North Carolina Legal Research
North Carolina Legal Research

Third Edition

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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.

All four of us have our own supporters, without whom we would not have reached the finish line of this project.
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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?

2. Id.
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-
Sometimes 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.