Regulatory Research

Legal Research Workshop 1/30/2018

zxm@law.stanford.edu

Today's Plan

- Federal Regulatory Research
- California Regulatory Research

Legal Research Process

- Step 1 Brainstorming and Research Planning
- Step 2 Start with Secondary Resources
- Step 3 Work with Primary Sources
- Step 4 Put everything together & enjoy life

Legal Research Process

- Step 1 Brainstorming and Research Planning
- Step 2 Start with Secondary Resources
- Step 3 Work with Primary Sources: cases, statutes, and/or regulatory materials
- Step 4 Put everything together & enjoy life

Need for regulatory research

- An agency is involved: eg., FCC's regulation on broadcasting fake news
- From a secondary source: 47 C.F.R. 134; 13 No. 8 F.C.C.R. 1689

Need for regulatory research

- There is a governing statute
  - In our example, the 1934 Communications Act
- Heavily Regulated Industries: Tax, securities, labor and employment, immigration, etc.

Secondary Resources

- Research Guides:
  - Recommend secondary resources
  - Information about relevant agencies
  - http://guides.ll.georgetown.edu/communications

Secondary Resources

- Commercial Databases: Browse by industry/practice centers
  - Lexis, Westlaw, and Bloomberg
  - Example: A treatise on regulating cable TV

Primary Sources for Regulatory Research

- Purpose of Legal Research
  - Identify and locate primary sources
    - Types of primary sources
    - Where to find them
  - Understand primary sources

Primary Sources for Regulatory Research

- Deal with many types of primary sources
  - Legislative/Regulatory function – regulations and rules
  - Investigative and enforcement function – citations and licenses
  - Quasi-judiciary function – Decisions and Orders
  - Other Guidance documents- Advisory opinions, statement of policy, manuals, etc.

Primary Sources for Regulatory Research

- Deal with many types of primary sources
  - Sources – APA, Enabling Acts, Regulations, and Agency Websites
  - Rulemaking Process: https://www.reginfo.gov/public/reginfo/Regmap/index.jsp

The Rulemaking Process

Authority	U.S. Code or Executive Order
Proposed Rule	Federal Register
Final Rule	Federal Register
Codification	Code of Federal Regulations

The Rulemaking Process

Codification	Code of Federal Regulations
[Agency Guidance]	Publications Vary
Agency Decisions	Publications Vary
Judicial Review	Cases

Primary Sources: Role of Statutes

- Statute/Enabling Act provides statutory authority
  - General statutes: APA, FOIA, Government in the Sunshine Act, and Regulatory Flexibility Act, etc.
  - https://fas.org/sgp/crs/misc/RL32240.pdf

Primary Sources: Role of Statutes

- Statutes/Enabling Act:
  - Statutory Authority
    - Specific statutes – delegate authority to agencies re: issue regulation and adjudicate disputes
    - Statute → Regulation Parallel Table of Authorities and Rules
      - 47 USC § 228 – Regulation of carrier offering of pay-per-call services
      - Easy access (not official): https://www.law.cornell.edu/uscode/text/47/228

Primary Sources: Role of Statutes

- Statutes/Enabling Act:
  - Statutory Authority
    - Regulation → Enabling Statute
      - 47 CFR § 79.1 Closed Captioning of Televised Video Programming
        - Statutory Authority section

Primary Sources: Regulations

- Proposed Regulations or Notice of Proposed Rulemaking
  - Summary (including regulatory needs), Date, Public Comment (time, docket no.), text of proposed rule
  - Available in Federal Register only

Primary Sources: Regulations

- [After notice and comment period] Final Rules and Regulations
  - Date (effective date etc.), Preamble (basis and purpose, review of significant alternatives, response to public comments, and reasons for rejection), and Text of final rule.
  - Available in Federal Register

Primary Sources: Federal Register

- Federal Register
  - Daily Publication
  - Arranged in Chronological Order
  - Key content: Notice of Proposed Rulemaking, Proposed Rules, Final Rules + Preamble

Primary Sources: Federal Register

- https://www.federalregister.gov/
- https://www.regulations.gov/
  - By Agency: FCC
  - By dates
  - Keyword search

Primary Sources: Regulations

- Final Rules and Regulations Codified
  - Text of Final Rules
  - Available in Code of Federal Regulations

Primary Sources: CFR

- Code of Federal Regulations
  - Annual Publication
  - Arranged By Topics (50 titles)
  - Final and Current Regulations/Rules
  - Limitation – Most recent changes
    - LIST OF CFR SECTIONS AFFECTED

Primary Sources: CFR

- Official Government Website: https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR
- Agency website: (e-cfr) https://www.fcc.gov/wireless/bureau-divisions/technologies-systems-and-innovation-division/rules-regulations-title-47

Primary Sources: CFR

- Lexis/Westlaw/Bloomberg:
  - Example: FCC regulation on broadcasting fake news
- Proquest Regulatory Insight:
  - Regulatory history under a specific statute
  - Public comments

Primary Sources: Agency Decisions and Orders

- Out of Agency's adjudicative function
- Similar to cases
- Binding on parties or public
- Publications really vary: FCC Record

Primary Sources: Agency Decisions and Orders

- Agency website: https://www.fcc.gov/
- Commercial databases: Lexis, Westlaw, Bloomberg and Hein
- Example: Agency decisions based on FCC's Hoaxes Regulation 47 C.F.R. § 73.1217.

Primary Sources: Judicial Review (cases)

- Jurisdiction – check enabling statute or regulation
  - 47 USC § 402 – Judicial review of FCC's orders and decisions - US Court of Appeals for D.C
- Commercial Databases: Lexis or WestLaw
  - Citing references or citing decisions feature
    - Example: **47 CFR § 79.1 Closed Captioning of Televised Video Programming**

State Regulatory Research

- Similar to Federal Regulatory Research
- Key: Understand the Agency's rulemaking process and documents issued under each of its functions
- Difficulty – may be harder to track down agency decisions and orders

California Regulatory Research

- Secondary Resources
  - Research Guide – California Legal Research
  - Lexis and Westlaw
  - State focused database: CEB
  - State Bar Journal

California Regulatory Research

- Primary Sources
  - CA Rulemaking Process
    - https://oal.ca.gov/rulemaking_process/
  - Statutes – CA APA https://oal.ca.gov/publications/administrative_procedure_act/
  - Regulations
    - California Code of Regulations
    - California Regulatory Notice Register
    - Lexis, Westlaw, and https://oal.ca.gov/

California Regulatory Research

- Primary Sources
  - Agency Decisions and Orders
    - Lexis and Westlaw
    - Agency Websites

Final Tips

- Research Regulatory Materials in Context
  - Likely need to search for relevant statutes and cases
  - Regulatory topics can be complex: may involve multiple statutes, regulations and agencies

Final Tips

- Start with best secondary resources
  - Research guides
  - Browse by practice centers/areas in Lexis, Westlaw and Bloomberg
  - Specialized databases: RIA (Tax), CCH (Tax, Securities Reg., Labor and Employment, etc.)
  - Current awareness tools: BNA Reports, https://www.theregreview.org/, https://www.reginfo.gov/public/

Final Tips

- Figure out the scope of primary sources
  - Rulemaking process & Information about agencies
  - Content of each official publication

Final Tips

- Places to find primary sources
  - Lexis, Westlaw, and Bloomberg
  - Official governmental websites
  - Historical sources (esp. for states) - you may need to call or check state archives