

Seven Rules for Format Neutral Effective Legal Research

When Good Enough Isn't

Searching is based on two concepts: Precision and recall.

Precision: Finding the exact thing you are looking for. This means developing a search query that returns few, but highly relevant results. Using a limited database with field searching is an example of a precision search.

Recall: Retrieving a lot of results, knowing that the relevancy of the results will vary greatly. Google, WestlawNext and Lexis Advance are examples of search engines that rely on recall rather than precision.

Techniques for precision and recall will vary on the type of search engine you are using. Older databases (Lexis, Westlaw Classic) allowed you to search precisely by limiting the database, using field/segment searching and Boolean operators. Newer databases, along the Google model (google scholar, WestlawNext, Lexis Advance) generally use filters to make a query more precise. Because of complaints, WestlawNext has added an advance search feature that allows you do Boolean searching.

Rule One of Effective Legal Research: Know what you are searching for.

The goal of research is to find current mandatory precedent supporting your position (i.e. US Code, Bankruptcy Rules, US Supreme Court case or 7th Cir. case) Otherwise find persuasive precedent supporting your position (everything else).

Rule Two of Effective Legal Research: Plan your strategy before turning on the computer or opening the book.

Before turning on the computer, you should engage in a preliminary analysis. For people new to bankruptcy, this will be explicit. For long term practitioners, it is probably done without thinking that is what they are doing.

Preliminary analysis:

Do I know enough about this area of law to know which facts are relevant (and which are not), to know the legal issues at stake and the legal terms of art in this area of law?

If I have any questions regarding the above, consider using secondary resources to help identify relevant facts, issue identification and key terms of art. Develop key words and synonyms to use for search query.

Rule Three of Effective Legal Research: Have someone else to do the research for you.

By using secondary resources, not only may you identify key words, legal issues, but you may discover the exact statute or case you are looking for. If your firm has a knowledge management system there may be some relevant materials in that. But see Rule Six.

Rule Four of Effective Legal Research: Strive for precision. This will save time in reading cases. Remember, one mandatory precedent that is still good law trumps unlimited persuasive precedents.

STARTING RESEARCH

1. Use an annotated copy of USC. (USCA/USCS) or WI Statutes Annotated.

Why is this effective legal research?

Bankruptcy is a heavily statute area of law. (Title 11, WI statutes, UCC)

Statutes are mandatory precedent. If the statute is ambiguous, you have the cases interpreting the statute right at hand.

One issue you may need to address is do you need the statute as it reads now or as it read at some earlier time?

2. Case law research

Types of case law research that wouldn't come up in step 1?

Concern with precision/recall. If searching for mandatory precedent, limit search to a 7th Circuit database/file. (or use filters to limit it to 7th Circuit.)

If no mandatory precedent, search for persuasive precedent.

Are some circuits more persuasive than others?

Rule Five of Effective Legal Research: Actually read the case, not just the headnote or paragraph.

See *Parker v. Matthews* __ U.S.___, (No. 11-845, decided June 11, 2012). In an Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) habeas appeal, 6th Circuit relied on *Gall v. Commonwealth*, 231 F.3d 265 (6th Cir. 2000) case. Unfortunately, *Gall* was a pre AEDPA case.

(While not known, it is suspected this case was discovered by a computer research query, the law clerk/judge looked only at the paragraph with the language, saw it was a 2000 case and assumed it was AEDPA. Reading the whole case would have made it clear it was not.)

REFINING RESEARCH

If your searches are not pulling up relevant results, considering changing search terms, using Boolean operators (AND OR BUT), advanced search boxes, filters etc. Consider using headnotes, topic words, more like this features. If you still are not finding anything relevant, consider going through the preliminary analysis again. If you are finding the same answer using multiple resources, you can move on to updating your research.

Rule Six of Effective Legal Research: Update your research early and often.

UPDATING RESEARCH

You need to ensure that your precedent is still good. This means updating both statutes and cases. If there are more than a couple of weeks between when your brief is filed and the hearing held, you need to update again the day before or of the hearing as well.

See *Marantz v. Permanente Medical Group Inc.* (10-1136, 7th Cir. decided July 10, 2012). An Erisa case. One of the cases relied upon by appellant was overturned after the filing of the appeals brief but before the filing of the reply brief and oral argument. This information was not presented to the court. Appellant's attorney also relied on an opinion that had been vacated in 2003 and made numerous citation errors.

Keycite and Shepards: These citatory services are worth their weight in gold and can also be used to find other relevant authority.

Fastcase Authority Check/other "cloud" citators. A cloud citator service will show how often a case gets mentioned over a time frame but does not expressly include whether the case has been reversed, limited or overruled. The assumption is that the larger the cloud, the greater the possibility of a negative treatment being mentioned. This is not accurate enough to rely on.

Rule Seven of Effective Legal Research: Do not assume that just because something is online, it is more current than print resources.

The online versions of USCA/USCS/WI Statutes are only as current as the print volumes, anywhere from 6-12 months out of date. You still need to update using keycite, shepards, or the citation as a citator. There have been some unfortunate examples where materials online were more out of date than the print. (Usually from government websites)

Helpful resource: University of Illinois' BankrLaw Project is a free online database containing both historical and current versions of the bankruptcy code. You can select any date from Jan. 1, 1980 and it will display the version in effect on that date. See <http://bankr.law.illinois.edu/>

