

**CORE LEGAL RESEARCH COMPETENCIES:  
A COMPENDIUM OF SKILLS AND VALUES AS DEFINED IN THE  
ABA'S MACCRATE REPORT**

**A REPORT BY THE AMERICAN ASSOCIATION OF LAW LIBRARIES'  
RESEARCH INSTRUCTION CAUCUS**

**PREPARED BY THE SUBCOMMITTEE ON RESEARCH CERTIFICATION**

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**July 1997**

## INTRODUCTION

This report is the work product of a dedicated group of law librarians from all over the United States, who devoted many hours of research and writing to this mission. The librarians were led by four regional coordinators who deserve special recognition for their efforts to persuade, encourage and even cajole so many very busy people into contributing sections to this document. Those four outstanding individuals are:

James Hambleton

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Patricia Pelz Hart

Patricia G. Strougal

The Research Instruction Caucus was disbanded in 1995, but its spirit lives on the Research Instruction and Patron Services Special Interest Section of the AALL. To all those who contributed their thoughts, words and deeds to this project, take pride in the completion of this major undertaking. To all those who find some use for this document, your implementation of these ideas will give life to our work.

*Ellen M. Callinan  
Washington, DC  
July 1997*

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# **CORE LEGAL RESEARCH COMPETENCIES**

## **PART A - CASELAW**

(1 through 3 follow 3.1 of MacCrate SSV; 4 through 8 follow 3.2 of the MacCrate SSV.)

### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should understand the sources of state and federal caselaw and the processes by which it is created.

#### **(A) Organization of the Federal and State Courts**

(i) The lawyer should have a working knowledge of the federal court structure including that:

1. the U.S. Supreme Court is the Court of final appeal for federal and state controversies. It is composed of eight Justices and one Chief Justice who are appointed by President for life with the advice and consent of the Senate;
2. the U.S. Circuit Courts of Appeal are the Courts of intermediate appeal for federal controversies. There are twelve circuits as well as a Federal Circuit. The Circuit Courts were established under Article III of the U.S. Constitution. As such, the Circuit Courts judges are appointed by President for life with the advice and consent of the Senate;
3. the U.S. District Courts are the trial courts for the controversies. This level includes ninety districts plus territorial courts. The District Courts were established under Article III of the U.S. Constitution. As such, the District Courts judges are appointed by President for life with the advice and consent of the Senate;
4. several specialized federal courts exist to handle controversies in technical or complex fields. These courts include the U.S. Bankruptcy Court, the U.S. Court of Federal Claims, the U.S. Court of International Trade, the U.S. Court of Military Appeals, the U.S. Tax Court, and the Temporary Emergency Court of Appeals. Lawyers assisting lawyers practicing in these areas should be familiar with the unique characteristics of these courts;

(ii) The lawyer should have a working knowledge of the general characteristics of the state court structure. In addition, the lawyer should be well versed in the

specific characteristics of the states in which she or he practices, including the name, composition and authority of the:

1. Court of Final Appeal;
2. Court of Intermediate Appeals;
3. Trial Court;
4. Small Claims Court;
5. Domestic Relations Court;
6. Other Special Courts;

**(B) Jurisdiction and Venue**

(i) The lawyer should have a working knowledge of the jurisdiction and venue of the federal court system, specifically that:

1. the U.S. Supreme Court has original and appellate jurisdiction over matters involving the U.S. Constitution and federal statutes;
2. the U.S. Supreme Court has discretionary jurisdiction over other matters it may decline to exercise through the process of certiorari;
3. the U.S. Circuit Courts of Appeal have appellate jurisdiction over all final and some interlocutory decisions of federal district courts and final decisions of administrative agencies;
4. the U.S. District Courts serve the federal trial courts and have jurisdiction over federal controversies involving amounts in excess of \$10,000;
5. the specialized federal courts have original and, in some cases, appellate jurisdiction over federal controversies. In addition, the lawyer should be aware that parties often must appeal to these courts after exhausting their administrative remedies;

(ii) The lawyer should have a working knowledge of the jurisdiction and venue of the state court system in general. In addition, the lawyer should be well versed in the specific characteristics of the states in which she or he practices. Specifically, the lawyer should know the original and appellate jurisdiction of the:

1. Court of Final Appeal;

2. Court of Intermediate Appeals;
3. Trial Court;
4. Small Claims Court;
5. Domestic Relations Court;
7. Other Special Courts.

### **(C) Procedure**

(i) The lawyer should understand the rudiments of the civil and criminal procedure of the federal court system, specifically that:

1. the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure are the authoritative sources of procedural rules;
2. the rules may be amended by the U.S. Congress upon the recommendation of the U.S. Supreme Court;
3. the federal courts also observe local rules which supplement the national rules. The lawyer should be aware of the need to research these rules in addition to the national rules.

(ii) The lawyer should understand the rudiments of the civil and criminal procedure of the state court system. In addition, the lawyer should be well versed in the specific legal characteristics of the states in which she or he practices. Specifically, the lawyer should know that:

1. state court rules are generally promulgated by the state legislation and are based on the recommendation of highest state courts;
2. some state rules are based on the Federal Rules of Procedure.

### **(D) *Stare Decisis***

The lawyer should have a working knowledge of the nature of common law decision-making by the courts and the doctrine of *stare decisis*. Specifically, the lawyer should know that:

(i) the doctrine supports the principle that individuals in similar factual circumstances should be treated similarly under the law;

(ii) *stare decisis* enables all individuals to anticipate the results of pursuing conduct litigated in the past;

(iii) this doctrine directs legal researchers to locate relevant precedent for the purpose of representing clients;

(iv) relevant precedent includes decisions rendered by the highest court possible with jurisdiction in which the factual circumstances match those of the controversy at hand;

(v) this doctrine further directs legal researchers to verify that precedents have not been modified, overruled or invalidated by subsequent judicial or legislative action.

### **(E) Law/Equity Split**

(i) The lawyer should understand the historical separation between courts of law and equity and its abolition in federal courts by procedural reform in the 20th Century. Specifically, the lawyer should know that:

1. equity continues to play a role in establishing remedies, including injunctions;
2. equitable remedies are also known as coercive remedies;
3. equitable remedies, until legal remedies, are enforced by the court's powers of contempt;

(ii) The lawyer should understand the historical separation between courts of law and equity and the modern vestiges of this dual court system in the state court system. In addition, the lawyer should be well versed in the specific characteristics of the states in which she or he is licensed. Specifically, the lawyer should know that:

1. equity may require special forms of pleading controversies;
2. equity may impose procedural requirements which differ from law;
3. equity is most apparent in the crafting of remedies and includes such options as specific performance, reformation, rescission, injunctions, and constructive trusts.

## **2. Relative Weight of Authority**

### **(A) Types of Authority**

The lawyer should be able to distinguish the types of authority and recognize which tend to provide the controlling principles for the resolution of various kinds of issues in various substantive fields. Specifically, the lawyer should:

(i) understand that mandatory authority is binding as precedent, and must be applied by courts;

(ii) understand that persuasive authority is not binding as precedent, and may be accepted or rejected by courts.

### **(B) Mandatory Authority**

The lawyer should know the degree of authoritativeness of constitutional and common law decisions made at the various levels of the federal and state judicial systems. Specifically, the lawyer should know that:

(i) in general, decisions of higher courts are binding on lower courts;

(ii) in general, decisions of federal courts on matters involving questions of federal law are binding on state courts;

(iii) in general, decisions of state courts on matters involving questions of state law are binding on federal courts;

(iv) decisions by the U.S. Supreme Court on matters involving the U.S. Constitution are binding on federal courts and on matters involving federal statutes are binding on state courts;

(v) decisions by U.S. Circuit Courts on matters involving the U.S. Constitution are binding on state courts in that Circuit;

(vi) decisions by U.S. District Courts involving federal statutes are binding on state courts in that District;

(vii) decisions by the highest state courts involving state constitutions or state statutes are binding on federal courts.

### **(C) Persuasive Authority**

The lawyer should recognize those materials considered persuasive by courts. Specifically, the lawyer should know that:

(i) similar decisions rendered by courts in nearby jurisdictions may be

persuasive;

(ii) analogous decisions rendered by courts with jurisdiction over the controversy may be persuasive;

(iii) dicta, the statements made by courts on matters not within the scope of the controversies considered in decisions, may be persuasive;

(iv) commentaries, including secondary resources such as law reviews, restatements, treatises, etc., may be persuasive.

### 3. **Primary Legal Texts**

With respect to each of the following fundamental tools of legal research, a lawyer should be generally familiar with the nature of the tool, its likely location in a law library, and the ways in which the tool is used.

#### **(A) Official Case Reporters**

In general, a lawyer should be able to distinguish between official and unofficial case reporters and understand the significance and practical consequences of these differences. Specifically, a lawyer should know that:

(i) official reporters may be published by the government or a commercial publisher;

(ii) official reporters are generally preferred by courts for citations purposes;

(iii) publication of official reporters can be slower than publication of unofficial compilations. As a result, a lawyer should understand the circumstances under which the rules of citation permit the use of unofficial reporters;

(iv) due to the chronological nature of case reporter publication, access to decisions is by extrinsic methods, such as digests, treatises, encyclopedia, or references from other legal documents;

(v) advance sheets contain the first versions of decisions released by the courts and are generally soft cover volumes, ultimately replaced by hard bound books;

(vi) the coverage varies greatly by court and not all decisions are included in official reporters.

#### **(B) Unofficial Case Reporters**

The lawyer should be familiar with unofficial reporters of federal and state cases.

Specifically, the lawyer should be able to:

- (i) identify the unofficial reporters for each level of the federal court system;
- (ii) identify the unofficial reporters for each level of the state court system;
- (iii) recognize the components of unofficial reporters, including advance sheets, permanent volumes, and intrinsic aides, such as indexes, citation analysis, and tables of cases;
- (iv) understand the rules of citation for unofficial case reporters;
- (v) recognize the geographic and chronological coverage of unofficial case reporters.

### **(C) Looseleaf Services**

In general, the lawyer should recognize the value of looseleaf services as tools which collect primary and secondary sources of law by subject rather than by jurisdiction, date, or branch of government. In addition, the lawyer should know:

- (i) methods for identifying relevant looseleaf services;
- (ii) the organization of looseleaf services and the differences among approaches of the major publishers of these tools;
- (iii) the techniques for internal updating of looseleaf services to determine the need for additional research in more current materials;
- (iv) the existence and use of transfer binders and other special materials associated with, but not intrinsically linked to, looseleaf services.

### **(D) Annotated Law Reports**

The lawyer should understand that Annotated Law Reports, a series produced by Lawyers Cooperative, is an enhanced case reporter which includes only leading decisions and secondary materials, i.e., annotations, explaining those decisions. Specifically, the lawyer should know:

- (i) the general content of the annotations;
- (ii) the existence and use of the jurisdictional tables included in the annotations;
- (iii) the various supplements to ALR, including annual pocket parts, the Later Case Service and others;

(iv) the History Table in the ALR index which identifies superseded annotations;

(v) the multiple methods of access, including the ALR Digest, the ALR Index, the ALR Quick Index, and electronic access through Lexis and Westlaw.

#### **(E) Legal Newspapers and Journals**

The lawyer should be aware that in some jurisdictions, local judicial decisions are published in legal newspapers and bar journals. Lawyers should know how to identify such materials in all jurisdictions in which they work and should know how to use these materials.

#### **(F) Document Retrieval Services**

The lawyer should know that commercial enterprises retrieve unpublished decisions and other court documents, including briefs, motions and docket sheets. Lawyers should understand the costs and limitations of these services.

### **4. Variety of Remedies Available in the Forum**

In order to recognize appropriate avenues of legal research, the lawyer should understand the variety of legal remedies available in federal and state court controversies.

#### **(A) Litigation**

With respect to litigation, the lawyer should be knowledgeable about the requirements of and sources of information regarding:

(i) a full trial, such as the statutory deadlines for initiating actions, conducting discovery, filing briefs, obtaining extensions, preserving the record, appealing decisions and enforcing judgements;

(ii) motions practice, such as strategies for delaying or avoiding full trials through motions for summary judgement or dismissal, the use and form of interlocutory motions;

(iii) settlement tactics, including sources of financial data on parties to controversy, incidence of prior settlements by same parties or in similar situations.

#### **(B) Alternative Dispute Resolution (ADR) Mechanisms**

With respect to ADR, the lawyer should be knowledgeable about the

requirements and sources of information regarding:

- (i) arbitration which is a formal mechanism for dispute resolution, which can be specified as a prerequisite to litigation in contracts or can be required by statute;
- (ii) mediation, which is also a formal mechanism for dispute resolution;
- (iii) conciliation, another formal mechanism for dispute resolution;
- (iv) Self-help, an informal mechanism whereby the parties agree to resolve their differences.

**5. Electronic Sources: Lexis; Westlaw; Court Systems; CD-ROM; The Internet**

The lawyer should know that judicial decisions are available in a wide array of formats. Lawyers should know when to choose electronic sources in lieu of print sources as well as the use and costs of these electronic tools.

**(A) Lexis**

Lexis-Nexis is an electronic database produced by the Lexis-Nexis Corporation, a subsidiary of Reed Elsevier Group, that is available by subscription through computer terminals. Lexis-Nexis contains thousands of different legal and non-legal libraries which are updated continuously. In addition, the competent lawyer should be conversant in the following Lexis-Nexis skills:

- (i) the selection of the appropriate Lexis or Nexis library and file, including: the structure and use of the Lexis-Nexis Directory of Online Services and its electronic equivalent, Guide; the product lines included in Lexis-Nexis, particularly those produced by its corporate siblings; the value of choosing the smallest relevant library and file as an aid to cost efficiency and the precision/recall ratio; the .price command as a means of determining the cost per search in the selected file; the topical, jurisdictional and chronological coverage of each selected file; and the tools for monitoring changes and additions to the Lexis-Nexis database;
- (ii) subject searching techniques, including: Boolean and Freestyle options and the circumstances for choosing each; the search architecture of terms, synonyms, truncation, plurals, feminine forms, noise words, date ranges, and phrases; the use of level searching and the Modify command; the operation and effect of Boolean connectors and the use of parenthesis to alter that effect; the use of the ATLEASTx command to improve search precision; and the structure of numerical searches;
- (iii) segment search techniques, including: the names of segments; the means of

identifying specific segment names unique to the different Lexis-Nexis files; the contents of segments as they vary from file to file; the conditions under which the addition of segments to searches filter extraneous results and those under which segments eliminate potentially relevant materials;

(iv) reading techniques, including: the view options CITE, FULL, KWIC and VARKWIC and techniques for switching among them; the commands for displaying additional documents and levels; the use of FOCUS to sort subsets electronically; the use and additional cost of LINK among documents; techniques for avoiding unnecessary and costly links to documents already in the retrieved results;

(v) evaluation techniques, including: the concept of the precision/ recall ratio and the factors that influence it; the identification of false hits and subsequent elimination of irrelevant materials through the use of FOCUS or new searches only when unavoidable; the advance preparation of alternative search strategies in anticipation of inadequate, incomplete or irrelevant result sets; the use of the command MORE to expand effective searches; the means of determining the currency and scope of material included in search results; the need to update online search results via non-electronic options; and the point at which offline research is required before pursuing additional online options;

(vi) document retrieval techniques, including: the use and cost of LEXSEE and LEXCITE; the difference between the two commands; the architecture of these known cite searches; the Lexis-Nexis files available for this technique; the use of CheckCite with these search techniques; the location of sample searches; and the cost considerations for selecting these options in lieu of other document retrieval techniques;

(vii) printing techniques, including: the commands for printing cite lists, single documents, multiple, non-consecutive documents, multiple consecutive documents, all documents, and in abbreviated formats; the relative costs of printing to attached printers, to disk, and to the offline printers; the files excluded from the flat rate document pricing, particularly in the news and business areas; and the use of command stacking to streamline the printing process;

(viii) cost-effective techniques, including: the circumstances under which Lexis is a preferable alternative to print tools, Westlaw, CD-ROM, PACER, and the Internet; the complete information necessary to conduct effective research; the appropriate search technique based on the information required; the use of SAVE to avoid duplicate search charges in the event the search needs to be recalled; the use of LOG to store requests; and the least expensive print alternatives.

**(B) Westlaw**

Westlaw is an electronic database produced by West Publishing, a subsidiary of Thompson Legal Group, that is available by subscription through computer terminals. Westlaw contains thousands of different legal and non-legal libraries which are updated continuously. In addition, the competent lawyer should be conversant in the following Westlaw skills:

(i) the selection of the appropriate Westlaw database, including: the structure and use of the Westlaw Database List and its electronic equivalent, the Westlaw Directory; the product lines included in Westlaw, particularly those produced by its corporate siblings; the use of the Scope command; the value of choosing the smallest relevant database as an aid to cost efficiency and the precision/recall ratio; the cost per minute in the selected database; the topical, jurisdictional and chronological coverage of each selected database; and the tools for monitoring changes and additions to the Westlaw database;

(ii) subject searching techniques, including: Terms and Connectors and Natural Language options and the circumstances for choosing each; the search architecture of terms, synonyms, truncation, plurals, feminine forms, noise words, date ranges, and phrases; the operation and effect of Boolean connectors and the use of parenthesis to alter that effect; the availability of Thesaurus; and the structure of numerical searches;

(iii) field search techniques, including: the names of fields; the means of identifying specific field names unique to the different Westlaw files; the contents of fields as they vary from file to file; the conditions under which the addition of fields to searches filter extraneous results and those under which fields eliminate potentially relevant materials; and the use and structure of West Key Number searches and the locations of the Topic/Number Conversion Table;

(iv) reading techniques, including: the view options Page, Term, List, and Best and techniques for switching among them; the use of Map, Go Back and TOC for faster navigation of results; the commands for displaying additional documents; the use of LOCATE to sort subsets electronically; the use and additional cost of JUMP among documents; techniques for avoiding unnecessary and costly jumps to documents already in the retrieved results;

(v) evaluation techniques, including: the concept of the precision/ recall ratio and the factors that influence it; the identification of false hits and subsequent elimination of irrelevant materials through the use of LOCATE; the advance preparation of alternative search strategies in anticipation of inadequate, incomplete or irrelevant result sets; the means of determining the currency and scope of material included in search results; the need to update online search results via non-electronic options; and the point at which offline research is required before pursuing additional online options;

(vi) document retrieval techniques, including: the use and cost of FIND; the architecture of known cite searches; the Westlaw files available for this technique; the use of WestCheck with this search technique; the location of sample searches; and the cost considerations for selecting this options in lieu of other document retrieval techniques;

(vii) printing techniques, including: the commands for printing cite lists, single documents, multiple, non-consecutive documents, multiple consecutive documents, all documents, and in abbreviated formats; the relative costs of printing to attached printers, to disk, and to the offline printers; and the use of command stacking to streamline the printing process;

(viii) cost-effective techniques, including: the circumstances under which Westlaw is a preferable alternative to print tools, Lexis, CD-ROM, PACER, and the Internet; the complete information necessary to conduct effective research; the appropriate search technique based on the information required; the use of SAVE to avoid duplicate search charges in the event the search needs to be recalled; the use of CLIP to store requests; and the least expensive print alternatives.

### **(C) State Electronic and Computer Databases**

Individual courts make their decisions available electronically. The competent lawyer should be aware of this information, the scope and means of access to it, and the circumstances under which this option is both responsive and appropriate to the information request. Specifically, the competent lawyer should know that the following information about these systems:

(i) Selected District decisions and most District Court dockets are available through a system known as PACER (Public Access to Court Electronic Records), which is a subscription-based service accessible through several programs, the most of effective of which is Courtlink. Federal Circuit decisions and dockets are available through a similar subscription to ABBS;

(ii) Individual state courts make their decisions available electronically. Selected state decisions and dockets are available through subscription-based bulletin board services accessible through several communications software programs;

(iii) CLAD (Complex Litigation Automated Docketing) is a prototype project providing electronic filing in a limited number of federal and state courts. Through this service, it is possible to retrieve pre-trial documents and decisions. The competent lawyer should be aware of the existence of this information, the scope and means of access to it, and the circumstances under which this option can be considered.

#### **(D) CD-ROM**

CD-ROM (Compact Disc - Read Only Memory) is a technology which captures the texts of material in imaged form that can be searched electronically in a manner similar to that used for online databases. Because the data is captured and stored, it is not updated internally until new CD-ROM discs are sent to subscribers. West Publishing, Michie and other legal vendors are making decisions available in this format by topic and by jurisdiction. The competent lawyer should be aware of this information, understand its usefulness for document retrieval purposes, recognize that the subject searching potential of CD-ROM is limited in large databases, the scope and means of access to it, and the circumstances under which this option is both responsive and appropriate to the information request.

#### **(E) The Internet**

The competent lawyer should know that the Internet offers access to decisions posted by the courts and associations, governmental organizations, legal publishers, law schools, interest groups, law firms, corporations, and individuals. Specifically, the lawyer should know that:

- (i) this information is most easily accessible through the World Wide Web, a graphical component of the Internet. Other Internet case access options include FTP and Telnet, both of which should be within the skills of lawyers;
- (ii) the WWW is most useful for known cite retrievals rather than subject searches and that access is available through Web search engines, Web menu stepping, and direct HTTP connections;
- (iii) the information available on the Web is limited in scope, lacks of quality control and requires independent authentication and citation verification.

#### **(F) Microfiche and Other Miniaturization Services**

The lawyer should know that judicial decisions are available in microfiche and microfilm, and that in some cases, these are the only formats in which many older decisions can be located. These formats are cost effective alternatives to electronic resources and should be used accordingly. Specifically, the lawyer should know which decisions are held in this format at the libraries he or she uses for research, how to the fiche or film that corresponds to the citations required, and how to operate reader/printer equipment, including a basic knowledge of lens, lamp housing, paper and ink replacement, and printing options.

### **6. Secondary Legal Materials**

With respect to secondary legal materials, a lawyer should have a general familiarity with the breadth, depth, detail and currency of coverage, the particular perspectives, and the relative strengths and weaknesses that tend to be found in the various kinds of secondary sources so that he or she can make an informed judgment about which source is most suitable for a particular research purpose.

### **(A) Digests**

In general, the lawyer should understand the function of digests in providing access to the decisions of state and federal courts which are published by jurisdiction and date, but not by subject. Specifically, the lawyer should be familiar with:

(i) the Decennial Digests (West Publishing), a compilation of state and federal case annotations collected in ten-year periods beginning with the First Decennial and updated through the General Digests;

(ii) the General Digests (West Publishing), a compilation of recent state and federal case annotations issued in bound volumes throughout each year which update the most current Decennial Digest;

(iii) the Federal Practice Digests (West Publishing), a compilation of federal case annotations which cover various periods and updated by annual pocket parts;

(iii) the Regional Digests (West Publishing), a compilation of state case annotations for the regional areas designated by West which are updated by annual pocket parts;

(iv) the State Digests (West Publishing), a compilation of state case annotations for individual states which are updated by annual pocket parts;

(v) the digests which accompany such specialized case reporters as the Bankruptcy Reporter, the Federal Claims Reporter and others. Produced by West Publishing, these digests include case annotations which cover specific topics and are updated by annual pocket parts.

### **(B) Treatises**

In general, the lawyer should understand the purpose of treatises as background reading for research and access to primary sources. In addition, the lawyer should recognize the limited citation value of treatises in both court and internal documents. Specifically, the lawyer should be familiar with the major treatises in the practice areas in which he or she works. This familiarity should include knowledge of the content, reputation, coverage, currency, and supplementation

of these materials.

### **(C) Encyclopedias**

In general, the lawyer should recognize legal encyclopedias as excellent sources of background reading, particularly for those situations in which the lawyer is not familiar with the overall area of law. Specifically, the lawyer should be familiar with the major encyclopedias, Corpus Juris Secundum and American Jurisprudence. This familiarity should include knowledge of the content, coverage, currency, and supplementation of these titles.

### **(D) Looseleaf Services**

In general, the lawyer should recognize the value of looseleaf services as tools which collect primary and secondary sources of law by subject rather than by jurisdiction, date, or branch of government. Specifically, the lawyer should be familiar with the major looseleaf services in the practice areas in which he or she works. This familiarity should include knowledge of the content, coverage, reputation, currency, and supplementation of these materials.

### **(E) Law Reviews and Other Periodicals**

In general, the lawyer should recognize the function of law reviews and other periodicals as sources of expert insight and analysis of current trends and changes in the law. Specifically, the lawyer should be familiar with the major looseleaf services in the practice areas in which he or she works. This familiarity should include knowledge of the content, coverage, reputation, currency, and supplementation of these materials.

## **7. Citation Verification**

### **(A) Shepard's Citations - Print Versions**

To determine if a decision has been effected by judicial action, a competent lawyer should know that Shepard's Citations provide access to case currency. Lawyers should be able to:

- (i) locate the appropriate edition of Shepard's U.S. Citations for federal decisions or the state citator for the jurisdiction at issue;
- (ii) understand the difference between cited and citing cases;
- (iii) identify the scope of citing sources and selected secondary materials published by Shepard's McGraw-Hill that are included in the citator and recognize those sources not included that should be checked separately,

including more recent decisions not yet appearing in the citator;

(iv) locate the explanations of abbreviations at the beginning of each volume to determine the effect of the citing sources upon the cited decision;

(v) determine the date and scope of the latest supplementary pamphlet and understand which parts of the set must be checked for an accurate search.

### **(B) Shepard's Citations - Electronic Versions**

A competent lawyer should be aware of the electronic alternatives for accessing Shepard's citations. Specifically, the lawyer should be able to:

(i) activate the Shepard's Citations service on Lexis and Westlaw; understand the scope of electronic coverage and how that scope compares to the print versions; use the editorial and Key Number codes to limit their search results to specific citing cases; use both command and function key techniques; understand the circumstances under which parallel cites should be included; recognize the difference among various Shepard's "documents;" and select the appropriate printing option;

(ii) activate the Shepard's Preview Citations service on Westlaw; understand the scope of coverage and how this compares to the standard Shepard's versions; recognize that the editorial and Key Number codes are not available in this service; use both command and function key techniques; understand the circumstances under which parallel cites should be included; and select the appropriate printing option;

(iii) understand the relative costs of these services on [Lexis](#) and Westlaw and the circumstances under which they should be selected and through which online databases;

(iv) use the automated software programs CheckCite and WestCheck to maximize the cost efficiency of these tools.

### **(C) Auto-Cite**

A competent lawyer should be aware of the existence and use of Auto-Cite, a citation service of Lexis-Nexis, as an alternative to Shepard's Citations. Specifically, the lawyer should be able to:

(i) activate the Auto-Cite service on Lexis; understand the scope and timing of electronic coverage and how they compare to other electronic citators; use both command and function key techniques; understand the circumstances under which parallel cites should be included; and select the appropriate printing option;

(ii) understand the relative costs of this service on Lexis and the circumstances under which it should be selected;

(iii) use the automated software programs CheckCite to maximize the cost efficiency of this tool.

#### **(D) Insta-Cite**

A competent lawyer should be aware of the existence and use of Insta-Cite, a citation service of Westlaw, as an alternative to Shepard's Citations. Specifically, the lawyer should be able to:

(i) activate the Insta-Cite service on Westlaw; understand the scope and timing of electronic coverage and how they compare to other electronic citators; use both command and function key techniques; understand the circumstances under which parallel cites should be included; and select the appropriate printing option;

(ii) understand the relative costs of this service on Westlaw and the circumstances under which it should be selected;

(iii) use the automated software programs WestCheck to maximize the cost efficiency of this tool.

#### **(E) LEXCITE**

A competent lawyer should be aware of LEXCITE as electronic citator. This service automatically creates a subject search based on the citation entered and runs it through all cases. The lawyer should recognize the unusual circumstances under which this alternative should be selected, given the relatively high cost of this option.

#### **(F) QUICKCITE**

A competent lawyer should be aware of QUICKCITE as electronic citator. This service automatically creates a subject search based on the citation entered and runs it through all cases. The lawyer should recognize the unusual circumstances under which this alternative should be selected, given the relatively high cost of this option.

#### **(G) Other Citators**

The competent lawyer should be aware that other official and commercial publishers produce citators to facilitate the verification of laws, particularly in administrative areas. Specifically, lawyers should:

- (i) know the existence of such citators in the areas in which they are employed most frequently;
- (ii) be able to identify the existence of such citators in areas in which they are expected to perform citation verification;
- (iii) understand the use, costs, coverage, accuracy, reputation, and currency of any citator relied upon for this function.

**8. Reading and Analysis of Caselaw**

With respect to the primary legal texts described above, a lawyer should be familiar with specialized techniques for reading or using the text, including:

- (A) The analysis of which are holdings and which are dicta;
- (B) The identification of narrower and broader possible formulations of holdings of the case;
- (C) The evaluation of the case's relative precedential value;
- (D) The reconciliation of doctrinal inconsistencies between cases;
- (E) The existence of specialized rules and customs relating to unofficial sources of case law.

**9. Multiple Sources of Caselaw**

With respect to both the primary and secondary legal materials, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

**(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;

(ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;

(iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;

(iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices.

**(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

(i) the range of years included in various case reporters and reporter series and their electronic equivalents;

(ii) the jurisdictions covered in the respective federal and regional case reporters;

(iii) the function of the jurisdictional tables in A Uniform System of Citation in identifying official sources of decisions and unofficial alternatives, the dates of jurisdictional splits and subsequent publication of decisions, the historical sources of early state and federal decisions, and other guidance and information.

# CORE LEGAL RESEARCH COMPETENCIES

## **PART B - STATUTES**

(1 through 3 follow 3.1 of MacCrate SSV; 4 through 8 follow 3.2 of the MacCrate SSV.)

### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should understand the sources of state and federal statutes and the processes by which they are created.

#### **(A) Federal Legislative Process**

Every lawyer should have a basic familiarity with procedures for preparing, introducing, amending, and enacting federal legislation. Specifically, the lawyer should know:

(i) the composition and powers of the U.S. Congress, including:

1. the bicameral legislature consists of two houses, the Senate and the House of Representatives, each of which serves to represent the citizens of the United States. The Senate is composed of 100 Members, two representing each state, who are elected to six-year terms. The House of Representatives is composed of 435 Members who are elected to two-year terms. State representation in the House is based on population;
2. the powers of Congress are enumerated in the U.S. Constitution in Articles;
3. the specific powers of the Senate, including advice and consent of Presidential nominees and foreign affairs;
4. the specific powers of the House, including bills for raising revenue;

(ii) the procedures followed in Congress to enact legislation, including:

1. the introduction of legislation and its subsequent designation as a means of distinguishing House and Senate documents as well as specific sessions of Congress;
2. referral of newly introduced legislation to Committees by the

Speaker. At this stage of the process, the bill is sent to the Government Printing Office, and printed copies become available in the Congressional document rooms;

3. action by Committees and the type and location of the information they produce, including announcements of upcoming hearings, schedules of past hearings, statements prepared by witnesses, and published committee hearings and prints;
4. reports of Committees and the means by which these documents can be obtained;
5. placement of reported legislation on the official calendar for the purpose of scheduling debate;
6. the second readings and amendments;
7. the engrossment and third reading of a bill;
8. the return of engrossed bill to the originating chamber, together with any amendments and circumstances under which a conference committee will be called;
9. the final passage of legislation, including enrollment of a bill and presentation to the President, at which point it becomes an Act;
10. the ability of Congress to override a Presidential veto with a two-thirds majority.

(v) Presidential action in the creation of federal legislation, including:

1. the signature by the President, if he approves the legislation;
2. the veto by the President, if he does not approve the legislation, at which point the Act is returned to Congress;
3. the automatic approval if the President fails to sign the Act within 10 days of receipt if Congress is in session;
4. the pocket veto by the President, which occurs when Congress adjourns before the 10-day Constitutional period.

(vi) the role Congress plays in reviewing the implementation of its legislation, known as Congressional oversight.

## **(B) State Legislative Process**

Every lawyer should have a basic familiarity with procedures for preparing, introducing, amending, and enacting state legislation. Specifically, the lawyer should know:

(i) the composition and powers of the state legislature in which he or she practices, including:

1. the structure of the legislature, generally bicameral, and number of representatives therein. In addition, the lawyer should know the basis of representation of the members (proportional, etc.);
2. the powers granted to the legislature in the state's Constitution;
3. the areas of state law preempted by federal legislation.

(ii) the procedures followed in the state legislature to enact legislation, including:

1. the introduction and assignment of legislation to committee;
2. action taken by committees to review the proposed legislation and recommend its approval or rejection to the entire legislature;
3. floor action and rules of debate;
4. methods for resolving conflicts in the proposed versions of legislation;
5. the printed documents which are generated through this process.

(iii) action taken by the state's executive in the creation of legislation;

(iv) the ability of the state legislature to override a veto by the executive.

## **2. Relative Weight of Authority**

The lawyer should be able to recognize the types of legislative materials and which tend to provide the controlling principles for the resolution of various kinds of issues in various substantive fields.

### **(A) Legislative Acts**

The competent lawyer should understand that the laws first appear as acts, also known as session or slip laws, which are published in chronological order. With respect to the authority of these materials, the lawyer should know that:

(i) slip laws are the authority for U.S. law from the time of passage until those laws are published in Statutes at Large. Parties may rebut the presumption of the authority of slip laws only by comparison to the enrolled acts;

(ii) Statutes at Large are "legal evidence" of U.S. law and must be accepted as proof in the courts. As such, Statutes at Large are deemed positive law;

(iii) marginalia in slip or session laws is of limited evidentiary value.

### **(B) Codified Language**

The competent lawyer should distinguish legislative acts from codified law and should understand the evidentiary implications of this distinction. Specifically, the lawyer should know that:

(i) the first codification of federal statutory law was the Revised Statutes, 1875. When Congress enacted this revision, they repealed and replaced the prior statutes from which the codification was derived. Accordingly, the Revised Statutes are positive law, or legal evidence of federal laws in force, in 1873;

(ii) errors in the first edition of Revised Statutes led to a second edition, which was enacted in 1878. Technically, this codification remains the most authoritative version of federal law and should be cited with subsequent amendments from Statutes at Large;

(iii) the United States Code, as originally enacted in 1925, is prima facie evidence of federal law. The Code was not enacted into law by Congress. It is presumed to be the law, but is rebuttable by conflicting language in prior unrepealed acts of Congress, specifically the Revised Statutes and Statutes at Large;

(iv) Congress has enacted some titles of the U.S. Code into positive law. These titles are distinguished by an asterisk inside the front cover of the U.S. Code and are considered legal evidence, not prima facie evidence, of federal law;

(v) some legislative language appears in the form of statutory notes rather than section text in codified versions of federal law. Assuming these phrases are contained in the Statutes at Large, they are legal evidence of federal law with the same weight and authority as the text.

### **3. Variety of Remedies Available**

The lawyer should recognize that complete representation of a client may entail involvement in the legislative process. The lawyer may assist attorneys lobbying

for changes which would serve a client's interests or against proposed legislation which would adversely impact a client's position. In all cases, the competent lawyer should be aware of pending changes in statutory law as a preventative measure for counseling clients into compliance.

#### **(A) Drafting and/or Lobbying for New Legislation**

Lobbying is attempting to influence the passage or defeat of any legislation. The competent lawyer should be aware of the following requirements that:

(i) professional, paid federal lobbyists must register as required by law, and keep detailed accounts of contributions and expenditures. Professional lobbyists are usually employed by corporations, trade associations, unions and political action committees;

(ii) certain activities are not considered as lobbying by organizations include the following:

1. informing members of current critical issues (but this does not include directing members to write to Washington);
2. inviting legislators or their staff to address the group;
3. responding to official written requests only from legislative bodies, but not individual members.

#### **(B) Sources of Information on Pursuing Remedies**

The competent lawyer should be aware of the basic resources which facilitate both lobbying and client counseling regarding pending legislative changes.

### **4. Primary Legal Texts**

Every lawyer should be familiar with the distinctions between the session laws passed by legislatures and the codified version of those session laws. In addition, the lawyer should understand the distinction between official and unofficial versions of the session laws and the codes and recognize the significance of this distinction for both citation and evidentiary purposes.

With respect to each of the following fundamental tools of legal research, a lawyer should be generally familiar with the nature of the tool, its likely location in a law library, and the ways in which the tool is used.

#### **(A) Official Federal Code: The United States Code**

The competent lawyer should recognize that the United States Code, published by the Government Printing Office, is the official federal code. In addition, the lawyer should:

(i) know that the United States Code contains fifty titles covering topics from Agriculture to War, that new editions of the United States Code are published every six years and supplements are published annually, and that for purposes of citation, this version is considered official;

(ii) be able to access the United States Code through the topical index, the Popular Name table, the Statutes at Large table, or the Public Law table;

(iii) understand updating techniques for U.S. Code sections;

(iv) be able to navigate section histories in order to identify the correct language in effect at specific points in time in the past as well as the current language.

## **(B) Official State Codes**

The competent lawyer should be able to identify the official state code, if one exists, for the jurisdiction(s) in which he or she practices. In addition, the lawyer should:

(i) understand that session laws of a general nature are published by or for the state government and organized into subject or title order. Most codes are arranged as either a total numerical sequence of sections or chapters, or by chapter/title and section. A few states subdivide their codes into topical volumes within which are section numbers;

(ii) recognize that these codes may be designated by a variety of names including revised, compiled, consolidated, unconsolidated or codified laws or statutes;

(iii) know that official codes may contain the following features:

1. alphabetical subject indexes;
2. historical notes which trace the derivation of the statutory section;
3. a copy of the state constitution (many also include the federal Constitution);
4. annotations to cases or secondary sources; and
5. sets of tables which: cross reference session laws to code section;

relate present section numbers to those in previous compilations of the code; and sometimes include information on subsequent amendment and repeal of section;

(iv) understand that official codes are "supplemented" first by "slip laws" and later by recompilation of the statutes following the next legislative session.

### **(C) Local Codes**

The competent lawyer should be able to identify the official state code for the jurisdiction(s) in which he or she practices. In addition, the lawyer should know that:

(i) City and County Charters and Ordinances are the primary sources for local and municipal statutes. A charter is equivalent to a constitution and sets out the governmental structure of a county or municipality;

(ii) ordinances are the local equivalent of statutes, enacted by a city council, board of commissioners or other body as set out in the charter;

(iii) charters and ordinances are notoriously difficult to obtain.

### **(D) Federal Legislative Compilations**

The competent lawyer should recognize the United States Statutes at Large, published by the Government Printing Office (GPO), as the official legislative compilation. In addition, the lawyer should know that:

(i) legislative acts passed by Congress and signed by the President (or vetoed and overruled by Congress) first appear as "slip laws" (official version). These slip laws are then compiled in chronological order into bound volumes known as Statutes at Large;

(ii) slip laws are published in two separate series, Public Laws (which deal with legislation of a general nature) and Private Laws (which affect only the individual or individuals for whom the law was enacted);

(iii) these slip laws are only available several months after passage and that Federal Depository Libraries and most law school libraries receive these materials automatically. Slip laws may also be picked up at the Congressional Document Rooms or purchased from GPO;

(iv) the United States Statutes at Large contains all laws, public and private, joint and concurrent resolutions, Presidential Proclamations (but not Executive Orders), Constitutional amendments (and, prior to 1951, Treaties and Executive

Agreements of international import, the latter two types of agreements are now found in United State Treaties & Other Executive Agreements) enacted since 1789 in chronological order, organized into Congressional sessions. Statutes at Large is the first permanent form of federal legislation;

(v) legislative history information for the statutes, including all committee reports, dates of consideration and passage in both houses, and references to Presidential statements for each law, are listed in Statutes at Large after 1975;

(vi) the significance of such other features in Statutes at Large including: marginal notations which state the date of approval; U.S. Code; subject indexes; and tables listing all laws (public and private in two separate listings) appearing in that volume, and amendments and repeals of prior laws;

(vii) access to the Statutes at Large is by subject or cross-reference from a U.S. Code section;

(viii) the circumstances under which a researcher would refer to this uncodified version include:

1. the need to refer to the original form of the act, both in numbering and order of sections, for the purpose of researching its legislative history;
2. to locate uncodified acts such as private laws, revenue acts, and other laws not of a general or permanent nature;
3. to locate those sections of the federal statute not enacted into "positive law" (approximately one third of the United States Code as well as sections of the United States Statutes Revised still in force) for possible conflicts with the U.S. Code. In the event of a variance between the U.S. Code and the Statutes at Large, the latter controls.

## **(E) State Legislative Compilations**

The competent lawyer should recognize the states also published legislative compilations, often known as "session laws." Some states publish these laws both in slip form and in permanent bound collections similar to the U.S. Statutes at Large. The lawyer should be familiar with the publication of session laws in the jurisdictions in which he or she works. In addition, the lawyer should know that:

(i) in the states which publish slip laws, the laws generally appear at irregular intervals, at least two to four weeks after passage;

(ii) if slip laws are available, they are authoritative. However, state publication is

often so slow, most practitioners rely upon commercial legislative advance services, particularly for slip laws from other states' legislatures;

(iii) commercial vendors produce advance legislative services, which are preferable for both speed of publishing and the availability to practitioners in other states. Typically, these publications also contain subject indexes and tables which indicate existing statutory sections affected by new legislation;

(iv) all states publish official session laws, although their titles may vary from state to state. As with federal session laws, the enactments appear in chronological or numerical order, and the volumes may not appear until long after the end of a legislative session. Typically, the bound volumes also include a subject index, tables of statutory sections affected (amended or repealed) by the enacted legislation, and lists of the bills which were enacted into law. The volumes may also include information about legislators and the composition of legislative committees;

(v) the status of session laws as legal authority varies among the states. In some states, they might control in the event of conflict between the content of statutory compilations and that of the session laws. Further, a practitioner doing legislative history research may need to consult the session laws to determine the original source of language in a statute prior to proceeding with the history;

(vi) techniques for accessing the official session laws in paper form and be aware of the availability of such laws in alternative formats.

## **(F) Types of Federal Legislative Documents**

The lawyer should be familiar with the various **TYPES** of documents produced in the course of legislation and their significance. Specifically, the lawyer should know that:

(i) **BILLS** contain the text of proposed legislation. A single bill can carry one number throughout the process or can be renumbered following committee or floor action. The various formulations of bill language can shed light on Congressional intent;

(ii) **COMMITTEE PRINTS** are background documents to inform Members prior to committee action. These documents are written by congressional staff members and generally contain a summary of bill, the potential issues and problems raised by the proposed legislation as well as those targeted for change by the bill;

(iii) **CONGRESSIONAL HEARINGS** are held before and/or after the bill is drafted to elicit commentary from interested parties. The testimony, prepared

statements and other documentation are collected and published;

(iv) HOUSE and SENATE DOCUMENTS contain a wide variety of background information of general interest reprinted from many sources, i.e. reports from think-tanks. These materials are designed to inform, not legislate;

(v) COMMITTEE REPORTS are issued by committees in conjunction with the reported version of bills. These reports accompany the bills to the full chamber for consideration. Committee reports contain the committee members' reasons for passing bill and are excellent sources of legislative intent;

(vi) FLOOR DEBATE by Members illuminates arguments for and against the bill. These debates appear in the Congressional Record, but are not verbatim transcripts as Members have an opportunity to delete and add information;

(vii) PRESIDENTIAL MESSAGES contain the Executive's reasons for signing or vetoing the legislation.

### **(G) Sources of Federal Legislative Documents**

The lawyer should know the **SOURCES** for obtaining federal legislative documents. Specifically, the lawyer should know that:

(i) the Government Printing Office prints most of these documents individually at the direction of Congress. This includes both the individual items, such as bills, reports, hearings, prints, and documents, as well as compilations such as the Congressional Record and the Weekly Compilation of Presidential Documents;

(ii) these materials are collected, organized and printed in the Serial Set, which gets its name from the serial number assigned to each volume;

(iii) USCCAN, the United States Code Congressional & Administrative News (West), reprints one House or Senate Report for major public laws in the "Legislative History" section of its annual volumes from 1941 to the present;

(iv) the Congressional Information Service (CIS) Index/Abstracts services collects, indexes, abstracts and microfiches every available federal legislative document since 1970.

### **(H) State Legislative Documents**

Very few of the legislative documents are available at the state level. For most states the text of the bills and some form of committee print are published and made available to law libraries by the state. Floor debate and committee reports are rarely published in a form available for distribution to libraries.

The competent lawyer will know that it is sometimes worth a trip to the state capitol to research the unpublished archival material. The committee documents may be available as primary written records or audio tape transcripts. Another strategy is to contact the sponsor of the bill.

## **5. Electronic Sources**

The competent lawyer should be able to access primary sources of federal and state legislative materials and codifications through electronic tools. Lawyers should know when to choose electronic sources in lieu of print sources as well as the use and costs of these electronic tools. Lawyers should also know that although online sources provide rapid access, courts may still require that documents cited to them be given their "official" statutory or governmental document citation as taken from the books themselves. They should understand that statutory language does not lend itself to free-text searching the way case law does, and that it is much easier to start with a known citation and use the "browse" feature to move around between the various provisions or related statutes. The lawyer should possess the following knowledge:

### **(A) Lexis-Nexis**

The lawyer should know that Lexis-Nexis is an electronic database produced by the Lexis-Nexis Corporation, a subsidiary of Reed Elsevier Group, that is available by subscription through computer terminals. Lexis-Nexis contains federal public laws and legislative bill tracking databases, annotated federal codes, and advance legislative service materials which are updated continuously. In addition, the competent lawyer should be conversant in the following Lexis-Nexis skills:

(i) the selection of the appropriate Lexis or Nexis library and file, including: the structure and use of the Lexis-Nexis Directory of Online Services and its electronic equivalent, Guide; the product lines included in Lexis-Nexis, particularly those produced by its corporate siblings; the value of choosing the smallest relevant library and file as an aid to cost efficiency and the precision/recall ratio; the .price command as a means of determining the cost per search in the selected file; the topical, jurisdictional and chronological coverage of each selected file; and the tools for monitoring changes and additions to the Lexis-Nexis database;

(ii) subject searching techniques, including: Boolean and Freestyle options and the circumstances for choosing each; the search architecture of terms, synonyms, truncation, plurals, feminine forms, noise words, date ranges, and phrases; the use of level searching and the Modify command; the operation and effect of Boolean connectors and the use of parenthesis to alter that effect; the

use of the ATLEASTx command to improve search precision; and the structure of numerical searches;

(iii) segment search techniques, including: the names of segments; the means of identifying specific segment names unique to the different Lexis-Nexis files; the contents of segments as they vary from file to file; the conditions under which the addition of segments to searches filter extraneous results and those under which segments eliminate potentially relevant materials;

(iv) reading techniques, including: the view options CITE, FULL, KWIC and VARKWIC and techniques for switching among them; the commands for displaying additional documents and levels; the use of FOCUS to sort subsets electronically; the use and additional cost of LINK among documents; techniques for avoiding unnecessary and costly links to documents already in the retrieved results; and the use of BROWSE as an effective statutory searching and reading skill;

(v) evaluation techniques, including: the concept of the precision/ recall ratio and the factors that influence it; the identification of false hits and subsequent elimination of irrelevant materials through the use of FOCUS or new searches only when unavoidable; the advance preparation of alternative search strategies in anticipation of inadequate, incomplete or irrelevant result sets; the use of the command MORE to expand effective searches; the means of determining the currency and scope of material included in search results; the need to update online search results via non-electronic options; and the point at which offline research is required before pursuing additional online options;

(vi) document retrieval techniques, including: the use and cost of LEXSEE and LEXCITE; the difference between the two commands; the architecture of these known cite searches; the Lexis-Nexis files available for this technique; the use of CheckCite with these search techniques; the location of sample searches; and the cost considerations for selecting these options in lieu of other document retrieval techniques;

(vii) printing techniques, including: the commands for printing cite lists, single documents, multiple, non-consecutive documents, multiple consecutive documents, all documents, and in abbreviated formats; the relative costs of printing to attached printers, to disk, and to the offline printers; the files excluded from the flat rate document pricing, particularly in the news and business areas; and the use of command stacking to streamline the printing process;

(viii) cost-effective techniques, including: the circumstances under which Lexis is a preferable alternative to print tools, Westlaw, CD-ROM, and the Internet; the complete information necessary to conduct effective research; the appropriate search technique based on the information required; the use of SAVE to avoid

duplicate search charges in the event the search needs to be recalled; the use of LOG to store requests; and the least expensive print alternatives.

## **(B) Westlaw**

Westlaw is an electronic database produced by West Publishing, a subsidiary of Thompson Legal Group, that is available by subscription through computer terminals. Westlaw contains federal public laws and legislative bill tracking databases which are updated continuously. Westlaw also offers the option of annotated or unannotated versions of the codes and the advance legislative services in separate databases.

In addition, the competent lawyer should be conversant in the following Westlaw skills:

(i) the selection of the appropriate Westlaw database, including: the structure and use of the Westlaw Database List and its electronic equivalent, the Westlaw Directory; the product lines included in Westlaw, particularly those produced by its corporate siblings; the use of the Scope command; the value of choosing the smallest relevant database as an aid to cost efficiency and the precision/recall ratio; the cost per minute in the selected database; the topical, jurisdictional and chronological coverage of each selected database; and the tools for monitoring changes and additions to the Westlaw database;

(ii) subject searching techniques, including: Terms and Connectors and Natural Language options and the circumstances for choosing each; the search architecture of terms, synonyms, truncation, plurals, feminine forms, noise words, date ranges, and phrases; the operation and effect of Boolean connectors and the use of parenthesis to alter that effect; the availability of Thesaurus; and the structure of numerical searches;

(iii) field search techniques, including: the names of fields; the means of identifying specific field names unique to the different Westlaw files; the contents of fields as they vary from file to file; and the conditions under which the addition of fields to searches filter extraneous results and those under which fields eliminate potentially relevant materials;

(iv) reading techniques, including: the view options Page, Term, List, and Best and techniques for switching among them; the use of Map, Go Back and TOC for faster navigation of results; the commands for displaying additional documents; the use of LOCATE to sort subsets electronically; the use and additional cost of JUMP among documents; techniques for avoiding unnecessary and costly jumps to documents already in the retrieved results; and the use of Documents in Sequence as an effective statutory searching and reading skill;

(v) evaluation techniques, including: the concept of the precision/ recall ratio and

the factors that influence it; the identification of false hits and subsequent elimination of irrelevant materials through the use of LOCATE; the advance preparation of alternative search strategies in anticipation of inadequate, incomplete or irrelevant result sets; the means of determining the currency and scope of material included in search results; the need to update online search results via non-electronic options; and the point at which offline research is required before pursuing additional online options;

(vi) document retrieval techniques, including: the use and cost of FIND; the architecture of known cite searches; the Westlaw files available for this technique; the use of WestCheck with this search technique; the location of sample searches; and the cost considerations for selecting this options in lieu of other document retrieval techniques;

(vii) printing techniques, including: the commands for printing cite lists, single documents, multiple, non-consecutive documents, multiple consecutive documents, all documents, and in abbreviated formats; the relative costs of printing to attached printers, to disk, and to the offline printers; and the use of command stacking to streamline the printing process;

(viii) cost-effective techniques, including: the circumstances under which Westlaw is a preferable alternative to print tools, Lexis, CD-ROM, and the Internet; the complete information necessary to conduct effective research; the appropriate search technique based on the information required; the use of SAVE to avoid duplicate search charges in the event the search needs to be recalled; the use of CLIP to store requests; and the least expensive print alternatives.

### **(C) State Electronic and Computer Systems**

The competent lawyer should know that some states have computer databases and provide direct modem links to this data. In other states, legislative documents are available via the Internet, and in still others this service may only be available to persons who work for the state. In addition, the lawyer should know that these systems are probably more current than commercial databases and offer the option of tracking only legislative materials in one state.

### **(D) CD-ROM Products**

A number of states' statutes are issued in the CD-ROM format. The competent lawyer should be aware of this technology as an avenue to legislative materials, the costs associated with this technology, its coverage and currency, and the limitations of CD-ROM search engines.

### **(E) The Internet**

A number of states' statutes are issued on the Internet. The competent lawyer should be aware of this technology as an avenue to legislative materials. Specifically, the lawyer should know that:

(i) the Internet offers access to statutes posted by the state legislatures, associations, governmental organizations, legal publishers, law schools, interest groups, law firms, corporations, and individuals. This information is most easily accessible through the World Wide Web, a graphical component of the Internet. Other Internet case access options include FTP and Telnet, both of which should be within the skills of lawyers;

(ii) the WWW is most useful for known cite retrievals rather than subject searches and that access is available through Web search engines, Web menu stepping, and direct HTTP connections;

(iii) the information available on the Web is limited in scope, lacks of quality control and requires independent authentication and citation verification.

## **6. Secondary Legal Materials**

With respect to secondary legal materials, a lawyer should have a general familiarity with the breadth, depth, detail and currency of coverage, the particular perspectives, and the relative strengths and weaknesses that tend to be found in the various kinds of secondary sources so that he or she can make an informed judgment about which source is most suitable for a particular research purpose.

### **(A) Annotated Federal Code**

The competent lawyer should know that commercial publishers have produced annotated versions of the U.S. Code which offer several advantages over the official government publications, including speed of publication, editorial enhancements such as statutory notes, user aids to improve access to the text, and references to secondary sources which explain the application of laws. Specifically, the lawyer should understand that:

(i) the United States Code Annotated (USCA), published by West, contains the text of federal statutes as codified by the Law Revision Counsel of the House of Representatives as well as case annotations and cross references to relevant CFR sections, other West publications such as Corpus Juris Secundum and USCCAN, West key numbers, journal articles;

(ii) the United States Code Service (USCS), published by Lawyers Coop, also contains the text of federal statutes as codified and case annotations. In contrast to USCA, USCS provides cross-references to other Lawyers Coop publications

including American Jurisprudence, Federal Forms and Procedure, and Annotated Law Reports. USCS also cross-references relevant CFR sections;

(iii) USCA and USCS are updated annually through pocket parts and supplemental pamphlets. The sets contain additional tools for identifying more recent amendments and the lawyer should be aware of the need to check these tools rather than rely solely on the pocket parts for the most current language;

(iv) access to USCA and USCS is through subject indexes, Popular Name tables or Statute/Public Law tables.

### **(B) Annotated State Codes**

The competent lawyer should be aware of the existence of annotated legislative codes in the jurisdiction(s) in which he or she works. State annotated codes generally include the same contents and features as the federal annotated codes. The lawyer should be conscious of the possibility that such materials may be approved for official citation purposes in those jurisdictions.

### **(C) Unofficial Legislative Compilations**

The competent lawyer should realize that the official versions of state and federal statutes are not as timely as those produced by commercial publishers. The reality of practice often requires that lawyer rely on unofficial sources to identify relevant law. The lawyer should know these sources, specifically that:

(i) the United States Code Congressional and Administrative News (USCCAN), published by West, contains all public laws passed during a Congressional session as well as selected committee reports, dates of consideration, and bill and report numbers. USCCAN also includes Presidential Proclamations and Executive Orders and some Private Laws. It is bound and indexed by Congressional session, and contains materials from the 77th Congress, first session (1941) to the present;

(ii) during Congressional sessions, USCCAN is issued in monthly pamphlets which reproduce the full text of all public laws enacted in that period. Each pamphlet also contains a cumulative subject index, lists of statutory sections affected, a cumulative "Table of Laws Enacted" and a table which summarizes the legislative history of enacted laws;

(iii) each annual set may be accessed by subject or through various tables including: the legislative history of the public laws; proclamations and executive orders; public laws and the sections of the United States Code they affect; sections of the United States Code amended, repealed, etc., bills and joint resolutions enacted; major bills enacted; and acts by Popular Name. The first

volume for each session also contains lists of legislators and the composition of legislative committees;

(iv) the USCCAN monthly pamphlets also act as an "advance sheet" to West Publishing Company's United States Code Annotated (USCA);

(v) although not the authoritative text to cite, USCCAN is published much sooner than the Statutes at Large, contains selected committee reports for enacted laws, provides tables which allow researchers to trace legislation by popular name, to find a summary of its history and to check the status of an existing code section following legislative activity;

(vi) the United States Code Service (USCS), Advance Sheets, published monthly during Congressional sessions by Lawyers Coop, reproduces the full text of public laws enacted during that period. Each pamphlet also contains a subject index, and lists of statutory sections affected. A separate monthly pamphlet contains cumulative tables and indexes for laws passed during that calendar year.

#### **(D) Encyclopedias**

In general, the lawyer should recognize legal encyclopedias as excellent sources of background reading, particularly for those situations in which the lawyer is not familiar with the overall area of law. In addition, the lawyer should know that American Jurisprudence, 2d, published by Lawyers Coop, contains a Table of Statutes which leads researchers directly to discussions of the relevant statutes within the encyclopedia.

#### **(E) Looseleaf Services**

In general, the lawyer should recognize the value of looseleaf services as tools which collect primary and secondary sources of law by subject rather than by jurisdiction, date, or branch of government. Specifically, the lawyer should know the particular characteristics of looseleaves, including that:

(i) the looseleaf format (ring binders with tabs) is a convenient mechanism for collecting the various primary sources needed for legal research. When new looseleaf pages are issued regularly and filed promptly, the set is always up to date. Current material is kept in a ring binder, older materials of continuing importance (usually primary materials such as cases) are collected and reissued in "transfer binders" or separately titled hardbound sets;

(ii) looseleaves contain the statutes, associated regulations, and cases along with editorial commentary explaining the primary sources. Generally, looseleaves are available only for highly regulated areas of the law such as tax or labor. There

are two major publishers of looseleaves, Bureau of National Affairs and Commerce Clearing House. Each publisher has developed a typical format for all of their publications. Lawyers who practice primarily in a highly regulated field should become intimately familiar with the looseleaves that cover their area;

(iii) because a looseleaf contains many different types of documents, the organization of the publication tends to be complicated. Most looseleaves have a tabbed section called "How to use this service" which is worth reading to find out the various ways to access the information contained in the looseleaf. Beware of the publishers' use of "double layered indexing" where the index is supplemented with a separate alphabetical listing rather than reprinting the entire index. Most looseleaves have index or citator volumes which will give references to statutes, cases and administrative documents contained anywhere in the set;

(iv) the most common problem with using a looseleaf is confusing page numbers with paragraph numbers. The page numbers in a looseleaf are for the convenience of the filer. References found in the index or other parts of the set are almost always referring to paragraph numbers. Page numbers usually appear at the top of the page, paragraph numbers at the bottom. The two numbers are often similar so it is important to understand the difference. The paragraph number is equivalent to a section number in a treatise. Historically, looseleaf publications have used paragraph numbers instead. The paragraph symbol or the letter "p" in a citation is a clue that the source is a looseleaf.

#### **(F) Law Reviews and Other Periodicals**

The competent lawyer should recognize the importance of law review articles for interpreting legislation, particularly new statutes which have not yet been applied in court. The lawyer should be able to locate such articles quickly and efficiently through such tools as the Table of Statutes in Current Law Index.

#### **(G) Annotated Law Reports**

The competent lawyer should be aware of the value of Annotated Law Reports for identifying cases and discussions of state and federal legislation. The competent lawyer should know that Annotated Law Reports, also by Lawyers Coop, includes a Table of Statutes in the last index volume which leads researchers to annotations which discuss the relevant statutes.

### **7. Citation Verification**

#### **(A) USCA/USCS Print Versions**

A competent lawyer should know that these two annotated versions of the U.S. Code have updating capabilities beyond their pocket parts and bound

supplements. The lawyer should be able to use the updating feature of at least one of the two sets.

After finding the primary statutory materials in the bound volume or pocket part a lawyer should be able to:

- (i) locate the quarterly pamphlets supplementing the pocket parts;
- (ii) find materials updating the relevant statutory sections;
- (iii) locate the monthly advance pamphlets of the service which contain the new legislation;
- (iv) use the tables of statute sections affected in the monthly pamphlets to determine which if any new laws must be checked;
- (v) ascertain the scope of coverage and cumulative or non-cumulative nature of both quarterly and monthly supplementation;
- (vi) determine the effective date of new laws found in the pamphlets, and;
- (vii) determine how new legislation should be incorporated into preexisting statutes, including knowing how to read the set's instructions for such incorporation such as redlining, cross-referencing, etc.

**(B) Shepard's Citations: U.S. Citations, Statute Edition and State Citators**

To determine if a statute has been amended, superseded or otherwise affected by legislative or judicial action, a competent lawyer should know that Shepard's Citations provide essentially the same, although abbreviated, information as an annotated code, and that Shepard's state citators perform the same functions for legislative materials as the case citators do for judicial opinions. The competent lawyer should be aware that the Statutes Citations are not updated as frequently as are the annotated codes and for this reason, should not rely on these materials alone for statute currency. Lawyers should be able to:

- (i) locate the separate statute edition of Shepard's U.S. Citations for federal statutes, and either separate volumes of the state citator or the section of the state citator containing statute citations for the jurisdiction at issue;
- (ii) understand and find citations to constitutions, annotated and unannotated codes, session law sections not included in codes, local ordinances, and citations to subdivisions of a statute;

(iii) understand that the scope of citing sources includes subsequent enactments and amendments, followed by cases, attorney general opinions, legal periodicals, ALR annotations and selected secondary materials published by Shepard's McGraw-Hill;

(iv) locate the explanations of abbreviations at the beginning of each volume to determine the effect of the citing sources upon the cited statute: amendment, added, extended, limited, repealed, reenacted, renumbered, repealed in part, repealed and superseded, revised, superseded, suspended in full or in part, supplementing, rules as constitutional or unconstitutional in full or in part;

(v) determine the date and scope of the latest supplementary pamphlet and understand which parts of the set must be checked for an accurate search.

### **(C) U.S. Code Congressional and Administrative News (USCCAN)**

A lawyer should be familiar with the features of U.S. Code Congressional and Administrative News (USCCAN), West Publishing's legislative service for federal statutes, and should be able to:

(i) after checking the bound volume of U.S.C.A. or U.S.C.S. and the appropriate pocket parts and/or supplementary pamphlets, find the text of new federal laws and amendments in public law (session law) form in the monthly USCCAN pamphlets;

(ii) locate Tables 3, 3A and 3B in the latest cumulative issue to find U.S. Code sections amended, repealed or newly enacted during that session of Congress;

(iii) find the Public Law number and Statutes at Large cite in the USCCAN pamphlet where the change is published;

(iv) determine the closing date of legislation published in the latest cumulative issue.

### **(D) State Codes and Legislative Services**

With respect to updating or verifying a state statutory section found in an official or commercial codification of the state's laws, a competent lawyer should be able to use the set's updating features and the state's legislative service. Specifically, the lawyer should be able to:

(i) determine the method of updating, whether by pocket parts and/or supplementary pamphlets or advance sheets, and whether a separate case annotation supplement exists;

(i) find the title and section number at issue in the corresponding supplementary service to ascertain the effect of subsequent legislation or case rulings;

(iii) locate a scope note which indicates the ending date for legislation and/or case material included in the supplement and whether the material in the supplement is cumulative;

(iv) determine if a legislative service exists which publishes the state's slip laws in chronological order as part of the state's codified statute service or as a separate subscription;

(v) use the tables or indexes in the legislative service to find a state statute by its codification title or section number to see if it has been amended, repealed, or otherwise changed by legislative action in the current session;

(vi) find the slip law or page in the legislative service containing the changes and determine the effective date of the new legislation;

(vii) find pending legislation through the use of subject indexes or bill number tables which may affect the statute at issue;

(viii) determine the ending date of legislation contained in the legislative service.

## **(E) Electronic Sources**

### **(i) Legislative Service Databases**

A competent lawyer should know that legislative databases are available on the Westlaw and Lexis services and should be able to use those updating materials on at least one of the services. In particular, the lawyer who had found relevant statutory sections should be able to:

1. determine, if viewing the relevant sections online, whether there is any new material affecting them;
2. select the database identifier for the appropriate legislative service database to see new legislation;
3. conduct a search on the legislative service which will bring up new laws which affect the relevant statute sections;
4. integrate the new legislation into the existing statutes, including understanding the set's instructions for such integration;
5. determine the effective date of the new legislation either from the

legislation itself or by descriptions of the database coverage.

(ii) Bill Tracking

If the lawyer's work involves lobbying or circumstances under which a client should be alerted to pending legislation, the lawyer should be able to further update statutes by consulting online bill tracking services. The lawyer should be able to choose an appropriate database, construct a word search or a search for a specific bill number, and be able to determine if the resulting documents are proposed, passed or approved bills.

(iii) Updating Notes of Decisions

In addition to consulting notes of decisions available in an annotated statutes database, the lawyer should be able to construct a search which would retrieve newer cases which reference the relevant statute section.

(iv) Shepard's Statute Citations

A competent lawyer should know whether Shepard's Statutory Citations are available online for the jurisdiction in question. If they are, the lawyer should be able to initiate a command to retrieve Shepard's materials for the appropriate statutory sections. The lawyer should also be able to browse through the results and understand the information presented in the screen display.

**8. Statutory Construction**

**(A) The Theoretical Foundations of Statutory Construction**

Every lawyer should have a basic familiarity with the power of the courts to construe ambiguous statutory language and to strike down unconstitutional statutory provisions. The competent lawyer should understand the principles of government which serve as the foundation for statutory construction. Specifically, the lawyer should:

(i) recognize that all statutory construction is exercised in the context of the separation of powers and that under the Constitutional, the legislature is superior to the judiciary in its power to make laws (except in matters of constitutional law);

(ii) understand that the role of the judiciary is to apply those laws to the facts of specific cases. Courts are to enforce the laws and may not rewrite laws for any reason;

(iii) recognize that in order to apply the laws enacted by the legislature as the legislature intended, the courts must understand the legislature's intentions;

(iv) distinguish the words "purpose" and "intention" in the context of statutory construction. The lawyer should understand that "purpose" is used to mean the broad policy the legislature wished to implement in a statute. "Intention" is used to mean something narrower, perhaps something as narrow as how a policy should be applied by courts to a certain type of situation;

(v) recognize that there is disagreement on the question of whether or not legislatures can have intent. The prevailing view is not only that legislatures can have intent, but that, even if it is not clear what that intent is, courts must discover what seems to be intended by the statutes under consideration;

(vi) understand that statutes use abstract language because they are written to comprehend a broad range of particular facts;

(vii) recognize that courts and legislatures have to deal with two kinds of difficulties: one temporal and the other conceptual;

(viii) understand that a minority view of statutory construction holds that only individuals can have intentions, and legislatures are not individuals.

## **(B) Literalism**

A lawyer should be aware of the principle of literalism, which encourages the interpretation of statutes without reference to extrinsic or intrinsic aids. Specifically, the competent lawyer should understand:

(i) the Plain Meaning Rule, which is applied before engaging in any statutory construction or interpretation. If there is no doubt or ambiguity about how a statute is to be applied to a particular set of facts, a judge need not apply any other intrinsic or extrinsic aids to interpretation;

(ii) that this rule may not be applied where it is clear that the will of the legislature is not clearly and unambiguously expressed by the language of the statute in question;

(iii) that any time a statute is applied to a set of facts to which it has never been applied before, it is inappropriate to apply the Plain Meaning Rule nor when its application would lead to an absurd or unjust result;

(iv) that the Plain Meaning Rule was most widely applied and strictly followed at a time in history when courts were more naive about the interpretation of language and more independent of legislatures than they are now;

(v) that the words of the statute are the best indication of the intent of the

legislature. Extrinsic aids, materials which contain the words spoken or written before the moment of enactment, are not included in the text of the law;

(vi) that this view is no longer prevalent. Current practice is to check extrinsic aids to verify that a statute means what it appears to mean on the surface and nothing else. The modern view is that language has no stable, inherent meaning apart from its context. The only way, then, to know whether statutory language is clear and unambiguous is to consult the extrinsic aids to construction;

(vii) the Mischief Rule, which holds that every statute exists to remedy some mischief and prevent its recurrence;

(viii) the Golden Rule, which expects that courts would prefer interpretations of statutes that lead to neither absurdities nor injustices.

### **(C) Intrinsic Aids**

The competent lawyer should realize that the canons of construction are not canons at all; there is no necessity for courts to follow them. They are traditional maxims that serve as guides to understanding the customs of composition of statutes. They are generally effective only to the extent that they help to reveal the intention of a legislature; they cannot be used to contradict it. Specifically, the competent lawyer should know:

(i) the principle of *Noscitur a Sociis*, which means that a word is known by those with which it is associated, i.e., by its immediate context. *Noscitur a sociis* may be applied only where there is doubt about the meaning of a word;

(ii) the principle of *Ejusdem Generis*, which is applied to situations in which a series of specific terms is followed by a general term or vice versa. It means that the meaning of the general term is limited to the kind of things indicated by the specific terms;

(iii) the principle of *Expressio Unius Est Exclusio Alterius*, which means that the expression of one thing is the exclusion of another. It means that when an author says one thing and not another, s/he intends to exclude the other;

(iv) the principle of *In Pari Materia*, which means that statutes should generally be interpreted in ways that are consistent with other statutes on the same subject. When two statutes have been enacted on the same subject one after the other, the latter and more specific one controls. The latter is interpreted to be an exception or qualification of the former;

(v) that statutes are generally written to be read by the general public. When ordinary or popular language appears in statutes, therefore, it is usually

interpreted in its ordinary or popular sense;

(vi) that one other source of meaning of particular significance in statutory interpretation is the definition section of a statute. If a statute has such a section, it must be consulted for it is the very expression of the legislature's intention as to the meaning of the words defined in it.

#### **(D) Legislative History**

The competent lawyer should understand the function of legislative history as a means of statutory construction. Specifically, the lawyer should be able to:

(i) distinguish the two meanings of the phrase "legislative history." The first is a list of documents that were produced as a result of the process through which legislation passed on its way to becoming law. This is more properly termed a legislative chronology to distinguish it from the second meaning, which is those documents themselves and their content. It is this second meaning that is usually and properly applied to the term legislative history;

(ii) identify the components of legislative history and their relative weights of authority;

(iii) recognize the proper use of legislative history, which is to clarify, qualify, or amplify a court's understanding of the purpose, intent or meaning of a statute. The sense of the legislative history as a whole can be used to verify the statute's underlying purpose or policy. Parts of the legislative history may be used to verify that the legislature foresaw the application of the statute to certain types of situations. It may clarify ambiguous language in the statute or show that language that appears on its face to be clear is actually ambiguous or at least subject to one or more other interpretations;

(iv) recognize that American courts may use legislative history to try to discover the intent, purpose or meaning of a statute, but they are not required to do so. Indeed some favor it while others do not. The competent lawyer should find out if the courts before which he is practicing favor its use or not;

(v) understand the criticisms of the use of legislative history by several influential jurists. These criticisms include:

1. the unavailability of legislative materials, particularly those generated by the states. Federal legislative materials are now more readily available, not only in depository libraries, but also from commercial sources such as West's U. S. Code Congressional and Administrative News and Congressional Information Service's indexes and microform sets;

2. the costs of legislative materials. In spite of the fact that federal legislative history is more easily accessible today than it once was, it can still be difficult and time consuming to acquire both federal and state legislative materials. If one litigant can afford such a search, of course, and the other cannot, the situation is ripe for abuse;
3. the potential for improper use of legislative history, which is notoriously subject to manipulation and misuse;
4. the overuse of legislative history;

(vi) realize the potential for identifying a conflict between the language of a statute and the content of a legislative history. When the plain meaning of a statute appears to conflict with the content of its legislative history, either the meaning of the statute is not as plain as it appears on its face or the legislative history is not being used properly or the legislation was controversial.

#### **(E) Strict Construction**

The competent lawyer should be aware of the principle and use of strict construction. Specifically, the lawyer should understand that:

(i) statutes may be interpreted strictly or liberally. Strict interpretation means narrow or less inclusive; liberal means broad or more inclusive;

(ii) penal statutes are generally construed strictly in order to favor the one who is accused over the prosecutor. A liberal construction of a penal statute may lead to a situation in which one does not have adequate warning that one's actions might fall within the scope of the statute;

(iii) statutes in derogation of the common law, passed by legislatures to change or qualify the common law, are also interpreted strictly.

#### **(F) Statutory Construction and the Constitution**

The competent lawyer should recognize the principle that if there are several, equally good ways of construing a statute, courts will generally favor one that does not conflict with the Constitution. Courts presume that legislatures intend their statutes to be Constitutional. If, however, one must choose between a construction that appears to be closer to the purpose or intention of the legislature, but conflicts with the Constitution, and one that is not so close to the legislature's purpose or intent, but does not conflict with the Constitution, a court may find that the statute is unconstitutional. Common sense must be used in

making such a decision.

**(G) Prospective and Retrospective Applicability of Statutes**

The competent lawyer should also understand that it is presumed that statutes are prospective unless it is clear from their language that they are intended to be retroactive. Retroactive statutes are disfavored because they do not allow people notice of the law so that they can adjust their behavior to it.

**(H) Sources for Statutory Construction**

The competent lawyer should be familiar with the standard sources of statutory construction, including standard treatises such as Sutherland on Statutory Construction, and the use of the topic "Statutes" in the West Digest system.

**9. Multiple Sources of Statutory Law**

With respect to both the primary and secondary legal materials, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

**(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;
- (ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;
- (iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;
- (iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices;

**(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

(i) the range of years included in various statutory and legislative services and their electronic equivalents;

(ii) the function of the jurisdictional tables in A Uniform System of Citation in identifying official sources of codes and unofficial alternatives, the historical sources of early state and federal statutes, and other guidance and information.

# CORE LEGAL RESEARCH COMPETENCIES

## **PART C - ADMINISTRATIVE MATERIALS**

(1 through 3 follow 3.1 of MacCrate SSV; 4 through 8 follow 3.2 of the MacCrate SSV.)

### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should have a basic familiarity with the rudiments of administrative law and its primary purpose, which is to keep government power within legal bounds and to protect individuals against the abuse of policy.

#### **(A) Procedures for Federal Executive Rulemaking**

The competent lawyer should be familiar with the rulemaking function of executive agencies. Specifically, the lawyer should know that:

(i) as required by the Administrative Procedure Act, federal agencies prepare proposed version of rules and regulations prior to the implementation of such laws and the special circumstances under which this stage of rulemaking is waived;

(ii) the Federal Register Act of 1935 imposed an obligation on all agencies to publish proposed and final versions of rules and regulations in the Federal Register, published daily by the U.S. Government Printing Office;

(iii) a period of Notice and Comment by interested parties is generally required for rulemaking and that the length of the period can be 30, 60 or 90 days;

(iv) the final rule must be published in the Federal Register initially and may be subsequently codified in the Code of Federal Regulations.

#### **(B) Procedures for Federal Adjudication**

The competent lawyer should understand the adjudicative function of federal agencies and the requirements for administrative litigation. Specifically, the lawyer should know:

(i) that due process, notice and hearing, etc. are required.

(ii) that these requirements are established by two sources:

1. Administrative Procedure Act, 5 U.S.C. §551 et seq.
2. the organic act authorizing the agency, which describes the specific due process requirements for each agency action under that section of the law.

### **(C) Relationship between the Executive and Judicial Branches**

The competent lawyer should understand the relationship between the executive and judicial branches of the federal and state governments. Specifically, the lawyer should understand:

- (i) the power of the courts to construe and pass on the validity and constitutionality of administrative regulations and the actions of administrative agencies;
- (ii) that agencies have both legislative and judicial functions, a variance from the traditional separation of powers;
- (iii) the *quasi*-judicial nature of administrative adjudication and that while administrative courts are not "inferior courts," they are nonetheless subject to judicial review;
- (iv) the delegation of powers doctrine under which each agency head has specialized expertise, acts with authority delegated from the President, with discretion, and that the power of appointment is the President's control over that discretionary power.

### **(D) Review of Administrative Decisions**

The competent lawyer should recognize the availability of judicial review of administrative decisions. Specifically, the lawyer should be familiar with:

- (i) the doctrine of standing, i.e., parties must be aggrieved, have a legal interest as interpreted by courts, etc.;
- (ii) the doctrine of ripeness, i.e., timing of review, etc.;
- (iii) the doctrine of exhaustion of administrative remedy, i.e., parties must have final administrative action before appeal to court system, etc.;
- (iv) the standards of review, i.e., actions based on abuse of discretion, without basis, unconstitutional, exceeding authority, without due process, unsupported by substantial evidence, unwarranted by the facts; provided by the APA or by enabling legislation; etc.;

(v) the doctrine of political question;

(vi) the doctrine of preemption.

### **(E) Relationship between Executive and Legislative Branches**

The competent lawyer should understand the relationship between the executive and judicial branches of the federal and state governments. Specifically, the lawyer should understand that:

(i) the legislature delegates authority to the agencies to implement statutes;

(ii) the legislature continues to exercise control over agencies after such delegation through oversight committees. These committees hold hearings, authorize investigations, and use subpoenas and contempt power in the course of this oversight;

(iii) agencies influence legislative action through legislative affairs officers who attend hearings, participate in markups of legislation, and generally function as liaisons between the agencies and legislatures;

(iv) the executive also influences the legislature by introducing legislative initiatives and the annual budget in order to further the executive's policy agenda;

(v) the resolution of inconsistencies between statutes and regulations.

## **2. Relative Weight of Authority**

The lawyer should be able to recognize the types of administrative materials and which tend to provide the controlling principles for the resolution of various kinds of issues in various substantive fields.

### **(A) The Authority of Regulations**

Specifically, the lawyer should know that:

(i) proposed rules and regulations have no authority until finalized;

(ii) final rules and regulations published in the Federal Register are authoritative, but that the lawyer should verify the effective date;

(iii) final regulations are recognized as binding precedent if they are established within the scope of power delegated to the agency by Congress;

(iv) the preambles to regulations published with final regulations are recognized as persuasive authority;

(v) agency guidelines, questions and answers, and other administrative documentation outside the rulemaking process are recognized as persuasive authority;

(vi) the Federal Register is judicially noticed by courts and that the Code of Federal Regulations is prima facie evidence of the Federal Register.

### **(B) The Authority of Administrative Decisions**

The lawyer should know the precedential value of administrative materials and specifically:

(i) administrative decisions are only binding on the issuing tribunal;

(ii) administrative decisions can be persuasive on appellate courts due to the subject expertise of the tribunals.

### **(C) The Authority of State Administrative Materials**

The lawyer should know the authority of regulations and adjudications within the jurisdictions in which he or she practices. The lawyer should also be aware of the preemption of some areas of state administrative law by federal law. In addition, the lawyer should be aware of the possibility that state law can be more restrictive than federal law and the implications that situation may have on preemption.

## **3. Variety of Remedies Available in the Forum**

In order to recognize appropriate avenues of legal research, the lawyer should understand the variety of legal remedies available in administrative controversies.

### **(A) Rulemaking**

The competent lawyer should recognize the options available to obtain relief from administrative rulemaking which are:

(i) presenting testimony in support of, or lobbying for, the adoption, repeal or amendment of administrative regulations;

(ii) obtaining waivers or exceptions to the application of administrative rules and regulations.

## **(B) Adjudication**

The competent lawyer should recognize the options available to obtain relief from administrative adjudication which are:

- (i) the availability of informal dispute resolution within an agency;
- (ii) the possible remedies which can result from formal administrative adjudication including damages, injunctive relief, orders to cease and desist, reinstate or bargain, consent decrees, penalties, and contempt.

## **(C) Sources of Information on Pursuing Remedies**

The competent lawyer should how to:

- (i) identify the nature of relief granted in the enabling statutes and implementing regulations;
- (ii) interpret the application of relief in both administrative decisions and subsequent court reviews;
- (iii) locate sources of the unique administrative relief granted by specific agencies, such as consent orders which do not appear in the standard primary law publications.

## **4. Primary Legal Texts**

With respect to each of the following fundamental tools of legal research, a lawyer should be generally familiar with the nature of the tool, its likely location in a law library, and the ways in which the tool is used.

### **(A) Official Federal Administrative Code**

The competent lawyer should understand that the federal administrative code is contained in the Code of Federal Regulations. This code includes those rules and regulations promulgated by federal executive agencies to implement the programs authorized by Congress and presidential documents. In addition, the lawyer should know:

- (i) the publication format and schedule of the Code of Federal Regulations. The CFR is issued by the Government Printing Office on quarterly schedule. In reality, the actual publication dates vary significantly from scheduled dates and the lawyer should be conscious of this delay in locating the most current regulations in effect;

- (ii) the Office of the Federal Register was created to provide notice of and the opportunity to comment on regulations to the public through the publication of a daily Federal Register and a federal code;
- (iii) the general arrangement of the CFR by subject in fifty titles which do not always correspond to U.S. Code titles. Each CFR title is divided into chapters by agency;
- (iv) each new edition is current as of the date of publication;
- (v) the function and operation of the CFR's List of Sections Affected;
- (vi) the authority note indicates the citation to the enabling legislation;
- (vii) the source note is the Federal Register citation for final publication of rule. This citation leads the lawyer to regulatory preambles, when they exist, as well as any earlier versions of the regulations;
- (ix) when the authority and/or source note differ, the CFR includes a separate citation;
- (x) Title 3 includes executive orders, proclamations and other presidential documents;
- (xi) the CFR is updated by the Federal Register, via the List of Sections Affected;
- (xii) the CFR may be shepardized and is indexed by official and commercial indexes.

**(B) Official State Administration Codes**

The competent lawyer should be familiar with the state administrative code in the jurisdiction(s) in which he or she practices, if such a code exists. In states without codified administrative law, the competent lawyer should be able to locate the rules and regulations promulgated by executive branch agencies in some published form.

Specifically, the lawyer should be able to:

- (i) determine the existence and title of an administrative code or the location of uncodified regulations and rules for the jurisdiction(s) in which he or she practices;

(ii) understand the general arrangement of the regulations and the methods of locating relevant regulations;

(iii) know the currency of regulations and sources for locating the most current versions of regulations.

### **(C) Local Administrative Codes**

The competent lawyer should be familiar with the local administrative code in the jurisdiction(s) in which he or she practices, if such a code exists. In locales without codified administrative law, the competent lawyer should be able to locate the rules and regulations promulgated by executive branch agencies in some published form.

Specifically, the lawyer should be able to:

(i) determine the existence and title of an administrative code or the location of uncodified regulations and rules for the jurisdiction(s) in which he or she practices;

(ii) understand the general arrangement of the regulations and the methods of locating relevant regulations;

(iii) know the currency of regulations and sources for locating the most current versions of regulations.

### **(D) Uncodified Administrative Rules and Regulations**

The competent lawyer should understand that some administrative rules and regulations are not codified. In some cases, this phenomenon is a result of the ongoing amendment of regulations and is remedied by the subsequent publication of revised codes. In other situations, rules and regulations are not codified for policy reasons. In either case, the competent lawyer should know the sources and purposes of uncodified administrative rules and regulations.

With respect to federal uncodified regulations, the competent lawyer should be able to:

(i) know the types of rules and regulations which are generally not codified for policy reasons, including meeting notices;

(ii) recognize that prior to publication in the Code of Federal Regulations, newer regulations appear in the Federal Register, a daily publication which generally includes:

1. Table of contents;
2. List of parts affected this issue;
3. Presidential documents;
4. New rules and regulations (final rules);
5. Proposed rules and related notices;
6. Other notices;
7. Sunshine Act notices;
8. Finding aids: telephone numbers, table of pages, cumulative list of parts affected for the month, etc;

(iii) know the function of the Unified Agenda (issued semiannually in April and Oct.) issued by each Agency as required by the Regulatory Flexibility Act of 1980, in four groups:

1. Pre-rule;
2. Proposed rule;
3. Final rule;
4. Completed actions;

(iv) know other sources of publication including:

1. West U.S. Code Congressional & Administrative News;
2. United States Code Service, Advance Pamphlets;

(v) know the tools for accessing the regulations, including:

1. the official GPO index, which is published with the Register subscription, is monthly and cumulative each month for all prior months in the year;
2. the CIS Congressional Index and Abstracts, a commercial publication.

## **(E) Administrative Documents**

The competent lawyer should be familiar with the depth and breadth of administrative documents generated at the federal, state and local levels of government. The lawyer should understand that executive branch agencies produce these documents to fulfill the responsibilities delegated to them by the legislative branch. Specifically, the lawyer should be able to:

(i) know federal executive documents are published in the CFR and Federal Register, the Weekly Compilation of Presidential Documents, Published since 1965, current Public Papers of the President Annual cumulation United States Code Congressional and Administrative News;

(ii) understand that many federal agency documents are not published in the Federal Register or Code of Federal Regulations. These materials include periodicals, annual reports, press releases, monographs, and other documents which shed light on the agency's thinking;

(iii) realize that although these materials are not authoritative, they are invaluable in determining strategies for client matters. Certain tools facilitate the identification of these items including looseleaf services, Monthly Catalog, direct subscriptions from agencies, (United States Government Manual), Guide to U.S. Government Publications, American Statistics Index, Government Reports Announcements and Index;

(iv) understand that other agency issuances may be more authoritative. These include Bulletins, Monographs, Guidelines and Guidances, Policy Statements, Policy Interpretations, Compliance Manuals, Internal Agency Procedure Manuals, Catalogs, Handbooks, News reports, Studies, and statistical reports;

(v) recognize that states and local jurisdictions also produce administrative documents which can be identified using the Monthly Checklist of State Publications and/or Index to Current Urban Documents;

(vi) know that the agencies have particular numbering systems for publications and series of publications. For example, the U.S. DOT, Coast Guard designates navigation and safety rules as its G-NSR- series, and the EPA - by Program, e.g. TS - series for Toxic Substances Indexing and Access to Government;

(vii) understand that many documents are available through the Federal Depository Library system. Participants in the system may opt for selective coverage of documents, but regional depositories tend to have broader coverage. Documents can be identified through the GPO Monthly Catalog, which is available from GPO Bookstores.

## **(F) Administrative Decisions**

The competent lawyer should be familiar with the array of decisions published by the quasi-judicial tribunals with federal and state executive agencies. Specifically, the lawyer should:

(i) understand the function of these decisions within the scheme of administrative law;

(ii) recognize that these decisions do not carry the same weight of authority as do federal and state court decisions;

(iii) know the procedural possibilities, including trial and appeal within the agency tribunals;

(iv) understand the role these bodies play in satisfying the legal requirement of exhausting administrative remedies;

(v) know the published sources of these materials, including official government publications, such as Decisions of the United States Merit System Protection Board and Decisions and Orders of the National Labor Relations Board, commercial publications, such as the Federal Merit Systems Reporter (CCH) and the Labor Relations Reporter (BNA), and the availability of these materials through electronic formats;

(vi) understand the relationship between administrative decisions and court decisions;

(vii) understand appropriate citation format for these decisions;

(viii) understand methods for verifying the currency of these decisions;

(ix) understand methods for accessing these decisions.

## **(G) Presidential Documents**

The competent lawyer should understand the significance of presidential documents and the sources of and techniques for using these materials. Specifically, the lawyer should know:

(i) the President issues Executive Orders and Proclamations. A Proclamation has no legal effect, however, an Executive Order directs activities of government officials and agencies;

(ii) the President also issues Reorganization Plans under the authority of 5 U.S.C. § 901. The President uses Reorganization Plans to propose changes in the structure and organization of agencies and must submit these plans to Congress for approval;

(iii) how to identify the primary sources of executive documents, including the following:

1. Statutes at Large (does not include Executive Orders);
2. the Federal Register;
3. the Weekly Compilation of Presidential Documents;
4. Title 3 of the Code of Federal Regulations;
5. the Public Papers of the President which include messages to

Congress, public speeches, news conferences, and public letters.

## 5. **Electronic Sources**

The competent lawyer should be familiar with electronic sources of administrative materials and the relative costs and efficiency of these tools. Specifically, the lawyer should know the techniques and contents of the major online databases and tools as described below.

### (A) Lexis-Nexis

(i) The competent lawyer should know the coverage and availability of primary administrative sources on Lexis, with the understanding that these change constantly. Accordingly, the competent lawyer will always verify the coverage and availability by consulting the Lexis-Nexis Library Contents before performing online research. Specifically, the lawyer should be aware that the following primary administrative materials are on Lexis:

1. Code of Federal Regulations (CFR);
2. List of Sections affected (LSA);
3. Federal Register (FEDREG);
4. Materials and decisions issues by many federal agencies;
5. Federal Executive branch documents;
6. Administrative codes for some individual states;
7. Selected state administrative decisions;

(ii) The competent lawyer should know the coverage and availability of secondary (commercial) administrative sources on Lexis, with the caveat above. Specifically, the lawyer should be aware that the following materials are on Lexis:

1. looseleaf services, particularly those produced by the Bureau of National Affairs;
2. journals and specialized newsletters which would provide access to information regarding unpublished administrative actions and analysis of pending rules and regulations;
3. law reviews;

(iii) The competent lawyer should be skilled in Lexis-Nexis search techniques including:

1. free text searching;
2. document retrieval searching, e.g. LEXSEE, LEXSTAT;
3. field restricted searching, e.g. segments;
4. natural language searching;

(iv) The competent lawyer should have a solid understanding of the various pricing options available on Lexis, the relative strengths and weaknesses of each, the option(s) in use at his/her institution, and the circumstances under which one option would be preferable to another. Specifically, the lawyer should understand:

1. the zero connect option;
2. the hourly rate option;
3. the transactional pricing option.

**(B) Westlaw**

(i) The competent lawyer should know the coverage and availability of primary administrative sources on Westlaw, with the understanding that these change constantly. Accordingly, the competent lawyer will always verify the coverage and availability by consulting the Westlaw Database List before performing online research. Specifically, the lawyer should be aware that the following primary administrative materials are on Westlaw:

1. Code of Federal Regulations (CFR);
2. Federal Register (FEDREG);
3. Materials and decisions issues by many federal agencies;
4. Federal Executive branch documents;
5. Administrative codes for some individual states;
6. Selected state administrative decisions;
7. Topical reporters which include state administrative material such as the Blue Sky Law Reporter-CCH (BSI);

(ii) The competent lawyer should know the coverage and availability of secondary (commercial) administrative sources on Westlaw, with the caveat above. Specifically, the lawyer should be aware that the following materials are on Westlaw:

1. looseleaf services, particularly those produced by the Bureau of National Affairs and Commerce Clearing House;
2. journals and specialized newsletters which would provide access to information regarding unpublished administrative actions and analysis of pending rules and regulations;
3. law reviews;

(iii) The competent lawyer should be skilled in Westlaw search techniques including:

1. free text searching;
2. document retrieval searching, e.g. FIND;

3. field restricted searching, e.g. segments;
4. natural language searching;

(iv) The competent lawyer should have a solid understanding of the various pricing options available on Westlaw, the relative strengths and weaknesses of each, the option(s) in use at his/her institution, and the circumstances under which one option would be preferable to another. Specifically, the lawyer should understand:

1. the flat rate option;
2. the hourly rate option.

### **(C) Agency Bulletin Boards**

The competent lawyer should be aware of the existence of bulletin boards, especially government bulletin boards, that will allow the lawyer access to some administrative materials by simply dialing into one of these bulletin boards. Examples of bulletin boards which have administrative materials follows:

FDA BBS: Food and Drug Administration information and policies  
FERC-CIPS: Federal Energy Regulatory Commission documents

### **(D) The Internet**

Some administrative decisions and regulations are issued on the Internet. The competent lawyer should be aware of this technology as an avenue to administrative materials. Specifically, the lawyer should know that:

(i) the Internet offers access to materials posted by the legislatures, associations, governmental organizations, legal publishers, law schools, interest groups, law firms, corporations, and individuals. This information is most easily accessible through the World Wide Web, a graphical component of the Internet. Other Internet case access options include FTP and Telnet, both of which should be within the skills of lawyers;

(ii) the WWW is most useful for known cite retrievals rather than subject searches and that access is available through Web search engines, Web menu stepping, and direct HTTP connections;

(iii) the information available on the Web is limited in scope, lacks of quality control and requires independent authentication and citation verification.

### **(E) CD-ROM Products**

(i) The competent lawyer should know that administrative materials are available

on a variety of CD-ROM products. The lawyer should be aware that there are sources which describe law-related CD-ROM products, including the Directory of Law-Related CD-ROMS, as well as newsletters and product reviews in legal magazines. Specifically, the lawyer should know that:

1. primary federal administrative sources, including the Code of Federal Regulations and the Federal Register, are available in CD-ROM;
2. federal agency material, including decisions, guidelines, releases and other items, can be purchased in CD-ROM;
3. topical federal administrative material have been collected in CD-ROM format;
4. some state administrative codes are in CD-ROM format;
5. state administrative documents are also included as part of larger state sets which contain court decisions and statutes;

(ii) The competent lawyer should possess a basic knowledge of CD-ROM viewing and printing equipment including the use of a CD-ROM drive, the techniques for searching and retrieval and printing options.

#### **(F) Microform**

(i) The competent lawyer should know that administrative materials are available in microform. The lawyer should be aware that there are sources which describe law-related microform products, including the Guide to Microforms in Print, the catalogs for Congressional Information Service (CIS), University Microfilms, Inc. (UMI), and Law Library Microform Consortium (LLMC). Specifically, the lawyer should know that:

1. primary federal administrative sources, including the Code of Federal Regulations and the Federal Register are available in microform;
2. federal agency material, including decisions, guidelines, releases and other items, can be purchased in microform;
3. some state administrative codes are in CD-ROM format;

(ii) The competent lawyer should possess a basic knowledge of microform viewing and printing equipment including lens, lamp housing, printing options.

### **6. Secondary Legal Materials**

With respect to secondary legal materials, a lawyer should have a general familiarity with the breadth, depth, detail and currency of coverage, the particular

perspectives, and the relative strengths and weaknesses that tend to be found in the various kinds of secondary sources so that he or she can make an informed judgment about which source is most suitable for a particular research purpose.

### **(A) Looseleaf Services**

In general, the lawyer should recognize the value of looseleaf services as tools which collect primary and secondary sources of law by subject rather than by jurisdiction, date, or branch of government. In addition, the lawyer should recognize that looseleaf services are published by commercial vendors and often include both primary source material such as cases, statutes and regulations as well as secondary source material such as commentaries, practice pointers, forms, check lists and annotations. Specifically, the lawyer should know:

(i) there are two primary types of looseleaf services:

1. interfiled services, which are often mini-libraries compiling a wide array of material on one area of law;
2. newsletter type services, which monitor current developments in a practice area. Some services offer a combination of the two;

(ii) the content of looseleaf services varies, but most provide weekly, biweekly, monthly or quarterly coverage of current legislative, administrative, and judicial developments affecting a specific area of administrative law;

(iii) many looseleaf services include a current awareness newsletter that highlights important issues reported in the latest looseleaf update;

(iv) some services include reference binders or manuals, which reprint the full text of relevant federal and state laws and regulations;

(v) administrative and relevant state and federal are often included in full text, with narrowly focused, specialized indexing using terms familiar to attorneys practicing in the field. Lawyers should know that this feature makes administrative looseleaf services the tool of choice for many experienced practitioners;

(vi) access to looseleaf services is provided by a variety of indexes and finding list, including:

1. Topical or subject indexes, which refer users to paragraph or page numbers;
2. A quick access index, which directs users to sections of the service

where major topics begin;

3. Tables of cases, which list court decisions alphabetically;
4. Numerical, finding lists, which provide a cross reference from primary source citations to regulations, agency rulings, releases, forms and opinions of the lawyer general, to the paragraph numbers which discuss these items is reprinted in full or discussed;

(vii) some looseleaf services include Cumulative Indexes, which serve a shepardizing function. Arranged by paragraph number, these indexes allow users to link older materials in the manuals or compilation volumes to new developments in what are essentially looseleaf "pocket parts;"

(viii) a source for identifying relevant looseleaf services is an annual reference tool, Legal Looseleaves in Print, that provides subject access to looseleaf services.

## **(B) Treatises**

In general, the lawyer should understand the purpose of treatises as background reading for research and access to primary sources. In addition, the lawyer should recognize the limited citation value of treatises in both court and internal documents.

## **(C) Encyclopedias**

In general, the lawyer should recognize legal encyclopedias as excellent sources of background reading, particularly for those situations in which the lawyer is not familiar with the overall area of law. Specifically, the lawyer should be familiar with the following titles:

- (i) American Jurisprudence, 2d (Am. Jr. 2d) Lawyer's Coop.

Under the topic "Administrative Law" this legal encyclopedia describes the general principles of the law relating to the powers, duties and functions of administrative law bodies at the federal, state and local level. The text treat both rulemaking and adjudicatory functions. In addition to the explanatory text, it cites extensively to select illustrative cases, other Lawyers Coop publications and applicable law review articles. Updated through pocket parts. As separate volume of the encyclopedia, entitled "Table of Statutes, Rules and Regulations Cited" contains cross-references showing where particular sections of the Code of Federal Regulations are cited in Am Jur 2d.

- (ii) Corpus Juris Secundum (CJS) West Publishing

The topic "Public Administrative Law and Procedure" covers the legal principles relating to the powers, duties and function of state and federal administrative law bodies. The topic covers both rulemaking and adjudicatory functions, and cites extensively to selected cases. Contains internal references to other West publications and provides references to the West Key Number System. Updated through pocket parts.

## **7. Citation Verification**

The competent lawyer should be able to verify the currency of federal and state administrative decisions and regulations using at least two of the tools described below.

### **(A) Shepard's Citations - Print Versions**

To determine if an administrative decision or regulation has been effected by judicial action, a competent lawyer should know how to use Shepard's Citations. Lawyers should be able to:

(i) be aware of the availability of Shepard's citations for primary administrative law, including Shepard's United States Administrative Citations: decisions, orders, and cross references and Shepard's Code of Federal Regulations citations;

(ii) know that Shepard's citations are also available for topical administrative collections, including Shepard's Federal Energy Law Citations and Shepard's Federal Tax citations;

(iii) be able to locate the separate edition of Shepard's U.S. Citations for federal administrative decisions or regulations as well as for the state jurisdiction at issue;

(iv) understand the difference between cited and citing cases;

(v) identify the scope of citing sources and selected secondary materials published by Shepard's McGraw-Hill that are included in the citator and recognize those sources not included that should be checked separately, including more recent decisions not yet appearing in the citator;

(vi) locate the explanations of abbreviations at the beginning of each volume to determine the effect of the citing sources upon the cited administrative document;

(vii) determine the date and scope of the latest supplementary pamphlet and understand which parts of the set must be checked for an accurate search.

## **(B) Shepard's Citations - Electronic Versions**

A competent lawyer should be aware of the electronic alternatives for accessing Shepard's citations. Specifically, the lawyer should be able to:

(i) activate the Shepard's Citations service on Lexis and Westlaw; understand the scope of electronic coverage and how that scope compares to the print versions; use the editorial and Key Number codes to limit their search results to specific citing cases; use both command and function key techniques; recognize the difference among various Shepard's "documents;" and select the appropriate printing option;

(ii) activate the Shepard's Preview Citations service on Westlaw; understand the scope of coverage and how this compares to the standard Shepard's versions; recognize that the editorial and Key Number codes are not available in this service; use both command and function key techniques; and select the appropriate printing option;

(iii) understand the relative costs of these services on Lexis and Westlaw and the circumstances under which they should be selected and through which online databases;

(iv) use the automated software programs CheckCite and WestCheck to maximize the cost efficiency of these tools.

## **(C) Auto-Cite**

A competent lawyer should be aware of the existence and use of Auto-Cite, a citation service of Lexis-Nexis, as an alternative to Shepard's Citations. Specifically, the lawyer should be able to:

(i) activate the Auto-Cite service on Lexis; understand the scope and timing of electronic coverage and how they compare to other electronic citators; use both command and function key techniques; and select the appropriate printing option;

(ii) understand the relative costs of this service on Lexis and the circumstances under which it should be selected;

(iii) use the automated software programs CheckCite to maximize the cost efficiency of this tool.

## **(D) Insta-Cite**

A competent lawyer should be aware of the existence and use of Insta-Cite, a citation service of Westlaw, as an alternative to Shepard's Citations. Specifically, the lawyer should be able to:

(i) activate the Insta-Cite service on Westlaw; understand the scope and timing of electronic coverage and how they compare to other electronic citators; use both command and function key techniques; and select the appropriate printing option;

(ii) understand the relative costs of this service on Westlaw and the circumstances under which it should be selected;

(iii) use the automated software programs WestCheck to maximize the cost efficiency of this tool.

### **(E) LEXCITE**

A competent lawyer should be aware of LEXCITE as electronic citator. This service automatically creates a subject search based on the citation entered and runs it through all cases. The lawyer should recognize the unusual circumstances under which this alternative should be selected, given the relatively high cost of this option.

### **(F) QUICKCITE**

A competent lawyer should be aware of QUICKCITE as electronic citator. This service automatically creates a subject search based on the citation entered and runs it through all cases. The lawyer should recognize the unusual circumstances under which this alternative should be selected, given the relatively high cost of this option.

### **(G) Other Citators**

The competent lawyer should be aware that other official and commercial publishers produce citators to facilitate the verification of laws, particularly in administrative areas. The competent lawyer should be skilled in the use of these specialized citators in the practice area of his or her expertise if one exists. Specifically, lawyers should:

(i) know the existence of such citators in the areas in which they are employed most frequently;

(ii) be able to identify the existence of such citators in areas in which they are expected to perform citation verification;

(iii) understand the use, costs, coverage, accuracy, reputation, and currency of any citator relied upon for this function.

## **8. Multiple Sources of Administrative Law**

With respect to both the primary and secondary legal materials, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

(i) the relative amount of time research actions require manually and electronically;

(ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;

(iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;

(iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices.

### **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization.

# CORE LEGAL RESEARCH COMPETENCIES

## PART D - PROCEDURAL AND ETHICAL RULES

(1 through 3 follow 3.1 of MacCrate SSV; 4 through 8 follow 3.2 of the MacCrate SSV.)

### 1. Characteristics

In order to conduct legal research effectively, every lawyer should understand the sources of state and federal procedural law and ethical rules and the processes by which they are created.

#### **(A) Creation and Interpretation of the Federal Rules of Procedure**

Every lawyer should understand the authority of the U.S. Congress and of the Supreme Court in the promulgation of court rules, and how the interplay of that authority results in some types of rules being legislatively promulgated, while other type of rules are adopted by judicial order.

##### (i) Civil Procedure

Every lawyer should understand the authority under which the civil rules are promulgated and should know that:

1. the Federal Rules of Civil Procedure are the national rules governing civil litigation;
2. the Supreme Court has authority to propose rules which are then reviewed by the U.S. Congress;
3. although affirmative approval of the rules by Congress is not necessary, Congress has a right to disapprove or change the rules;
4. courts interpret the rules by looking at the plain language of the rules, decisions in earlier cases that interpreted the rules, official notes of the advisory committees, and any statements made by the Judicial Conference or by the Supreme Court. If Congress takes action on a rule, any resulting legislative history could be considered;

##### (ii) Criminal Procedure

Every lawyer should understand the authority and process by which the rules of criminal procedure are promulgated and should know that:

1. the Federal Rules of Criminal Procedure are the national rules governing criminal litigation;
2. the Supreme Court has the power to promulgate these rules, subject to transmission by the Chief Justice to Congress for approval;
3. the purpose of the rules is to provide a uniform set of procedures for criminal cases in the federal court system, consistent with requirements of justice and sound administration. The original rules were adopted effective March 1945 and have been amended several times since then;
3. as of 1988, the public has had the opportunity to participate in the rulemaking process through open meetings on proposed changes to the rules;

#### (iii) Appellate Procedure

Every lawyer should understand the authority under which rules of appellate procedure are promulgated, and that appellate rules govern procedures in taking appeals and in practicing before appellate courts. Specifically, the lawyer should know that:

1. the Federal Rules of Appellate Procedure are the national rules governing appeals;
2. the thirteen federal circuit courts promulgate local rules as well as internal operating procedures;
3. the Supreme Court has the power to make rules of practice and procedure for all cases within the jurisdiction of the courts of appeals;
4. the Rules continue to evolve and change. The Rules have been amended several times since they first became effective in July 1968;

#### (iv) Evidence

Every lawyer should understand the role of the common law, the U.S. Congress, and the U.S. Supreme Court in the creation of the law of evidence. Specifically, the competent lawyer should understand:

1. that the Federal Rules of Evidence are the national rules governing criminal litigation;

2. that evidence was controlled by the common law prior to the adoption of the Rules;
3. the authority and process by which the Rules of Evidence have been adopted and are currently amended;

(v) Local Court Rules

Every lawyer should understand the authority under which federal courts promulgate local rules of procedure. Specifically, the lawyer should know that:

1. Federal Rule of Civil Procedure 83 partially delegates the U. S. Supreme Court's rulemaking power by authorizing the district courts to promulgate local rules for the conduct of their business, providing such rules do not conflict with the Acts of Congress or the Rules of Practice and Procedure;
2. as a result of this delegation, litigation is subject to both national and local court rules, both of which must be researched and applied in the course of representing clients.

**(B) Creation of State Rules of Procedure**

Every lawyer needs to understand the role of common law, the state legislature, and the state high court in making laws, rules, or regulations that govern state rules of procedure.

(i) Civil Procedure

Every lawyer should understand that the process for creating rules of civil procedure differs among the states. The four most common approaches to this process include:

1. the judicial branch (usually the highest court in the state) has final authority to promulgate civil procedural rules;
2. the rules promulgated by the judiciary to go into affect unless the legislature acts on them within a certain time limit;
3. legislative action on a rule proposed by the judiciary is required before a rule can go into effect;
4. the legislature has final authority to enact the rules;

(ii) Criminal Procedure

Every lawyer should understand that states may regulate criminal procedure using a variety of approaches and resources including:

1. the adoption of laws by the state legislature, in the form of a code of criminal procedure;
2. the promulgation of rules by the state high court in the form of rules of criminal procedure;
3. the guidance offered by the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Rules of Criminal Procedure in 1952, which were revised in 1974;

#### (iii) Appellate Procedure

Every lawyer should realize that most state appellate courts have established separate systems of procedure and that the rules may even vary by court level within the same state. While many states have adopted the FRAP, they can also promulgate local rules and operating procedures. Thus, appellate procedural diversity exists both within and among states.

The competent lawyer should understand the implications of this complexity and carefully identify all applicable rules. In addition, the lawyer should recognize the National Center for State Courts as a major provider of information about state courts and should seek to identify relevant studies and recommendations issued by the Center.

#### (iv) Evidence

Every lawyer should understand that, in the past, evidence was generally governed by the common law of each state. Attempts to standardize the rules of evidence throughout the 20th century ultimately led to the creation of the Uniform Rules of Evidence in 1953. Initially, only a few states adopted the Uniform Rules', however, work on the Federal Rules of Evidence rekindled interest. When the development of the Federal rules was near completion, the National Conference of Commissioners on Uniform State Laws appointed a special committee on Rules of Evidence charged with the responsibility of conforming so far as practicable the Uniform Rules of Evidence with the Federal Rules of Evidence.

#### (v) Local Court Rules

Every lawyer should:

1. understand the authority under which courts promulgate local rules of procedure;
2. be aware that state local rules are designed to streamline the adjudicatory process and to facilitate the resolution of disputes, but have instead led to confusion in local practice, higher court costs, and delays in resolving disputes;
3. realize that getting information about the rules is difficult because many local rules are either not published or out-of-date due to unannounced revisions;
4. recognize that it is not uncommon for courts within the same jurisdiction to ignore traditional local rules as new judges with different philosophies refuse to be constrained by such rules;
5. be aware that this situation has led state courts to study and propose reforms that will increase the quality, simplicity, and uniformity of the local rules.

**(C) National, State and Federal Standards of Professional Conduct**

Every lawyer should understand the significance of the rules of attorney conduct which regulate the profession and be aware of the professional organizations that promulgate and enforce these rules of professional conduct. It is also essential for the lawyer to understand that the adoption of a professional code does not necessarily carry with it a means of enforcement. In the United States, the enforcement of legal codes of conduct is a responsibility of individual states and other admitting jurisdictions. These authorities also exercise the legal power, through the courts or legislatures, to adopt ethical standards which bind lawyers within their jurisdiction.

Specifically, a competent lawyer should be aware of:

- (i) the initial codification of ethical standards in the Canons of Professional Ethics, promulgated by the ABA in 1908, which consisted of 32 canons that were later supplemented by an additional 15 canons;
- (ii) the initial codification of ethical standards in the Code of Professional Responsibility, promulgated by the ABA in 1969, which consisted of:
  1. nine Canons, which express in general terms the standards of professional conduct expected of lawyers;

2. Ethical Considerations (EC) and Disciplinary Rules (DR), which implemented each Canon. The Ethical Considerations were aspirational in character and represented the objectives toward which every member of the profession should strive. The Disciplinary Rules were mandatory statements of the minimum level of conduct below which no lawyer could fall without being subject to disciplinary action;

(iii) the current iteration of ethical standards in the Model Rules of Professional Conduct issued by the ABA in 1983, which eliminated the confusing dichotomy between aspirational and binding principles of the Code, and adopted a format of black letter rules followed by explanatory Comments. Only the Rules were adopted as authoritative, and the Comments were intended as guides to interpretation which explain and illustrate the meaning and purpose of the Rule;

(iv) the existence of state codes of professional conduct, many of which are based on the ABA's Model Rules;

(v) the meaning and significance of Federal Rule of Civil Procedure Rule 11 sanctions as a method of improving competency within the bar by:

1. requiring that all lawyers who sign their names to any pleading, motion, brief, or other paper filed in court, certify that they believe the paper to be well grounded in fact, that it is supported by existing law or a good faith argument for a change in the law, and that it is not interposed for an improper purpose such as harassment or delay;
2. punishing any violation of the Rule by requiring the trial court to impose a sanction upon the lawyer, the client, or both. Sanctions include: warnings; fines payable to the court; assessment of attorney's fees and costs incurred by the opposing party in responding to the improper or frivolous filing; and, on rare occasions, payment of all fees and costs or suspension from practice before the court.

#### **(D) Ethical Opinions and Opinions of Bar Associations**

The competent lawyer should understand the function of ethical opinions in the regulation of legal practice. Specifically, the lawyer should know that:

1. the American Bar Association and many state and local bar associations have created committees which render opinions on questions of legal ethics for guidance;
2. these committees apply the applicable rules to fact situations presented by the inquirer;

3. the committees have no jurisdiction to adjudicate grievances or administer discipline, but are concerned with providing guidance for future conduct;
4. when new, recurring or significant questions are raised, the committee may render a formal opinion, which is more thoroughly researched, discussed and articulated;
5. while opinions of the various ethics committees are not binding, state and federal courts faced with ethical questions arising in discipline, civil or criminal cases often refer to these opinions in reaching their own decisions;
6. the opinions of the bar associations ethics committees, especially those which are formal and published, constitute an important interpretative aid for resolving issues of lawyers' professional responsibilities;
7. formal opinions are usually published in the association periodical or otherwise made available for the general information of the bar. Opinions of the ABA Committee on Ethics and Professional Responsibility and of the larger state and local bar associations have been periodically compiled and published. Commercial publications on professional responsibility are now available in looseleaf form, including one sponsored by the ABA, which include reprints or summaries of court cases and ABA, state and local bar committee opinions on ethical issues.

## 2. **Relative Weight of Authority**

The lawyer should be able to recognize the various types of procedural and ethical material and which tend to provide the controlling principles for the resolution of various kinds of issues in various substantive fields. Specifically, the lawyer should know that courts interpret a rule of civil procedure by considering the plain language of the rule, previous decisions that have interpreted the rule, and statements made by members of committees that assisted in promulgating the rule. If the rule was based upon a federal rule, the court might consider the interpretations in those cases also. If the legislature of a state took action on a rule, committee reports, floor debates, and statements in hearings might also be used to interpret the rule.

## 3. **Sources of Procedural Law**

With respect to each of the following fundamental tools of legal research, a competent lawyer should be generally familiar with the nature of the tool, its likely location in a law library, and the ways in which the tool is used.

### (A) **Federal Civil Procedure**

Every lawyer should be able to locate the official text of federal procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use the rules in an appendix to Title 28 in the United States Code Annotated. The lawyer should know that:

1. the rules can be accessed by rule number, by subject in an index following the Rules of Civil Procedure, or by subject under the topic "Rules of Civil Procedure" in the Master Index;
2. U.S.C.A. volumes are updated by annual pocket parts or annual supplements, which in turn are updated by noncumulative quarterly supplements;
3. following each rule, there are annotations that refer to cases that construe the rule. There are also references to topics and key numbers in the American Digest System, as well as to C.J.S., forms, law review articles, texts and treatises, potential Westlaw searches, and related rules;

(ii) use the rules in the United States Code Service. The lawyer should know that:

1. the Federal Rules of Civil Procedure are published in the rules volume of USCS. They can be accessed by rule number, by subject in the index to Rules of Civil Procedure following the Rules of Civil Procedure, or under the topic "Federal Rules of Civil Procedure" in the general index;
2. these are updated by yearly pocket part or yearly supplements which are updated by cumulative quarterly supplements which are, in turn, updated by the United States Code Service-Advance. These can be further updated by the USCS Hotline;
3. the case notes section refers to cases that interpret the rules. There also are references to advisory committee notes. The research guide section has references to legal texts, Am. Jur. and Am. Jur. 2d, forms, ALR Annotations, and law review articles;

(iii) use the rules in the U.S. Supreme Court Digest L.Ed. The lawyer should know that:

1. the Federal Rules of Civil Procedure are published with Title 18. They can be located by rule number and by subject in the Index to

Federal Rules of Civil Procedure immediately following the text of the rules;

2. updating is by pocket parts;
3. following each rule are references to advisory committee notes. The Research Guide gives references to U.S. Supreme Court Digest, Federal Procedure L.Ed., and forms;

(iv) use the rules in the Moore's Rules Pamphlets. The lawyer should know that:

1. the Federal Rules of Civil Procedure are published in volume 1. These can be located by rule number or by subject in Index to Civil Rules and Official Rules;
2. the pamphlet is republished each year;
3. references are made to sections in Moore's Federal Practice, Moore's Manual and Bender's Federal Practice Forms. History of the rule discusses amendments to the rule and advisory committee notes. These are followed by references cases;

(v) use the rules in the United States Code. The lawyer should know that:

1. the Federal Rules of Civil Procedure are found in the appendix to Title 28. They can be located by rule number and by topic under the subject "Rules of Civil Procedure" in the general index;
2. the title is updated by yearly cumulative supplements;
3. each rule is followed by a reference to notes of advisory committee on rules, cross references to other rules, and references to forms;

(vi) use the rules in the Federal Procedure Rules Service. The lawyer should know that:

1. the Federal Rules of Civil Procedure are located in the volume with other federal rules. Rules can be found by rule number or by topic under the subject "Federal Rules of Civil Procedure;"
2. updating is by pocket part;
3. in "History; Ancillary Laws and Directives" are references to notes of the advisory committee. References to Federal Procedure L. Ed. and forms are included under Heading Research Guide;

(vii) use the rules in the Federal Rules of Civil Procedure. The lawyer should know that:

1. the Federal Rules of Civil Procedure can be found in this volume by number;
2. the volume is republished each year;
3. each rule is followed by notes of advisory committee, references to specific amendments by year, and to potential amendments;

(viii) use the rules in the Cyclopedia of Federal Procedure. The lawyer should know that:

1. the Federal Rules of Civil Procedure are located in Volume 16A Part One. The rules are accessible by number;
2. updating is by pocket parts and bound supplements;
3. the text summarizes ruling case law.

## **(B) Federal Criminal Procedure**

Every lawyer should be able to locate the official text of federal criminal procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use the rules in an appendix to Title 18 in the United States Code Annotated. The lawyer should know that:

1. the rules can be accessed by rule number, by subject in an index following the Rules of Criminal Procedure, or by subject under the topic "Rules of Criminal Procedure" in the Master Index;
2. U.S.C.A. volumes are updated by annual pocket parts or annual supplements, which in turn are updated by noncumulative quarterly supplements;
3. following each rule, there are annotations that refer to cases that construe the rule. There are also references to topics and key numbers in the American Digest System, as well as to C.J.S., forms, law review articles, texts and treatises, notes of the Advisory Committee, potential Westlaw searches, and related rules;

(ii) use Court Rules: Federal Rules of Criminal Procedure. The lawyer should know that:

1. the Federal Rules of Civil Procedure are published in the rules volume of USCS. They can be accessed by rule number, by subject in the index to Rules of Criminal Procedure following the Rules of Criminal Procedure, or under the topic "Federal Rules of Criminal Procedure" in the general index;
2. these are updated by yearly pocket part or yearly supplements which are updated by cumulative quarterly supplements which are, in turn, updated by the United States Code Service-Advance. These can be further updated by the USCS Hotline;
3. the case notes section refers to cases that interpret the rules. There also are references to advisory committee notes. The research guide section has references to legal texts, Am. Jur. and Am. Jur. 2d, forms, ALR Annotations, and law review articles.

### **(C) Federal Appellate Procedure**

Every lawyer should be able to locate the official text of federal appellate procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use the rules in the Federal Civil Judicial Procedure and Rules. The lawyer should know that this deskbook contains an unannotated version of the Federal Rules of Appellate Procedure;

(ii) use the Federal Rules of Appellate Procedure in an Appendix to Title 28, United States Code Annotated. The lawyer should know that these volumes contain the rules, notes of the Advisory Committee, excerpts from reports of the Congressional committees involved in the promulgation of the rules, and extensive case annotations;

(iii) use the Court Rules: Rules of Appellate Procedure in the United States Code Service. The lawyer should know that this volume contains the Federal Rules of Appellate Procedure and the Rules of the Courts of Appeals. Included in the text are references, history notes, and interpretive notes of decisions;

(iv) use the [State] Rules of Court: Federal. The lawyer should know that this annual deskbook contains an unannotated version of the Federal Rules of Appellate Procedure and the local rules and Internal Operating Procedures of the state's circuit court;

(v) use the Federal Local Court Rules for Civil and Admiralty Proceedings. The lawyer should know that this multi-volume set contains the unannotated versions of the rules for the United States Courts of Appeals and their Statements of Internal Operating Procedures.

#### **(D) Federal Rules of Evidence**

Every lawyer should be able to locate the official text of federal rules of evidence in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use the Federal Civil Judicial Procedure and Rules. The lawyer should know that this deskbook contains an unannotated version of the Federal Rules of Evidence;

(ii) use the Federal Rules of Evidence in an Appendix to Title 28, United States Code Annotated. The lawyer should know that these volumes contain all of the rules, notes of the Advisory Committee, excerpts from reports of the Congressional committees involved in the promulgation of the rules, and extensive case annotations;

(iii) use the Rules of Evidence for United States Court and Magistrates in Title 28 of the United States Code Service Appendix. The lawyer should know that this volume contains the rules, interpretive notes and decisions, notes of the Advisory Committee, and excerpts from reports of the Congressional committees involved in the promulgation of the rules;

(iv) use the Federal Rules of Evidence Service. The lawyer should know that this case reporting service has extensive finding aids and a Digest that follows the organization of the Rules themselves.

#### **(E) Federal Local Rules**

Every lawyer should be able to locate the official text of federal local rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use the [State] Rules of Court: Federal. The lawyer should know that this deskbook contains an unannotated version of the federal district court rules.

(ii) use the Federal Local Court Rules for Civil and Admiralty Proceedings. The lawyer should know that this multi-volume set contains unannotated versions of the federal district court rules for the fifty states. The set is part of the multi-volume Federal Rules Service.

#### **(F) State Rules of Civil Procedure**

Every lawyer should be able to locate the official text of state civil procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) identify and use an annotated rules of civil procedure for the jurisdiction in which he or she works. The rules are generally accessed by rule number or subject index;

(ii) understand that until recently, the sources of state civil procedural codes varied according to which branch of government promulgated the rules. If legislative acts determined court procedure, the rules were usually a part of the state code. If the judiciary alone was responsible for promulgation, the rules would appear only in separate pamphlets or in the state reports. More and more publishers are including state rules in the code volumes regardless of process of promulgation;

(iii) recognize that state rules of civil procedure are updated in many ways. These include republished rules volumes, pocket parts, supplemental volumes or new looseleaf pages and to be familiar with the updating mechanism for the rules in the particular jurisdiction;

(iv) identify and use an unannotated rules of civil procedure for the jurisdiction in which he or she practices. Unannotated rules pamphlets are published for each state. They can be accessed by rule number and, in most cases, by subject in the indexes. Most of these pamphlets are republished and updated on a yearly basis.

### **(G) State Rules of Criminal Procedure**

Every lawyer should be able to locate the official text of state criminal procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use [State] Rules of Court: State. The lawyer should know that this deskbook contains the court-promulgated rules governing criminal procedure;

(ii) use [State] Code of Criminal Procedure. The lawyer should know that the state rules of criminal procedure may be included in the state statutory compilation. If the state has a system of procedure that is legislatively controlled, the laws governing criminal procedure will be a part of the state statutes.

### **(H) State Rules of Appellate Procedure**

Every lawyer should be able to locate the official text of state appellate procedural rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use [State] Rules of Court. The lawyer should know that this deskbook contains an unannotated version of the state Rules of appellate procedure and the local rules for the state's courts of appeals;

(ii) use the state compilations of court rules. The lawyer should know that most of the state statutory codes include the state rules of appellate procedure, either as part of the code or in a separate pamphlet. Some of the rules are annotated.

### **(I) State Rules of Evidence**

Every lawyer should be able to locate the official text of state rules of evidence in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use Uniform Laws Annotated Master Edition Uniform Rules of Evidence, Vol. 13A. The lawyer should know that this volume contains the text of the Uniform Rules of Evidence together with the Official Comments and case annotations. A Table of Jurisdictions indicates which jurisdictions have adopted the Rules, their effective dates and their citations. Variations, if any, in adopting jurisdictions are noted under each rule;

(ii) use [State] Rules of Court: State. The lawyer should know that this deskbook contains an unannotated version of the this deskbook would contain unannotated court-promulgated rules governing evidence, if the state has a judicially promulgated set of evidence rules;

(iii) use [State] Evidence Code. The lawyer should know that this code is generally part of a state statutory compilation. If the state has a system of procedure that is legislatively controlled, the laws governing evidence will be a part of the state statutes.

### **(J) State Local Rules**

Every lawyer should be able to locate the official text of state local rules in sources such as those listed below. Specifically, the lawyer should be able to:

(i) use [State] Rules of Court: State. The lawyer should know that this deskbook contains an unannotated version of the state local rules. While very few of the state's local jurisdictions are covered, the deskbook does not include any of the county court rules;

(ii) use State Codes of Court Rules. The lawyer should know that most of the state codes include district court and some county court local rules. Some of the rules are annotated.

**(K) Electronic Sources: Lexis, Westlaw, Court Systems, CD-ROM, Bulletin Boards**

Every lawyer should be aware that federal and state procedural rules are available in electronic format, either on disk, CD-ROM, or online. Specifically, the lawyer should know that:

(i) federal procedural rules are available on Lexis in the GENFED library, RULES file. Rules are grouped in this file regardless of whether they are legislatively enacted or judicially promulgated. Several states have rules files as well;

(ii) federal and state procedural rules are grouped in Westlaw databases by jurisdiction as follows: XX-RULES, where XX is the jurisdiction (either US for federal rules, or a state two digit postal abbreviation for a particular states' rules. Rules are combined in these databases whether they are legislatively enacted or judicially promulgated.

**4. Sources of Ethical Law**

Every lawyer should know how to locate the rules and opinions which govern professional ethics in the jurisdictions in which he or she practices. Specifically, the lawyer should be familiar with the requirements for attorney supervision of nonlawyer employees and the parameters of unauthorized practice of law (UPL) as defined with those jurisdictions.

**(A) National Ethical Standards**

The competent lawyer should be familiar with the ethical standards issued by the American Bar Association and understand the implications of those standards. Specifically, the lawyer should be able to locate and use the Model Rules of Professional Conduct, promulgated by the American Bar Association.

**(B) State Ethical Standards**

The competent lawyer should be familiar with the ethical standards issued by the state bar for the jurisdictions in which he or she is licensed and understand the implications of those standards.

**(C) National Ethical Opinions**

The competent lawyer should be familiar with the ethical opinions issued by the American Bar Association and understand the implications of those opinions. Specifically, the lawyer should:

(i) understand that the ABA issues formal and informal opinions. ABA formal opinions have been more carefully compiled and indexed than informal opinions;

(ii) be able to locate formal opinions in at least two of the following sources:

1. Opinions on Professional Ethics, which includes the full text of ABA Formal Opinions Nos. 1-315, covering the period 1924 to 1965;
2. Formal and Informal Ethics, which includes the full text of ABA Formal Opinions Nos. 316 to 348, covering the years 1967 to 1982;
3. Recent Ethics Opinions, which includes the full text of ABA Formal Opinions Nos. 349 to the most current, covering the years 1984 to the present;
4. The ABA/BNA lawyers Manual, which includes the full text of ABA Formal Opinions from 1980 to the present;
5. Lexis in the library ETHICS and file FOPIN;

(iii) understand that the early ABA informal opinions exist only in digest form and that there are several gaps in numbering;

(iv) be able to locate informal opinions in at least two of the following sources:

1. Opinions on Professional Ethics, which includes summaries (with some gaps) of ABA Informal Opinions Nos. 1-230, covering the years before 1961;
2. Informal Ethics Opinions Vol. 1, which contains the full text of ABA Informal Opinions Nos. 230a through 866, covering the years 1961 to 1966;
3. Informal Ethics Opinions Vol. 1, which contains the full text of ABA Informal Opinions Nos. 867 through 1284, covering the years 1965 to 1973;
4. Formal and Informal Ethics Opinions, which contains the full text of ABA Informal Opinions Nos. 1285 through 1495, covering the years 1974 to 1982;

5. Recent Ethics Opinions, which contains the full text of ABA Informal Opinions Nos. 1496 through the present, covering the years 1983 to the present;
6. ABA/BNA lawyers Manual, which includes the full text of ABA Informal Opinions from 1980 to the present;
7. Lexis in the library ETHICS and file INFOP.

#### **(D) State Ethical Opinions**

The competent lawyer should be familiar with the ethical opinions issued by the state and local jurisdictions in which he or she practices and understand the implications of those opinions. Specifically, the lawyer should:

(i) understand that the individual state bars or county bars issue opinions. The opinions of these committees, if they are published at all, are usually printed in state bar association journals;

(ii) know that in the ABA/BNA Lawyers Manual, forty-three states and some local ethics opinions appear in digested form. They go back to 1980 and requests for the full text of these opinions should be addressed to the bodies that represent them.

#### **(E) Electronic Sources of Ethical Law**

Every lawyer should be aware that ethics opinions and codes or rules of professional conduct are available in electronic format, either on disk, CD-ROM, or online. Specifically, the lawyer should know that:

(i) on Westlaw, the Model Rules of Professional Conduct are in the database ETH-MRPC. Ethics opinions issued by the American Bar Association are in the database ETH-ABAE0, while state ethics opinions are in databases XXETH-EO, where XX is the two digit state postal abbreviation. There are some exceptions, so every lawyer should know how to locate online ethics opinions in one's state;

(ii) on Lexis, case law on state ethics is grouped in the ETHICS library, and then listed by state. Other files include American Bar Association ethics opinions.

### **5. Secondary Sources for Procedural Rules**

With respect to secondary legal materials, a lawyer should have a general familiarity with the breadth, depth, detail and currency of coverage, the particular perspectives, and the relative strengths and weaknesses that tend to be found in secondary sources.

**(A) Federal Procedural Rules**

The lawyer should be conversant in the use of the following sources of federal procedural law. The lawyer's level of knowledge should be sufficient to enable him or her to make an informed judgment about which source is most suitable for a particular project. Specifically, the lawyer should be able to:

(i) use Shepard's Federal Rules Citations in identifying cases which construe particular federal rules. Specifically, the lawyer should be able to:

1. locate the appropriate edition of Shepard's U.S. Citations for federal decisions or the state citator for the jurisdiction at issue;
2. understand the difference between cited and citing cases;
3. identify the scope of citing sources and selected secondary materials published by Shepard's McGraw-Hill that are included in the citator and recognize those sources not included that should be checked separately, including more recent decisions not yet appearing in the citator;
4. locate the explanations of abbreviations at the beginning of each volume to determine the effect of the citing sources upon the cited decision;
5. determine the date and scope of the latest supplementary pamphlet and understand which parts of the set must be checked for an accurate search;

(ii) use Federal Practice and Procedure to research rules of civil procedure and should know that:

1. access to the material is by rule number or by subject in the civil procedure index;
2. updating is by pocket parts and newly published volumes;
3. references are provided to cases and some other secondary materials;

(iii) use Moore's Federal Practice to research rules of civil procedure and should know that:

1. access is by rule number and by subject in the index;

2. it is updated by replacement pages and supplements;
3. references are given to cases and some secondary authority;

(iv) use Cyclopedia of Federal Procedure to research rules of civil procedure and should know that:

1. access to the secondary material is by subject in the index;
2. updating is by annual pocket parts;
3. references are provided to cases and some secondary sources;

(v) use Moore's Manual: Federal Practice and Procedure to research rules of civil procedure and should know that:

1. access to the material is by subject in the index;
2. it is updated by new pages and supplements;
3. references are provided to cases and some secondary sources;

(vi) use Wright and Miller's Federal Practice and Procedure. Criminal 2d. to research rules of criminal procedure and should know that the first several volumes of this set contain the Federal Rules of Criminal Procedure, with extensive annotations;

(vii) use Federal Rules Decisions (West Pub. Co) to research rules of criminal procedure and should know that this series of case reporters contains decisions of the United States district courts that construe the Federal Rules of Criminal Procedure;

(viii) use Shepard's Federal Rules Citations to research rules of criminal procedure and should know that this Shepard's citation system, contains cases that cite the federal rules;

(ix) use Wright and Miller's Federal Practice and Procedure to research rules of appellate procedure and should know that this multi-volume set includes the text of the federal appellate rules and includes commentary about their history and case annotations;

(x) use Wright and Miller's Federal Practice and Procedure to research local rules and should know that the set does not include the text of the local rules.

However, the discussion on F. R. Civ. P. 83 includes annotations of cases adjudicating the validity of local rules.

## **(B) State Procedural Rules**

Every lawyer should be able to locate sources that discuss state procedural rules. Specifically, the competent lawyer should be able to:

(i) use Shepard's [State] Citations and know that each state unit of the Shepard's system has a portion where cases and other sources cite to that state's court rules of procedure or legislative codes of procedure;

(ii) use the state and practice manuals available in the jurisdiction in which he or she practices to locate provide text and commentary of rules of civil procedure;

(iii) use Uniform Laws Annotated Master Edition. Uniform Rules of Criminal Procedure, Vol. 10, which contains the text of the Uniform Rules of Criminal Procedure together with the Official Comments and case annotations. A Table of Jurisdictions indicates which jurisdictions have adopted the Rules, their effective date, the corresponding statutory citation, any variations in adopting jurisdictions;

(iv) use Robert L. Stern's Appellate Practice in the United States (B.N.A., 1981), a monograph that compares the procedures in the various appellate jurisdictions. It does not cite or refer to the rules of practice in each state, but it does give illustrative examples;

(v) use state and practice manuals to research appellate and local rules to research text and commentary of appellate and local rules for the state's court of appeals;

(vi) use John William Strong and Kenneth S. Brown's McCormick on Evidence, a hornbook that offers a detailed and comprehensive single volume treatment of the basic rules and principles of evidence law;

(vii) use John Henry Wigmore's Evidence in Trials at Common Law, known as "Wigmore on Evidence", a monumental, multi-volume work of scholarship provides exhaustive coverage of the common law of evidence;

(ix) use sets of local rules which provide the unannotated version of the local rules for the state district courts.

## **(C) Secondary Sources of Ethical Law**

Every lawyer should be aware of sources that discuss and construe the rules of professional conduct.

## **6. Multiple Sources of Procedural and Ethical Rules**

With respect to both the primary and secondary legal materials, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, instructions from the supervising attorney, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;
- (ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;
- (iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;
- (iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices.

### **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization.

## **CORE LEGAL RESEARCH COMPETENCIES**

### **PART E – NON-OFFICIAL EXPOSITIONS OF LEGAL RULES: RESTATEMENTS, UNIFORM LAWS, MODEL ACTS, MARTINDALE-HUBBELL LAW DIGESTS, AUTHORITATIVE STATE AND LOCAL TEXTS AND JURY INSTRUCTIONS**

(1 and 2 follow 3.1 of MacCrate SSV; 3 and 4 follow 3.2 of MacCrate SSV.)

#### **RESTATEMENTS**

##### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should understand the significance and use of Restatements, the processes by which they are created and what they actually reflect. Specifically, lawyers should know the following:

(A) Restatements serve as unofficial codifications of the common law in the United States by summarizing and defining widely accepted doctrines and principles developed over time by judicial decisions;

(B) Restatements are drafted by preeminent legal scholars and approved by the American Law Institute (ALI). The scholars who prepare the initial drafts are known as "Reporters." Usually, a number of "tentative drafts" are issued by ALI before the official version is adopted. The tentative drafts reflect the current thought of the ALI at the time they are issued. The ALI publishes the official draft after it is formally adopted;

(C) Restatements cover the following fields of law:

- (i) Agency
- (ii) Conflicts of Law
- (iii) Contracts
- (iv) Donative Transfers
- (v) Foreign Relations Law
- (vi) Judgments
- (vii) Landlord and Tenant
- (viii) Restitution
- (ix) Security
- (ix) Torts
- (xi) Trusts;

(D) Restatements covering "The Law Governing Lawyers," "Property-Security (Mortgages)," "Property (Servitudes)," "Suretyship" and "Unfair Competition" are

in the process of being created and are available as of January 1994 as tentative drafts;

(E) the Restatement rules do not purport to reflect the law of any particular jurisdiction. In fact, the rules are often not even the rules adopted by a majority of jurisdictions. Instead, they may reflect emerging trends in the law that still represent a "minority" position. It has also been suggested that some of the rules reflect the drafters' views of what the law should be, as opposed to what it actually is;

(F) in addition to the black letter rules themselves, which purport to "restate" the common law, the Reporters also prepare "Comments," "Illustrations" and "Reporter's Notes" for each rule. These supplementary materials also have authoritative value. The "Comments" shed light on the purpose, meaning and scope of the various rules and the "Illustrations" show how the rules apply in hypothetical situations. The "Reporter's Notes" indicate relationships to prior Restatement rules and cite to authority (i.e., court decisions, treatises, periodicals, etc.), usually supportive of (though sometimes contrary to) the Restatement rules. The "Reporter's Note" may also reveal how widely accepted a rule actually is;

(G) the ALI issues new editions of its Restatements infrequently. Pocket parts and supplementary volumes provide access to current judicial applications of the Restatements, however, the rules, comments and Reporters' notes are not revised until a new edition is approved.

## 2. **Relative Weight of Authority**

The lawyer should be able to recognize the value of restatements. Specifically, the lawyer should know:

(A) that Restatements can only be used as persuasive authority because they do not have any official status and do not necessarily reflect the current state of the law in any particular jurisdiction;

(B) the Restatements are most useful as authority in situations where the particular issue at hand has not yet been addressed in the relevant jurisdiction and where the Restatement rule purports to reflect the view of a majority of jurisdictions that have examined the issue;

(C) different courts will give different weight to the Restatements and will rely on the Restatements to differing degrees. Because the Restatements purport to summarize the general common law and are produced by eminent legal scholars, judges and lawyers, they are generally given more weight and more frequently cited to than other secondary sources;

(D) if a jurisdiction has adopted a particular Restatement rule, the binding effect of that rule in that jurisdiction will not be affected by a newer version of that Restatement unless and until the jurisdiction decides to adopt the newer rule;

(E) even if part of a Restatement rule has been adopted by a particular jurisdiction, a lawyer cannot conclude that the entire rule has been adopted by that jurisdiction;

(F) tentative drafts that are still being debated by the ALI may also be persuasive authority though not as persuasive as the final version adopted by the ALI. Tentative drafts (which are analogous to legislative bills) can also be viewed as a form of "legislative history" and are sometimes cited in court opinions.

### **3. Sources and Features**

With respect to the Restatements, the lawyer should be generally familiar with the nature of this tool, its likely location in a law library, and the ways in which the tool is used. The competent lawyer should know that each Restatement series is comprised of individual Restatements, each one covering one of the main fields of law listed above. Each edition of a Restatement is identified by the series of which it is a part (e.g., Restatement (Second) of Torts, Restatement (Third) of Foreign Relations.) The ALI is currently working on its third series.

#### **(A) Research Tools**

In addition to the authoritative components discussed above, lawyers should be aware of the following research tools contained in the Restatements:

(i) the case annotations, which provide summaries of those cases that have cited to a Restatement section. At the beginning of each case summary is an explanation of the nature of the use of the cited Restatement section (somewhat analogous to the treatment codes in Shepard's);

(ii) the cross-references (in the Second and Third series), which provide references to West topics and key numbers as well as ALR annotations related to the various Restatement sections;

(iii) finding tools, which include Indexes, Tables of Content, Tables of Cases (which list the cases cited in the Reporter's Notes), Tables of Statutes and cross-reference tables (which guide the lawyer from a Restatement section in one series to the comparable section in either an earlier or later series).

#### **(B) Organization**

Every lawyer should have a basic understanding of the following organizational features of the Restatements of the Law:

(i) most of the Second and Third series Restatements are comprised of main volumes and appendix volumes;

(ii) the main volumes are broken up into topical sections, each of which consists of the relevant black letter rule as well as the related comments and illustrations. In some of the Restatements, each section also contains the related Reporter's Notes. Generally speaking, the main volumes also contain the finding tools discussed above. Each Restatement has its own set of finding tools;

(iii) the appendix volumes contain the case annotations and the cross-references to the ALR annotations and West topics and key numbers. In some of the Restatements, the appendix volumes contain the Reporter's Notes as well. The section numbers in the appendix volumes correspond to the section numbers used in the main volumes. Thus, a lawyer who finds a relevant section in the main volume can find the related case annotations and cross-references under the same section number in the appendix volume;

(iv) the precise location of the Indexes, Tables and Reporter's Notes varies from one Restatement to another. Also, in some sets, the Indexes and/or Tables of Contents cover the entire set while in others, each volume has its own Index and/or Table of Contents covering that specific volume only. Finally, cases citing to earlier Restatement series are also included in the Appendix volumes, though the precise location of these citations to earlier Restatements may vary from one Appendix volume to another.

### **(C) Updating**

While most of the components of the Restatements are not updated until a new edition is issued, the Appendix volumes are updated regularly to provide access to new cases that have cited Restatements. The Appendix volumes are supplemented by annual pocket parts, pamphlets and new bound volumes. The most recent cases are digested in the Interim Case Citations to the Restatement of the Law pamphlets (which provide the cites and treatment codes but not the summaries.) As is true when using Shepard's, lawyers must consult all relevant volumes and supplements in order to find all relevant case references.

### **(D) Restatements as Secondary Sources**

Given that the Restatements of the Law provide references to relevant authority as well as summarize and interpret the common law, lawyers should view the Restatements as secondary sources as well as authoritative codifications. As secondary sources, the Restatements are more similar to treatises than they are

to other types of secondary sources. Like treatises, the Restatements provide more detailed coverage and are more scholarly and analytical than encyclopedias but are generally not as analytical, scholarly or in-depth as law review articles. Unlike treatises though, the Restatements are not updated on a regular basis (except for the case annotations.) Also, while there are treatises for virtually every major legal topic, there are a number of major legal topics not covered by a Restatement.

### **(E) Shepard's Restatement of the Law Citations**

Every lawyer should know that there is a separate volume of Shepard's Citations devoted to the Restatements. Shepard's Restatement of the Law Citations alerts researchers to cases and articles that have cited to Restatement sections, comments or illustrations. It is used in a similar fashion as the other Shepard's volumes. One must first find the section in the volume covering the particular Restatement (and edition) of interest and then look for the heading for the particular Restatement section of interest (appearing in boldface). For each jurisdiction, cases merely citing to the Restatement section are listed first, followed by cases citing to particular comments and illustrations. As is true when using other Shepard's sets, one must consult all of the appropriate Shepard's supplements (both bound and unbound) to get as up-to-date as possible. Unlike the other Shepard's sets however, Shepard's Restatement of the Law Citations does not provide lawyers with codes indicating the nature of the citation (e.g., "f" to indicate that the court followed the Restatement approach.)

## **4. Multiple Sources of Law**

With respect to Restatements, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;

(ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;

(iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;

(iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices.

## **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization.

## **(C) Restatements on Westlaw**

Lawyers should know the following things about the Restatements on Westlaw:

(i) one can search a database that covers all of the Restatements (REST) or a database that contains only one Restatement (e.g., REST-AGEN, REST-PROP, etc.);

(ii) each Restatement section is contained in a separate document on Westlaw. Most of the components of a Restatement section are kept together in one document, though case citations contained in the pocket parts and the interim case pamphlets as well as some of the case citations to first series Restatements are contained in separate documents;

(iii) one can go directly into a particular section by using the FIND (FI) command (e.g., FI REST 2d TRUST s. 2) or by going into an appropriate database and using the citation field (e.g., ci(trust /s 2));

(iv) once one has entered a Restatements database, one can type "F" to identify the field identifiers that one can use to restrict one's search. The fields correspond more or less to the different component parts of the Restatements discussed above (e.g., TE (for the black letter rule), CO (for the comments and Illustrations section, etc.));

(v) like statutes, Restatement sections can be viewed in the "documents in sequence" mode on Westlaw (by typing "d"). This allows one to easily browse

through the sections that appear (in the print version) before and/or after a retrieved section;

(vi) the Tables of Contents for each of the Restatements are also retrievable on Westlaw (each contained in a separate document). One can use the citation field to retrieve a Table of Contents document (e.g., ci (contract and second and content));

(vii) one can use either the Terms and Connectors (TC) mode or the Natural Language (NAT) mode when searching for Restatement sections online.

#### **(D) Restatements on Lexis**

Lawyers should know the following things about the Restatements on Lexis:

(i) the Restatements are contained in the RESTAT file which can be found in a few Lexis libraries, including the BEGIN library. When one enters this file, one must first choose the particular Restatement (e.g., Torts, Contracts, etc.) as well as the type of document that one wishes to access. The types of Restatement documents available on Lexis are the "Tables of Contents" for the various Restatement subjects, the "Rules, Comments and Notes" and the "Annotated Case Citations." Each "Rule" document covers one particular Restatement rule and each "Citations" document covers one citation;

(ii) one can retrieve a particular Rule document by using the CITE segment i one's s (e.g., CITE (2) for section 2). The LINK feature can be used to jump from the "Rule, Comments and Notes" document for a particular section to the "Annotated Case Citations" for that section (and vice-versa). The LINK feature can also be used to jump from the Table of Contents to a particular Rule document;

(iii) to find out what other segment identifiers can be used to restrict one's search, one can type ".se" after choosing which type of document one wishes to search (i.e., "Rules, Comments and Notes," or "Annotated Case Citations");

(iv) like statutes, Restatement sections can be viewed in the browsing mode (by typing "b"). This allows one to easily browse through the sections that appear (in the print version) before and/or after a retrieved section.

### **UNIFORM LAWS**

#### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should understand the significance and use of Uniform Laws, the processes by which they are created and what they actually reflect. Specifically, lawyers should know the following:

(A) Uniform acts are proposed statutes drafted by public or private organizations for the purpose of standardizing the statutory law of the many U.S. jurisdictions. They differ from model acts because they are created by a broad-based, national group of legal experts appointed by state legislatures and have a greater possibility of passage in a number of jurisdictions. Lawyers should be familiar with identifying, locating and analyzing uniform acts. Lawyers should also be able to discern what uniform acts have been adopted and modified in their own jurisdictions;

(B) The National Conference of Commissioners on Uniform State Laws (NCCUSL), founded in 1892, serves as the facilitator of uniform laws. Each state is represented at the annual Conference by four or more Commissioners, who serve six-year terms. Lawyers, judges and academics who are experts in the area of law comprise the NCCUSL. The Commissioners draft, approve, and promulgate laws where uniformity among the states would be beneficial. The Commissioners also lobby extensively for the adoption of these laws among the states;

(C) The lawyer should understand the process by which uniform laws are adopted by the states. After passage by the NCCUSL, individual states may consider the text of the uniform act and either ignore it, adopt it in its entirety or pass it with revision.

## **2. Relative Weight of Authority**

The lawyer should be able to distinguish the relative weight of authority which attaches to the uniform acts that are adopted by the National Conference of Commissioners on Uniform State Laws and the form of the statute that is ultimately adopted by the various states. Specifically, the lawyer should know:

(A) The uniform acts approved by the NCCUSL are secondary authority. The language may also be persuasive authority when analyzing an ambiguous statute that is based on a uniform act;

(B) The form of the uniform act that is adopted by a jurisdiction becomes primary authority for that jurisdiction.

## **3. Sources and Features**

(A) The lawyer should be familiar with these sources of uniform laws:

(i) Uniform Laws Annotated (West Publishing, 1968- ), which contains the text of uniform laws which have been adopted in at least one jurisdiction;

(ii) Handbook of the National Conference of Commissioners on Uniform State Laws (NCCUSL, annual), which lists all of the NCCUSL uniform and model acts, not just those adopted by one or more states and discusses the progress of acts being considered or being drafted. The text of a particular act only appears in the Handbook published in the year the act was approved;

(iii) state codes, which contain the uniform acts adopted by the particular jurisdiction;

(B) The lawyer should also be familiar with the features of each source of uniform acts. Specifically, the lawyer should be able to:

(i) locate the text of a uniform law in Uniform Laws Annotated through the Directory of Uniform Acts and Codes: Tables-Index by act name or subject;

(ii) search the text of the uniform acts in Uniform Laws Annotated using the internal index for each act or volume;

(iii) determine whether a particular jurisdiction has adopted a uniform act through the Table of Jurisdictions in Uniform Laws Annotated;

(iv) identify the variances from the text of the uniform act in the version adopted by a particular jurisdiction using the explanatory comments and other references in Uniform Laws Annotated;

(v) identify relevant Uniform Laws by using the Uniform Law table in the American Law Reports Index, the Table of Statutes, Rules and Regulations Cited in the American Jurisprudence 2d, Corpus Juris Secundum under the topic "Uniform Laws," and through specialized subject Shepard's Citators;

(vi) locate other secondary sources, such as law reviews, forms, periodicals, electronic search strategies, and digests of decisions, to explain the application of uniform laws;

(vii) determine the location of adopted uniform laws in state codes.

#### **4. Multiple Sources of Uniform Laws**

With respect to the uniform laws, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same

information. The competent lawyer should not consider a source in which he or she has not been trained.

### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;
- (ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;
- (iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;
- (iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Key-Word-in-Context views, and customized print choices.

### **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know that Uniform Laws Annotated is available in full text on Westlaw in the database ULA and that the texts of such laws are available on Lexis in the library Uniform and Model Acts.

## **MODEL ACTS**

### **1. Characteristics**

In order to conduct legal research effectively, every lawyer should understand the origins of model laws, the processes by which they are created, and the purposes for which they are used.

#### **(A) Origins of Model Laws**

The lawyer should understand that model laws:

(i) contain sample statutory language to be considered by legislatures in drafting new laws;

(ii) often include commentary that explains the rationale for the drafted language as well as the problem the legislation seeks to remedy;

(iii) do not need to be drafted under the auspices of a governmental or judicial body;

(iv) can be written for federal, state or local purposes.

### **(B) Promulgation of Model Laws**

The lawyer should know that many model laws are drafted by practitioners, scholars, students, and others who are knowledgeable about particular areas of law and who draft statutory language to solve real or perceived legal problems. The lawyer should be aware that the following organizations draft model laws:

(i) National Conference of Commissioners on Uniform State Laws;

(ii) American Law Institute/American Bar Association (ALI/ABA);

(iii) Council of State Governments.

### **(C) Functions of Model Laws**

The lawyer should know that model laws can be used to:

(i) draft new legislation or amendments to existing legislation;

(ii) interpret enacted statutes patterned after specific model laws.

## **2. Relative Weight of Authority**

The lawyer should know that model laws are never mandatory authority unless they have been adopted in the jurisdiction in which research is being conducted.

## **3. Sources and Features of Model Laws**

(A) The lawyer should be generally familiar with the following sources of model laws:

(i) Handbook of the National Conference of Commissioners on Uniform State Laws, which explains the standard procedures and exceptions followed by the Commission in promulgating model acts. One exception is that an act shall be

designated a "Uniform Law Commissioners' Model Act" if uniformity is not the principal objective of the act and if the purposes of the act can be substantially achieved even if the act is not adopted in its entirety by every state;

(ii) Uniform Laws Annotated, (West Publishing), which contains the text of uniform laws which have been adopted in at least one jurisdiction;

(iii) American Law Institute/American Bar Association (ALI-ABA), which issues model laws in tentative draft form and in final form after approval;

(iv) Suggested State Legislation (Council of State Governments), which publishes an annual volume of state legislation on topics of current interest and importance to the states.

(B) The lawyer should be aware of the following factors in performing research in this area:

(i) Model laws are rarely referred to in official or annotated state codes;

(ii) Model laws can be hard to identify and locate. Creative searching is necessary.

#### **4. Multiple Sources**

With respect to model laws, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information, including knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. The competent lawyer should not consider a source in which he or she has not been trained. Specifically, the lawyer should know that model acts are included in West's Uniform Laws Annotated, which is available on Westlaw in the database ULA, and that the texts of such laws are also available on Lexis in the library Uniform and Model Acts.

##### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

(i) the relative amount of time research actions require manually and electronically;

(ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;

(iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;

(iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Kew-Word-in-Context views, and customized print choices.

### **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know that:

(i) model laws are published in many types of legal materials, including hard copy print and electronic online databases;

(ii) model laws are often included in law review articles, monographs, texts and treatises;

(iii) finding aids include periodical indexes in print, CD-ROM and online databases; law library catalogs (traditional, CD-ROM and online);

(iv) electronic databases provide full text access when the exact name of the model law is known. Searches can be run in case and secondary (particularly law review) materials databases.

## **MARTINDALE-HUBBELL LAW DIGESTS**

The lawyer should have a working knowledge of the Martindale-Hubbell Law Digests.

### **1. Characteristics**

In order to conduct legal research effectively, the lawyer should know that the Martindale-Hubbell Law Digest is legal compendium of the laws of all U.S. states and over 60 foreign countries. It is organized into the following parts:

**(A) Domestic Law Digests**

Part I contains digests (summaries) of the laws of each of the fifty states of the United States, the District of Columbia, Puerto Rico and the Virgin Islands.

**(B) Federal Law Digests**

Part II contains digests (summaries) of the Copyright, Patent and Trademark laws of the United States. In addition to the substantive law controlling the grant of copyright, patent and trademark rights, these digests contain information regarding the practice to be followed in obtaining, protecting and enforcing these laws; fee schedules; examples of forms and other practical assistance.

**(C) Courts**

Information regarding the U.S. Supreme Court, the U.S. Courts of Appeals, the U.S. Court of Federal Claims, the U.S. Court of International Trade, the U.S. Court of Military Appeals, the U.S. Tax Court, the U.S. Court of Veterans Appeals, and the Administrative Office of the U.S. Courts is found in Part III.

**(D) The Uniform Acts**

The complete texts of many Uniform Acts are presented in Part IV in the form recommended by the National Conference of Commissioners on Uniform State Laws. In some instances, earlier versions, subsequently withdrawn by the Commissioners, are included because they are still in force in some states.

**(E) American Bar Association Section**

The American Bar Association Model Rules of Professional Conduct, the Code of Judicial Conduct, and the jurisdiction and rules of procedure of the American Bar Association Standing Committee on Ethics and Professional Responsibility are contained in Part V. Also included is a subject guide to the American Bar Association Model Rules.

**(F) Digests of Laws - International Section**

Part VI contains the digests of the laws of over 60 foreign countries. In the case of Canada and Australia, digests of the laws of the States and Provinces of these countries are included in addition to the digest of their federal laws. Also included is a digest of European Community Law.

**(G) International Conventions**

The texts, with annotations, of nine international conventions to which the U.S. is a party are included in Part VII.

## 2. **Features**

In order to conduct legal research effectively, the lawyer should know the following features of the Martindale-Hubbell Law Digest:

### **(A) Annual Compilation**

The Martindale-Hubbell Law Digest is updated, revised and reprinted annually to ensure some degree of currency.

### **(B) Authors**

The U.S. Digests are compiled and revised every year by distinguished lawyers and law firms who are acknowledged leaders of the bars of their respective jurisdictions. In some cases, the international law digests are revised by U.S. authorities with the advice and assistance of local experts.

### **(C) Uniform Arrangement of Material**

The uniform arrangement of the material in the digests, supported by abundant citations (including case citations to the National Reporter System), presents the digests in an organized and accessible form. The laws presented in the Martindale-Hubbell Law Digests of the U.S., the District of Columbia, Puerto Rico and the Virgin Islands have been classified under topics or headings, ranging from "Abandonment" to "Wrongful Death," which are uniform in all the digests. The same classification is found, as much as possible, in the Canadian and International Law Digests.

### **(D) Topical Index**

The Topical Index gives an alphabetical list of the main Digest headings and gives references which will assist the user in finding where the particular point which he/she desires to investigate will be found.

### **(E) Local Forms of Instruments**

Numerous forms of instruments preferred by local usage appear throughout the digests under the appropriate topics, e.g., forms of acknowledgment under the topic "Acknowledgments," subheading "Forms."

### **(F) Format**

The Martindale-Hubbell Law Digest is available in hard copy and on Lexis. It is not available on CD-ROM nor on Westlaw.

## **AUTHORITATIVE STATE AND LOCAL TEXTS**

The lawyer should have a working knowledge of the authoritative texts recognized in state and local courts as support for procedural principles of law.

### **1. Characteristics**

(A) In order to conduct legal research efficiently, every lawyer should be aware that there may be authoritative texts (e.g., in California, the Witkin treatises) which map important principles and rules within a local jurisdiction and are likely to:

- (i) Provide critical comment on substantive/procedural law;
- (ii) Summarize historical/developmental legal landmarks;
- (iii) Identify idiosyncratic features of statutory and decisional law;
- (iv) Provide a broad perspective on topical issues;
- (v) Help find pertinent case and statutory law;
- (vi) Expedite the reading of authoritative case law;
- (vii) Identify judicial/legislative/administrative trends;
- (viii) Distill the political bias of local law-giving institutions;
- (ix) Draw together the full panoply of official sources;
- (x) Provide a colloquial index;
- (xi) Correlate state law with federal law, *ULA* and *the Restatements*.

(B) Every lawyer should be able to use law library catalogs, law librarians, legal research guides, bibliographies, pathfinders or local practitioners to identify titles.

### **2. Relative Weight of Authority**

The lawyer should recognize that authoritative texts are persuasive authority, but in some jurisdictions are cited by the courts.

### **3. Sources and Features**

The lawyer should be familiar with these sources and features of authoritative texts:

(A) These materials are written by highly regarded practitioners, but without the official imprimatur of a judicial or legislative body and are often the first source consulted by practitioners, especially for perspective or a quick answer;

(B) They are published by commercial publishers and may include such access features and styles as:

- (i) Encyclopedic, topical organization;
- (ii) Tables of codes, cases, constitution, court rules;
- (iii) Comprehensive jurisdictional index;
- (iv) Subject indexes;
- (v) Analytical outlines;
- (vi) ABA Rule references;
- (vii) Annual updates;
- (viii) Periodic revisions;

(B) The materials may be part of a publisher's network of publications. For instance, the annotations in the state code may provide collateral references to them or to other compilations such as *ALR*;

(C) Caveats regarding the use of such materials include:

- (i) Comments may be opinionated;
- (ii) Authorities must be read in full text;
- (iii) The supplements or pocket parts supplied by the publisher may not provide the most up-to-date information on the current state of the law.

#### 4. **Multiple Sources**

With respect to authoritative texts, a lawyer engaged in litigation should be familiar with the types and names of compilations commonly used in his or her jurisdictions of practice. The lawyer should know how to locate each tool in a law library, its organization and features, including indexing, updating, and special features such as tables of relevant cases or statutes and should be familiar with alternative forms of accessing the materials, including hard copy, microform, and computerized service. Typically, these materials are available in print, but increasingly they can be found on Lexis, Westlaw or CD-ROM.

##### **(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;
- (ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;

(iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;

(iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Kew-Word-in-Context views, and customized print choices.

### **(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization.

## **JURY INSTRUCTIONS**

### **1. Characteristics**

In order to conduct legal research effectively, every lawyer engaged in litigation should have an understanding of the sources of state and federal jury instructions, the processes by which they are created, and how they are used.

#### **(A) Types of Jury Instructions**

The lawyer should have a working knowledge of the following characteristics of **state** jury instructions:

- (i) They may be official (model, pattern, approved) or unofficial;
- (ii) They will be criminal or civil.

The lawyer should have a working knowledge of the following characteristics of **federal** jury instructions:

- (i) There is no general set of approved instructions;
- (ii) Some individual circuits have published sets of pattern instructions;
- (iii) Jury instructions will be criminal or civil.

#### **(B) Promulgation of Jury Instructions**

The lawyer should know the promulgator (State supreme court, bar association, judicial association, circuit court) of jury instructions for:

- (i) the state in which he or she is licensed;
- (ii) the federal circuit in which he or she practices.

### **(C) Functions and Importance of Jury Instructions**

The lawyer should know that:

- (i) each side proposes instructions, from which the judge makes a selection to give to the jury;
- (ii) the outcome of a case may be determined by which instructions are chosen;
- (iii) inadequate or erroneous jury instructions are grounds for appeal.

## **2. Relative Weight of Authority**

(A) A lawyer engaged in litigation should know the weight of authority given jury instructions in his or her state:

- (i) whether official jury instructions are to be used merely as a guide for the judge or lawyer, or whether they must be read verbatim;
- (ii) when unofficial jury instructions may be used.

(B) A lawyer engaged in federal litigation should know whether the circuit court in which he or she practices has published pattern instructions, and how and when they should be used.

## **3. Sources and Features**

With respect to jury instructions, a lawyer engaged in litigation should be familiar with federal and state, official and unofficial, criminal and civil compilations in his or her jurisdictions of practice. The lawyer should know how to locate each tool in a law library, its organization and features, including indexing, updating, and special features such as tables of relevant cases or statutes.

## **4. Multiple Sources of Law**

With respect to jury instructions for her state, a lawyer should be familiar with alternative forms of accessing the materials, including hard copy, microform, CD-ROM, and computerized services. Additionally, the lawyer should be familiar

with the type of coverage available, the actual instructions and/or other relevant secondary materials. Specifically, the lawyer should be conversant with the factors to be considered when selecting from among several sources of the same information. The competent lawyer should not consider a source in which he or she has not been trained.

**(A) Relative Costs of Manual and Electronic Tools**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization. Specifically, the lawyer should know:

- (i) the relative amount of time research actions require manually and electronically;
- (ii) the additional costs of electronic tools, including connect time, transactional search fees, and large file surcharges;
- (iii) the relative costs of the various printing options, including offline printing, downloading, attached printing, fax and mail delivery;
- (iv) the relative costs of printing various components of search results, including cite lists, full text, selected documents, summaries, Kew-Word-in-Context views, and customized print choices.

**(B) Comparative Scope of Multiple Sources of Law**

The competent lawyer should be able to exercise judgment in choosing manual or electronic tools for the purpose of performing research. This judgment should be based on knowledge of the options, operating policies of the organization at which the lawyer is employed, and the pricing arrangements in place at that organization.