

DUCiv R 7-2 CITING UNPUBLISHED JUDICIAL DECISIONS

Approved by Rules Committee on January 8, 2008

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Reporter's Note: This rule would replace current rule DUCiv R 7-2 to make it consistent with the rule of the Tenth Circuit on use of unpublished decisions. The draft rule is reorganized and provides for the furnishing of copies of the unpublished decision to another party upon request. The draft rule also clarifies the citation format for unpublished decision.

(a) Precedential Value. The citation of unpublished decisions is permitted. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.

(b) Citation Form. Citation to unpublished opinions must include an appropriate parenthetical notation stating that it is an unpublished decision. E.g., *United States v. Wilson*, No 06-2047, 2006 WL 3072766 (10th Cir. Oct. 31, 2006) (unpublished); *United States v. Keeble*, No 05-5190, 184 Fed. Appx. 756, 2006 U.S. App. LEXIS 14871 (10th Cir. June 15, 2006) (unpublished); *United States v. Gartrell*, NO: 2:04CR97 DB, 2005 WL 2265362 (D Utah Sept.7, 2005) (unpublished). References to unpublished decisions should include an appropriate electronic citation where possible.

(c) Copies. If an unpublished decision is not available in a publicly accessible electronic database, such as a commercial database maintained by a legal research service or a database maintained by a court, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Even if such decisions are available in a publicly accessible database, counsel should provide copies of the cited unpublished decision upon request.