

AELIC Guidance Document for State Government Web Managers - Understanding Primary Legal Materials

Introduction

Most state governments are comprised of 3 branches: the executive/agency branch, the judicial branch and the legislative branch. These branches work together to create the laws, rules and regulations governing citizens of a particular state. Each branch is responsible for defining what the law is and making the laws known to the public. Laws created by the three branches are collectively known as **primary legal materials**, and represent an authoritative statement of the law.

When conducting legal research your legal situation may be governed by some combination of judicial, legislative and executive/agency law; therefore it's important to understand how primary legal materials work together to answer a legal question. The grid below is a branch by branch summary of the types of laws created by each branch. It also includes a brief overview of the relationship amongst these laws and the relevancy of those laws to the researcher.

	Legislative Branch	Executive Branch	Judicial Branch
Consists of	<ul style="list-style-type: none"> Legislature – elected officials 	<ul style="list-style-type: none"> Governor State agencies/departments 	<ul style="list-style-type: none"> Courts, including Trial Courts, Courts of Appeal and Supreme Court
Type of law created	<ul style="list-style-type: none"> Constitution Statutes or acts (compiled by subject into a code) <p>Examples of statutes/acts.¹</p>	<ul style="list-style-type: none"> Administrative rules & regulations (compiled by subject into a code) Executive orders <p>Examples of agency rules/regulations.¹</p>	<ul style="list-style-type: none"> Court opinions/case law <p>Examples of court opinions.¹</p>
Relationship with other	<ul style="list-style-type: none"> Judicial – Court decisions interpret and explain statutory language so 	<ul style="list-style-type: none"> Legislative - Agency rules and regulations carry out laws passed 	<ul style="list-style-type: none"> Legislative - Interpret and explain statutory language.

branches	<p>when you're researching statutes, you'll also want to consult case law.</p> <ul style="list-style-type: none"> • Executive/Agency – legislature delegates power to agencies to create and enforce specific rules to carry out the laws passed by the legislature. 	<p>by the legislature. Authority to create rules and regulations is granted by the legislature via statute.</p>	<ul style="list-style-type: none"> • Creates new law in areas not covered by statutory law (this type of law is known as “common law”). • Determines whether administrative rules or regulations are consistent with statutory law.
Relevance	<ul style="list-style-type: none"> • Constitution represents the highest law in a jurisdiction. It creates the branches of government and describes their rights and relationships. • Statutes/acts take priority over court opinions and administrative rules and regulations as long as the statute/act is deemed constitutional. 	<ul style="list-style-type: none"> • Agencies create rules and regulations to enforce and implement laws created by the legislature. 	<ul style="list-style-type: none"> • Statutory laws are written in broad, concise language; therefore a researcher would consult court opinions because they develop, interpret and explain the purpose and application of a particular statutory law. • In the absence of a statutory law/act, courts look to previous court decisions to create new legal principles and rules. This type of law making is known as the “common law”. • Courts may abrogate, or revoke, statutory law. Abrogation occurs when a court determines that a statute is unconstitutional.

Comments:

1. In box labeled “Type of Law Created” examples would link to another page with examples of this type of law. Government administrators would provide examples.