

North Carolina Legal Research

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North Carolina Legal Research

Third Edition

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Summary of Contents

List of Tables and Figures	xvii
Series Note	xxi
Acknowledgments	xxiii
Introduction	xxv
Chapter One · Foundations of Legal Research and Analysis	3
Chapter Two · The Research Process: Strategies and Techniques	13
Chapter Three · Secondary Sources	27
Chapter Four · Constitutions and Statutes	55
Chapter Five · Legislative History and Bill Tracking	77
Chapter Six · Administrative Law	97
Chapter Seven · Court Systems and Reporters	115
Chapter Eight · Finding and Updating Cases	135
Chapter Nine · Court Rules and Other Practice Rules	159
Chapter Ten · Legal Citation	171
Appendix A	191

Appendix B	193
Appendix C	195
Appendix D	197
About the Authors	201
Index	203

Contents

List of Tables and Figures	xvii
Series Note	xxi
Acknowledgments	xxiii
Introduction	xxv
Chapter One · Foundations of Legal Research and Analysis	3
I. Review of the Law and the American Legal System	3
A. Constitutions and Statutory Law	3
1. The Federal System	4
2. North Carolina	4
B. Judicial Opinions	5
1. Federal Courts	6
a. Generally	6
b. Routes of Appeal	7
2. North Carolina Courts	7
a. Generally	7
b. Routes of Appeal	8
3. Courts of Other States	8
C. Executive and Administrative Law	9
1. Federal	9
a. President	9
b. Administrative Agencies	9
2. North Carolina	9
a. Governor	9
b. Administrative Agencies	9

II. Types of Authority	10
A. Primary Authority and Secondary Authority	10
B. Mandatory vs. Persuasive Authority	11
III. Tools for the Toolbox	12
Chapter Two · The Research Process: Strategies and Techniques	13
I. Overview of the Research Process	13
II. Preparing to Research and Getting Started	14
A. Analyzing Issues and Generating Search Terms	14
B. Consulting Secondary Sources	16
C. Locating Primary Authority	16
D. Evaluating the Authorities	16
E. Updating	16
F. Stopping Your Research	18
III. Choosing Sources of Legal Information	18
A. Introduction	18
B. Fee-Based Sources of Legal Information	19
C. Free Legal Information Sources	21
IV. Basic Strategies for Using Legal Information	22
A. Print Research Techniques	23
B. Online Research Techniques	24
C. Using Annotated Resources	24
D. Using Citators and Case Analysis Tools	24
V. Final Notes on the Research Process	25
VI. Tools for the Toolbox	25
Chapter Three · Secondary Sources	27
I. Introduction	27
A. Secondary Sources and Practice Materials	28
B. Selecting the Most Relevant Secondary Source	29
C. Print versus Online	30
II. Legal Encyclopedias	30
A. <i>Strong's North Carolina Index</i>	31
B. <i>American Jurisprudence</i> , 2d	31
C. <i>Corpus Juris Secundum</i>	33

III. Hornbooks, Professional Treatises, and Nutshells	34
A. Hornbooks	34
B. Professional Treatises	34
C. Nutshells	35
D. Finding Hornbooks and Treatises	36
IV. Legal Periodicals	36
A. Finding Law Review and Journal Articles Using the Index Method	38
B. Finding Full-Text Articles on Westlaw, Lexis, and Bloomberg	39
C. HeinOnline	39
D. Internet Sites	40
E. Other Types of Legal Periodicals	41
V. <i>American Law Reports</i>	42
VI. Restatements and Principles	44
A. How Restatements and Principles are Created	44
B. Researching a Legal Question in the Restatements or Principles	46
VII. Continuing Legal Education Publications	46
VIII. Legal Forms	47
IX. Jury Instructions	49
X. Uniform Laws and Model Acts	49
XI. Law-Related Blogs	50
XII. Tools for the Toolbox	51
Chapter Four · Constitutions and Statutes	55
I. Constitutions	55
A. The North Carolina Constitution	56
1. History and Scope	56
2. Researching the North Carolina Constitution	56
3. Interpreting the North Carolina Constitution	57
B. The United States Constitution	58
1. Researching the United States Constitution	58
2. Interpreting the United States Constitution	59
II. Statutes	59
A. North Carolina Statutes	59

1. Sources of North Carolina Statutes	59
a. Session Laws	60
b. The North Carolina Codes	60
c. Other Sources for North Carolina General Statutes	63
2. Researching North Carolina Statutes	63
a. Using a Citation or Popular Name	63
b. Browsing the Index	64
c. Browsing the Table of Contents	65
d. Keyword Searching	66
e. Additional Code Research Strategies	66
f. Using Case Annotations	67
B. Researching Statutes of Other States	68
C. Researching Federal Statutes	69
1. <i>United States Code</i>	69
2. Research Strategies for Federal Statutes	70
a. Using the Citation or Popular Name	71
b. Searching the Index	71
c. Browsing Titles and the Table of Contents	72
d. Searching the Code Online by Keyword	72
D. Updating Statutes	72
1. Using KeyCite on Westlaw	73
2. Using Shepard's on Lexis	73
3. Restricting Statutory Updates	74
III. Tools for the Toolbox	75
Chapter Five · Legislative History Research and Bill Tracking	77
I. Introduction	77
II. North Carolina Legislative Research	78
A. Tracking Current North Carolina Legislation	79
1. The General Assembly Website	79
2. Other Online Sources for Tracking North Carolina Legislation	82
3. Other Options for Tracking Current North Carolina Legislation	83
B. Researching North Carolina Legislative History	84
1. Methods of Researching Legislative History/Types of Legislative History	84
a. Identify the Session Law Number	84

b. Read the Session Law Text	84
c. Review the Final Bill and Previous Versions	85
d. Use Journals for Pre-1985 Bill Reports	85
e. Review the Committee Minutes	85
f. Floor Debate	86
g. Study Reports	86
h. Governor's Statements	87
2. Westlaw and Lexis as Sources of State Legislative History	88
3. Uniform Laws and Model Acts	88
III. Researching Federal Legislative History	89
A. Summary of the Federal Legislative Process	89
B. Tracking Current United States Legislation	90
1. Congress.gov	90
2. Other Online Sources for Tracking Federal Legislation	92
a. GovTrack.us	92
b. Commercial Options	93
C. Federal Legislative History Shortcuts	93
1. Annotated Codes	93
2. Compiled Histories	94
3. Committee Reports	94
4. Collecting Your Own Legislative History	94
IV. Tools for the Toolbox	95
Chapter Six · Administrative Law	97
I. Administrative Agencies Generally	97
II. North Carolina Administrative Law	98
A. Rules	99
1. How Administrative Rules Are Created in North Carolina	99
2. Sources of North Carolina Administrative Rules	100
a. <i>North Carolina Register</i>	100
b. <i>North Carolina Administrative Code</i>	101
3. Finding North Carolina Administrative Rules	102
4. Using the <i>North Carolina Register</i> to Update Your Research	104
B. Administrative Decisions	104
1. The Adjudication Process	104
2. Finding Administrative Decisions	105
III. Federal Administrative Law	106

A. Administrative Regulations	107
1. <i>Code of Federal Regulations</i>	107
2. <i>Federal Register</i>	108
B. Researching Federal Administrative Regulations	109
1. Starting with Secondary Sources	109
2. Using the <i>United States Code</i>	109
3. Browsing Titles or Searching the Index	110
4. Online Search Options	110
5. Updating Federal Administrative Regulations	110
a. Online	110
b. Print	111
c. Using Citators	112
C. Administrative Decisions	112
IV. Tools for the Toolbox	113
Chapter Seven · Court Systems and Reporters	115
I. Court Systems	115
A. Federal Courts Relevant to North Carolina Practitioners and Researchers	116
1. United States District Courts	116
2. United States Courts of Appeals	116
3. Supreme Court of the United States	117
B. North Carolina State Courts	117
1. Trial Courts in North Carolina	117
2. North Carolina Court of Appeals	117
3. North Carolina Supreme Court	118
II. Publication of Judicial Opinions	118
A. Characteristics of Reporters	121
1. Advance Sheets	121
2. Tables	121
3. Reporter Series	121
B. Publication of North Carolina State Court Decisions	122
1. Official Reporters	122
a. <i>North Carolina Reports</i>	122
b. <i>North Carolina Court of Appeals Reports</i>	123
2. Unofficial Reporters	123
a. <i>West's South Eastern Reporter</i>	123
b. <i>North Carolina Reporter</i>	123

3. Online Publication of North Carolina Cases	124
a. Fee-Based Sources	124
b. Free Sources	124
C. Publication of Federal Court Decisions	125
1. Print Publications	125
a. Reporters for Federal Cases	125
b. Advance Sheets	128
2. Online Publication	128
D. Published vs. Unpublished	129
E. Parts of a Reported Case	130
III. Tools for the Toolbox	134
Chapter Eight · Finding and Updating Cases	135
I. Finding Cases	135
A. The Digest System	135
1. The Organization of the Digest System	136
a. Headnotes	136
b. Topics and Key Numbers and Their Relationship to Headnotes	137
2. Using the West Digest System	138
a. West's Key Number System on Westlaw	138
b. Using Print Digests	140
B. Other Online Subject-Based Search Methods	143
1. Westlaw's Practice Areas	143
2. Lexis	143
a. "Browse Topics" Find and Search by Legal Topic	143
b. Browse Practice Centers	144
c. Working from Lexis Headnotes	144
3. Topic Searching in Bloomberg	145
II. Updating Cases	146
A. Citators for Case Law	146
1. Updating Cases Using Shepard's on Lexis	148
a. The Shepard's Display	148
b. The Meaning and Use of the Citor Symbols	148
c. Narrowing the Citing Documents with Shepard's	150
d. Analyzing the Citing Sources' Treatment of the Cited Case	151
2. Updating Cases Using KeyCite on Westlaw	152

a. The KeyCite Display	152
b. The Meaning and Use of the KeyCite Status Flags	154
c. Narrowing the Citing Sources with KeyCite	154
d. Analyzing the Citing Sources' Treatment of the Cited Case	155
3. Updating Cases Using BCite on Bloomberg	156
4. Prioritizing Citing Sources	157
III. Tools for the Toolbox	158
Chapter Nine · Researching Court Rules and Other Practice Rules	159
I. Rules Governing North Carolina Court Practice	159
A. North Carolina Rules of Civil Procedure	160
B. North Carolina Rules of Evidence	161
C. North Carolina Rules of Appellate Procedure	161
D. Combined Sources	161
II. North Carolina State Bar Rules, Rules of Ethics, and Ethics Opinions	162
A. Rules and Regulations for the North Carolina State Bar	163
B. 2003 Revised Rules of Professional Conduct	163
C. North Carolina Formal Ethics Opinions	164
D. North Carolina Bar Association	165
E. North Carolina Attorney General Opinions	165
III. Federal Sources of Practitioner Rules	167
A. Federal Rules of Court Procedure/Practice	167
B. The American Bar Association Model Rules of Professional Conduct	168
C. U.S. Attorney General Opinions	168
IV. Tools for the Toolbox	169
Chapter Ten · Legal Citation	171
I. Introduction	171
II. The <i>Bluebook</i>	172
A. Quick Reference Guides (inside front and back covers)	173
B. Preface, Table of Contents, and Introduction	174
C. Bluepages	174
D. Whitepages	175

E. Tables	175
F. Index	175
III. North Carolina Citation Rules	176
IV. Other States' Citation Rules	177
V. Basic Citation Forms	178
A. Case Citations	178
1. Full Case Citations	178
a. Case Name	178
b. Volume Number and Reporter	179
c. Page Numbers	179
d. Deciding Court	179
e. Date of Decision	180
f. Prior and Subsequent History	180
2. Short Case Citations	181
B. North Carolina Statutory Citations	182
C. Federal Statutory Citations	182
D. Signals	183
E. Explanatory Parentheticals	184
F. Quotations	184
G. Additional Citation Details	185
H. Citations Not Covered in the <i>Bluebook</i>	185
VI. Incorporating Citations into a Document Effectively	186
1. Use string citations carefully in briefs and court documents	187
2. Use explanatory parentheticals following your citations if they will help the reader understand the significance of the cited authorities.	187
3. Avoid citation clauses and embedded citations if possible	188
VII. <i>ALWD Guide to Legal Citation</i>	189
VIII. Tools for the Toolbox	190
Appendix A: How a Bill Is Enacted into Law in the United States Congress	191
Appendix B: How a Bill Is Enacted into Law in the North Carolina General Assembly	193

Appendix C: Geographic Boundaries of United States Courts of Appeals and United States District Courts	195
Appendix D: Research Log	197
About the Authors	201
Index	203

List of Tables and Figures

Tables

Table 1-1. Federal Court System	7
Table 1-2. The North Carolina Court System	7
Table 1-3. Examples of Authority in North Carolina Legal Research	11
Table 2-1. Overview of the Legal Research Process	14
Table 2-2. Generating Research Terms	15
Table 2-3. Fee-Based Sources Providing Legal Information	21
Table 2-4. Government Websites for North Carolina Primary Law Sources	22
Table 3-1. Outline for Selecting Appropriate Secondary Sources for a Research Project	29
Table 3-2. North Carolina Treatises	35
Table 3-3. Law Reviews and Journals Published by Law Schools in North Carolina	37
Table 3-4. Law Review & Journal Repositories of North Carolina Law Schools	41
Table 3-5. Restatement Subjects	45
Table 3-6. Principles Subjects	45
Table 3-7. Summary of Key Characteristics of Secondary Sources	52
Table 4-1. Articles of the North Carolina Constitution	56

Table 5-1. Documenting the North Carolina Legislative Process	80
Table 5-2. Process of Legislative History Research in North Carolina	84
Table 5-3. Comparison of Sources for North Carolina and Federal Legislative History	91
Table 6-1. Finding North Carolina Register on Electronic Sources	101
Table 6-2. Finding North Carolina Administrative Code on Electronic Sources	102
Table 6-3. Finding North Carolina Administrative Decisions on Electronic Sources	106
Table 7-1. Online Providers of North Carolina Cases	124
Table 7-2. Summary of Reporters for Federal Court Cases	126
Table 8-1. North Carolina Digests	136
Table 8-2. Symbols for Updating with Shepard's	149
Table 8-3. Shepard's "Narrow by Categories"	151
Table 8-4. KeyCite Depth of Treatment Symbols	153
Table 8-5. KeyCite Status Indicators	154
Table 8-6. BCite Indicators	156
Table 9-1. Summary of Available Electronic Sources for North Carolina Practice Rules	162
Table 9-2. Finding North Carolina Attorney General Decisions	166
Table 10-1. Common Signals	183

Figures

Figure 3-1. Excerpt from <i>Strong's North Carolina Index</i>	32
Figure 4-1. Westlaw Table of Contents	65
Figure 7-1. North Carolina Courts System Routes of Appeal	120
Figure 7-2. Example of a North Carolina Supreme Court Case Viewed in <i>West's South Eastern Reporter</i>	133

Figure 7-3. Example of the Same North Carolina Supreme Court Case Viewed on Westlaw	134
Figure 8-1. Example from <i>West's North Carolina Digest</i>	138
Figure 8-2. West Key Number System	139
Figure 8-3. Lexis "Practice Areas and Topics" Page	144
Figure 8-4. Lexis Document: <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242	145
Figure 8-5. The E-Discovery Practice Center Page in Bloomberg Law	146
Figure 8-6. Shepard's Citing Decisions Tab	149
Figure 8-7. KeyCite on Westlaw	152
Figure 8-8. Westlaw KeyCite Filters	155

Series Note

The Legal Research Series published by Carolina Academic Press includes titles from many states around the country as well as a separate text on federal legal research. 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 jurisdiction. Unlike more bibliographic texts, the Legal Research Series books seek to explain concisely both the sources of legal research and the process for conducting legal research effectively.

Acknowledgments

This edition of *North Carolina Legal Research* continues to fill the unique niche of providing “a North Carolina-focused, process-based legal research textbook for law students and lawyers.” We have tried to stay true to the goal of the first two editions: to help North Carolina students, attorneys, and lay persons become savvy researchers.

In addition to updating the substantive information that appeared in the second edition, we have changed the tone of the book a bit, in the hope that it will be more inviting and more accessible to current law students. We have also added an Introduction that explains the important role research plays in helping lawyers achieve their ultimate goal of constructing reliable answers to legal questions. Finally, we have heavily emphasized how to research using electronic and low-cost sources of legal information, in keeping with the trend in the legal academy and the profession.

This edition follows the established footprint of the prior editions, but we have expanded the book’s discussion of foundational sources of law within each chapter. We have combined the chapters on constitutions and statutes, and we have placed the information about North Carolina citation rules in its own chapter rather than in an appendix.

Special thanks to Suzanne Rowe for her vision and leadership in creating this state-specific research series and for providing us with the tremendous opportunity to work on a new edition of *North Carolina Legal Research*. We are also grateful to Tenielle Fordyce-Ruff, series editor, for approving our four-member “dream team” and for lending us her keen eyes and superb editorial skills; her input has made this a much better book than it would have otherwise been. And we are grateful to Scott Childs and Sara Sampson, authors of the second edition, whose work provided us with a great foundation to build upon.

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Introduction

Answers to Preliminary Questions to Get You Started

I. What Is Legal Research?

As lawyers, the essence of our work is constructing answers to legal questions. And just as carpenters have toolboxes filled with various tools they use on their different projects, lawyers must have toolboxes filled with various tools to help them construct answers to legal questions.

The question might be simple (like building a bookshelf): What are the elements of first-degree burglary in North Carolina? The question might be a little more complex (like building a backyard shed): How have North Carolina courts defined the various elements of first-degree burglary in cases similar to my client's case? Or the question might be quite difficult and multi-faceted (like building a house): What arguments can I make to convince the court that this North Carolina statute is unconstitutional?

Legal research is one of the tools that all lawyers need in their toolboxes in order to construct answers to legal questions. Legal research refers to the process lawyers (and law students) use to find and evaluate authorities that are relevant to particular legal questions. The authorities a lawyer discovers through that process provide the legal rules that apply to a particular issue. The authorities can also provide information about what those rules mean and perhaps even how those rules have been applied to similar legal questions.

II. Why Is Legal Research an Important Skill?

Many veteran lawyers argue that legal research is the most important tool lawyers can have in their toolboxes. In a recent survey conducted by LexisNexis,

86% of the senior attorneys who responded considered legal research skills highly important in young associates. Additionally, 81% considered advanced legal research skills highly important, and an even higher percentage, 88%, considered proficiency in using paid research services highly important.¹

Moreover, studies show that most young associates spend between 40% and 60% of their time conducting legal research.² Perhaps this is one reason why the American Bar Association, in Standard 302(b), explicitly recognizes the importance of legal research, listing it as one of the skills in which law schools must demonstrate they are training students to be competent.³

III. What Makes Legal Research Challenging?

Legal research can be extremely interesting and even fun; lawyers take great satisfaction in finding the best authorities to answer a legal question or support a legal argument. But legal research can also be difficult, especially for new legal researchers, for several reasons.

First, legal research requires great *intellectual effort*. You cannot formulate an effective research strategy or develop effective search terms unless you understand the contours of the legal question you need to answer. Thus, before you jump headfirst into your research, you must spend some time “getting your bearings.” You must become familiar with the facts that give rise to the legal question. You may need to spend some time familiarizing yourself with the area(s) of law the question touches on. You must orient yourself to the specific end goal of your research process: Will you simply be reporting your research findings? Will you be using your findings to craft a legal document such as a memorandum or brief? Are you constrained to the authorities from a particular jurisdiction, or should your research be broader? Asking these questions early will help you stay focused and be efficient in your research process.

You must also be knowledgeable about the various sources of authority that are available and how those sources relate to each other. Acquiring this knowledge can take a long time, and new legal researchers may find the maze of different sources of authority confusing. Is this authority primary or secondary?

1. LexisNexis, *Hiring Partners Reveal New Attorney Readiness for Real World Practice* 3 (2015), [lexisnexis.com/documents/pdf/20150325064926_large.pdf](https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf).

2. *Id.*

3. ABA Standard 302(b), *available at* [americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalOfLawSchools/2018-2019-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalOfLawSchools/2018-2019-aba-standards-chapter3.pdf).

Is it mandatory or persuasive? Is it promulgated by a court, or a legislature, or an agency? What if you find two authorities that conflict with each other? What if the only authority you can find that is relevant to your question is not from your jurisdiction?

And you must discipline yourself to pause periodically in your research process to evaluate what you are finding. Today's law students are good *finders*, having grown up in the Google age. And being able to find authorities quickly is a good thing. But legal research is about much more than *finding* authorities. It requires you to constantly ask yourself certain questions about the authorities you are finding. Are they in fact relevant to the question you need to answer? Are they reliable? Do they contain references to other helpful authorities that you should consult? The process of legal research is intertwined with the process of legal analysis, and you will often find yourself toggling back and forth between finding and evaluating.

Second, legal research is *messy*. It is not a linear process. You cannot complete a legal research task simply by consulting a master checklist and moving through the steps in an orderly fashion. Yes, there are strategies for effective legal research that are tried and true, and this book explains those strategies. But how you use those strategies may differ widely from one legal question to the next.

Moreover, even after you have found and evaluated the relevant authorities and have moved on to drafting a document that conveys your analysis of the legal question, you may discover that you need to return to the research process. Perhaps in your analysis you have discovered a new angle to the question—a new issue—and you need additional authority to help you address it. Perhaps you have realized that the authority you thought was helpful on a particular point is not really “on point.” Or perhaps you simply need more authority to support your analysis of a particular issue.

Third, legal research is an *ongoing effort*. The law is not static, and it is important to know (1) how to verify that the authorities you are using to answer your legal question are still “good” and (2) how to update your research in the course of a particular project.

Finally, legal research can be *costly*. And because legal employers and clients value *efficiency* in the research process, you must not only know what sources to consult; you must also be strategic about the cost-effectiveness of your research. Legal authority can be found through sophisticated online research on expensive commercial platforms, and sometimes that is the most cost-effective way to go about your research. Legal authority can be found through a number of free online resources, and sometimes that is the most cost-effective way to go about your research. Legal authority can still be found in print, and some-

times that is the most cost-effective way to go about your research. Sometimes the process requires you to use a combination of these resources. A wise lawyer always thinks about the most cost-effective and time-saving approach to the task before she begins researching.

IV. Why Is This Book Useful?

Recognizing the importance of legal research and the challenges it presents (especially for novices), this book undertakes to give law students and attorneys in North Carolina as well as other jurisdictions a set of research tools to add to their toolboxes. Much of the content of this book applies to all legal research, regardless of the jurisdiction; whether you are researching a federal issue, an issue of North Carolina law, or an issue of some other state's law, the strategies for developing a research plan and for engaging in the process of legal research are very similar.

However, each jurisdiction has certain unique structures and sources of legal authority, resulting in nuances that may affect the planning and execution of legal research in that jurisdiction. This book focuses on the structures and sources of legal authority in North Carolina.

Because questions of North Carolina law may sometimes overlap with questions of federal law, portions of this book do contain some discussion of the federal legal system and sources of federal authority. However, those portions are meant to supplement the book's coverage of legal research in North Carolina, and this book does not exhaustively cover federal legal research. This book also contains some references to the legal systems and sources of law of other states; those references are mainly intended to highlight key differences between conducting legal research in North Carolina and conducting legal research in other states.

V. How Is This Book Organized?

Chapter 1 provides an overview of the categories of legal authority you will encounter in your legal research, whether in North Carolina or another jurisdiction. It also discusses the various sources of legal authority within North Carolina, focusing on the three branches of North Carolina's government. Chapter 2 describes the research process generally, then provides specific strategies for planning an efficient, effective research process. Chapter 3 explores the various secondary sources available to North Carolina researchers. Chapters 4 through 8 cover the key legal authorities needed to research constitutions and statutes, legislative history, administrative materials, and cases, respectively.

Chapter 9 covers the key sources of court rules and rules of ethics and professional conduct that govern the practice of law in North Carolina. Chapter 10 covers the basic citation rules adopted by North Carolina and points to some resources that are useful in constructing correct citations to North Carolina authorities. Finally, the book contains several appendices intended to direct readers to additional resources relevant to legal research in North Carolina.

Because efficient research often involves using both print and online resources, we have included information about both kinds of resources in each chapter. For some kinds of legal sources, we cover how to research them online first; for others, we cover how to research them in print first. This is a deliberate choice on our part; for each source, we have chosen to describe the research methods in the order that makes the most sense for that particular source.

Our hope is that this book will become an invaluable tool in the toolboxes of law students and lawyers interested in North Carolina legal research.

