

Finding the Law

We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution.

Charles Evans Hughes (1907)

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Chapter Overview

In this chapter we will discuss the role of paralegals in legal research and writing, the ethical duty to perform research competently, types of law libraries and their uses, and the sources of law in the United States. We will also examine the classification of law books as either primary or secondary sources. Finally, there is a brief introduction to the major law book publishers, who will be compared in greater detail in later chapters.

A. The Paralegal's Role in Legal Research and Writing

1. Legal Research and Writing as Core Competencies

Paralegals are expected to perform the task of legal research competently and cost effectively. In fact, the American Association for Paralegal

Education (“AAfPE”), a national organization that serves the needs of paralegal educators and institutions offering paralegal education programs, identifies legal research as one of the “core competencies” that a successful paralegal must possess.

Performing legal research today is both easier and more difficult than it was just a generation ago. It is easier because many materials are available through electronic sources and on the Internet, making it quick and easy to find statutes, cases, and other legal authorities. It is more difficult because these new materials make so many sources accessible that tracking down the right authority can seem like finding a needle in a haystack.

Today’s paralegals are expected to know how to use conventional print sources, the computer-assisted research services Lexis and Westlaw, and the Internet to find the best answer to a research problem as quickly and effectively as possible.

Once you have conducted legal research, you will need to communicate the results of that research. In fact, the cornerstone of the legal profession is communication—communication with a colleague, client, adverse party, or judge. In most cases the communication will be in written form. Even in those instances in which you communicate orally, you will often follow up with a written letter or memo to a file. Effective legal writing is not only a task expected of paralegals but also one of the core competencies identified by AAfPE for success in the paralegal profession.

2. Ethical Duty to Research Accurately

Perhaps the most fundamental aspect of the attorney-client relationship is the client’s absolute trust and confidence in the competence of the attorney. This duty of competence is imposed on paralegals as well who are required to exercise the ordinary skill and knowledge that would be expected of similar paralegals in similar circumstances. In fact, Guideline 1 of the American Bar Association’s Model Guidelines for the Utilization of Paralegal Services specifically requires that attorneys take reasonable measures to ensure that a paralegal’s conduct is consistent with the attorney’s obligations, meaning that obligations imposed on attorneys are likewise imposed on paralegals. Thus, attorneys are responsible for ensuring that their paralegals are competent to perform assigned work, including legal research and writing.

Although it is important to “know” the law, particularly in a field in which you may intend to specialize, it is even more important to be able to “find” the law. In this sense, proficiency in legal research is the foundation for a successful career as a paralegal. Your employer will not be as interested in your final grade in any specific class as much as your ability to find accurate answers to questions relating to topics even though you may not have been exposed to those topics in school. If you cannot perform legal research tasks accurately and efficiently, you will not be a successful paralegal despite excellent grades in your coursework.

In fact, the duty to perform accurate legal research has been addressed in a number of cases, including *People v. Ledesma*, 729 P.2d 839, 871 (Cal. 1987), in which the court noted that an attorney's first duty is to investigate the facts of a client's case and to research the law applicable to those facts. In sum, the ethical duty to conduct adequate research required of attorneys is shared by paralegals as well.

Moreover, the failure to research adequately may lead to liability for legal malpractice. In one of the earliest cases on this subject matter, *Smith v. Lewis*, 530 P.2d 589 (Cal. 1975), *overruled on other grounds*, 544 P.2d 561 (Cal. 1976), the California Supreme Court affirmed a lower court decision awarding \$100,000 to be paid to a former client by an attorney who had failed to conduct adequate legal research. The court held that the attorney was obligated to undertake reasonable research and stated, "[e]ven as to doubtful matters, an attorney is expected to perform sufficient research to enable him to make an informed and intelligent judgment on behalf of his client." 530 P.2d at 596. In sum, you will be expected to perform competent legal research not only because your employer will insist on it but also because ethical standards demand it. Finally, as further evidence of the importance of legal research, in spring 2006, the National Conference of Bar Examiners announced plans to consider adding a component to the bar exam that will focus on legal research methods and skills. Now that we have established the role of paralegals in legal research and writing and the ethical duty shared by paralegals with attorneys to conduct competent legal research, we can address two critical questions: where legal research is performed and what sources are used.

B. Law Libraries

1. Types of Law Libraries

As noted in the introduction to this text, legal research is a "hands-on" skill, requiring you to know how to use a law library. Your first task, therefore, is to locate a law library that you may use. There are approximately 3,600 law libraries in the United States. Following is a list of the most common types of law libraries with a brief description of each:

Law School Libraries All accredited law schools have their own law libraries, most of which will have tens of thousands of volumes in print and nonprint forms such as Lexis, Westlaw, CD-ROM, microforms, and the Internet. If you are attending a paralegal program at a four-year university that is affiliated with a law school, you will undoubtedly have access to the law library at the law school. Even if you do not attend a paralegal program affiliated with a law school, you may have access to a law school library if it has been designated as a Federal Depository Library,

or a partial or selective depository, meaning that certain publications of the United States government, generally statutes and court decisions, will be sent to the library for review and access by the general public. In many cases, local public libraries or university libraries are designated as federal depositories. You can easily determine whether a library is a Federal Depository Library by calling the reference librarian at the library and inquiring. The locations of the approximately 1,350 depository libraries can be found at the Government Printing Office's website: <http://www.gpo.gov/libraries>.

Paralegal School Libraries Some paralegal programs maintain their own law libraries, although these are typically much smaller and contain far fewer volumes than law school libraries. Generally, only students who attend these programs have access to these law libraries.

Local Law Libraries Often a county or city will maintain a law library, and these are usually open to members of the general public. These law libraries vary in size, with the largest law libraries being found in the largest counties. Often they are located near a courthouse. The American Association of Law Libraries provides a list of state, county, and court law libraries at the following website: <http://www.aallnet.org/sis/sccll>.

Government or Agency Law Libraries Various governmental agencies, such as the Department of Justice, maintain their own law libraries. These law libraries typically serve only agency employees, and members of the general public will have no access. The Library of Congress, located in Washington, D.C., was established by the United States Congress in 1800 primarily to provide reference and research assistance to members of Congress. It has an excellent law library, which is open to any member of the general public.

Courthouse Law Libraries Many courts, both federal and state, maintain their own law libraries. Court law libraries are often found in the courthouse for the county seat. Some law libraries are open to the public while others restrict access to courthouse personnel, attorneys, and their paralegals.

Bar Association and Private Group Law Libraries Often bar associations or private groups, such as insurance companies or real estate boards, will maintain law libraries. These are usually open only to members of the association or group.

Law Firm Libraries Almost every law firm will maintain a law library, some of which are nearly as extensive as a law school or courthouse law library. These law libraries are available for use only by members or employees of the firm.

You should consult a telephone book or use a general Internet search engine, such as Google, and contact law schools, courthouses, and county offices in your area to determine whether members of the general public have access to those law libraries and to obtain the hours for each. Be particularly careful of law school libraries that tend to schedule their hours of operation around the law school calendar and will often close unannounced after final exams or during semester breaks.

Additionally, many public and college or university libraries are increasing their collections of law books. While these libraries typically offer only the major sets of books, such as the cases of the United States Supreme Court, federal statutes, and statutes from the state in which they are located, these public or college libraries may afford a quick answer to some legal research questions.

Finally, law libraries now exist in computer databases such as those offered by Lexis or Westlaw and in cyberspace with vast collections of legal materials available for free “24/7.” These virtual law libraries afford quick and easy access to a significant number of legal resources. Conducting legal research using Lexis and Westlaw is discussed in Chapter 11, and conducting legal research in cyberspace through the Internet is discussed in Chapter 12.

2. Arrangement of Law Libraries

There is no one standard arrangement for law libraries. Each law library is arranged according to the needs of its patrons or by decision of the law librarian. The best introduction to a law library is a tour given by a staff member, and you should inquire whether orientation tours of the law library are given. If you cannot arrange for a tour, obtain a copy of the library handbook or guide that will describe the services offered, set forth the library’s rules and regulations, and provide a floorplan of the law library. Spend an hour wandering around the law library and familiarizing yourself with its arrangement, organization, and collections. You will notice that there may be duplicate volumes of some books or even duplicate sets of books. In general, books that are widely used will have duplicates to ensure ease of use and accessibility. In many cases you can judge legal books by their titles, which usually describe their contents. The law library’s website may offer a “virtual” tour.

Although a few law libraries still use a card catalog (identical in its alphabetical organization and arrangement to the card catalogs you may have used through your schooling) to help you locate the books, treatises, and periodicals in the library, the more modern approach is the online catalog or OPAC (online public access catalog).

Most of the online catalogs are very easy to use, and you should not be intimidated. The law library staff is usually quite willing to provide instruction, and training sessions can be completed in only a few minutes. Typically, you will type in or “enter” the title, author, or subject matter you desire in the search box displayed on the screen, and you will then be provided with the “call number.” The shelves or “stacks” in the law library

are clearly marked, and locating a book is merely a matter of matching up the call number provided by the card catalog or online catalog with the appropriate stack label.

Most law school and large law firm law libraries use the Library of Congress classification system to arrange their books. The Library of Congress classification system arranges books on the shelves in subject order. Materials are organized according to twenty-one branches of knowledge. Each book is marked with a three-line classification number, consisting of an alphanumeric combination, which includes letters, a whole number, and a decimal. For example, a book may be classified as “KF503.181.” The designation “KF” is the Library of Congress identifier for American legal publications, and “503.181” refers to the book’s location in the stacks.

An unusual feature of law libraries is that, in general, they are not circulating libraries. That is, unlike other libraries that circulate their volumes by allowing one to check out books, law libraries seldom allow patrons to check out books. You can imagine your frustration if you were unable to read a case because someone had already checked out the volume containing the case. Books that are not widely used, however, may often be checked out by individuals who possess library identification cards.

Practice Tip

The Law Library

Familiarize yourself with your law library by investing half an hour to wander through the stacks and gain a sense of how the library is arranged. Experiencing the way the stacks are organized will imprint itself on your memory. This initial investment will save time for you later when you need to recall, for example, where the books relating to corporate law or litigation are located.

3. Law Library Staff

Most of the larger law libraries are serviced by full-time law librarians who not only are lawyers who have been awarded a Juris Doctor degree but also possess a Master’s Degree in Library Science. Most library staff are extremely helpful and responsive to questions; however, you should diligently try to locate a book or answer before you approach library staff for help. In law school libraries, the individuals who sit at the front desk are often law students who may not be thoroughly knowledgeable about the arrangement of the library or its collections. Therefore, if you have a question, be sure to address it to one of the professional law librarians (in this regard, the reference librarians are particularly helpful) rather than a student who may be more interested in studying at the front desk than