Citation of Unpublished Opinions Issued Prior to January 1, 2007 in Federal Courts

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Circuit	Category	Treatment	Authority
First	Discouraging	Not precedent; may be cited regardless of date issued for its persuasive value	1ST CIR. R. 32.1.0(a)-(b)
Second	Restrictive	Not precedent; citation not permitted except for a related case, or for the purposes of estoppel or res judicata	2ND CIR. R. 0.23(c)(2)
Third	Permissive	Not precedent; court, by tradition, does not cite to its non-precedential decisions as authority	3RD CIR. I.O.P. 5.7

[1] Karen S. Breda gratefully acknowledges the assistance of Boston College Law School student Michael Moore in preparing this guide.

Fourth	Discouraging	Citation is disfavored, except for establishing res judicata, estoppel, or law of the case; however, the court will allow it if no published opinion would serve as well.	4TH CIR. R. 32.1
Fifth	Permissive	Permits citation, in compliance with FED. R. APP. P. 32.1(b); unpublished opinions issued before 1996 are precedential; unpublished opinions issued on or after January 1, 1996 are not precedential.	5TH CIR. R. 28.7; 47.5.3 and 47.5.4
Sixth	Permissive	Permits citation, in compliance with FED. R. APP. P. 32.1(b)	6TH CIR. R. 28(g)

Seventh	Restrictive	Not precedent; citation not permitted except to support a claim of preclusion or to establish the law of the case	7TH CIR. R. 32.1(d)
Eighth	Discouraging	Not precedent; citation permitted to establish res judicata, collateral estoppel, or the law of the case; court also allows citation for persuasive value if no published opinion would serve as well.	8TH CIR. R. 32.1A; Anastasoff v. U.S., 223 F.3d 898 (8th Cir., 2000) (holding unconstitutional restrictions on citations to unpublished opinions), *vacated as moot on other grounds*, 235 F.3d 1054 (8th Cir. 2000) (en banc)

Ninth	Restrictive	Not precedent; citation not permitted except to establish law of the case, preclusion, other factual purposes, in a request to publish a disposition or order, or in a petition for rehearing	9TH CIR. R. 36-3(a), (c); Hart v. Massanari, 266 F.3d 1155 (9th Cir., 2001) (holding the restriction of citations to unpublished opinions as constitutional)
Tenth	Permissive	Not precedent; citation permitted for persuasive value, or to establish law of the case and preclusion	10TH CIR. R. 32.1(A)
Eleventh	Permissive	Not precedent; citation permitted for persuasive value	11TH CIR. R. 36-2

District of Columbia	Permissive	If issued before January 1, 2002, not precedent and may be cited to establish res judicata or law of the case; if issued on or after January 1, 2002, may be cited as precedent	D.C. CIR. R. 32.1(b)(1)(A)-(B)
Federal Circuit	Discouraging	Court may look to unpublished opinion for guidance or persuasive reasoning	FED. CIR. R. 32.1