

## **Chapter 8**

### **Legal Research, Analysis, and Writing**

#### **Chapter Outline**

1. Introduction
2. Primary and Secondary Sources
3. The Research Process
4. Finding and Analyzing Case Law
5. Researching Statutory Law
6. Researching Administrative Law
7. Finding Constitutional Law
8. Updating the Law
9. Legal Writing

#### **Chapter Objectives**

After completing this chapter, you will know:

- How primary and secondary sources of law differ and how to use each of these types of sources in the research process.
- The various steps involved in the research process.
- How to find and analyze case law and summarize, or brief, cases.
- Why finding current law is important and how to verify that your research results are up to date.
- Some important considerations in legal writing and the types of writing tasks often undertaken by paralegals.
- How to prepare a legal memorandum.

## Chapter 8 Legal Research, Analysis, and Writing

### Chapter Outline

- I. INTRODUCTION
  - A. For many paralegals, legal research is a fascinating part of their jobs.
  - B. Many paralegals now use computerized legal services to assist in their legal research.
- II. PRIMARY AND SECONDARY AUTHORITY
  - A. *Primary sources* of the law consist of all documents that establish the law, such as case decisions, a legislative act, an administrative rule, or a presidential order.
  - B. *Secondary sources* consist of books and articles that summarize, systematize, compile, or otherwise interpret the law, such as legal encyclopedias, articles in a law review, and treatises.

#### **Really? I have to research and use real books?**

Research is both mechanical and analytical. The process of research can be accomplished by using a checklist that reflects the sources, both primary and secondary, to be consulted. Knowing what each collection represents and how it fits into the research plan is a lofty goal. Know your state's court system, reporters, statute books, and secondary sources. Know which area of your law library houses these collections. Then, follow your checklist.

- III. THE RESEARCH PROCESS
  - A. Defining the Issue
    - i. The first step in the legal-research process is to identify the legal question, or issue, to be researched.
    - ii. Examine the facts of the case to determine the nature of the legal issue involved.
  - B. Determining Your Research Goals
    - i. Cases on Point
      - 1. A case on point is a previous case involving fact patterns and legal issues that are similar to a case that has not yet been decided by a court.
      - 2. The ideal case on point would be a case in which all four elements of the case (parties, circumstances, legal issues, and remedies sought) are very similar; such a case is called a case "on all fours."
    - ii. Mandatory Authorities
      - 1. A mandatory authority is any source of law that a court must follow when deciding a case.

2. To serve as mandatory authority, a case must be on point and decided by a superior court.
3. A lower court is bound to follow decisions set forth by a higher court in the same jurisdiction.
4. When researching, look for cases on point decided by the highest court in your jurisdiction.

### iii. Persuasive Authorities

1. A persuasive authority is not binding on a court.
2. Examples are as follows:
  - a. Prior court opinions of other jurisdictions
  - b. Legal periodicals
  - c. Encyclopedias
  - d. Legal dictionaries.

## C. Consulting Secondary Sources

### i. Legal Encyclopedias

1. The two major legal encyclopedias are *American Jurisprudence*, Second Edition, and *Corpus Juris Secundum*.
2. Topics are organized alphabetically.
3. These encyclopedias are valuable because they provide both broad statements of accepted law and footnotes to other legal sources.
4. *Words and Phrases* is a 46-volume encyclopedia of definitions and interpretations of legal terms and phrases published by West Group.
  - a. Each definition is followed by abstracts from federal or state court decisions in which the word or phrase has been interpreted or defined.

### ii. Digests

1. Compilations in which brief statements regarding court cases are arranged by subject and subdivided by jurisdiction and court.
2. The West Key-Number System has simplified the task of researching case law.
3. The system divides all American law into specific categories, or topics, arranged in alphabetical order.
4. The topics are further divided into many specific subtopics; each designated by a key number.
5. Other digests
  - a. There are other digests for specific jurisdictions and specialized interest areas, such as the *Lawyer's Edition of the Digest of the Supreme Court Reports*.

- iii. Annotations: *American Law Reports* (A.L.R.) is a multi-volume set that present the full text of selected cases in numerous areas of the law.
  - 1. This set is helpful in finding cases from jurisdictions throughout the country with similar factual and legal issues.
- iv. Treatises are formal, scholarly works that treat a given subject systematically and in detail.
  - 1. Treatises are written by law professors, legal scholars, and practicing attorneys.
- v. Restatements of the Law are highly respected scholarly compilations of the common law that are published by the American Law Institute (ALI).
- vi. Legal Periodicals contain thoroughly researched information on a specific area of the law.

#### **Now I have to read those books?**

Locating research material is difficult enough, but understanding what you have located is even harder. Statutes may not be written in plain English or in a reader-friendly format. Cases may be complex, involving much dicta about issues unrelated to that which you are researching. Be patient. Learn to dissect cases and break statutes into elements or component sections. Then, apply these research materials to your facts and demonstrate an analytical answer to your client's legal issue.

#### **IV. FINDING AND ANALYZING CASE LAW**

##### **A. Finding Case Law**

##### **i. State Court Decisions**

- 1. State court decisions are found in the state reporters of that particular state.
- 2. A few states, including New York and California, publish more than one official state reporter.

##### **ii. Regional Reporters.**

- 1. State court opinions also appear in regional units of the National Reporter System published by West Group.
- 2. These reporters publish opinions more quickly than state reporters.
- 3. This system divides the states into geographical areas:
  - a. Atlantic
  - b. South Eastern
  - c. South Western
  - d. North Western
  - e. North Eastern
  - f. Southern

- g. Pacific
- 4. Citation Format
  - a. After an appellate decision has been published, it is normally referred to by its citation.
  - b. A reference to the other reporter or reporters in which the case can be found is known as a *parallel citation*.
  - c. When performing legal research, you should include citations to cases or other legal sources in your notes.
  - d. The most widely-used book on how to cite legal sources is *The Bluebook: A Uniform System of Citation*.
- 5. Federal Court Decisions
  - a. Federal trial court opinions are published unofficially in West's Federal Supplement (F.Supp.).
  - b. Opinions from the federal circuit court of appeals are published unofficially in West's Federal Reporter (F., F2d, or F3d).
- 6. United States Supreme Court Decisions
  - a. *The United States Reports* is the official edition of all decisions of the United States Supreme Court.
  - b. *The Supreme Court Reporter* (S.Ct.) is an "unofficial reporter."
    - i. The opinion is preceded by a brief syllabus and headnotes with key numbers.
  - c. The *Lawyers' Edition of the Supreme Court Reports* (L.Ed. or L.Ed.2d) is an unofficial edition of the entire series of the Supreme Court reports and contains many decisions not reported in earlier official volumes.
    - i. The *Lawyers' Edition* offers research tools and provides summaries of the briefs presented by counsel.

## B. Analyzing Case Law

### i. The Components of a Case

#### 1. Case Format

- a. Case Citation - Shows the volume and page number where the case is located in a particular case reporter.

- b. Docket Number - The docket number assigned by the court clerk where the case is initially filed.
  - c. Dates Argued and Decided
  - d. Syllabus - A brief synopsis of the facts of the case, the issues analyzed by the court, and the court's conclusion.
    - i. Reading the syllabus is not a substitute for reading the case.
  - e. Headnotes - Short paragraphs that serve to highlight and summarize specific rules of law mentioned in the case.
  - f. Names of Counsel
  - g. Name of Judge or Justice Authoring the Opinion
- 2. Opinion - Contains the analysis decision of the judge or judges that heard and decided the case.
- 3. The Court's Conclusion
  - a. In the *conclusion* the judges indicate their decision on the issue or issues before the court.
- ii. Guidelines for Reading Cases
  - 1. It may be necessary to reread a case several times to understand what is being said.
  - 2. Judges often indicate sections and subsections within an opinion by numbers, letters, or subtitles.
  - 3. Distinguish the Court's Holding from Dicta
  - 4. Only the *holding* (the legal principle to be drawn from the court's decision) is binding.
  - 5. Other views expressed in the opinion are referred to as *dicta* and are not binding in subsequent cases.
- iii. Summarizing and Briefing Cases
  - 1. Legal professionals often use an analytical technique called *case briefing* to reduce the content of the case to its essentials.
  - 2. A typical case brief will contain the case citation, the key facts of the case, the case's procedural history, a statement of the issue(s) raised in the case, the court's holding, the court's rationale, and the court's judgment.

## V. RESEARCHING STATUTORY LAW

- A. Statutes are enacted by legislative bodies.
- B. Finding Statutory Law

- i. The laws passed by the United States Congress are collected in a publication entitled *United States Statutes at Large*.
- ii. State laws are published in similar state publications.
- iii. Although these are arranged by date of enactment, the laws are referred to in their codified form.
  - 1. A code is a systematic and topically organized presentation of laws, rules, or regulations.
  - 2. When researching statutes, start by reviewing the topical index to find statutes relevant to your issue.
- iv. The *United States Code (U.S.C.)*
  - 1. The U.S.C. is published by the United States government.
  - 2. The U.S.C. organizes statutes into 50 subjects, or titles.
  - 3. The U.S.C. further subdivides each title into chapters (sections) and subchapters.
  - 4. The researcher can find a statute in the U.S.C. through the following methods:
    - a. Searching through the topical outlines
    - b. Looking in the index
    - c. Looking under the act's popular name in the volume entitled *Popular Name Table*.
- v. Unofficial Versions of the Federal Code
  - 1. The *United States Code Annotated (U.S.C.A.)*
    - a. The U.S.C.A. contains the full text of the U.S.C., the United States Constitution, the *Federal Rules of Evidence*, and various other rules, including the *Rules of Civil Procedure* and *Rules of Criminal Procedure*.
    - b. The U.S.C.A. is more current than the U.S.C. and provides updated statutory information through supplemental pocket parts and pamphlets many times a year.
  - 2. The *United States Code Service (U.S.C.S.)*
    - a. This code is published by the West Group.
    - b. The research section of the U.S.C.S. provides references and citations to some sources that are not contained in the U.S.C.A., such as *American Law Reports*, legal periodicals, and *American Jurisprudence*.
  - 3. State Codes
    - a. State codes follow the U.S.C. pattern of arranging statutes by subject.
    - b. Many states publish annotated codes that provide references to case law, legislative

history sources, and other documents in which the statute has been considered or discussed.

C. Analyzing Statutory Law

- i. Some statutes are extremely wordy or lengthy or difficult to understand.
- ii. By carefully reading and rereading a statute, a paralegal can usually determine the reasons for the statute's enactment and other things inherent in the statute such as:
  1. Why was the statute enacted?
  2. When does the statute take effect?
  3. To what class or group of people does the statute apply?
  4. What kind of conduct is regulated by the statute, and in what circumstances is that conduct prohibited, required, or permitted?
  5. Are there any exceptions to the statute's applicability?
- iii. Another technique is to research case law to see how other courts have applied the statute or to research the legislative history of the statute.

VI. RESEARCHING ADMINISTRATIVE LAW

A. The *Code of Federal Regulations (C.F.R.)*

- i. C.F.R. contains all federal administrative agency regulations

B. Publication of the C.F.R.

- i. The regulations in the C.F.R. are compiled from the Federal Register.

C. Finding Tools for Administrative Law

- i. A good place to start researching administrative regulations is in the index section of the C.F.R.'s *Index and Finding Aids* volume.
- ii. The Congressional Information Service (C.I.S.) provides an index to the C.F.R. that is helpful in locating regulations by subject matter and in determining the geographical area affected by the regulation.
- iii. The American Digest System provides coverage of court cases dealing with administrative questions but does not contain agency rulings.

**Simple, succinct, structured sentences with style ...**

Avoid the temptation to write in legalese. You probably hate reading through all that verbiage, so keep that in mind as you draft letters, pleadings, and other court documents. Make the information easy for the reader to comprehend. Make your sentences short and to the point. Avoid long sentences.



## VII. FINDING CONSTITUTIONAL LAW

- A. The United States Constitution can be found in a number of publications, including the extensively annotated official publication, which is available through the Library of Congress.
- B. Annotated versions of state constitutions are also available.

## VIII. UPDATING THE LAW

- A. Checking Supplemental Publications
  - i. Legal encyclopedias, case digests, and other sources are updated periodically by the publication of pamphlets or pocket parts.
  - ii. Pocket parts are separate pamphlets containing recent cases or changes in the law that are used to update authorities. It is called a pocket part because it slips into a sleeve, or pocket, in the back binder of the volume.
- B. *Shepard's Citations* contains the most comprehensive system of case citators in the United States.
  - i. Citators provide the history and interpretation of an authority, and a list of authorities that have interpreted, applied or modified that authority.
  - ii. Use *Shepard's* to obtain parallel citations for the cited case and verify the history of a case.
- C. On-line citators enable the researcher to ensure that research results are as up to date as possible. Several computerized legal-research services, such as Westlaw® and Lexis®, provide online citators.

### **Keep your audience in mind**

As you write, keep your audience in mind. To whom are you writing and for what reason? Are you writing to the client? Are you preparing discovery material for your opponent? Are you asking the court to rule in your favor? Once you determine this objective, you will be better able to begin your project, writing in an appropriate style. Read your writing. Write again. Re-read your writing. Re-write again. Make your writing a work of art.

## IX. LEGAL WRITING

- A. Legal research and writing go hand in hand.
  - i. After completing your research, a paralegal will need to create a memorandum in which to summarize the research results.
- B. Important Considerations in Legal Writing
  - i. Accuracy - Proofread carefully; ensure that there are no grammatical or spelling errors.

- ii. Legal terminology - Consider the purpose of the legal document and communicate effectively, minimizing confusing legal terms.
- iii. Writing approach - Determine whether the writing is to be objective or persuasive.
  - 1. *Objective* writing is an unbiased analysis, presenting a balanced discussion of both sides.
  - 2. *Persuasive* writing requires advocating the facts and issues in the light most favorable to your client.

#### C. Pleadings and Discovery

- i. Many writing tasks undertaken by paralegals involve forms that must be submitted to the court or to opposing counsel.
- ii. It is especially important that these documents contain the required information and be presented in the appropriate format.

#### D. General Legal Correspondence

- i. Types of Legal Letters
  - 1. An *informative letter* conveys information to another party.
  - 2. A *confirmation letter* put the contents of an oral discussion into written form.
  - 3. The function of an *opinion letter* is to provide information and advice. An opinion letter must be signed by an attorney.
  - 4. In the *demand letter*, one party explains its legal position in a dispute and requests that the recipient take some action

#### E. General Format for Legal Correspondence

- i. Date, Method of Delivery, and Address Block
  - 1. Legal correspondence must be dated.
  - 2. The date serves an important function in legal matters.
  - 3. The method of delivery should appear below the date.
  - 4. The *address block* indicates to whom the letter is addressed.
- ii. Reference Line and Salutation
  - 1. The writer may include a *reference line* identifying the matter discussed in the letter.
  - 2. Many law firms also include the firm's file number for the case in the reference line.
  - 3. The *salutation* appears just below the reference line. It is a greeting to the addressee.
- iii. Body and Closing
  - 1. The *body* is the main part of the letter.
  - 2. The closing in legal correspondence is formal, for example, "Sincerely" or "Very truly yours."

## F. The Legal Memorandum

- i. The legal memorandum is prepared for internal use within a law firm, legal department, or other organization or agency.
- ii. The goal in drafting a legal memorandum is to inform, explain, and evaluate the client's claim or defense.
- iii. The format of a legal memorandum includes the heading, the statement of facts, questions presented, brief conclusion, discussion and analysis, and conclusion.

### 1. The heading contains

- a. The date on which the memo is submitted
- b. The name of the person submitting the memo
- c. The name of the person for whom the memo was prepared
- d. A brief description of the matter, usually in the form of a reference line.

### 2. The statement of facts

- a. Introduces the legal issues by describing the relevant facts
- b. Must not be slanted in favor of the client
- c. Should contain a logical and concise description of events surrounding the conflict.

### 3. The questions presented

- a. Should refer to the parties by name
- b. Succinctly set out the legal problems
- c. Specifically indicate the important and relevant events.

### 4. The brief conclusion sets forth succinct responses to the questions presented.

### 5. Discussion and analysis contains a discussion and legal analysis of each issue to be resolved

- a. If multiple issues are involved, it should be organized into separate parts that analyze each legal issue separately.
- b. The discussion is the core of the legal memo.
- c. One method of legal reasoning and analysis commonly used by legal professionals is called the IRAC method, an acronym consisting of the first letters of the words:
  - i. Issue
  - ii. Rule
  - iii. Application
  - iv. Conclusion
- d. To use the IRAC method, first state the issue, then the rule of law that applies, then apply the rule to the set of facts and conclude.

6. The conclusion presents your opinion of how the issues discussed may be resolved