

## CHAPTER 7 CASE LAW RESEARCH

### CASE LAW: BACKGROUND

For the purpose of legal research the term "cases" or "case law" refers to opinions written by judges, usually on the appellate level, which resolve litigated disputes. In deciding cases, appellate judges base their reasoning on statutes or previously decided cases.

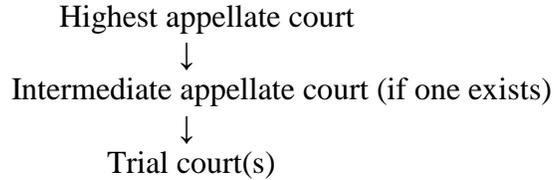
There are several points to keep in mind when conducting case research:

- \* Opinions of the highest level appellate court of the jurisdiction are the most important mandatory authority. If the highest level court has ruled on a matter, that ruling binds any intermediate level appellate or trial courts in the jurisdiction. If the highest court has not ruled, the rulings of intermediate level courts are the best authority which can be found, but they do not bind the higher level court in any subsequent proceeding.
- \* When researching, it is usually most efficient to seek out and read the most recent cases first and work your way back. The most recent cases will: a) reflect the current state of the law and b) contain citations to, and discussions of, earlier relevant cases.
- \* Remember that the one-paragraph summary of a case (known as the syllabus) and the headnotes which precede the court's opinion are provided by the editors of the reporter, and do not constitute part of the actual opinion, although they often quote or paraphrase its actual text. Headnotes and syllabi are useful research tools because skimming them may allow the researcher to eliminate irrelevant cases. In order to fully understand the holding of a case, however, you must read the opinion in its entirety.
- \* Keep in mind the distinction between holding and dicta. The holding is the part of the opinion which is central to deciding the issue before the court; it is characterized as the law applied to the facts at hand. Dicta, on the other hand, refers to parts of the judge's opinion which are not essential to the resolution of the dispute before the court. Language in an opinion which can be characterized as dicta is not binding on subsequent courts.

### COURT HIERARCHIES AND THE APPELLATE PROCESS

In the United States, there are 50 state court systems plus the District of Columbia and federal court systems (not including territories such as American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S Virgin Islands). Court hierarchies in each jurisdiction follow this established pattern:

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The holdings of cases decided by the highest-level appellate court in a jurisdiction are mandatory precedent for the lower courts in that particular hierarchy.

The holdings of cases decided by intermediate appellate courts are not binding on courts at the higher appellate level. They are less likely than decisions of the highest court to carry persuasive weight in other jurisdictions.

Cases decided at the trial level which are not appealed usually generate no written opinion, are not reported, and are not considered precedent.

Court decisions are good law (that is, they can be relied upon) unless they are reversed by a higher appellate court, they are overruled by the same court, or a statute renders the holding obsolete.

### **PRINT SOURCES FOR CASE LAW RESEARCH**

#### **Case reporters**

Case reporters are series of volumes that contain the text of published cases. The cases are generally published chronologically as they are decided; they are not grouped by subject, judge, or other system. Official reporters are sanctioned by statute or court rule. Official reporters may or may not be printed by a government body.

There are many published reporter series. Separate sets of reporters exist for the United States Supreme Court, for various federal courts, and for state courts. A number of different publishers are involved in producing print reporters; however, for more than a century the publishing of American court cases has been dominated by one company, West Publishing, now known as Thomson West, a part of Thomson Reuters.

Most reporters only publish appellate court cases. This is because at the state level, trial court cases are for the most part not reported. Selected federal trial court cases are reported in the *Federal Supplement*. For particularly important unreported trial court cases, check newspapers or perhaps subject-specialized reporters from the time of the decision. Materials in court files are generally available to the public. Exceptions include juvenile court records, which are closed in most jurisdictions, and cases in which the trial judge has ordered the record sealed. To find out what materials are available, contact the clerk of the court in which the trial was held. The library has directories to help in locating contact information.

A case may be ordered unpublished or depublished for a variety of reasons, e.g.: the

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judge doesn't want it cited as precedent, the case has been overturned, the case has been granted review in a higher court, or the judge just thinks too many unimportant cases get printed. Always check local court rules before using unpublished cases as authority.

### State reporters and the National Reporter System

Beginning late in the nineteenth century, West Publishing Company developed a system of case reporters which provided court opinions from all fifty states. There are seven regional reporters (Atlantic, North Eastern, North Western, Pacific, South Eastern, South Western, and Southern) and a separate reporter for each of two large states, New York and California. These constitute the National Reporter System. There are still a number of reporters that publish cases from one state only; for example, our library maintains an up-to-date set of both *Maryland Reports* (opinions of the Maryland Court of Appeals) and *Maryland Appellate Reports* (opinions of the Maryland Court of Special Appeals). Most of the single state reporters are designated as official reports because they are published under the authority of the state government. For about one half of the states, however, there is no longer a separate reporter devoted to cases from only that state. The tendency has been to rely increasingly upon the National Reporter System for print versions of cases from the fifty states, even when official reporters still exist. Our library does not maintain an up-to-date set of National Reporter System reporters as the opinions are widely available from online legal research services.

### Editorial enhancements to published cases

Many reporters add summaries, called the syllabus and headnotes, to the official text of cases. The syllabus and headnotes are handy brief summaries of rules of law and significant facts drafted by publishers' editors or court recorders. They are not authoritative, although an exception is that in Ohio the syllabus is authoritative. Never cite to a case solely on the basis of the headnote or syllabus. You must always read the full case. Headnotes may not contain sufficient factual information to accurately assess the holding of the case; on occasion the headnote may even misrepresent the holding. In rare cases they are frankly erroneous. An example is omission of the word "not" from a headnote. Think of the headnotes and syllabus as finding tools.

Many reporters also list counsel for the various parties somewhere near the beginning of the text of each case. The names of counsel can give you a contact person to call for further details or subsequent history of a case, or to request copies of briefs.

### Advance Sheets

Advance sheets are freestanding paper pamphlets that supplement reporter sets. Eventually they are replaced by bound volumes. While the exact contents will vary from reporter to reporter, most advance sheets have the following features in addition to the text of the cases.

*Table of cases contained in the volume.* This usually goes beyond the physical volume to

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the volume number assigned to the advance sheets. For example, it may take 5 physical pamphlets of the advance sheets to make up volume 47 of the bound reporter. These 5 advance sheet pamphlets will all have volume 47 as their volume number. The table of cases contained in the latest advance sheet pamphlet generally covers the cases reported in volume 47. With some advance sheets, including the California official reports advance sheets, the table of cases is a multi volume table covering all cases reported since the last *bound* volume. For example, if the last bound volume is 46, volume 47 consists of 5 advance sheet pamphlets but has not been bound yet, and volume 48 has started with its first advance sheet, the table of cases in the volume 48 advance sheet may cover all of volume 47 as well as volume 48.

*Table of statutes interpreted in the cases reported in the volume.* This table may also be for a single volume or multiple volumes.

*Subject index or digest of the cases reported.* For West reporters, this will be the most current update of their Key Number digest. For other reporters, a subject index to the cases reported will be included. Note that only those topics, or topics and key numbers that are included in that volume will be included. If no case in that volume deals with habeas corpus there will not be a habeas corpus topic listed.

*Lists of presiding judges.*

*Revisions in the local court rules.* While they are compiled in other types of legal resources, local court rules typically appear first in advance sheets.

*Subsequent History Tables.* Some advance sheets contain this information. For example, advance sheets for the California official reports have a table that gives the subsequent history for cases, including whether the case has been depublished, granted review, or overturned.

The exact features vary by reporter. Generally speaking though, there is a wealth of information and finding tools that go far beyond just the most recent cases.

### **Case digests**

Because case reporters print cases chronologically, an indexing system is necessary to do effective research. Though other indexing systems exist, the most comprehensive and well known has been developed by the West Publishing Company. West has developed a system for indexing cases based on the Topic and Key Number System. This system divides the law into more than 400 broad topics. Within each topic, subtopics are represented by key numbers. Over the years, as the law has developed and grown in complexity, many new topics have been instituted and key numbers have proliferated within both old and new topics. Some complex topics have thousands of subtopics represented by key numbers; other topics have many fewer. The print version of the topic and key number system can be found in a series of West digests, available for state and federal courts. The topic and key number system is also available online on Westlaw.

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Except for the digest for Maryland, our library does not maintain an up-to-date digest for any other jurisdiction.

### **Relationship between West Digests and Reporters**

Every case published in the West reporters is indexed by editors who assign a topic and key number to each issue decided in the case and write a short summary (abstract) of the issue. The two things combined, the topic/key number and the summary of the issue, are consolidated into a headnote. In each reported case, headnotes appear before the text of the opinion. Some cases have only one headnote while others have dozens, depending on the number and complexity of the issues in the case. Central to understanding the West indexing/reporting system is the connection between the headnotes which appear in the reported versions of the cases and the digest summaries. The brief summary of each issue that appears in a headnote at the beginning of a reported case also appears under that corresponding topic and key number in the Digest. The digest provides a subject arrangement of summaries of cases arising in the jurisdictions that are covered by the particular digest, along with citations to the reporters where the full text of the opinions can be found.

### **Using the West Digests**

West publishes regional digests for four of its seven regional reporters. For states not covered by a regional digest our library has individual state digests. However, all of these digests in our library, with the exception of the Maryland Digest, are updated only through 2006. WestlawNext provides online access to the West Key Number System, an outline of the Topics and Key Numbers. This online tool is kept up-to-date and is even more current than the print digests.

Westlaw claims to provide comprehensive coverage of all reported appellate decisions in or arising in a particular state or region. Digests are merely finding tools and are never cited. A case described within a digest should never be cited without first reading the full text of the case itself, verifying the digest's categorization, and making sure the case is still good law.

All state, regional and federal digests published by West have similar features listed below.

- \* Topics are arranged alphabetically and are subdivided into key numbers that represent subtopics. Within each subtopic, abstracts of cases are arranged by jurisdiction (higher to lower courts) and in reverse chronological order. Each digest includes multiple volumes that cover the topics.
- \* The Descriptive Word Index functions as an index to the topics. The Descriptive Word Index is used by the researcher to look up key words which describe the legal issues or factual elements of the questions being researched. It provides references to topics and key numbers, which the researcher then

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looks up to see the cases that have been indexed under those key numbers.

- \* Each topic begins with a table of contents that includes a listing of key numbers and subtopics for that topic.
- \* Tables of Cases are found in each digest in which it is possible to look up party names and find the reporter citation(s) for the case.
- \* Most print digests are kept up to date by annual "pocket parts," which are pamphlets designed to be inserted into the back of each volume. These pocket parts provide the newest cases added to the Digest. Both the Digest and the Descriptive Word Index volumes contain pocket parts. There may also be free-standing softbound supplementary pamphlets which contain references to recently decided cases not listed in the pocket part. It is essential to check these updating sources; in fact, it is often sensible to check them before consulting the main volume in order to see the more recent cases early in the research process.

### **Tips for Using Digests**

Choose the digest most narrowly focused to your research topic. For example, if you need California cases only, use a California digest instead of the Pacific Digest. In our library, check the list entitled "State and Regional Case Law Resources" to determine which digest is available for your jurisdiction. Always be sure to check for pocket parts in the specific volume of the digest, keeping in mind that it is only updated through 2006. If there are multiple series of a digest, it usually makes sense to start with the most recent and work your way back as needed.

The Descriptive Word Index is usually the best starting point to the digest. Since both facts and legal terms may be searched in the index, it is helpful to have a basic understanding of the legal issues involved in a particular problem before attempting to navigate the index. A known statute can be a good access point into digests that have a table of statutes. A known case is also a good access point, as it is often an efficient strategy to take the topic and key numbers from relevant cases already found and look up those topic and key numbers in the digest. A caution with the known case strategy is that key numbers do change so older cases may not be indexed under current key numbers for that topic. Also, nuances between key numbers may not be substantial and a check of the index and the topic outline should be undertaken to locate all relevant key numbers.

### **American Law Reports (A.L.R.)**

A.L.R. is characterized as a case finding tool by some researchers. A.L.R. publishes an annotation or review article discussing a topic along with the full text of a representative case. Annotations attempt to provide discussion of and citations to previously reported cases on a topic. The annotations discuss all sides of the issue. Annotations present general principles deduced from the cases and give their exceptions, qualifications,

## **Thurgood Marshall Law Library Guide to Legal Research – 2015 - 2016**

distinctions and applications, as well as jurisdictional based differences. Our library maintains a print collection of A.L.R. titles updated only through 2015.

### **ELECTRONIC SOURCES FOR CASE LAW RESEARCH**

The text of most reported, and many unreported, cases appear in several electronic sources.

#### **Bloomberg Law, Lexis, and Westlaw**

Bloomberg Law, Lexis (Lexis Advance and Lexis.com), and Westlaw (collectively online legal research services) provide the full text of state and federal cases, with coverage extending as far back in time as most researchers usually need. They also provide access to unpublished opinions. Cases appearing on Westlaw include the headnotes and other "editorial enhancements" added by West to the cases in the print reporters. Lexis includes editorial enhancements for cases as well. Bloomberg Law has editorial enhancements like headnotes for some, but not all cases.

#### **Internet**

Though not as highly organized or comprehensive a source for case research as subscription online legal research services, there are many free web sites that supply the text of cases. For example, most federal and many state courts have web sites where the text of recently decided cases is available. There are some limiting factors in case research on the Internet compared to online legal research services. An Internet site probably will not provide enough archival (historical) coverage to allow comprehensive research on many topics or it may provide versions of the text of cases which are not authoritative. The search engines available may not be as sophisticated or as powerful as those available on subscription online legal research services. Citator services that are available on Bloomberg Law (BCite), Lexis (Shepard's) and Westlaw (KeyCite) currently have no counterpart on the Internet.

### **CITATORS: FUNCTION AND FORMATS**

Citation verification and updating tools are central to effective case law research. Once a case is decided and the opinion published, it does not remain static. It becomes part of a developing body of case law on a particular issue. The individual case may be frequently cited and relied upon by judges considering subsequent cases or it may be disagreed with and distinguished until its precedential value is negligible. Although a case continues to appear in a print reporter or in an electronic database over the years (that is, cases which are overruled or otherwise treated unfavorably are not deleted from publications or databases), its value as precedent is determined by subsequently decided cases which must be discovered through research. This is because judges decide cases based on reasoning of previously decided cases; therefore any individual case can be seen as part of a chain of decisions which develops a legal theory. It is often necessary for thorough research and a reliable conclusion to find and read all or most of the cases that are part of

## Thurgood Marshall Law Library Guide to Legal Research – 2015 - 2016

the chain. Depending upon where in the research process you enter this chain, by locating a reference to a relevant case through a secondary source, digest or electronic research, or otherwise, it is crucial to determine where that case stands in relation to the body of case law on that or related topics. Such a comprehensive review of the relevant mandatory authorities usually requires the use of several research sources and techniques. Among the resources which must be consulted are citators.

In the current world of legal research, citators are used primarily in electronic format. There are two main purposes achieved by consulting citators as part of the case research process:

1. To ascertain the status and precedential weight of an individual case. A case's importance as precedent may be affected in two ways.
  - a. One is by later developments in the procedural history of the case itself, referred to as the history of the case. The case may have been reversed or affirmed on appeal.
  - b. The second is by holdings of subsequent cases unrelated to the original case referred to as the treatment of the case. Outside its own appellate chain, the case may have received significant treatment by subsequently decided cases.

For example, the case may have been cited with approval or followed by many later cases, indicating that its holding carries strong precedential weight. Alternatively, the case may have been frequently criticized or limited by later cases, which weakens its value as precedent. Less frequently, a case may be expressly overruled in a later opinion, indicating that the court will no longer follow it as precedent.

2. To assure comprehensive case research by identifying subsequently decided cases which have cited the case. Since often your research goal is to locate every potentially relevant case, citators that list every case that refers to your case are valuable tools.

## PRINT CITATORS

### Shepard's Citations

The original print publication for citation research was *Shepard's Citations*. This tool, which for many years represented the only available source for citation research, gave rise to the term "Shepardizing," which every U.S. law student and lawyer recognizes.

*Shepard's Citations* is not one publication, but a group of publications. Some of these are based on jurisdiction. For instance, *Shepard's Maryland Citations* lists citations to cases and other materials from Maryland. *Shepard's* essentially consists of a roughly chronological listing of every case that mentions a previous case. It uses a system of editorially assigned codes which indicate the history or treatment given the case by later decided cases. Like other units of *Shepard's*, it consists of several bound volumes

## Thurgood Marshall Law Library Guide to Legal Research – 2015 - 2016

updated by a number of supplementary pamphlets. In spite of the issuance of these updating pamphlets, a print *Shepard's* set is generally up to a few months behind in its listing of cases. Therefore the major drawbacks to using the print version of *Shepard's* are its lack of currency relative to the electronic citation tools and the cumbersome nature of the print volumes. Like many academic law libraries, the Thurgood Marshall Law Library no longer subscribes to print *Shepard's*.

### ELECTRONIC CITATORS

Electronic citation services are currently available on Bloomberg Law, Lexis, and Westlaw.

#### KeyCite (Westlaw)

KeyCite is Westlaw's citation service that covers all cases on Westlaw, the United States Code Annotated, the Code of Federal Regulations, and statutes from all 50 states and the District of Columbia. KeyCite arranges this information in a manner that eliminates many of the stylistic details that can make print citators confusing. It also attempts to help researchers determine which subsequent cases are likely to be significant, answering the time-honored question, "Do I have to look at **all** those cases?"

Instead of listing citing cases in a roughly chronological arrangement with the use of margin codes such as "r" for reversed or "d" for distinguished (as in the print version of *Shepard's*), KeyCite arranges the citing cases into four categories that indicate the depth of discussion given to the original case. Cases that provide extended discussion (defined by West as more than one printed page) are listed first. Three subsequent categories follow, which reflect declining degrees of depth of treatment, ending with a final category of cases that mention the original opinion in passing, usually in a string cite. Within each category, cases from the same jurisdiction as the court that decided the original case are listed first, followed by cases from other jurisdictions. The full text of each case in the listing can be accessed by clicking on its name in the list. Non-case materials, such as secondary sources, that cite the original opinion are also listed at the end of the display and are hot-linked.

KeyCite also permits restriction of the display of citing cases to those dealing with only the issue(s) of particular interest to the researcher. This technique is tied to the West headnotes and their corresponding topics and key numbers. This facilitates coordination of online research with print research techniques.

Texts of cases on Westlaw are linked to KeyCite by a system of graphics that signal the reader of an online opinion that important subsequent history or treatment of the opinion exists. Above the title of the case there may appear a blue "H" for "History" or a red or yellow flag that signals important negative treatment. Clicking on the signal takes the reader into the KeyCite display.

KeyCite is very current. West states that full KeyCite coverage is available within a few

## Thurgood Marshall Law Library Guide to Legal Research – 2015 - 2016

hours of the time a case appears online, and that it is updated equally quickly. KeyCite Alert is a service that monitors the status of cases and statutes and sends automatic updates when their KeyCite information changes. KeyCite Alert allows the researcher to specify how frequently the case or statute should be checked, and how the alert should be delivered. Delivery by email is one option. KeyCite also includes other features such as a Table of Authorities for each case, which is an alphabetical list of all cases cited within an opinion and signals for any of those cases that have negative history.

### Shepard's (Lexis)

The Lexis version of Shepard's covers all cases on Lexis, the United States Code Service, the Code of Federal Regulations, and statutes from all 50 states and the District of Columbia. The Lexis version of Shepard's also eliminates the use of the history and treatment codes that characterize the print Shepard's. Treatment such as "followed" or "criticized" is indicated by simply including the appropriate word beside the listed citations. Citations are listed by jurisdiction, and in reverse chronological order within each jurisdiction. Headnote numbers, referring back to the headnotes of the cited case, are also listed to help the researcher determine which cases may be most relevant to the issues being researched.

Shepard's provides citations to cases in secondary sources such as law reviews and A.L.R. The Lexis version of cases also includes codes or signals within the text of cases available online to indicate negative treatment, similar to the KeyCite signals that appear on Westlaw. Shepard's on Lexis also has an alert feature that lets researchers monitor developments relating to a case.

### BCite (Bloomberg Law)

BCite is Bloomberg Law's citation service. BCite is only available for cases. It provides a citation analysis summary using headers such as "positive," "distinguished," "caution," and "negative." In addition, the table of authorities notes how thoroughly the citing authority deals with the cited case, provides the characterizing reference, and allows for direct viewing of the citing authority. Like Lexis and Westlaw, Bloomberg Law also has an alert feature that lets researchers when their case has been cited. However, unlike Lexis and Westlaw, BCite does not let researchers limit their results to cases only addressing the issue(s) of particular interest to the researcher.

## CITATION FORMAT FOR CASES

Case citations have for many years followed a standard format. A typical case citation appears as follows:

*O'Donnell v. Sardegna*, 646 A.2d 398 (Md. 1994).

The elements of this citation are:

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<i>O'Donnell v. Sardegna</i>	names of parties to the action
646	volume number of the reporter
A.2d	abbreviation of the reporter title; this citation is to <i>Atlantic Reporter 2d</i> , the West regional reporter which includes Maryland cases
398	the page number on which the particular case begins
Md.	the abbreviation for the court which decided the case - here the Maryland Court of Appeals (this information is found in Table T. 1 of the <i>Bluebook</i> )
1994	the year the case was decided

The dominant citation manual that governs legal citation form is the *Bluebook: A Uniform System of Citation*. Citation rules according to this manual are complex. Many jurisdictions have local citation rules that supplement, alter, or replace the rules of the *Bluebook*.

### HIGHLIGHTS OF *BLUEBOOK* FORM FOR CASES

Rule 10 provides detailed rules for case citation form, including the parallel citation rule found at 10.3.1. A thumbnail sketch of the most important aspects of the rules for case citation form is provided below.

#### Case names

- Underscore or italicize all case names, including the “v.” and any procedural phrases. Do not underscore or italicize the comma that follows the case name. Rule 10.2.
- Rule 10 covers in detail which parts of a case name appear in the citation, and the abbreviations of words in case names. Generally given names or initials of individuals, as well as terms such as “appellee” which describe the parties are omitted. Additionally, when a case is a consolidation of two or more actions, or if multiple parties are listed, usually only the first-named party on each side of the first-named action is used in the citation; phrases such as “*et al.*” are omitted. Long procedural phrases such as “for the use of” or “on behalf of” are abbreviated to “*in re*,” “*ex parte*,” or “*ex rel.*” See Rules 10.2.1 and 10.2.2. Many terms in party names may be abbreviated; for example, the case name *Bazak International Corporation v. Mast Industries, Incorporated* may be written *Bazak Int’l Corp. v. Mast Indus. Inc.* For more information on abbreviations in case names, refer to Rule 10.2 and Table T6.

## Thurgood Marshall Law Library Guide to Legal Research – 2015 - 2016

### Reporters

- Table T1 provides information as to which reporters to cite for each jurisdiction. Court name abbreviations are listed in Table T7.

### Parenthetical

- It is essential that every case citation indicate which court decided the case. According to Rule 10.4, give the name of the court and its geographical jurisdiction (abbreviated according to Table T1) in the parenthetical phrase that immediately follows the citation.

If the court of decision is the highest court of the state, the abbreviation for the court provided by Table T1 is simply the abbreviation for that state. Note that the jurisdiction is omitted from the parenthetical if it is “unambiguously conveyed by the reporter title.”

Example: *Weems v. State*, 590 S.W.2d 693 (Mo. Ct. App. S. Dist. 1979)

The Missouri Court of Appeals, Southern District (an intermediate level appellate court, not the highest state court) is abbreviated as shown.

- The citation must also include the date or year of decision.
- Prior and subsequent history of a case may be included according to Rule 10.7. The general rule is that the subsequent history of a case (such as decisions on appeal) other than remands, rehearings, and rehearings en banc is given in full. Prior history is included only if deemed significant by the writer (e.g., if a lower court opinion more clearly describes or analyzes the issues in the case than the disposition on appeal); it is never mandatory.

Rules 10.8.1 and 18.1 govern citations to electronic databases. Although citation to print sources is the preferred format, you may need to cite to an electronic source if a case is unreported or is very recent and has not appeared in the print reporters.

Example: *Robinson v. Hicks*, No. 1:07-CV-1751, 2010 WL 5697139, at \*5 (M.D. Pa. Dec. 2, 2010).