), the court commented upon “the practice of citing to this court unreported decisions issued by Judges of coordinate jurisdiction. Such decisions, although entitled to respectful consideration, are not binding precedent upon this court.”

22. Telephone interview with Ralph A. White, Jr., Reporter of Judicial Decisions, N.C. Sup. Ct.

State	Publication Standards	Citation Rule
North Dakota	<p>N.D. R. App. P. 35.1</p> <p>The supreme court may affirm by summary opinion in any case in which no reversible error of law occurred and one of the following situations exists: the appeal is frivolous and completely without merit, the judgment of the trial court is based on findings of facts that are not clearly erroneous, the jury verdict is substantially supported by evidence, the trial court did not abuse its discretion, the administrative agency order is supported by a preponderance of the evidence, the summary judgment, directed verdict, or judgment on the pleadings is supported by the record, or a previous controlling appellate decision is dispositive of the appeal. The court may also reverse by summary opinion when a previous controlling appellate is dispositive.²³</p>	<p>Rule 35.1 summary dispositions may be cited as precedent.²⁴</p>

23. The North Dakota Court of Appeals is not a permanent sitting court. It receives assignments from the supreme court mainly to alleviate the supreme court's workload. Although the rules establishing the court of appeals allow for discretionary publication, court of appeals opinions have not been numerous, and all opinions are published in a manner similar to the supreme court. E-mail from Penny Miller, Clerk of N.D. Sup. Ct., to Melissa Serfass (May 14, 2001).

24. Telephone interview with Penny Miller, Clerk of N.D. Sup. Ct. (Apr. 20, 2001).

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Ohio	<p>Ohio Sup. Ct. R. for Reporting Op. 1(A) All supreme court opinions are reported in the Ohio official reports.</p> <p>Ohio Sup. Ct. R. for Reporting Op. 2(F) A court of appeals opinion may be selected for official reporting if the supreme court reporter determines that the case contributes significantly to Ohio case law, and the court which heard the case certifies that it meets certain standards, which include establishing a new rule of law; affecting an existing rule; applying an established rule to significantly different facts; explaining, criticizing, or reviewing the history of an existing rule; creating or resolving a conflict of authority; or discussing factual or legal issues of significant public interest.</p>	<p>Ohio Sup. Ct. R. for Reporting Op. 2(G) Unofficially published opinions and unpublished opinions of the courts of appeals may be cited as controlling authority in the judicial district in which they were decided when relevant under the doctrines of the law of the case, res judicata or collateral estoppel or in a criminal proceeding involving the same defendant. In all other situations, such opinions shall be considered persuasive authority. Opinions reported in the Ohio official reports are controlling authority for all purposes in the judicial district in which they were rendered unless and until each such opinion is reversed or modified by a court of competent jurisdiction.</p>

State	Publication Standards	Citation Rule
Oklahoma	<p>Okla. Sup. Ct. R. 1.200(a) Supreme court and court of civil appeals opinions are issued in memorandum form unless they establish, criticize or affect a rule of law, involve a legal issue of continuing public interest, apply an established rule to a novel fact situation, resolve an apparent conflict, or contribute significantly with a historical legal review or description of legislative history.</p> <p>Okla. Ct. Crim. App. R. 3.13(A) "Opinions may be by Summary Opinion form, memorandum or of such length and detail as the Court determines."²⁵</p>	<p>Okla. Sup. Ct. R. 1.200(b)(5) Memorandum opinions, unless otherwise required to be published, are marked: "Not for Official Publication." These opinions shall not be considered as precedent by any court or cited in any brief or other, except for purposes of res judicata, collateral estoppel, or law of the case. They shall neither be published in the unofficial or official reporter, nor on the Supreme Court World Wide Web site.</p> <p>Okla. Sup. Ct. R. 1.200(b)(6)-(8) governs reporting of opinions and dispositions in the unofficial reporter, <i>Oklahoma Bar Journal</i>. Opinions designated "For Publication in O.B.J. Only" are not precedential.</p> <p>Okla. Ct. Crim. App. R. 3.5(C)(3) "In all instances, an unpublished opinion is not binding on this Court. However, parties may cite and bring to the Court's attention the unpublished opinions of this Court provided counsel states that no published case would serve as well the purpose of which counsel cites it"</p>

25. Specific publication standards for the Court of Criminal Appeals were not found. Standards for the Emergency Appellate Division of the Court of Criminal Appeals are found at Okla. Ct. Crim. App. R. 12.12(C). For a discussion of issues raised by use of summary opinions in the court, see *Johnson v. State*, 1993 OK CR 11, 847 P.2d 810 (Okla. Crim. App. 1993).

State	Publication Standards	Citation Rule
Oregon	<p>Or. Rev. Stat. § 19.435 The Supreme Court and the Court of Appeals may decide cases by memorandum decision. Full opinions are prepared only in those cases deemed proper by the court.</p> <p>All opinions, memorandum decisions, and orders are published.²⁶</p> <p>Or. Ct. App. Internal Practices Forms of Decisions When the deciding judges agree on the result and agree that an opinion would have no precedential value, a case may be decided without opinion. Per curiam opinions are issued when the judges agree on the analysis and the result, the law is clear, and an extensive opinion is not needed. The court generally decides cases by signed opinion when an opinion would have precedential value because it involves a previously undecided issue of law or because it applies established law to new or “exceptionally illustrative” facts, issues of unusual public concern exist, or a summary statement of the reasons for reversal or modification would not suffice.</p>	<p>Supreme Court affirmances without opinion may be cited, but have no authority.²⁷</p> <p>Or. R. App. P. 5.20(5) “Cases affirmed without opinion by the Court of Appeals should not be cited as authority.”</p>

26. Telephone interview with Mary Bauman, Reporter of Judicial Decisions, Oregon Supreme Court (May 18, 2001).

27. *Id.*

State	Publication Standards	Citation Rule
Pennsylvania	<p>Pa. R. Sup. Ct. I.O.P. III (Notes) A per curiam order may be used when the Court's decision does not establish a new rule of law, does not affect or criticize an existing rule, does not apply an established rule to novel facts, does not constitute the only, or only recent binding precedent on an issue, does not involve a legal issue of continuing public interest, or whenever the Court decides it is appropriate.</p> <p>Pa. R. Cmmw. Ct. I.O.P. §412 The author of a commonwealth court opinion of a panel or the court en banc recommends whether it is reported. This recommendation is followed unless a majority of the court disagrees.</p> <p>Pa. R. Cmmw. Ct. I.O.P. §413 Each reported opinion is designated as an "opinion." An unreported opinion is designated as a "memorandum opinion."</p> <p>Pa. R. Super. Ct. I.O.P. 65.37(C) Publication of decisions is within the panel's discretion, but generally a decision should be published when any of the following apply: it is by a court en banc; it establishes a new rule of law, applies an existing rule to novel facts, affects or criticizes an existing rule, or resolves an apparent conflict of authority; it involves a legal issue of continuing public interest; or it constitutes a significant, non-duplicative contribution to law by way of an historical legal review, a review of legislative history, or a review of conflicting decisions among the courts or other jurisdictions.</p>	<p><i>Commonwealth v. Tilghman</i>, 673 A.2d 898 (Pa. 1996). The court in <i>Tilghman</i> attempted to clear up the "confusion within the Bar of this Commonwealth regarding the precedential value of orders of this Court affirming (or reversing) per curiam an order of a lower court." <i>Id.</i> "If a majority of the Justices of this Court, after reviewing an appeal before us . . . join in issuing an opinion, our opinion becomes binding precedent on the courts of this Commonwealth." <i>Id.</i> (citing <i>Commonwealth v. Mason</i>, 456 Pa. 602, 322 A.2d 357 (1974)).</p> <p>When a per curiam opinion of the supreme court affirms on the basis of the opinion of the lower court, the holding and reasoning of that opinion become supreme court precedent. When a per curiam supreme court affirmance says nothing more, the lower court rationale is not adopted and is not precedential.²⁸</p> <p>Pa. R. Cmmw. Ct. I.O.P. §414 "Unreported opinions of the court shall not be cited in any opinion of this court or in any brief or argument addressed to it, except that any opinion filed in the same case may be cited as representing the law of the case. A one-judge opinion, even if reported, shall be cited only for its persuasive value, not as a binding precedent."</p>

28. Richard B. Cappalli, *What Is Authority? Creation and Use of Case Law by Pennsylvania's Appellate Courts*, 72 Temple L. Rev. 303, 362-365 (1999). This article provides an outline of the "rules" set forth in *Tilghman* and a discussion of each rule's precedential value.

State	Publication Standards	Citation Rule
Pennsylvania, <i>cont'd</i>	<p>Pa. R. Super. Ct. I.O.P. 65.37(D) An appeal may be decided by a judgment order without separate memorandum decision when the decision is unanimous and requires minimal explanation because it is based on established law or is clearly supported by the evidence.</p>	<p>Pa. R. Super. Ct. I.O.P. 65.37(A) An unpublished memorandum decision may not be relied upon or cited except when relevant under the doctrine of law of the case, res judicata, or collateral estoppel, or when it is relevant to a criminal action or proceeding involving the same defendant.</p>
Rhode Island	<p>R.I. Gen. Laws § 8-1-3 “The supreme court shall render written opinions in all cases decided by it wherein points of law, pleading, or practice have arisen which are novel or of sufficient importance to warrant written opinions.”</p> <p>R.I. Gen. Laws § 8-1-6 “The reporter shall make true reports of all cases in which written opinions have been rendered, and of all decisions and rescripts of the court which he or she may deem to be important and useful, and also all such matters as the court may order to be reported.”</p>	<p>R.I. Sup. Ct. R. 16(h) “Unpublished orders will not be cited by the Court in its opinions and such orders will not be cited by counsel in their briefs. Unpublished orders shall have no precedential effect.”</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
South Carolina	<p>S. C. App. Ct. R. 220</p> <p>The appellate court may make its decisions in writing either by published or memorandum opinion. The supreme court may file a memorandum opinion when the court unanimously decides that a published opinion would have no precedential value and any one or more of the following circumstances exists: The judgment of the trial court is based on findings of fact which either are or are not clearly erroneous; the evidence to support a jury verdict is or is not insufficient; an administrative agency order meets or does not meet the standard of review; or no error of law appears. "The Court of Appeals need not address a point which is manifestly without merit."</p> <p>This rule governs both the South Carolina Supreme Court and the South Carolina Court of Appeals. S.C. App. Ct. R. 101.</p>	<p>S. C. App. Ct. R. 220(a)</p> <p>Memorandum opinions are not published in the official reports and have no precedential value.</p> <p>S. C. App. Ct. R. 239(d)(2)</p> <p>"Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."</p>
South Dakota	<p>S.D. R. App. P. 15-26A-87.1</p> <p>The supreme court may affirm or reverse a judgment or order of a trial court by order or memorandum opinion when it is clear from the record that the issues are clearly controlled by settled law, findings of fact or jury verdict are clearly supported by sufficient evidence, an issue of material fact made summary judgment inappropriate, or the issue was one of judicial discretion and abuse is clearly present or absent.</p>	<p>S.D. R. App. P. 15-26A-87.1(E)</p> <p>Orders or memorandum opinions issued under this section shall not be cited or relied on as authority in any court except when they establish the law of the case, res judicata, collateral estoppel, or involve the same defendant in a criminal action, or the same person in a disciplinary action.</p>

State	Publication Standards	Citation Rule
Tennessee	<p>Tenn. R. Sup. Ct. 4(A)(2) All opinions of the supreme court are published in the official reporter unless explicitly designated "Not for Publication."</p> <p>Tenn. Ct. App. R. 11; Tenn. Ct. Crim. App. R. 19 General criteria for publication of opinions of the court of appeals or the court of criminal appeals include whether the opinion establishes a new rule of law, affects or criticizes an existing rule or legal principle, applies an existing rule to novel facts, involves a legal issue of continuing public interest, resolves an apparent conflict, or makes a significant contribution to legal literature.</p> <p>Publication of intermediate appellate court opinions does not go forward until the issue of appeal to the supreme court has been resolved. The individual rules provide specific publication guidelines when application for permission to appeal has been filed, granted, or denied. Tenn. Ct. App. R. 10 sets out the guidelines for affirmances without opinion and memorandum opinions in the court of appeals.</p>	<p>Tenn. R. Sup. Ct. 4(F)(1)-(2) "If an application for permission to appeal is hereafter denied by the Court with a 'Not for Citation' designation, the opinion of the intermediate appellate court has no precedential value." These opinions are not published in any official reporter and may not be cited by any judge or by any litigant except in the circumstance of res judicata, collateral estoppel, law of the case, or a criminal action involving the same defendant.</p> <p>Tenn. R. Sup. Ct. 4(H)(1) Unpublished opinions are controlling authority for purposes of res judicata, collateral estoppel, or law of the case. Unless designated "Not for Citation" under subsection (F) of this rule, unpublished opinions are persuasive authority in all other circumstances.</p> <p>Tenn. Ct. App. R. 12; Tenn. Ct. Crim. App. R. 19(4) When unpublished opinions are cited, copies must be provided.</p>
Texas	<p>Tex. R. App. P. 67 The supreme court hands down a written opinion in every case in which it renders a judgment.</p> <p>Tex. R. App. P. 47.4 A court of appeals opinion should be published only when it establishes, affects, or criticizes a rule of law, applies an existing rule to a new fact situation, involves a legal issue of continuing public interest, or resolves an apparent conflict of authority.</p> <p>Tex. R. App. P. 77.2 Court of criminal appeals opinions will be published upon the determination of a majority of the judges.</p>	<p>Tex. R. App. P. 47.7 Court of appeals opinions that are not designated for publication have no precedential value and may not be cited as authority.</p> <p>Tex. R. App. P. 77.3 Unpublished opinions of the court of criminal appeals have no value as precedent and may not be cited as authority.</p>

<i>State</i>	<i>Publication Standards</i>	<i>Citation Rule</i>
Utah	<p>Utah R. App. P. 30(c),(d) When a judgment, decree or order is reversed or modified, the reasons shall be given in writing. The court may dispose of a case by expedited decision without written opinion if it satisfies the criteria of Rule 31(b).</p> <p>The Utah Rules of Appellate Procedure apply to the supreme court and the court of appeals. Utah R. App. P. 1.</p> <p>Utah R. App. P. 31(b), (d) Types of cases qualifying for expedited decision without opinion include appeals that involve uncomplicated factual issues primarily based on documents; summary judgments; dismissals for failure to state a claim or for lack of jurisdiction; and cases based on uncomplicated issues of law. Expedited appeal will not be granted when a case raises a substantial constitutional issue, an issue of significant public interest, an issue of first impression or a complicated issue of fact or law.</p>	<p>Utah R. App. P. 31(f) “Appeals decided under this rule will not stand as precedent, but, in other respects, will have the same force and effect as other decisions of the court.”</p> <p>Utah Code Jud. Admin. R. 4-508, 4-605 “Unpublished opinions, orders and judgments have no precedential value and shall not be cited or used in the courts of this state, except for purposes of applying the doctrine of the law of the case, res judicata, or collateral estoppel. Unpublished opinions are “any memorandum decision, per curiam opinion, or other disposition of the Court designated ‘not for official publication.’”</p> <p>The stated intent of Rule 4-508, governing civil practice, and Rule 4-605, governing criminal practice, is to establish a uniform standard for the citation of unpublished opinions.</p>

State	Publication Standards	Citation Rule
Vermont	<p>Vt. R. App. P. 33.2</p> <p>A full opinion may be appropriate when the court is establishing a new rule of law, affecting or criticizing an existing rule, or applying an established rule to a novel fact situation; the appeal involves a legal issue of substantial public interest; or the court may be resolving a conflict or apparent conflict between panels of the court. In other instances, an entry order or per curiam opinion may be appropriate.</p>	<p>Vt. R. App. P. 33.1(c)</p> <p>An entry order decision issued by a three-justice panel under the guidelines set forth in Rule 33.2 that is not published in the Vermont reports may be cited as persuasive authority but is not considered controlling precedent. These decisions may be cited as controlling authority with respect to issues of claim preclusion, law of the case, and similar issues involving the parties or facts of the case in which the decision was issued.</p>
Virginia	<p>The supreme court determines by judicial discretion during conference which cases will be decided by order and which will be decided by a published opinion.²⁹</p> <p>Va. Sup. Ct. R 5:42(i)</p> <p>“A written opinion of the Supreme Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion will be sent by the clerk under the seal of the Supreme Court to the certifying court and to counsel for the parties and shall be published in the Virginia Reports.”</p> <p>Va. Code Ann. § 17.1-413(A)</p> <p>The court of appeals in its discretion may render its decision by order or memorandum opinion. All orders and opinions of the court are preserved with the record of the case. Opinions that the court designates as having precedential value or other legal significance are reported in separate court of appeals reports in the same manner as the decisions and opinions of the supreme court.</p>	<p>There is no prohibition against citing unpublished orders of the supreme court, though their value is probably just as persuasive authority.³⁰</p> <p>In <i>Grajales v. Commonwealth</i>, 353 S.E.2d 789, 790 n.1 (Va. App. 1987), the court wrote: “Unpublished memorandum opinions of [the Court of Appeals] are not to be cited or relied upon as precedent except for the purpose of establishing res judicata, estoppel or the law of the case.” Later, in <i>Fairfax County Sch. Bd. v. Rose</i>, 509 S.E.2d 525, 528 n. 3 (Va. App. 1999), the court wrote: “Although an unpublished opinion of the Court has no precedential value [citing <i>Grajales</i>], a court or the commission does not err by considering the rationale and adopting it to the extent it is persuasive.”</p>

29. Telephone interview with David Beach, Clerk of the Virginia Supreme Court (Apr. 27, 2001).

30. *Id.*

State	Publication Standards	Citation Rule
Washington	<p>All Washington Supreme Court opinions are published.³¹</p> <p>Wash. R. App. P. 12.3(d) Whether an opinion will be printed in the Washington appellate reports or be filed for public record only will be determined by a majority of the issuing panel pursuant to RCW 2.06.040. In making this determination the panel will use at least the following criteria: whether a case decides an unsettled or new question of law or constitutional principle; affects or reverses an established principle of law; is of general public interest or importance or is in conflict with a prior opinion of the court of appeals.³²</p>	<p>Wash. R. App. P. 10.4(h) An unpublished opinion of the court of appeals may not be cited as authority. Unpublished opinions are defined as those not published in the Washington appellate reports.</p>
West Virginia	<p>W. Va. Const. Art. VIII, § 4 The state constitution requires the court "to prepare a syllabus of the points adjudicated in each case in which an opinion is written . . . which shall be prefixed to the published report of the case." Thus, all opinions are published. However, memorandum orders in administrative appeals and certain per curiam orders are not published.³³</p>	<p>Only signed, justice-authored opinions have precedential value.³⁴</p> <p>"Per curiam opinions . . . are used to decide only the specific case before the Court; everything in a per curiam opinion beyond the syllabus point is merely obiter dicta. A per curiam opinion that appears to deviate from generally accepted rules of law is not binding on the circuit courts, and should be relied upon only with great caution. [I]f rules of law or accepted ways of doing things are to be changed, then this Court will do so in a signed opinion, not a per curiam opinion." <i>Lieving v. Hadley</i>, 423 S.E.2d 600, 604 n. 4 (W. Va. 1992).</p>

31. Telephone interview with Truman Fuller, Editorial Coordinator, Washington Supreme Court Reporter of Decisions (May 11, 2001).

32. Specific publication standards for Supreme Court of Washington opinions were not found.

33. Facsimile from Rory L. Perry II, Clerk, and Blake Westfall, Deputy Clerk, W. Va. Sup. Ct., to Melissa Serfass (May 8, 2001).

34. *Id.*

State	Publication Standards	Citation Rule
Wisconsin	<p>All supreme court opinions are published; the court disposes of some issues by unpublished order.³⁵</p> <p>Wis. Stat. § 809.23(1)(a) In the court of appeals, criteria for publication in the official reports include whether the opinion states a new rule of law or affects or criticizes an existing rule; applies an established rule to a novel fact situation; resolves or identifies a conflict of authority; contributes to the legal literature by reviewing case law or legislative history; or decides a case of substantial and continuing public interest.</p>	<p>Per curiam orders and authored opinions may be cited as precedent; unpublished orders may not.³⁶</p> <p>Wis. Stat. § 809.23(3) An unpublished opinion is of no precedential value and may not be cited as precedent or authority, except to support a claim of res judicata, collateral estoppel, or law of the case.</p>
Wyoming	<p>Wyo. R. App. P. 9.01 Appellate court decisions are set forth in a written opinion or order.</p> <p>Wyo. R. App. P. 9.06 The appellate court may issue a ruling without a published decision when all parties to an appeal stipulate in writing that they so desire. Such abbreviated opinions provide the ultimate disposition without a detailed statement of facts or law.</p>	<p>Wyo. R. App. P. 9.06 Abbreviated opinions are not published or generally disseminated and do not constitute precedent of the appellate court.</p>

35. Telephone interview with Cornelia Clark, Reporter of Judicial Decisions, Wis. Sup. Ct. (May 11, 2001).

36. *Id.*

