Oregon Library Association 2017 Annual Conference
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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 (e.g., 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

*Federal Legislature*

Bill
H.R. 422, 106th Cong. § 2 (1997)

**SESSION LAWS**

*Oregon Legislation*

Oregon Laws
Or Laws 1989, ch 790, § 3

**STATUTES**

*Oregon Revised Statutes*
ORS 191.155(1)(a)(A)

*United States Code*
## 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

#### Oregon State Courts

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| Federal Rules of Civil Procedure
| Federal Rules of Evidence
| Federal Rules of Appellate Procedure
| 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

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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

• 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**
  - Cornell’s Legal Information Institute: [www.law.cornell.edu/uscode/text](http://www.law.cornell.edu/uscode/text)

- **State Statutes: Oregon Revised Statutes**
  - Oregon State Legislature: [www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx](http://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)
  - oregonlaws.org: [www.oregonlaws.org](http://www.oregonlaws.org)
Overview: Finding Statutes & Ordinances

- **County & City Ordinances**
  - Web search:
    - city/county name + “code” or “ordinances”
    - [https://www.municode.com/library/or](https://www.municode.com/library/or)
  - Marion County: [www.codepublishing.com/OR/MarionCounty](http://www.codepublishing.com/OR/MarionCounty)
  - Lincoln County: [www.co.lincoln.or.us/countycounsel/page/lincoln-county-code](http://www.co.lincoln.or.us/countycounsel/page/lincoln-county-code)
  - City of Sherwood: [www.sherwoodoregon.gov/ordinances](http://www.sherwoodoregon.gov/ordinances)
  - City of Springfield: [www.qcode.us/codes/springfield/](http://www.qcode.us/codes/springfield/)
Overview: Finding Rules & Regulations

- **Federal:** Code of Federal Regulations
  - Cornell’s Legal Information Institute (LII): [www.law.cornell.edu/cfr/text](http://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).
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](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/](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: Trial Court Documents

Oregon Circuit Courts

Finding trial court (circuit court) documents

- **Circuit Court Records Department**: Call, email, or visit in person

- **Online:**
  - Fee based - [Oregon Judicial Case Information Network (OJCIN)](http://www.courts.oregon.gov/OJD/OnlineServices/OJIN/Pages/index.aspx) — Trial (OECI) and Appellate (ACMS)
  - Fee based - [Public Access to Court Electronic Records (PACER)](https://www.pacer.gov/) — Federal trial court documents
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
Legal Reference: Challenges

Legal information vs. legal advice

Legal Advice 5¢
Accurate Legal Advice $5,000
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

- 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?  

2. Is there a sample form in a **state-specific legal practice book**?  
   - Oregon State Bar [BarBooks](https://barbooks.oregonbar.org) *(most county law libraries)*

3. Can you find a sample form from a **reliable publisher**?  
   - 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](http://store.nolo.com/products/free-forms-library)
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