

Louisiana Legal Research

CAROLINA ACADEMIC PRESS
LEGAL RESEARCH SERIES

Suzanne E. Rowe, Series Editor
Tenielle Fordyce-Ruff, Associate Series Editor



- Arizona, Third Edition—Tamara S. Herrera
Arkansas, Second Edition—Coleen M. Barger, Cheryl L. Reinhart & Cathy L. Underwood
California, Third Edition—Aimee Dudovitz, Hether C. Macfarlane, & Suzanne E. Rowe
Colorado—Robert Michael Linz
Connecticut—Jessica G. Hynes
Federal, Second Edition—Mary Garvey Algero, Spencer L. Simons, Suzanne E. Rowe, Scott Childs & Sarah E. Ricks
Florida, Fourth Edition—Barbara J. Busharis, Jennifer LaVia & Suzanne E. Rowe
Georgia—Nancy P. Johnson, Elizabeth G. Adelman & Nancy J. Adams
Idaho, Second Edition—Tenielle Fordyce-Ruff & Kristina J. Running
Illinois, Second Edition—Mark E. Wojcik
Iowa, Second Edition—John D. Edwards, Karen L. Wallace & Melissa H. Weresh
Kansas—Joseph A. Custer & Christopher L. Steadham
Kentucky, Second Edition—William A. Hilyerd, Kurt X. Metzmeier & David J. Ensign
Louisiana, Third Edition—Mary Garvey Algero
Massachusetts, Second Edition—E. Joan Blum & Shaun B. Spencer
Michigan, Third Edition—Pamela Lysaght & Cristina D. Lockwood
Minnesota—Suzanne Thorpe
Mississippi—Kristy L. Gilliland
Missouri, Third Edition—Wanda M. Temm & Julie M. Cheslik
New York, Third Edition—Elizabeth G. Adelman, Theodora Belniak, Courtney L. Selby & Brian Detweiler
North Carolina, Second Edition—Scott Childs & Sara Sampson
North Dakota—Anne Mullins & Tammy Pettinato
Ohio, Second Edition—Sara Sampson, Katherine L. Hall & Carolyn Broering-Jacobs
Oklahoma—Darin K. Fox, Darla W. Jackson & Courtney L. Selby
Oregon, Third Edition Revised Printing—Suzanne E. Rowe
Pennsylvania, Second Edition—Barbara J. Busharis, Catherine M. Dunn, Bonny L. Tavares & Carla P. Wale
Tennessee, Second Edition—Scott Childs, Sibyl Marshall & Carol McCrehan Parker
Texas, Second Edition—Spencer L. Simons
Washington, Second Edition—Julie Heintz-Cho, Tom Cobb & Mary A. Hotchkiss
West Virginia—Hollie Schwartz Temple
Wisconsin—Patricia Cervenka & Leslie Behrooz
Wyoming, Second Edition—Debora A. Person & Tawnya K. Plumb



Louisiana Legal Research

Third Edition

Mary Garvey Algero

Suzanne E. Rowe, Series Editor
Tenielle Fordyce-Ruff, Associate Series Editor



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2017
Mary Garvey Algero
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Algero, Mary Garvey, author.

Title: Louisiana legal research / Mary Garvey Algero.

Description: Third edition. | Durham, North Carolina : Carolina Academic Press, LLC, [2017] | Series: Legal research series | Includes bibliographical references and index.

Identifiers: LCCN 2017031839 | ISBN 9781531007935 (alk. paper)

Subjects: LCSH: Legal research--Louisiana.

Classification: LCC KFL75 .A42 2017 | DDC 340.072/0763--dc23

LC record available at <https://lcn.loc.gov/2017031839>

Carolina Academic Press, LLC
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

*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 Lagniappe	xvii
Series Note	xxi
Preface	xxiii
Acknowledgments	xxv
Chapter 1 · Fundamental Principles of Legal Research	3
Chapter 2 · Overview of the Legal Research Process and Citation	13
Chapter 3 · Research Efficiency and Organization	23
Chapter 4 · Researching Enacted Law: Constitutions, Statutes, and Rules	45
Chapter 5 · Bill Tracking and Researching Legislative History	69
Chapter 6 · Judicial Systems and Judicial Opinions	81
Chapter 7 · Researching Judicial Opinions: Digests and Other Finding Tools and Strategies	101
Chapter 8 · Researching Administrative Law and Other Executive Documents	119
Chapter 9 · Citators	137
Chapter 10 · Finding and Updating Secondary Sources	145
Appendix A · Legal Citation	169
Appendix B · Websites of Interest	187
About the Author	191
Index	193

Contents

List of Tables, Figures, and Lagniappe	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 Authority	6
A. Louisiana Legal Authority	7
B. Legal Authority in Other American Courts	10
Chapter 2 · Overview of the Legal Research Process and Citation	13
I. Moving from Story to Strategy	13
II. Overview of the Research Process	14
A. Pre-Research Tasks	15
B. Example of Generating Search Terms	16
C. Develop a Research Plan	17
D. Researching the Law	19
III. Legal Citation	19

A. Constitutions	21
B. Legislation	21
C. Cases	21
D. Administrative Regulations	22
E. Books and Periodicals	22
Chapter 3 · Research Efficiency and Organization	23
I. Maintain Your Focus on the Issue	23
II. Decide Where to Research: Online or in Print	24
A. Where Is the Document Available?	24
B. How Fast and How Efficient Will Research Be?	24
C. What Is the Document?	25
D. Who Wrote the Document?	25
E. How Accurate Is the Document?	26
F. When Was the Document Published?	26
G. How Much Context Is Provided?	26
H. How Much Does It Cost, and Who Is Paying?	27
III. Researching Online	27
A. Choosing a Site or Service	28
B. Online Searching	29
1. Terms and Connectors Searching	30
2. Natural Language Searching	32
3. Additional Searching Techniques	32
a. Sources, Databases, and Filters	32
b. Segment and Field Searching	33
c. Continuing Research with One Good Case	34
d. Printing, Downloading, or Emailing Results	35
IV. Keeping Track of What You Find and Choosing What to Keep	35
A. Keep a Research Log	35
B. Choose What to Keep	36
C. Take Good Notes and Organize	37
V. Updating	39
VI. Outlining the Analysis	39
VII. Ending Research	41
VIII. Presenting Your Findings	41
A. Determine What Is Expected	41

B. Begin with Mandatory Authority	42
C. Move from General to Specific Principles	42
D. Use Prior Decisions Properly to Support Analysis	42
E. Be a Skeptic	42
Chapter 4 · Researching Enacted Law: Constitutions, Statutes, and Rules	45
I. Introduction	45
II. Constitutional Research	47
A. Louisiana Constitution	47
1. Background	47
2. Researching the Louisiana Constitution	49
3. Updating Louisiana Constitution Research	50
B. The United States Constitution and Other State Constitutions	51
III. Statutory Research	51
A. Louisiana Statutory Research	52
1. Background	52
a. Louisiana Civil Code	53
b. Louisiana Revised Statutes	54
c. Other Louisiana Enacted Law	56
2. Researching Louisiana Statutes	57
a. Researching in Print Sources	57
b. Researching Online	59
3. Updating Louisiana Statutory Research	60
4. Interpreting and Applying Louisiana Enacted Law	60
B. Federal Statutory Research and Statutory Research in Other States	61
1. Background	61
2. Researching Federal Statutes	62
3. Researching Other States' Statutes	63
4. Updating Federal and State Statutory Research	64
IV. Researching Court Rules and Rules of Professional Responsibility	64
A. Introduction	64
B. Court Rules	64
1. Procedural and Evidentiary Rules	64
2. Court-Specific Rules or Local Rules	65
C. Rules of Professional Responsibility	66

Chapter 5 · Bill Tracking and Researching Legislative History	69
I. The Legislative Process in Louisiana	69
II. Bill Tracking in Louisiana	71
III. Louisiana Legislative History Research	72
IV. The Federal Legislative Process	76
V. Tracking Federal Bills	77
VI. Researching Federal Legislative History	77
Chapter 6 · Judicial Systems and Judicial Opinions	81
I. Judicial Systems	82
A. The Louisiana Judicial System	82
B. The Federal Judicial System and the Judicial Systems in Other States	85
II. Judicial Opinions	87
A. What to Expect in a Published Judicial Opinion	87
1. Courts' Opinions	87
2. Publishers' Research Aids	88
B. Louisiana Judicial Opinions	90
1. The Importance of Louisiana Judicial Opinions	90
2. Reporting of Louisiana Judicial Opinions	91
C. Federal Judicial Opinions and Opinions of Other State Courts	93
III. Reading and Analyzing Judicial Opinions or Cases	94
A. Skim	95
B. Read	96
C. Brief	96
D. Categorize	98
E. Update	98
Chapter 7 · Researching Judicial Opinions: Digests and Other Finding Tools and Strategies	101
I. Beginning with a Citation to Relevant Enacted Law or a Regulation	101
II. Beginning with a Name or a Citation to a Relevant Case	102
A. Using a Citator to Find Additional Cases	103
B. Using Headnotes from a Case to Find Additional Cases	104

III.	Using the West Digest System to Begin Research or to Continue Research	105
	A. Organization by Topics and Key Numbers	106
	B. Researching in the West Digest System	106
	C. Using the Descriptive-Word Index	108
	D. Using Words and Phrases	110
IV.	Using the Lexis Topic and Headnote System to Begin or Continue Research	111
V.	Using the Bloomberg BNA Classification Outlines and Headnotes to Begin or Continue Research	112
VI.	Digest Coverage	112
	A. Geographically Based Digests	113
	B. Digests for Court Systems or Particular Courts	113
	C. Subject Matter Digests	114
	D. All-Inclusive Digests	114
VII.	Other Methods for Researching Cases Online	115
	A. Researching Using Lexis	115
	B. Researching Using Westlaw	116
	C. Researching Using Bloomberg Law	117
	D. Researching Using Google Scholar	118
Chapter 8 · Researching Administrative Law and Other Executive Documents		119
I.	Overview of the Administrative Agency System	120
	A. Administrative Agencies	120
	B. Agency Rules	121
	C. Agency Hearings	121
	D. Example of an Agency	122
II.	Louisiana Administrative Rules	122
III.	Researching Louisiana Administrative Rules	125
	A. Researching an Unfamiliar Area of Law	125
	B. Researching with Limited Knowledge of an Area of Law	125
	1. State Agency List	126
	2. LAC Subject Index and List of LAC Titles	126
	3. Fee-Based Online Services	127
	C. Researching With a Citation to a Relevant Rule	127
	D. Updating Rules	128

IV.	Other Documents from the Louisiana Executive Branch	129
	A. Miscellaneous State Agency Documents	129
	B. Municipal Law	130
	C. Executive Orders and Proclamations	130
	D. Attorney General Opinions	131
V.	Federal Administrative Law	131
	A. <i>Code of Federal Regulations</i>	132
	B. <i>Federal Register</i>	132
VI.	Researching Federal Administrative Law	133
	A. Identify the Relevant Agency	133
	B. Search for Relevant Regulations in the CFR	134
	C. Search for References to Regulations Using an Annotated Code	134
	D. Locate Cases Interpreting Federal Regulations	134
	E. Update Federal Regulations	134
VII.	Other Documents from the Federal Executive Branch	135
	A. Decisions of Federal Agencies	135
	B. Executive Orders and Proclamations	136
	Chapter 9 · Citators	137
I.	The Benefits of Updating	138
II.	Where to Update	138
	A. Using the Source in Which You Are Researching	138
	B. Using a Citator	139
	1. Updating Using These Citators Is Simple and User-Friendly	140
	2. Signals Assist in Interpreting Results	141
	3. Citing Lists with Links to Citing Sources Allow Easy Review of Results	141
	4. A Wide Variety of Sources May Be Updated	142
	5. A Wide Variety of Potential Sources Are Searched	142
	6. The Table of Authorities Link Analyzes Cases Cited by the Cited Case	142
III.	Limitations on Results of Updating with Citators	143
IV.	Postscript: A Note about Shepardizing in Print	144
	Chapter 10 · Finding and Updating Secondary Sources	145
I.	Why Consult Secondary Sources?	145

II.	The Persuasive Value of Secondary Sources	146
III.	Types of Secondary Sources and the Process for Researching Them	148
A.	Legal Periodicals	149
1.	Overview	149
2.	Researching Legal Periodicals	150
B.	Legal Treatises and Other Books	152
1.	Overview	152
a.	Multi-Volume Treatises	153
b.	Monographs	155
c.	Hornbooks, Nutshells, Deskbooks, and Practice Guides	155
2.	Researching Treatises and Other Books	156
C.	Legal Encyclopedias	159
1.	Overview	159
2.	Researching in a Legal Encyclopedia	159
D.	<i>American Law Reports</i>	160
1.	Overview	160
2.	Researching in the ALRs	161
E.	Restatements	162
1.	Overview	162
2.	Researching in Restatements	163
F.	Uniform Laws and Model Codes	164
1.	Overview	164
2.	Researching in Uniform Laws and Model Codes	164
G.	Continuing Legal Education Materials	165
H.	Forms and Jury Instructions	166
1.	Overview	166
2.	Researching Forms and Jury Instructions	166
I.	Legal Dictionaries	167
	Appendix A · Legal Citation	169
I.	Louisiana Citation Rules	170
II.	Other States' Citation Rules	172
III.	The National Citation Manuals	174
A.	Incorporating Citations into a Document	175
B.	Case Citations	176
1.	Essential Components of Case Citations	176
2.	Full and Short Citations to Cases	178
3.	Prior and Subsequent History	179

C. Federal Statutory Citations	180
D. Signals	180
E. Explanatory Parentheticals	181
F. Quotations	181
G. Noteworthy Details	182
H. Citations for Law Review Articles	183
IV. Editing Citations	184
Appendix B · Websites of Interest	187
I. Websites Focusing on Louisiana Law	187
II. Websites Focusing on Federal Law	189
III. General Websites that Provide Searchable Databases	189
About the Author	191
Index	193

List of Tables, Figures and Lagniappe

Tables

Table 2-1. Overview of the Research Process	14
Table 2-2. Generating Search Terms	17
Table 3-1. Websites for Commercial Providers	29
Table 3-2. Common Connectors	31
Table 3-3. Example Notes for Online Searching	35
Table 3-4. Sample Analysis Chart	40
Table 4-1. Titles of the Sources of Louisiana Enacted Law	46
Table 4-2. Articles of the Louisiana Constitution of 1974	48
Table 4-3. Titles of the Louisiana Revised Statutes	55
Table 4-4. Locating Local Rules	67
Table 6-1. Reporters for Federal Court Cases	93
Table 8-1. Illustration of How to Update LAC Research	129
Table 9-1. Outline for Using a Citator	140
Table 10-1. Outline for Researching Secondary Sources	148
Table 10-2. Law Journals Published by or at Law Schools in Louisiana	150
Table 10-3. <i>Louisiana Civil Law Treatise</i> Titles	154
Table 10-4. Deskbooks and Practice Guides	156
Table A-1. Purposes of Legal Citation	169

Table A-2. Louisiana Supreme Court General Administrative Rules pt. G, r. 8	171
Table A-3. Louisiana Uniform Rules of the Court of Appeal 2-12.4	172
Table A-4. Comparisons of Citation Formats for Louisiana Citations	173
Table A-5. Examples of Citation Sentences and Citation Clauses	175
Table A-6. Examples of Full Citations	178
Table A-7. Common Signals	181
Table A-8. Bluebook Typeface for Law Review Footnotes	184

Figures

Figure 5-1. Louisiana Legislative Process	70
Figure 5-2. Example of Screen with Links to History and Amendments	74
Figure 6-1. Diagram of the Louisiana Court Structure	83
Figure 6-2. Case Excerpt	89
Figure 7-1. Digest Excerpt	108
Figure 7-2. Excerpt from the Descriptive-Word Index	109
Figure 7-3. Excerpt from Words and Phrases	110
Figure 8-1. Excerpt from LAC	124
Figure 10-1. Excerpt from <i>Louisiana Civil Law Treatise</i>	158

Lagniappe

Louisiana Lagniappe 1-1. A Secondary Source Given Mandatory Authority?	8
Louisiana Lagniappe 1-2. The Role of Judicial Precedent	9
Louisiana Lagniappe 2-1. The Changing Law	15
Louisiana Lagniappe 4-1. Louisiana Constitutions	48
Louisiana Lagniappe 4-2. Louisiana Statutory Law	53
Louisiana Lagniappe 5-1. Public Update Legislative Services Line	72
Louisiana Lagniappe 5-2. House Journal Excerpt	75

Louisiana Lagniappe 6-1. Louisiana Parishes	82
Louisiana Lagniappe 6-2. Louisiana Supreme Court	85
Louisiana Lagniappe 6-3. The Value of Cases	91
Louisiana Lagniappe 7-1. Digest of 1808	105
Louisiana Lagniappe 8-1. ALJ Rulings	123
Louisiana Lagniappe 8-2. Executive Orders	130
Louisiana Lagniappe 9-1. Updating Briefs and Arguments	137
Louisiana Lagniappe 9-2. From Print to Online Updating	139
Louisiana Lagniappe 10-1. Doctrine in Louisiana Law	147
Louisiana Lagniappe 10-2. The Value of Doctrine	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.

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.

Discussion of research using electronic sources is meant to introduce basic features that researchers will encounter, not to exhaustively discuss all features of all electronic sources. As with most technologically based products, platforms for electronic research are always developing and changing. Fortunately, the vendors of online services provide training and tutorials to keep researchers up to date on their products.

Most citations in the book conform to the citation format for practitioners set out in the twentieth edition of *The Bluebook: A Uniform System of Citation* and the sixth edition of the *ALWD Guide to Legal Citation*. Any variations from *The Bluebook* and the *ALWD Guide to Legal Citation*, 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* and the *ALWD Guide to Legal Citation* with 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 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!

Acknowledgments

Professor Suzanne E. Rowe, the Series Editor through 2017, 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, and small excerpts of her book *Oregon Legal Research* appear here in discussions of general legal principles. In addition, portions of Appendix A were drawn from 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 Susanne Meyer, Jamie Busby, Tyler Landrieu, Nadia Hall, 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 and the family of Warren E. Mouledoux.

