Louisiana Legal Research

Carolina Academic Press Legal Research Series

Suzanne E. Rowe, Series Editor

è**s**,

Arizona — Tamara S. Herrera

Arkansas-Coleen M. Barger

California-Hether C. Macfarlane & Suzanne E. Rowe

Connecticut-Jessica G. Hynes

Florida, Third Edition-Barbara J. Busharis & Suzanne E. Rowe

Georgia — Nancy P. Johnson, Elizabeth G. Adelman & Nancy J. Adams

Idaho-Tenielle Fordyce-Ruff & Suzanne E. Rowe

Illinois—Mark E. Wojcik

Kansas-Joseph A. Custer & Christopher L. Steadham

Louisiana—Mary Garvey Algero

Michigan — Pamela Lysaght

Missouri-Wanda M. Temm & Julie M. Cheslik

New York-Elizabeth G. Adelman & Suzanne E. Rowe

Ohio—Katherine L. Hall & Sara Sampson

Oregon, Second Edition—Suzanne E. Rowe

Pennsylvania — Barbara J. Busharis & Bonny L. Tavares

Tennessee—Sibyl Marshall & Carol McCrehan Parker

Texas—Spencer L. Simons

Washington, Second Edition—Julie Heintz-Cho, Tom Cobb & Mary A. Hotchkiss

Louisiana Legal Research

Mary Garvey Algero

Suzanne E. Rowe, Series Editor

Carolina Academic Press

Durham, North Carolina

Copyright © 2009 Mary Garvey Algero All Rights Reserved.

Library of Congress Cataloging-in-Publication Data

Algero, Mary Garvey.
Louisiana legal research / Mary Garvey Algero.
p. cm. -- (Carolina Academic Press legal research series)
Includes index.
ISBN 978-1-59460-529-1 (alk. paper)
1. Legal research--Louisiana. I. Title. II. Series.

KFL75.A44 2009 340.072'0763--dc22

2009014770

CAROLINA ACADEMIC PRESS 700 Kent Street Durham, North Carolina 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.cap-press.com

Printed in the United States of America.

Dedication

This book is dedicated to Chris, Elizabeth, Maggie, and Christopher Algero and Joan and Walter Garvey.

Summary of Contents

Contents		ix
List of Tables	, Figures, and Lagniappes	xvii
Series Note		xxi
Preface		xxiii
Acknowledgr	nents	XXV
Chapter 1	Fundamental Principles of Legal Research	3
Chapter 2	Overview of the Legal Research Process and Citation	13
Chapter 3	Researching Enacted Law: Constitutions, Statutes, and Rules	27
Chapter 4	Bill Tracking and Researching Legislative History	55
Chapter 5	Judicial Systems and Judicial Opinions	69
Chapter 6	Researching Judicial Opinions: Digests and Other Finding Tools and Strategies	91
Chapter 7	Researching Administrative Law and Other Executive Documents	109
Chapter 8	Updating	131
Chapter 9	Finding and Updating Secondary Sources	139
Chapter 10	Online Legal Research	163
Chapter 11	Research Strategies and Organization	173
Appendix A	Legal Citation	185
Appendix B	Websites of Interest	207
About the Au	thor	211
Index		213

List of Tables, Figures, and Lagniappes	xvii
Series Note	xxi
Preface	xxiii
Acknowledgments	XXV
Chapter 1 Fundamental Principles of Legal Research	3
I. Introduction	3
II. Intersection of Legal Research and Legal Analysis	3
III. Intersection of Legal Research and Legal Tradition	4
IV. Basic Structure of Legal Systems in the United States	5
V. Types of Legal AuthorityA. Louisiana Legal AuthorityB. Legal Authority in Other American Courts	6 7 10
Chapter 2 Overview of the Legal Research Process and Citation	13
I. The Research Process A. Pre-Research Tasks	13 14
B. Example of Generating Search Terms	16
II. Choosing to Research in Print or OnlineA. Where Is the Document Available?B. How Fast and How Efficient Will Research Be?C. What Is the Document?	17 17 18 18
D Who Wrote the Document?	18

	Е. F. G. Н.	How Accurate Is the Document? When Was the Document Published? How Much Context Is Provided? How Much Does It Cost, and Who Is Paying?	19 19 19 20
III.	Res	earching the Law	21
IV.	А. В. С.	al Citation Constitutions Legislation Cases Administrative Regulations Books and Periodicals	21 23 24 24 25 25
Chapt	er 3	Researching Enacted Law: Constitutions,	
		Statutes, and Rules	27
I.	Inti	roduction	27
II.	Coi A. B.	 nstitutional Research Louisiana Constitution 1. Background 2. Researching the Louisiana Constitution 3. Updating Louisiana Constitutional Research The United States Constitution and Other 	29 30 30 31 33
	р.	State Constitutions	34
III.	Stat	 tutory Research Louisiana Statutory Research 1. Background a. Louisiana Civil Code b. Louisiana Revised Statutes c. Other Louisiana Enacted Law 2. Researching Louisiana Statutes a. Researching in Print Sources b. Researching Online 3. Updating Louisiana Statutory Research 4. Interpreting and Applying Louisiana Enacted Law 	34 35 35 37 38 40 40 40 40 43 44
	В.	Federal Statutory Research and Statutory Research in Other States	46
		Research III Uther States	40

х

	 Researching Federal Statutes Researching Other States' Statutes 	46 46 48 48
IV.	 A. Court Rules 1. Procedural and Evidentiary Rules 2. Court-Specific Rules or Local Rules 	49 49 49 50 51
Chapt	er 4 Bill Tracking and Researching Legislative History	55
I.	The Legislative Process in Louisiana	55
II.	Bill Tracking in Louisiana	56
III.	Louisiana Legislative History Research	59
IV.	The Federal Legislative Process	63
V.	Tracking Federal Bills	64
VI.	Researching Federal Legislative History	64
Chapt	er 5 Judicial Systems and Judicial Opinions	69
I.	Judicial SystemsA. The Louisiana Judicial SystemB. The Federal Judicial System and the Judicial Systems in Other States	70 70 74
II.	Judicial OpinionsA. What to Expect in a Published Judicial Opinion1. Courts' Opinions2. Publishers' Research Aids	76 76 76 78
	 B. Louisiana Judicial Opinions The Importance of Louisiana Judicial Opinions Reporting of Louisiana Judicial Opinions C. Federal Judicial Opinions and Opinions of 	80 80 81 82
III.	Reading and Analyzing Judicial Opinions or Cases A. Skim	84 85

xi

Contents

	D.	Read Brief Categorize	86 87 88
Chapt	E. er 6	Update Researching Judicial Opinions: Digests and Other Finding Tools and Strategies	89 91
I.	Beg	inning with a Citation to a Relevant Statute	91
II.		inning with a Citation to a Relevant Case Updating to Find Additional Cases Using Headnotes from One Case to Find Additional Cases	92 92 94
III.	to C A. B. C.		95 96 98 99 101
IV.	А. В. С.	est Coverage Geography Court System or Court Subject Matter All Inclusive	102 102 103 103 104
V.	Res A. B.	earching Online General Case Research Online Topic Searching 1. Westlaw Search by Topic 2. LexisNexis Search By Topic	105 105 106 106 107
Chapte	er 7	Researching Administrative Law and Other Executive Documents	109
I.	А. В.	Agency Rules Agency Hearings	110 110 111 111 113

xii

	Contents	xiii			
II.	Louisiana Administrative Rules 1				
III.	3	116 116			
	 an Area of Law 1. State Agency List 2. LAC Subject Index and List of LAC Titles 3. Fee-Based Online Services C. Researching With a Citation to a Relevant Rule 	117 117 118 119 119 120			
IV.	A. Miscellaneous State Agency DocumentsB. Municipal LawC. Executive Orders and Proclamations	122 122 122 123 124			
V.	A. Code of Federal Regulations	124 125 125			
VI.	 A. Identify the Relevant Agency B. Search for Relevant Regulations in the CFR C. Search for References to Regulations Using an Annotated Code D. Locate Cases Interpreting Federal Regulations 	126 127 127 127 128 128			
VII	A. Decisions of Federal Agencies	129 129 129			
Chapt	er 8 Updating	131			
I.	The Benefits of Updating	132			
II.	A. Using the Source in Which You Are Researching	132 133 134			

1. Updating on Both Services Is Simple and	
User-Friendly	134
2. Two Types of Citing Lists with Links to	
Citing Sources Allow Easy Review of Results	135
3. Signals Assist in Interpreting Results	135
a. Shepard's	135
b. KeyCite	136
 A Wide Variety of Sources May Be Updated A Wide Variety of Potential Sources 	136
Are Searched	137
III. Limitations on Results of Updating with Citators	137
IV. Post Script: A Note about Shepardizing in Print	138
Chapter 9 Finding and Updating Secondary Sources	139
I. Why Consult Secondary Sources?	139
II. Types of Secondary Sources	142
A. Legal Periodicals	142
1. Overview	142
2. Researching Legal Periodicals	144
B. Legal Treatises and Other Books	146
1. Overview	146
a. Multi-Volume Treatises	147
b. Monographs	148
c. Hornbooks, Nutshells, Deskbooks,	
and Practice Guides	149
2. Researching Treatises and Other Books	149
C. Legal Encyclopedias	153
1. Overview	153
2. Researching in a Legal Encyclopedia	153
D. American Law Reports	154
1. Overview	154
2. Researching in the ALRs	155
E. Restatements	157
F. Uniform Laws and Model Codes	158
G. Continuing Legal Education Materials	159

xiv

Contents		
	H. Forms and Jury InstructionsI. Legal Dictionaries	160 162
Chapt	er 10 Online Legal Research	163
I.	Constructing Effective Terms and Connectors SearchesA. Clarify the IssueB. Choose a Site or ServiceC. Generate Search TermsD. Add ConnectorsE. Refine the Search	163 164 164 165 166 167
II.	 Online Search Techniques A. Segment and Field Searching B. Natural Language Searching C. Continuing Research with <i>One Good Case</i> D. Printing, Downloading, or Emailing Results E. Keeping Track 	168 169 169 170 171
Chapt	er 11 Research Strategies and Organization	173
I.	Moving from Story to Strategy	173
II.	Developing a Research Plan	174
III.	Maintaining Your Focus on the Issue	
IV.	Keeping Track of What You Find and ChoosingWhat to KeepA. Keep a Research LogB. Choose What to KeepC. Take Good Notes and Organize	176 176 177 178
V. 1	Updating	180
VI.	VI. Outlining the Analysis	
VII	. Ending Research	182
VII	I. Presenting Your FindingsA. Determine What Is ExpectedB. Begin with Mandatory AuthorityC. Move from General to Specific Principles	182 183 183 183

	D. E.	Use Prior Decisions Properly to Support Analysis Be a Skeptic	184 184
Appen	ppendix A Legal Citation		
I.	Lou	iisiana Citation Rules	186
II.	Other States' Citation Rules		
III.	A. B. C. D. E. F.	 e National Citation Manuals Incorporating Citations into a Document Case Citations 1. Essential Components of Case Citations 2. Full and Short Citations to Cases 3. Prior and Subsequent History Federal Statutory Citations Signals Explanatory Parentheticals Quotations Noteworthy Details The Bluebook: Citations for Law Review Articles 	189 192 193 193 196 198 199 200 201 202 203
IV.	Edi	ting Citations	205
Appen	dix	B Websites of Interest	207
I.	We	bsites Focusing on Louisiana Law	207
II.	We	bsites Focusing on Federal Law	209
III.	Gei	neral Websites that Provide Searchable Databases	210
About	the	Author	211
Index			213

xvi

List of Tables, Figures, and Lagniappes

Tables

Chapter 2 Overv	iew of the Legal Research Process		
and Citation			
Table 2-1.	Overview of the Research Process	14	
Table 2-2.	Generating Search Terms	17	
Chapter 3 Resear	ching Enacted Law: Constitutions,		
Statute	es, and Rules	27	
Table 3-1.	Titles of the Sources of Louisiana		
	Enacted Law	28	
Table 3-2.	Articles of the Louisiana Constitution		
	of 1974	30	
Table 3-3.	Titles of the Louisiana Revised Statutes	39	
Table 3-4.	Locating Local Rules	52	
Chapter 5 Judicial Systems and Judicial Opinions			
Table 5-1.	Reporters for Federal Court Cases	83	
Chapter 7 Resear	ching Administrative Law and		
Other	Executive Documents	109	
Table 7-1.	Illustration of How to Update LAC Research	121	
Chapter 9 Findin	g and Updating Secondary Sources	139	
Table 9-1.	Law Journals Published by or at		
	Law Schools in Louisiana	143	
Table 9-2.	Louisiana Civil Law Treatise Titles	148	

xviii		Tables, Figures, and Lagniappes	
	Table 9-3.	Deskbooks and Practice Guides	150
Chapt	er 10 Onlir	ne Legal Research	163
	Table 10-1	. Outline for Constructing Terms	
		and Connectors Searches	164
	Table 10-2	. Websites for Commercial Providers	164
	Table 10-3	. Connectors	167
	Table 10-4	Example Notes for Online Searching	171
Chapt	er 11 Resea	arch Strategies and Organization	173
	Table 11-1	. Sample Analysis Chart	181
Apper	ndix A Lega	l Citation	185
	Table A-1.	Purposes of Legal Citation	186
	Table A-2.	Louisiana Supreme Court General	
		Administrative Rules pt. G, r. 8	188
	Table A-3.	Louisiana Uniform Rules of the Court	
		of Appeal 2-12.4.	189
	Table A-4.	Comparisons of Citation Formats for	
		Louisiana Citations	190
	Table A-5.	Examples of Citation Sentences and	
		Citation Clauses	193
	Table A-6.	Comparison of Select Word Abbreviations	
		in ALWD and The Bluebook	194
	Table A-7.	Examples of Full Citations	197
		Common Signals	200
	Table A-9.	Bluebook Typeface for Law	
		Review Footnotes	204

Figures

Chapter 4 Bill Tracking and Researching Legislative History	55
Figure 4-1. Louisiana Legislative Process	57
Figure 4-2. Example of Screen with Links to History	
and Amendments	61

Tables, Figures, and Lagniappes	xix		
Chapter 5 Judicial Systems and Judicial Opinions	69		
Figure 5-1. Diagram of the Louisiana Court Structure	71		
Figure 5-2. Case Excerpt			
Chapter 6 Researching Judicial Opinions: Digests and			
Other Finding Tools and Strategies	91		
Figure 6-1. Digest Excerpts			
Figure 6-2. Excerpt from the Descriptive-Word Index			
Figure 6-3. Excerpt from Words and Phrases	101		
Chapter 7 Researching Administrative Law and			
Other Executive Documents	109		
Figure 7-1. Excerpt from LAC	115		
Chapter 9 Finding and Updating Secondary Sources	139		
Figure 9-1. Excerpt from Louisiana Civil Law Treatise	152		

Lagniappes

Chapter 1 Fundamental Principles of Legal Research	3
Louisiana Lagniappe 1-1. A Secondary Source Given	
Mandatory Authority?	8
Louisiana Lagniappe 1-2. The Role of Judicial Precedent	9
Chapter 2 Overview of the Legal Research Process	
and Citation	13
Louisiana Lagniappe 2-1. The Changing Law	15
Chapter 3 Researching Enacted Law: Constitutions,	
Statutes, and Rules	27
Louisiana Lagniappe 3-1. Louisiana Constitutions	31
Louisiana Lagniappe 3-2. Louisiana Statutory Law	36
Chapter 4 Bill Tracking and Researching Legislative History	55
Louisiana Lagniappe 4-1. Public Update Legislative	
Services Line	58
Louisiana Lagniappe 4-2. House Journal Excerpt	62

XX	Tables, Figures	, and Lagniappes			
Chap	Chapter 5 Judicial Systems and Judicial Opinions				
	Louisiana Lagniappe 5-1.	Louisiana Parishes	72		
	Louisiana Lagniappe 5-2.	The Value of Cases	80		
Chap	ter 6 Researching Judicial (Dpinions: Digests and			
-	Other Finding Tools a	and Strategies	91		
	Louisiana Lagniappe 6-1.	Digest of 1808	96		
Chap	ter 7 Researching Administ	rative Law and			
	Other Executive Documents				
	Louisiana Lagniappe 7-1.	ALJ Rulings	112		
	Louisiana Lagniappe 7-2.	Executive Orders	123		
Chap	Chapter 8 Updating				
-	Louisiana Lagniappe 8-1.	Updating Briefs			
		and Arguments	132		
	Louisiana Lagniappe 8-2.	From Print to			
		Online Updating	134		
Chap	Chapter 9 Finding and Updating Secondary Sources 139				
1	ē 1 (Doctrine in Louisiana Law	141		
	Louisiana Lagniappe 9-2.		147		

Series Note

The Legal Research Series published by Carolina Academic Press includes an increasing number of titles from states around the country. The goal of each book is to provide law students, practitioners, paralegals, college students, laypeople, and librarians with the essential elements of legal research in each state. Unlike more bibliographic texts, the Legal Research Series books seek to explain concisely both the sources of state law research and the process for conducting legal research effectively.

Preface

This book is written to assist attorneys, law students, paralegals, librarians, and others in researching legal materials effectively and efficiently. While focused on Louisiana law, the book also provides the reader with information necessary to research federal law as well as the law of other jurisdictions.

In addition to discussing research techniques, sources, and strategies, the book highlights the unique characteristics of the Louisiana legal system, including the State's reliance on the Civil Code and statutory law and the value of precedent. The book also provides specific information on both print and electronic sources for locating law and provides legal citation information.

Most citations in the book conform to the citation format for practitioners set out in the eighteenth edition of *The Bluebook: A Uniform System of Citation.* Any variations from *The Bluebook*, such as to conform to Louisiana custom or rule, are noted within the text. Additionally, Appendix A compares the citation formats set out in *The Bluebook*, the *ALWD Citation Manual: A Professional System of Citation*, and Louisiana rules and customs.

Louisiana has a rich legal history, with its private law rooted primarily in French and Spanish traditions, many of which stem from ancient Roman law. In 1803, the United States purchased the territory of Louisiana, which included the land that is now the State of Louisiana. In that one year, this territory was governed successively by Spain, France, and the United States. The legal system that exists today has grown and has been most influenced by the traditions of these three nations.

Throughout this book, the reader will find text boxes that include historical notes of interest and quotes about Louisiana law and the

Preface

Louisiana legal system. These additions are referred to herein as *Louisiana Lagniappe* (lanyap). *Lagniappe* derives from the Spanish *la ñapa*, which means *the gift*. Lagniappe was given its French spelling in southern Louisiana where the word is frequently used and refers to *something extra* or *a bonus* or *unexpected gift*. Enjoy this lagniappe while you learn!

xxiv

Acknowledgments

Professor Suzanne E. Rowe, the Series Editor, significantly contributed to the quality of this book by reviewing and editing each chapter. Moreover, as the author of previous books in this series, Professor Rowe shared freely from her own body of work. In particular, the author acknowledges that Chapters 2, 10, and 11, and portions of Appendix A were based on Professor Rowe's book, *Oregon Legal Research*.

Additionally, the author acknowledges the contributions of the many Loyola law students who have informed her teaching of legal research and analysis over the years. In particular, she acknowledges the contributions of Bradley Driscoll, Raechelle Munna, Elisabeth Lorio Baer, Jason Baer, and Jennifer Englander, who assisted with the research for this book.

Further, the author acknowledges the generous support for research and writing provided by the administration, faculty, and staff of Loyola University New Orleans College of Law.