Conducting Legal Research

Prepared for
National Association of Hearing Officials 2021 Professional Development Conference

Types of Legal Authority

- Primary Authority
- Secondary Authority

Primary Authority
US Legal System

Parallel systems that can overlap and contradict each other

	Federal	State
Legislative	Statutes	Statutes
Judicial	Cases	Cases
Executive	Administrative Law	Administrative Law

Secondary Authority

- Treatise
- Law Encyclopedia
- Law Review Articles and commentary
- Legal Text Book

What is a citation?
AKA "Citation of Authority"
(often referred to as "cite")

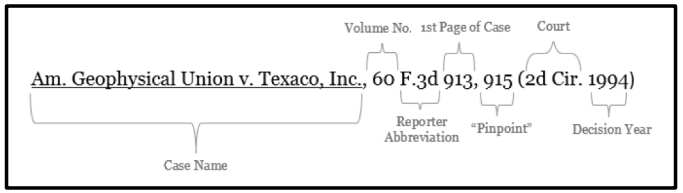
A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position.

Citing Statutes and Regulations

- Title 42 USC 435
- 49 CFR § 383.51
- 2 Pa.C.S. § 101
- 1 Pa.Code §31.2
- P.R.E. 801

Report or Reporter

- U.S. Supreme Court Reporters: U.S. and S.Ct.
- Federal Court Reporter: F.2d, F.3d, etc.
- Federal Supplement: F.Supp.
- Examples of Regional Reporters:
  - S.W.2d
  - S.E.2d
  - N.E.2d
  - N.W.3d
  - P.2d
  - A.2d
- State Reporters: Neb., Tex., Or.



Citation:
295 A.2d
825, 831

Citing More Than One Reporter

City of York v. Pennsylvania Public Utility Commission,
449 Pa. 136, 295 A.2d 825 (1972)

Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia,
262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923)

Precedent

- Previously adjudicated decision of a court providing authority on identical or similar question of law.
- Close in facts or legal principles to case under consideration.
- Principle from a prior case used as basis to decide later cases with similar facts and issues.

Allegheny Gen. Hosp. v. NLRB

"…precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar facts and arising in the same court or a lower court in the judicial hierarchy."

Value of Precedent

- Consistency
- Expectations
- Replicability
- Law-Making

How to Search for the Information You Seek

Breaking Down and Analyzing the Problem

- Understand the documents and procedural posture to determine the facts and issues to research
- Use secondary sources to find an overview of the legal issue, terms and sources of primary law
- Review the primary law and search databases for additional law
- Update the primary law and make sure it is current

Practice Tip

Avoid the Temptation to begin your research before you understand the issue

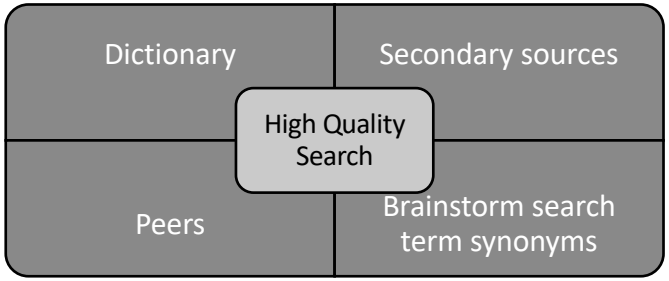
Research Plan

Issue Spot:

- Acts
- Persons
- Places
- Dates

to use as search terms in your chosen database.

Develop a List of Key Terms



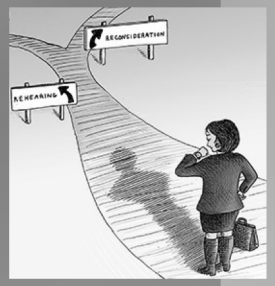
Research Strategy

- Using terms that specifically describe the administrative agency's allegations or sanctions can be particularly useful.
- If you don't come up with the correct case immediately, use the cases you do find to narrow your search by adding or removing different terms.

Tips

- Google can be a very useful place to start to generate key words
- Use terms that specifically describe the administrative agency's allegations or sanctions
- Avoid broad terms that may result in too many search results – to narrow your search combine these terms with more specific words
- Search for references to the important statute or regulation can result in case law or agency opinions which cite or interpret that statute or regulation
- Learn what the "seminal" decisions are in your area

Using the Case Law Appropriately Once It's Been Located



Format of an Appellate Opinion

Appellate Opinion Format

1. Heading, title, or case caption.
2. Brief case summary.
3. Headnotes (points of law).
4. Parties, attorneys & firms.
5. Pertinent facts, procedural history, "background."
6. Standard of review.

Appellate Opinion Format

7. Contentions of the parties and facts in dispute
8. Legal analysis: explains how applicable law relates to facts.
9. Conclusions and rationale.
10. Disposition: partial or full affirmation, reversal, remand.

Basis for Precedent: *Stare Decisis* Doctrine

- Judges must respect the precedents established by prior decisions.
- *Stare decisis et mon quieta movere*—to stand by decisions and not disturb the undisturbed.

Stare Decisis: Verticality

Trial courts (general jurisdiction or limited jurisdiction) are inferior courts and must accept the law (obey the precedents) of intermediate appellate courts and supreme courts.

Stare Decisis: Horizontality

Judges must abide by the decisions of earlier judges at the same, similar or coordinating level (*e.g.,* each panel of judges on the federal court of appeals for a circuit must abide by the prior decisions of the same circuit).

Stare Decisis: State v. Federal

- State court systems are not inferior to federal courts—they are parallel.
- While state courts must follow the U.S. Supreme Court on issues of federal law, federal courts must follow state courts on issues of state law.

Binding Precedent

- Lower court must honor findings of higher courts in the appeals path of cases the court hears.
- Appeals court decisions are not binding on inferior courts falling under a different appeals court.
- An appellate court can depart from its own prior decisions.

Persuasive Precedent

- Rulings of lower courts, higher courts from other geographic jurisdictions, cases decided in parallel systems (*e.g.,* military courts, tribal courts, etc.) and courts of other nations are not binding and have no value as precedent.
- However, in cases of "first impressions, a court may consider the reasoning of courts of other jurisdictions that have dealt with the same or similar issues, for their persuasive value.

When Is a Case "On Point"?

1. The question in the precedent case is the same question as in the pending case.
2. Resolution of the question was needed for the disposition of the prior case.
3. Significant facts of the precedent case are presented in pending case.
4. No significant additional facts were in the pending case that would distinguish it from the prior case.

Analogous

A prior case which is not "on point," because of differences between it and the pending case, but which bears enough similarity to the pending case that an analogy can be drawn from it.

Distinguishable

A prior case which was cited as applicable to a pending case, but which can be shown to be inapplicable due to essential differences between the two cases.

Holding

- Court's determination of matter of law pivotal to its decision.
- Legal principle drawn from a court decision.

Dictum

- Observation that doesn't contribute to final holding of the case.
- Dicta are usually correct and can be very useful.
- Can be illustrative.

Unpublished Opinions

- Not published in official reporter.
- Binding only on the parties of the case.
- Can't be precedent (ordinarily).
- Your state's unpublished opinions have value only if rules for your state or agency say so.
- Other jurisdiction's unpublished opinion has no value *as precedent* but may be useful to show another appellate court's reasoning on a matter on which your appellate court has not spoken.

National Center for State Courts

http://www.ncsc.org/Information-and-Resources/Browse-by-State.aspx

Every state has its own legal database. Some are better than others. All can be accessed through this portal.

U.S. Supreme Court

https://www.supremecourt.gov/opinions/opinions.aspx

Contains U.S. Supreme Court decisions beginning with the 2000 term and other useful information about the Court.

Court Links

http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links

Great database for lower federal courts. First choose from U.S. Court of Appeals, U.S. District Court, or Bankruptcy Court then enter information for a database search.

Cornell University Legal Information Institute (LII)

https://www.law.cornell.edu/

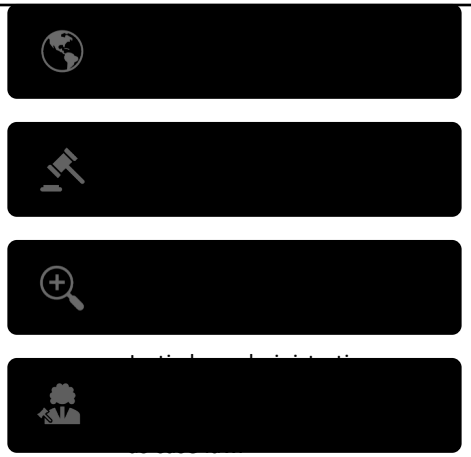
- Click on the "Get the Law" tab at top left
- Select "Law by Jurisdiction"
- Select "State Law"
- Enter the citation or key words in the "Search" box at upper right

Google Scholar

http://scholar.google.com/

Under the familiar Google search box, click "Case Law" button from which you select "Federal Law," "State Courts," or "Select Court." Enter key words in search box or click on inverted triangle at right for advanced search. Also "Articles."

Justia



Findlaw

http://caselaw.findlaw.com/

Useful for finding federal cases. Has Supreme Court cases to 1893 and other federal cases back to 2000. Does not have all state courts. You may need full case name or citation number in order to find state cases.

Law Libraries often provide links to free legal resources. For example:

- George Mason Antonin Scalia Law School
- https://www.law.gmu.edu/library/freelegalresearch
- Harvard Law School
- https://guides.library.harvard.edu/free
- University of Pittsburgh Law School
- https://law-pitt.libguides.com/az.php?t=42145
- San Diego Law Library
- https://sandiegolawlibrary.org/wp-content/uploads/2021/06/Legal_Research_Free_Web_Class_Handout_2021_01_13-final.docx

Google

https://www.google.com

The simplest is often still the best, because of the capabilities of its superior search engine.

But keep in mind that search results are not curated or authenticated.

Questions?