

**INTERACTIVE CITATION
WORKBOOK FOR *ALWD GUIDE
TO LEGAL CITATION***

Texas

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Tracy L. M. Norton

Louisiana State University Paul M. Hebert Law Center

Neil L. Sobol

Texas A&M University School of Law

John F. Murphy

Texas A&M University School of Law

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Editorial Offices
630 Central Ave., New Providence, NJ 07974
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

(Pub. 3146)

TEXAS COURTS OF APPEALS CASES

Citation to cases from Texas intermediate courts of appeals uses rules created outside of the *ALWD Guide*. Those additional rules are found in Chapter 4 of *The Greenbook: Texas Rules of Form* (currently in its Twelfth Edition). These rules govern the information to be included in the court and date parenthetical and to be included as subsequent history. You should read Chapter 4 in *Texas Rules of Form* before continuing. You may also want to refer to those rules as they are mentioned and explained in this chapter.

A. COURT & DATE PARENTHETICAL

Rules 4.1.1 and 4.3.1 tell you that the court and date parenthetical for Texas intermediate courts of appeals cases includes a designation indicating that the case is a court of appeals case (i.e., Tex. App.) and another indicating the location of the court (e.g., Austin). (See Rules 4.1.1 and 4.2.1 for examples.)

In addition to the designation “Tex. App.,” the court is also identified by its location. Rule 4.3.1 lists the cities in which the courts of appeals are located. The numbers in that list correspond to the district numbers of the courts of appeals. For example, the Seventh District Court of Appeals is seventh on the list. That court sits in Amarillo. Notice that both the First and Fourteenth Districts sit in Houston. To distinguish them in citations, the district number in brackets follows the city name. (See examples in Rule 4.3.1.) Houston courts of appeals are the only courts that take a district number designation in the parenthetical.

Notice the spaces between each abbreviation in “Tex. App.” Notice also that no space is placed before or after the em dash¹ that separates the court designation from the city.

B. HISTORY

Rule 4.4 also tells us that we must include writ history, petition history, or other subsequent history for intermediate courts of appeals cases. This is especially important because the writ and subsequent history notations give the reader important information about the weight of the authority. (See Appendices D&E of *Texas Rules of Form*.) Although you would only note a denial of certiorari by the United States Supreme Court in certain situations, you will always include writ and petition history for Texas state courts of appeals.

1. History Without an Opinion

Writ and petition history notations tell the reader whether either of the two highest courts in Texas, the Texas Supreme Court and Texas Court of Criminal Appeals, has been asked by a party in a writ or petition to dispose of the cited case. If the Supreme Court or Court of Criminal Appeals has disposed of a writ or petition without an opinion, we give writ or petition history inside the court and date parenthetical following the year of decision according to the rules below. The history notation inside the parenthetical **is not italicized**.

Cochran v. Shannon, 456 S.W.2d 789 (Tex. App.—Amarillo 2000, pet. denied).

¹ An em dash (—) looks like an extra long hyphen (-). If you cannot produce an em dash, then use two hyphens (--). On most current versions of word processors, after you type two hyphens in a row, they will automatically be combined into an em dash. [Note: if using the online Workstation, you must use *three hyphens* in place of the em dash.]

If one of those courts has issued an opinion in disposing of the writ or petition, we give subsequent history following the court and date parenthetical according to the rules in the following section, 2. History with an Opinion, and Rule 4.6.1(b). The history notation following the parenthetical in that situation **is italicized**.

Cochran v. Shannon, 456 S.W.2d 789 (Tex. App.—Amarillo 2000), *pet. denied*, 458 S.W.2d 321 (Tex. 2001).

Civil cases have either writ or petition history, depending on the date the request for review was filed. Before September 1, 1997, parties attempting to appeal a civil case filed a “writ”; so filings before that date created “writ history.” These writ history notations are found in Rule 4.4.2. Beginning September 1, 1997, that same “writ” has been called a “petition,” thus creating “petition history.” The civil petition history notations are found in Rule 4.4.1.

Because parties to criminal cases have always filed a “petition” for review, criminal cases have only petition history, regardless of the date of decision. Those criminal petition history notations are found in Rule 4.5.

To find the history for a Texas case, click “Shepardize this document” in Lexis Advance or the Keycite “History” tab in WestlawNext. The resulting Shepard’s or Keycite report will describe the procedural history of the case. Use the disposition abbreviations given in 4.4.1, 4.4.2, and 4.5 to translate the Shepard’s or Keycite history into the appropriate *Texas Rules of Form* history notation. Note that the procedural terms used in Shepard’s or Keycite may differ from the terms listed in the Texas Rules of Form; for example, Keycite uses the term “review denied” instead of “petition denied” for recent cases. Always use the disposition abbreviations listed in the *Texas Rules of Form* rather than relying on the procedural terms recited in Shepard’s or Keycite.

If Shepard’s or Keycite recites no subsequent history for a case, then we assume that neither party has filed a petition; we may note this fact by using either “no pet. h.” or “no pet.” These two notations are the most commonly confused, but each has a distinct meaning. Use “no pet. h.” during the time period that a petition may be filed and pending. Many practitioners use a rule of thumb of two years. Therefore, if your citation is less than two years old, and you find no information in the Shepard’s or Keycite, use the notation “no pet. h.” That indicates to your reader that, at this point, all you know for sure is that no petition history has been recorded. This leaves open the possibility that a petition may have been filed. However, if more than two years have passed and you find no subsequent history in Shepard’s or Keycite, use the notation “no pet.” to indicate that no petition was ever filed.

2. History with an Opinion

If the Texas Supreme Court or Court of Criminal Appeals issues an opinion in a case, either after the petition or writ is granted or in otherwise disposing of the petition or writ, that information should be given as subsequent history according to Rule 4.6.1.

You will know that the court has issued an opinion by the notations in Shepard’s or Keycite. If the direct subsequent history report includes a citation to a higher court’s opinion, you know the higher court has issued an opinion.

If the citation is to an opinion issued in conjunction with the granting or refusal of a request for review, you will indicate the disposition (found in Rules 4.4.1, 4.4.2, or 4.5) in italics after the court and date parenthetical followed by the citation to the case.

Cochran v. Shannon, 456 S.W.2d 789 (Tex. App.—Amarillo 2000), *pet. denied*, 458 S.W.2d 321 (Tex. 2001).

If the citation is to an opinion the court issued after granting the request for review and deciding the case, you will include this citation as subsequent history as demonstrated in ICW Exercise 10, Prior & Subsequent History.

Cochran v. Shannon, 456 S.W.2d 789 (Tex. App.—Amarillo 2000), *aff'd*, 458 S.W.2d 321 (Tex. 2001).

B. MEMORANDUM OPINIONS & OPINIONS NOT DESIGNATED FOR PUBLICATION

Finally, the citation may need an additional parenthetical if it is a memorandum opinion or an opinion not designated for publication.² (See examples in Rule 4.1.2.) If the opinion is simply designated as an opinion for publication, no parenthetical is necessary.

C. DRY RUN

Whew! Got all that? It's really less complicated than it might seem. Let's try one. Say that you want to cite *Robbins v. HNG Oil Co.* The opinion was issued by the Fourteenth District Court of Appeals in Houston in 1994. The opinion is printed in volume 878 of South Western Reporter, Second Series, page 351. First, get down the information you already know from completing past ICW exercises:

Robbins v. HNG Oil Co., 878 S.W.2d 351

Add the abbreviation for the intermediate courts of appeals:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.

Next, add the city of the court. It will be separated from "Tex. App." by an em dash, or two hyphens, with no spaces before or after:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston

Because this is a Houston Court of Appeals case, you will also need to include the district number in brackets. Remember that only cites to Houston Courts of Appeals cases include the district number—all other courts are sufficiently identified by the name of the city.

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.]

Then add the year of decision:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.] 1994

Now that you are done with the court and date information, you need to add the writ history (notice that you will have writ history rather than petition history because this case was decided before September 1, 1997, when civil cases began to have petition history). For that, you will need to consult the Shepard's or Keycite direct history report (we'll use Keycite for this example). Clicking the History tab, you see that Keycite reports the direct history as "writ dismissed w.o.j." Remembering that you cannot rely on the abbreviations in Shepard's or Keycite, you look back at Rule 4.4.1 for the list of writ history notations. You see that the sixth notation contains your match: "writ dism'd w.o.j." So add it to your citation, separating it from the court and date information with a comma. Finally, close the parentheses and end your citation sentence with a period. Hey, that wasn't so hard!

² Why the court might designate an opinion as a memorandum opinion after January 1, 2003, and why a prior opinion might not be designated for publication are beyond the scope of the ICW. Your professor will likely cover this.

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.] 1994, *writ dismissed*, w.o.j.).

Now let's assume that when you clicked "History" in WestlawNext, you found a notation that looks like this:

Writ Dismissed W.O.J. by
Robbins v. HNG Oil Co., 880 S.W.2d 125 (Tex. 1994).

In that situation, your citation would look like this:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.]), *writ dismissed* w.o.j., 880 S.W.2d 125 (Tex. 1994).³

How about one final twist? What if you had found that same citation next to page 351 just as in the example above, but when you went to Shepardize or Keycite it, you found that the Supreme Court had granted the request for review, heard the case, and then issued an opinion reversing the Fourteenth Court of Appeals' decision? In that situation, your citation would look like this:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.]), *rev'd*, 880 S.W.2d 125 (Tex. 1994).

Finally, assume that instead of going up for review by the Texas Supreme Court, the parties decided not to pursue the case beyond the Court of Appeals and that the court designated its opinion as a memorandum opinion. In that case, the citation would look like this:

Robbins v. HNG Oil Co., 878 S.W.2d 351 (Tex. App.—Houston [14th Dist.] 1994, no pet.) (mem. op.).

Okay, now that you've got it, it's time to do some citin' TEXAS STYLE!

³ Here is a little prior and subsequent history review: Remember that you omit the first date of decision when the subsequent citation is from the same year.

Checklist for Texas Courts of Appeals Cases

- Is your case an intermediate courts of appeals case from Texas? If not, you don't need *Texas Rules of Form*. Back to the *ALWD Guide* with you!
- Have you identified the city in which the court is located, being sure to leave no spaces before or after the separating dash?
- If you have a Houston Court of Appeals case, have you identified the district in brackets?
- Have you looked up the case in Shepard's or Keycite?
 - If you did not find a notation, has the time expired for filing a request for review?
 - If yes, use the notation "no pet."
 - If no, use the notation "no pet. h."
 - If you found a history notation . . .
 - have you made sure that you use the appropriate abbreviation from Rule 4.4.1, 4.4.2, or 4.5?
 - did you place the history notation *unitalicized* within the court and date parenthetical?
 - If you found a citation to another case . . .
 - if it was an opinion explaining why the court granted or refused the request for review, have you used the appropriate abbreviation from Rule 4.4.1, 4.4.2, or 4.5?
 - if it was an opinion issued after the court granted review and heard the case, have you appropriately noted the subsequent history according to Rule 10.7 and T.8 of the *ALWD Guide*?
 - did you place the history notation outside the court and date parenthetical and italicize it?
- Did you remember to end your citation sentence with a period?