



Oregon Library Association 2017 Annual Conference
Wednesday, April 19, 2017

**Thrive in the Hive:
Working Together to
Provide Exceptional Legal
Reference Service**

Presented by

Sue Ludington, Washington County Law Library

Lewis Zimmerman, State of Oregon Law Library

Holly Rudolph, Oregon Judicial Department

Eric McClendon, Oregon State Bar

Janice Morgan, Legal Aid Services of Oregon



Introduction

- Presenters:
 - **Sue Ludington**, Assistant Law Librarian, Washington County Law Library
 - **Lewis Zimmerman**, Reference Librarian, State of Oregon Law Library
 - **Holly Rudolph**, Judicial Forms Manager, Oregon Judicial Department
 - **Eric McClendon**, Referral and Information Services Manager, Oregon State Bar
 - **Janice Morgan**, Executive Director, Legal Aid Services of Oregon



Agenda

- **Overview** of the law and legal research
- Legal reference **challenges and strategies**
- Using **forms**
- Getting **legal assistance**/knowing **referrals**
- Open **discussion/Q&A**



Thrive in the Hive

OVERVIEW OF THE LAW & LEGAL RESEARCH



Overview: The Law & Legal Research

Speakers:

SUE LUDINGTON

Assistant Law Librarian, Washington County Law Library

LEWIS ZIMMERMAN

Reference Librarian, State of Oregon Law Library



Overview: The Law & Legal Research

- What is “**the law**”?
 - Be careful with this **common red-flag patron question!**:

“I want to know the law on _____ . Can you help me find it?”



Overview: The Law & Legal Research

- What is “**the law**”?
 - The law is **almost never one single statute or rule**
 - “The law” on a particular matter may come from all branches of government:
 - **Statutes** (passed by the Legislature)
 - **Rules and regulations** (created by government agencies [executive])
 - **Case law** (decisions by the courts [judicial])



Overview: The Law & Legal Research

- What is “the law”? **Primary** vs **Secondary**
 - **Primary:** Statement of **the law itself** that is **legally binding** upon courts, government, and individuals; often used to **support a proposition or persuade a court** to favor one’s position.
 - **Secondary:** Materials that **discuss, explain, interpret, and analyze what the law is or what it should be; not legally binding.** Secondary sources also provide extensive citations to other relevant sources, notably case law.



Overview: The Law & Legal Research

- Types of **Primary Law**:
 - **Substantive law**: The body of **statutory or written law** which **creates, defines, and regulates the rights and obligations of individuals and collective bodies**; includes **all categories of public and private law** such as the law of contracts, real property, torts, and criminal law.
 - **Statutes**: passed by the legislature; includes text of legislative bills
 - **Ordinances**: passed by municipal government (eg city council, county commission)
 - **Rules and regulations**: issued by executive agencies
 - **Case law**: judicial and administrative decisions
 - Contracts, wills, other **legal documents**



Overview: The Law & Legal Research

- Types of **Primary Law**:
 - **Procedural law**: The technical aspects that prescribe the **formal steps that need to be followed** while enforcing criminal or civil law; the method and means by which the substantive law is administered.
 - **Court rules**: mandatory procedural regulations
 - The procedural system provides guidelines regarding **what information is received** by the judge or jury, **how that information is presented**, and by **what standards of proof** ("beyond a reasonable doubt," "by clear and convincing evidence," "by a preponderance of the evidence").



Overview: The Law & Legal Research

- **Secondary Law:**
 - Usually the best place to start research
 - Provides **terminology** and **overview** of event or issue
 - Easier to find and **more readable** than primary law
 - Includes **treatises, law reviews and journals**, reference compilations (**encyclopedias, dictionaries**), locating tools (**digests, citators**), **American Law Reports (ALR)** annotations, **Restatements of the Law**, legal **newspapers/blogs**, **Continuing Legal Education**, and legal **practice guides**



Overview: Sources of Law & Citations

Legislative Branch

BILLS

Oregon Legislature

Bill

HB 2300



SESSION LAWS

Oregon Laws

Or Laws 1989, ch 790, § 3



STATUTES

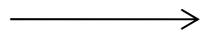
Oregon Revised Statutes

ORS 191.155(1)(a)(A)

Federal Legislature

Bill

H.R. 422, 106th Cong. § 2
(1997)



Statutes at Large

Pub. L. No. 87-195
75 Stat. 424 (1961)



United States Code

18 U.S.C. §510(b) (1983)



Overview: Sources of Law & Citations

Judicial Branch

Federal Courts

United States Supreme Court
477 U.S. 57
132 S. Ct. 230



9th Circuit Court of Appeals
27 F.3d 1432



U.S. District Court for the
District of Oregon
744 F. Supp. 952

Rules

Federal Rules
of Civil
Procedure

Federal Rules
of Evidence

Federal Rules
of Appellate
Procedure

9th Circuit
Local Rules

Oregon State Courts

Oregon Supreme Court
213 P.3d 1201
346 Or. 463



Court of Appeals of
Oregon
219 Or. App. 86
178 P.3d 301



Oregon Circuit Courts
**Opinions not generally
recorded or cited*

Rules

ORCP

Uniform Trial Court Rules
(UTCR)

ORAP

Evidence Code

Rules of Professional
Conduct

Code of Judicial Conduct

Supplementary Local Rules



Overview: Sources of Law & Citations

Executive Branch

- ***Federal Government***

- **Code of Federal Regulations**

- 20 C.F.R § 404.260 (2015)

- **Administrative Rulings**

- varies

- **Executive Orders**

- Exec. Order No. 12345, 3 C.F.R. 23 (2015)

- ***Oregon State Government***

- **Oregon Administrative Rules**

- OAR 123.123.1234 (2015)

- **Executive Orders**

- Executive Order No. 16-05



Overview: Finding Statutes & Ordinances

- **Federal Statutes: United States Code**
 - Government Publishing Office: www.gpo.gov/fdsys (“United States Code” under ‘Browse’)
 - Cornell’s Legal Information Institute: www.law.cornell.edu/uscode/text
- **State Statutes: Oregon Revised Statutes**
 - Oregon State Legislature: www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx
 - oregonlaws.org: www.oregonlaws.org



Overview: Finding Statutes & Ordinances

- **County & City Ordinances**

- **Web search:**

- city/county name + “code” or “ordinances”

- <https://www.municode.com/library/or>

- **Marion County:** www.codepublishing.com/OR/MarionCounty

- **Lincoln County:** www.co.lincoln.or.us/county counsel/page/lincoln-county-code

- **City of Sherwood:** www.sherwoodoregon.gov/ordinances

- **City of Springfield:** www.qcode.us/codes/springfield/



Overview: Finding Rules & Regulations

- **Federal: Code of Federal Regulations**
 - Government Publishing Office **Electronic Code of Federal Regulations**: www.ecfr.gov
 - Cornell's **Legal Information Institute** (LII): www.law.cornell.edu/cfr/text
- **State: Oregon Administrative Rules**
 - “A ‘rule’ is “any **agency directive, standard, regulation or statement** of general applicability that **implements, interprets or prescribes law or policy**, or describes the procedure or practice requirements of any agency.” ORS 183.310(9).
 - Oregon Secretary of State:
http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx



Overview: Finding Case Law

- **Case law** refers to **reported decisions of appeals courts** — which make **interpretations** of the law — and can be **cited as precedent**
- Case law **resolves ambiguities and questions** about other kinds of law. Look out for patron questions like:

“I want to find cases that talk about whether my boyfriend can take my car if it’s in my name but he paid for it. Where do I look?”



Overview: Finding Case Law

Which court **opinions matter**?

- **Binding Precedent**
 - The lower courts **MUST** follow these cases.
 - Supreme Court → Court of Appeals → Trial Court
- **Persuasive Precedent**
 - The lower courts **MAY** follow these cases
 - Any other **appellate** court which the litigant argues has a relevant take on the case
- **NOT Case Law**
 - **Trial Court orders and judgments only** apply to the case at hand and are not case law



Overview: Finding Case Law

Where to locate case law:

- First: Ask **what do you want** from the case law?
 - Search for a **relevant case issue?**
 - SOLL **Fastcase** <http://soll.libguides.com/index/fastcase>
 - Other advanced databases available in law libraries (**Westlaw / Lexis Nexis**)
 - Find a **specific case?**
 - **Google Scholar** <https://scholar.google.com/>
- Follow the **citations** (forwards and backwards)
 - Check to see if case has been **overruled**
 - Find **similar arguments**
 - Relied on by the court (backwards)
 - Other courts rely on this opinion (forwards)



Overview: Finding Case Law

Oregon Appellate Courts

Other **appellate court documents**:

- **Briefs**

- **Arguments** parties make to the appellate courts
- What were the parties arguing about? What arguments did the court disregard?

- **Petitions**

- Arguments parties make to get **Supreme Court** to hear case
- In older cases (pre 1980s), sometimes take the place of briefs in Oregon Supreme Court Cases



Overview: Finding Case Law

Oregon Appellate Courts

 **State of Oregon Law Library Digital Collection**
OREGON JUDICIAL DEPARTMENT

Search Opinions:

Search for all of the words

Indexes to search

- Oregon Court of Appeals Briefs
- Oregon Court of Appeals Opinions
- Oregon Supreme Court Briefs
- Oregon Supreme Court Opinions

Items per page

Stemming
 Fuzzy searching -- Fuzziness
 Phonic searching

[State of Oregon Law Library](#)
[Oregon Judicial Department](#)
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USEFUL LINKS

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Questions or Comments? Email state.law.library@oid.state.or.us

How to Locate a Brief or Opinion

To search, enter a search request in the space provided and select the **Search** button. A list of matching documents will appear. To you have opened a document, you can use the navigation buttons within that document.

To locate specific words and phrases within documents, you can use the keyboard shortcut to open your Web browser's Find feature. Within your browser, enter the phrase you wish to locate and press **'Enter'**. This will highlight occurrences of the phrase. Pressing **'Enter'** will allow you to skip from one occurrence to the next.

To print PDF files from within your reader, we recommend using the PDF viewer's print function. To print opinions [HTML files], use your browser's print function. Click the **Print** button and follow the directions on your screen.

More detailed instructions for searching the Digital Collection are provided in the [Help](#) section.

Google Search the Digital Collection

Use the Google Search Bar to conduct searches of Oregon Supreme Court or file number, party name(s), statute number, or keyword. For more information on Boolean operators, please click the **Help** button.

Note: This feature works for searching Oregon Supreme Court and Oregon Court of Appeals.

Search by Case Citation or File Number

 **Oregon Courts**
Oregon Judicial Department

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[Publications](#) | [OJD Home](#)

[Supreme Opin](#) | [Ct of Appeals Opin](#) | [Tax Regular Opin](#) | [Tax Magistrate](#)

Publications

Opinions Issued in 2017

[January](#) | [February](#) | [March](#)

ADVANCE SHEETS 2017 # 09
SUPREME COURT

03/30/17

- 361 Or 241 ([S062420](#)) [Brown v. SAIF](#)
- 361 Or 284 ([S063754](#)) [State v. Haugen](#)

ADVANCE SHEETS 2017 # 07
SUPREME COURT

03/09/17

- 361 Or 187 ([S063169](#)) [State v. Andersen](#)
- 361 Or 205 ([S063946](#)) [State v. Moore](#)

Search



[Search](#) court and briefs for Supreme Court of Appeals



Overview: Trial Court Documents

Oregon Circuit Courts

Finding **trial court (circuit court) documents**

- **Circuit Court Records Department:** Call, email, or visit in person
<http://www.courts.oregon.gov/OJD/courts/circuit/Pages/index.aspx>
- **Online:**
 - Fee based - **Oregon Judicial Case Information Network (OJCIN)** — Trial (OECI) and Appellate (ACMS)
<http://www.courts.oregon.gov/OJD/OnlineServices/OJIN/Pages/index.aspx>
 - Fee based - **Public Access to Court Electronic Records (PACER)** — Federal trial court documents
<https://www.pacer.gov/>



Overview: Trial Court Documents

Oregon Circuit Courts

Finding **trial court (circuit court) documents**

- **Online (cont):**

- Free: **Limited information** (docket only, no court filing documents, printable options)

- **Circuit Courts and Tax Court**

- Calendar <https://publicaccess.courts.oregon.gov/PublicAccess/default.aspx>

- Docket entries <https://webportal.courts.oregon.gov/portal/>

- Other **free sources** (eg eCourt viewing terminals for public)

- County Law Libraries <http://www.oregoncountylawlibraries.org/directory-of-county-law-libraries/>

- State Law Library <http://soll.libguides.com/index>



Overview: Trial Court Documents

Oregon Circuit Courts

OREGON JUDICIAL DEPARTMENT - Online Records Search Register / Sign In

1 Smart Search 2 Search Results 3 Details

Case Information

0600800 | State of Oregon VS. DAVID JAMES DAHL

Case Number 0600800	Court MUL Pre-Filing Criminal	File Date 06/29/1997
Case Type Offense Felony	Case Status Closed	

Party

REGISTER OF ACTIONS
CASE No. 0600800

State of Oregon VS. DAVID JAMES DAHL

Case Type: Offense Felony Date Filed: 06/29/1997 Location: Multnomah Booking Number: 0600800 District Attorney Number: 970644917	Attorneys
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PARTY INFORMATION

Defendant	DAHL, DAVID JAMES <i>Also Known As</i> CPMS, 55167 1401 SE 89TH PORTLAND, OR 97216	Male White DOB: 1963 6' 0", 195 lbs
Plaintiff	State of Oregon	

CHARGE INFORMATION

Charges: DAHL, DAVID JAMES	Statute	Level	Date
1. Poss Controlled Sub 2	4759924B	Felony Class C	06/29/1997
2. Escape in the Third Degree	162.145	Misdemeanor Class A	06/29/1997
3. Resisting Arrest	162.315	Misdemeanor Class A	06/29/1997



Thrive in the Hive

LEGAL REFERENCE CHALLENGES & STRATEGIES



Legal Reference: Challenges

Legal information vs. legal advice





Legal Reference: Challenges

Legal information vs. legal advice

- **License required** to practice law (ORS 9.160)
 - Protects the public from **exploitation and incompetence**
- Oregon courts broadly define practice of law to include **“any exercise of an intelligent choice, or any informed discretion in advising another of his legal rights and duties.”** *Oregon State Bar v. Security Escrows, Inc.*, 233 Or 80, 89 (1962)
- Even so, librarians **can do a lot to help patrons!**



Legal Reference: Challenges

Legal information vs. legal advice

- You **CAN** provide **legal information**!
 - **Locate information resources** to help patrons research their legal problem
 - Show patrons **how to use those resources** (eg., demonstrate how an index works)
 - Refer patrons to **county law library**, where more specialized resources may be available
 - Refer patrons to **legal service providers** who CAN offer legal interpretation and advice



Legal Reference: Challenges

Legal information vs. legal advice

- Legal **information** examples:
 - Find a **statute, rule, or ordinance** (by index or citation) *without interpretation*
 - Find **court cases** on a particular topic but *not apply to individual circumstances*
 - Find **court rules** for a particular court *without explanation*
 - Find a **variety of court form examples** *without telling patron which one to use*



Legal Reference: Challenges

Legal information vs. legal advice

- Legal **advice** =
 - **Interpreting or explaining** statutes, court rules, court procedures, or other aspects of the law
 - **Recommending a specific course of legal action** a court user should take
 - **Applying the law** to a patron's specific legal problem



Legal Reference: Challenges

Legal information vs. legal advice

- You **CANNOT** provide **legal advice**!
- Legal **advice** examples:
 - **Explain what a law means** or otherwise interpret legal authority, including statutes of limitations
 - **Advise on which choice to make between two or more options**, or give an opinion about whether a certain action should be taken or not
 - **Provide a specific form** or instruct what to write in a form or other court filing
 - **Identify proper jurisdiction** for patron's legal matter



Legal Reference: Strategies

Reference Interview Tips

- A legal reference interview is **THE SAME** as any other **reference interview**
 - **listen well** and keep an open mind
- Responding to a legal reference question is **DIFFERENT** from **regular reference**
 - you will **not find “the answer”** but rather resources and/or referrals
- **Asking specific questions** may enable you to provide more targeted assistance



Legal Reference: Strategies

Reference Interview Tips

- **Never** start a response to a patron with **what you CAN'T do**
 - *Don't **hide behind a legal shield** and say you can't help because you're not an attorney —try to offer **effective assistance by connecting patrons with materials or services that can help**
- Use your **listening skills**
- **Reframe the question** into one you CAN answer
- **Paraphrase the question** back to the patron



Legal Reference: Strategies

Reference Interview Tips

- **Reframe** the question
 - My ex-wife won't let me see our son, and she wants to move with him to California. How do I stop her?
Reframe: I need information about custody and visitation rights.
 - I ended a lease and my landlord returned my security deposit. Now he says there's damage and I need to pay him back some of the deposit. Can he do that?
Reframe: What does the law say about security deposit returns?
 - Is it legal for me to leave my 7-year-old daughter at home alone?
Reframe: Does the law say anything about the age a child can be left alone?



Legal Reference: Strategies

Reference Interview Tips

- **Specific reference interview questions may help narrow** the legal information need:
 - Is the case **civil or criminal**?
 - Is the patron looking for **actual law or for services** relating to the law?
 - **Which court/jurisdiction** is the patron's case in?



Legal Reference: Strategies

Reference Interview Tips

- **Reference DON'Ts:**
 - Never be invested in the **case outcome**
 - Never promise **unreasonable expectations**
 - Don't **fill out legal forms** or give advice on filling them out
 - Don't **interpret or explain** primary sources of law
 - Don't recommend a **specific lawyer**
 - Don't advise a patron about a particular **legal course of action**



Legal Reference: Strategies

Reference Interview Tips

- **Reference DOs:**
 - Promote **effective and open access** to legal information
 - **Provide resources** on court procedures, court rules, federal and state cases and statutes
 - Provide **access to legal forms** and instructions
 - Provide **options, resources, and referrals** (including websites)
 - Allow patrons to **come to their own conclusions**



Legal Reference: Strategies

Reference Interview Tips

- **Patron instruction:**
 - Teach patrons **how to use indexes and tables** included with statutes, cases, and rules
 - Demonstrate **how to search legal databases and navigate legal websites**
 - Offer **word processing and printing guidance** for completing online court forms
 - Provide advice for effectively using **lawyer referral service**



Legal Reference: Strategies

Reference Interview Tips

- **Improve your ability** to provide legal reference service:
 - Develop expertise regarding **legal research print and online sources**
 - Review websites that contain **local (Oregon specific), current, and authoritative self-help** legal information
 - Create **referral lists** and be knowledgeable about **local services offering legal assistance or representation**



Thrive in the Hive

USING FORMS



Using Forms

- Selecting or filling out forms for a patron is *always* practicing law!
- Categories of forms:
 - **Transactional forms** = legal documents such as contracts, leases, and wills
 - **Pleading and practice forms** = documents filed in court (complaints, answers, motions, counterclaims, etc.)



Using Forms

1. Is there an **official, Oregon court-sanctioned** local or statewide form?
<http://www.courts.oregon.gov/ojd/forms/pages/index.aspx>
2. Is there a sample form in a **state-specific legal practice book**?
 - Oregon State Bar **BarBooks** (*most county law libraries*)
3. Can you find a sample form from a **reliable publisher**?
 - **Stevens-Ness Law Publishing**: <http://www.stevensness.com/>
 - **Oregon Law & Practice**, Vol. 8 “Civil Procedure” (Thomson/West) (*most county law libraries*)
4. Is there a sample form **on the web** (use with caution — be wary of free forms)?
 - **Nolo** (fee required): <http://store.nolo.com/products/free-forms-library>
 - **Findlaw/US Legal Forms** (fee required): <http://forms.lp.findlaw.com/>



Using Forms

Speaker:

HOLLY RUDOLPH

Judicial Forms Manager, Oregon Judicial Department



Thrive in the Hive

GETTING LEGAL ASSISTANCE & KNOWING REFERRALS



Getting Legal Assistance & Knowing Referrals

- **Referrals**

- **Contact and general information** for recommended relevant agencies and organizations
- For many legal reference questions, a referral is the **optimal response**
- Further explanation on **how to most effectively use referral** is vital
- Offering **realistic expectations** one of the most important aspects of using referrals



Getting Legal Assistance & Knowing Referrals

- **Referrals**
 - **Legal assistance providers**
 - OSB, Legal Aid, other sliding-fee scale providers
 - **Court and county departments**
 - Family law facilitator offices
 - Mediation/conciliation services
 - Juvenile services
 - Probate
 - Domestic relations
 - Court records



Getting Legal Assistance & Knowing Referrals

- **Referrals**

- **Law school libraries & county law libraries**

- University of Oregon School of Law (public)
 - Willamette University, College of Law
 - Lewis & Clark Law School
 - County law libraries statutorily required, but staffing, collections, and services vary widely

- **Other agencies**

- 211 Info
 - Disability Rights Oregon
 - Consumer Protection, Department of Justice
 - Oregon Bureau of Labor and Industries (BOLI)



Getting Legal Assistance

Speaker:

ERIC McCLENDON

Referral and Information Services Manager, Oregon State Bar



Getting Legal Assistance

Speaker:

JANICE MORGAN

Executive Director, Legal Aid Services of Oregon



Thrive in the Hive

OPEN DISCUSSION AND Q&A