Chapter 5

CALIFORNIA LAW

The state of California has done a great job of making its primary sources of law widely available via the Internet. In addition, legal publishers publish a multitude of secondary sources in print and in online databases. This abundance of information has made researching California law easy for some and overwhelming for others. For those without a legal background (and most with one), it is always advisable to start with a secondary source. ¹

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¹ Secondary sources describe and explain the law and provide background information and citations to primary sources of law.

Secondary Sources

There are many California secondary sources geared specifically towards non-lawyers. Nolo Press is one of the most well respected legal self-help publishers. Titles such as *The California Landlord's Guide: Rights and Responsibilities, California Tenants Rights, How to Do Your Own Divorce in California,* and *U.S. Immigration Made Easy* are found in many public libraries and serve as an excellent starting place for non-lawyers doing their own legal research. The Nolo Press Web site also has a Legal Encyclopedia which offers brief entries on many legal topics. Chapter 10: *Bibliography of Self-Help Resources* includes an extensive list of self-help books and Web sites, including numerous Nolo Press publications, arranged by subject area.

Another excellent resource is the California Judicial Council's <u>California Courts</u> Web site. The California Judicial Council created the <u>California Courts Online Self Help Center</u> to assist self-represented litigants and others in learning about California law and court procedures. The <u>Self Help Center</u> offers information on common legal matters such as divorce, child custody and visitation, landlord/tenant issues, and small claims court in English, Spanish, Chinese, Korean, and Vietnamese. It includes guides for completing necessary court forms and links to legal service organizations and lawyer referral programs. It also provides links to state agencies that assist with legal problems such as employment discrimination.

The <u>Self Help Center</u> also provides access to <u>AskNow's Law Librarian Service</u> which connects users with county law librarians throughout the state. Law librarians may suggest strategies and resources to help individuals with their particular legal research needs.

Primary Sources

It is important to keep in mind that primary sources of law – constitutions, statutes, cases, regulations, and regulatory decisions – all work together to form "the law" on a particular subject. A good secondary source will explain how these pieces of primary law fit together and which is most important for a particular legal issue. Please refer to Chapter 6: *Bibliography of California Law Resources* for a list of secondary sources, including legal encyclopedias, treatises, practice guides, and handbooks, which are all specific to California legal research.

A few words of caution: while researchers often just want to read the text of the Vehicle

Code section they allegedly violated or the text of a recent California Supreme Court decision, caution should be exercised in looking at any one of the primary sources of law in isolation when a broader topic is researched.

California Constitution

The first California Constitution was drafted by a group of 48 delegates in 1849. In 1878, a second constitutional convention was convened and in 1879, 152 delegates drafted the second California Constitution. Though amended numerous times, the 1879 Constitution continues to serve as the framework for California government and the rights of its citizens.²

The California Constitution may be found in many sources including within the sets of the California Codes. The California Legislative Counsel provides a searchable copy of the current <u>California Constitution</u> under the *California Law* button on its <u>Web site</u>.

California Statutory Law

The statutory laws of California consist of acts passed by the California legislature and by the California electorate through the initiative process. The legislative process is explained below. For more information on the initiative process, see <u>A History of the</u> <u>California Initiatives</u> available from the California Secretary of State.³

Statutes are organized by subject and published in the California codes. Codes provide the current version of statutes arranged by topic. Please see the next page for a list of California codes.

California does not publish an official version of its codes. Two unofficial versions of the codes, West's Annotated California Codes published by West and Deering's California Codes Annotated published by LexisNexis, contain all 29 codes. Both sets are arranged alphabetically by code title and include the California Constitution and the California Rules of Court. As indicated by their titles, both sets are annotated, meaning that they include references to cases, law review articles, and other materials which discuss and help explain individual code sections. Both sets are updated by yearly pocket parts,

² See The California State Constitution: A Reference Guide (Joseph R. Grodin, Calvin R. Massey, and Richard B. Cunningham, 1993) for a discussion of the history of the California Constitution and commentary on its provisions.

³ See also J. Fred Silva, The California Initiative Process: Background and Perspective (Public Policy Institute of California, 2000), available at http://www.ppic.org/content/pubs/op/OP 1100FSOP.pdf.

newspaper-like pamphlets inserted in the back of each volume, or by supplementary pamphlets. Some individual code titles such as the Civil Code, Evidence Code, and Vehicle Code are also published in unannotated paperback versions, often called compact codes. These volumes are republished yearly to incorporate any changes to the codes.

Both annotated and unannotated codes contain indexes to assist in locating particular sections. West's Annotated California Codes and Deering's California Codes Annotated both contain indexes to each individual code title as well as general indexes to the entire set of codes. LARMAC Consolidated Index to the Constitution and Laws of California is a separate index to the California Codes published yearly. It is not easy to guess in which code a particular statute will be found. Therefore, it is best to start in one of the general indexes or in LARMAC to locate relevant code sections.

CALIFORNIA CODES		
Business and Professions Code	Insurance Code	
Civil Code	Labor Code	
Code of Civil Procedure	Military and Veterans Code	
Commercial Code	Penal Code	
Corporations Code	Probate Code	
Education Code	Public Contract Code	
Elections Code	Public Resources Code	
Evidence Code	Public Utilities Code	
Family Code	Revenue and Taxation Code	
Financial Code	Streets and Highways Code	
Fish and Game Code	Unemployment Insurance Code	
Food and Agriculture Code	Vehicle Code	
Government Code	Water Code	
Harbors and Navigation Code	Welfare and Institutions Code	
Health and Safety Code		
	1	

The California Legislative Counsel provides a current set of the <u>California Codes</u> on its Web site. Individual codes or the entire set of 29 codes may be searched by keyword. In

addition, the table of contents for each code may easily be printed or downloaded. The Legislative Counsel's version of the <u>California Codes</u> is the most up-to-date but lacks annotations and historical notes.⁴

Legislative Process⁵

The laws which eventually become part of the California codes begin in the state legislature as bills. Bills passed by the legislature are enacted into law and become statutes. Statutes are published in chronological order in the official *Statutes and Amendments to the Codes* which serves as the permanent record of all statutes passed by the California Legislature. A single statute may affect (add to, revise, or repeal) more than one code section and, over time, one code section may be affected by many different statutes. *West's Annotated California Codes* and *Deering's California Codes Annotated* keep each code volume up-to-date with statutory changes through the use of pocket parts and supplementary pamphlets. Compact codes are republished each year so as to reflect any statutory change.

In order to understand why a certain statute was enacted by the legislature, a legislative intent (or history) search may be made. Legislative history research involves collecting the documents generated at each step of the legislative process and then reading them for evidence of intent. Locating legislative history documentation requires that one first understand the process by which a bill becomes a statute.⁶

The legislative process begins with the introduction of a bill on the floor of the Senate or the Assembly. Only a legislator may introduce a bill, but government agencies and community organizations, as well as individuals often propose the subject matter. The Legislative Counsel drafts the bill into the proper form and also provides a commentary in the preface of the bill, called the Legislative Digest.

Bills introduced in the Assembly are assigned a number preceded by *A.B.* Bills introduced in the Senate are assigned a number preceded by *S.B.* The Legislature meets in two-year sessions (e.g. 2009-2010) and bill numbers are assigned in sequential order

⁵ <u>California's Legislature</u>, published by the Office of the Assembly Chief Clerk, is an in-depth introduction to the legislative process and to California state government. It is also available for purchase (currently \$5) from the Legislative Bill room ((916) 445-2323).

⁴ Note that in the fall of 2011, the Legislative Counsel released a beta site for California legislative information: http://leginfo.legislature.ca.gov/. As of November 4, 2011, the California Codes had not yet been added to the new site.

⁶ The Legislative Counsel offers a detailed chart of the <u>California legislative process</u> [PDF], available via the <u>Legislative Publications</u> button (scroll down the page to <u>California's Legislature</u>).

during each session. Bill numbers start anew with each new legislative session. It is therefore imperative when researching legislative intent to be able to specify:

- \checkmark A.B. or S.B.
- ✓ the bill number
- ✓ the year the bill was introduced or passed

As a bill makes its way through the legislative process, it must follow certain rules. Once it is passed by both the Assembly and the Senate, it is submitted to the Governor for his signature. If the Governor signs the bill, it becomes a law effective January 1 of the following year. If the act is not signed within twelve days and the Legislature is still in session, it becomes a law without the Governor's signature. If the Governor vetoes the bill, it can still become a statute on a two-thirds majority vote from each house of the Legislature. Once a bill becomes a statute, the Secretary of State assigns it a chapter number and it is placed chronologically in the official *Statutes and Amendments to the Codes*. The Legislative Counsel has made the <u>statutes</u> (starting from the 1993-94 legislative session) available on its <u>Web site</u>.

During the legislative process, documents such as committee analyses and reports may be generated. These documents may offer evidence of the legislative intent behind a particular statute. Committee analyses, voting records, veto messages, and bill versions from the 1993-94 legislative session to the present may be found for individual bills in the Bill Information portion of the California Legislative Counsel's Web site. Legislative information, both for bills which were passed into law and those which died may be searched by bill number, bill author, or keyword. While not providing complete legislative history documentation, the Bill Information portion of the Legislative Counsel's Web site has made legislative documents much more accessible and may provide insight into legislative intent.

If a more complete legislative history is desired, the best place to start is in a library that serves as a state depository. There are also commercial legislative intent service companies that will research and prepare legislative histories for a fee.⁹

⁷ Compiling legislative documents can be a time-consuming and frustrating task and many times the documents fail to reveal the legislator's intent.

⁸ The <u>California Legislative Information beta</u> site offers new functionality to the *Bill Search* and bill *Text Search* Features

⁹ Please see the *Selected Bibliography* at the end of this chapter for examples for commercial legislative intent research services.

Most libraries that collect legislative intent materials also have worksheets which are designed to guide the researcher through the process and are keyed to the materials available in their own collections. An excellent example is the <u>California Legislative History Checklist</u> available from the <u>LA Law Library</u>. Listed below are seven basic steps to get a researcher started on legislative intent research.

- 1. Check the annotations to the code section in both *West's Annotated California Codes* and *Deering's California Codes Annotated* for law review articles and/or cases that discuss legislative intent.
- 2. Check the history notes which follow the code section in *West's* and *Deering's* for chapter number and year. Note that many different statutes may have affected a code section over time. One must read the annotations and decide which statute or statutes one needs to research based on how each statute affected that code section.
- 3. Read the original statute and, if available, the Legislative Digest in the *Statutes and Amendments to the Codes*.
- 4. Convert the chapter number into a bill number. Before 1970, check Volume 1 of the *Statutes and Amendments to the Codes*, Table of Laws Enacted. After 1970, check the last volume of the *Statutes and Amendments to the Codes*, Summary Digest.
- 5. Check published sources of legislative intent:
 - a. *Pacific Law Journal* (1970-1997) renamed *McGeorge Law Review* (1998 Present), Annual Review of Selected California Legislation, which covers legislation from 1970 to the present.
 - b. CEB's *Review of Selected Code Legislation*, which covers some years prior to 1970.
 - c. The <u>Bill Information</u> portion of the Web site of the <u>California</u> <u>Legislative Counsel</u> gives bill text and committee analyses from the 1993-94 legislative session to the present.¹⁰
- 6. If the library you are using has California legislative materials:
 - a. Read the various versions of the bill.
 - b. Read the Assembly File Analysis.

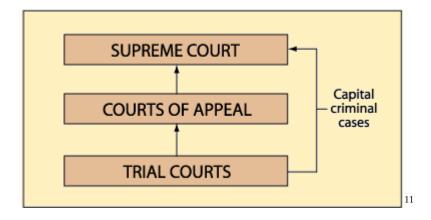
¹⁰ Again, the <u>California Legislative Information beta</u> site adds new functionality to the *Bill Search* feature. However, as of Nov. 4, 2011, you can only search from the 1999-2000 session year to the current session.

- c. Read the Final History, which will list all actions and committees which studied the bill.
- d. Check the indexes to the *Senate and Assembly Journals* for references to Legislative Counsel Opinions or Statements of Intent.
- e. Check for hearings and reports.
- 7. <u>Contact</u> the <u>California State Archives</u> in Sacramento, (916) 653-7715. The Archives maintains bill files which may contain correspondence, reports, and other useful materials. The State Archives will compile a package of legislative documents but the process generally takes several weeks.

California Case Law

Cases are the written opinions rendered by judges in particular cases. Cases resolve disputes between parties by interpreting statutes and regulations. Cases can also establish "the law" in areas where there are no governing statutes or regulations. Not all cases result in a written opinion, nor are all written opinions formally published or "reported."

• California State Court System



Like most states, California has a three-tiered court system. The <u>California Supreme Court</u> is the highest court. Cases do not originate in the Supreme Court but arrive there on appeal from a lower court. The Supreme Court's reviewing power allows it to decide important legal questions and to maintain uniformity in California law. The Supreme Court is composed of a Chief Justice and six Associate Justices.

¹¹ Diagram is from the California Judicial Council Web site.

The <u>California Courts of Appeal</u> are the basic appellate courts for the state. There are six appellate districts: First District – San Francisco; Second District – Los Angeles and Ventura; Third District – Sacramento; Fourth District – San Diego, San Bernardino/Riverside and Santa Ana; Fifth District – Fresno; Sixth District – San Jose. Each district has a presiding justice and two or more judges.

<u>Superior Courts</u> are the trial level courts within California. All California cases must begin in a superior court. There is one superior court in each of California's 58 counties (each court may maintain multiple branches). Municipal courts were unified with superior courts in 2001.

As stated above, cases are the written opinions rendered by judges in particular cases. Decisions from the superior courts are not generally published and must be retrieved directly from the court. Cases from the California Courts of Appeal and the California Supreme Court are published in both official and unofficial versions. In either case, only the text of the opinions comes from the court itself; the editorial matter, such as the case summary and headnotes, differ between the official and unofficial versions.

• California Case Law Publications

Below is a chart that shows where California cases are published.

Court	PUBLICATION TITLE
California Supreme Court	California Reports (Official) West's California Reporter (Unofficial) West's Pacific Reporter (Unofficial)
California Appellate Courts	California Appellate Reports (Official) West's California Reporter (Unofficial)
Trial Courts (e.g., Los Angeles Superior Court)	Decisions are not published.

Appellate cases from 1850 to the present are also available in a searchable database provided by LexisNexis, the official publisher of California cases, on the California Courts Web site. In addition, SCOCAL, a joint project between Justia and Stanford Law School Library, provides free access to California Supreme Court opinions (from 1934 to present), along with annotations, briefs, documents and news.

California Regulations & Regulatory Decisions

California regulations are rules and procedures promulgated by state agencies which allow the implementation of statutes. Regulations are a binding source of law similar to statutes and cases.

California regulations are found in the *California Code of Regulations* (formerly called the *California Administrative Code*) published by the <u>California Office of Administrative Law</u>. The *California Code of Regulations* (*CCR*) is divided into 27 numbered titles (excluding Title 24, see paragraph below) and then into sections. A typical citation would read 25 *CCR* 60, where 25 is the title number and 60 is the section number. The print version of the *CCR* is published by Barclays, a division of West Publishing Company (a Thomson Reuters business), and is published in loose-leaf format. Update pages are issued weekly. Regulations can be found by consulting the subject index or, where a relevant code section is known, by consulting the Statutes to Regulations Table.

The <u>CCR</u> is also available online through the <u>Office of Administrative Law</u>. Regulations can be accessed through an agency list, a table of contents, or a subject search through one or more titles. Note that Title 24, the Building Code, is not published as part of either the print or online version of the *CCR*, since it is copyrighted and published by the ICBO (International Conference of Building Officials). The *California Regulatory Notice Register* updates the *CCR*.

State administrative boards and agencies such as the Workers' Compensation Appeals Board and the Franchise Tax Board often have judicial or quasi-judicial authority and may issue administrative decisions. Finding these decisions may often be a challenging task. Many subject-specific books will include administrative decisions. Check state agency Web sites for their regulations, decisions, forms, and other information of interest. The California State Web page offers a <u>listing of California agencies</u> and their Web sites.

City and County Municipal Codes

Article 11 of the <u>California Constitution</u> gives cities and counties the authority to pass legislative acts, called ordinances, relating to municipal affairs. These ordinances are collected and arranged by topic in municipal codes and county codes.

Most city and county Web sites include their own ordinances. U.C. Berkeley's Institute of Governmental Studies provides a list of <u>California Local Codes and Charters</u> and includes links to those available on the Internet.

Other Resources

California County Law Libraries

Because many public libraries have limited legal research resources, it may be necessary to refer users to a local county law library. By statute, each of the 58 counties in California maintains a county law library whose mission is to provide free access to legal materials to all persons interested in the law. The county law libraries vary greatly in size and resources. Several, including the <u>LA Law Library</u>, the <u>Bernard E. Witkin Alameda County Law Library</u>, and the <u>San Diego County Public Law Library</u> collect not only California legal materials, but materials for the federal system and for other states as well. The <u>LA Law Library</u> also has an extensive collection of foreign and international law materials.

The larger county law libraries maintain Web sites that provide access to their catalogs and include helpful research guides and lists of local legal providers. Some also provide in-person classes and training on legal research topics. The county law libraries also participate in <u>AskNow's Law Librarian service</u> which allows real-time legal reference assistance over the Internet.

A <u>list of the California county law libraries</u> may be found at the <u>Council of California</u> <u>County Law Librarians</u> Web site and in <u>Appendix C</u> of this publication.

California Attorneys

To practice in California, an attorney must be a member of the California State Bar. Furthermore, only active members of the State Bar are entitled to practice law within California.

The <u>State Bar</u> makes its member records available to the public through its <u>Attorney Search</u> feature. Information provided for individual attorneys includes current contact information, undergraduate and law schools, and, most importantly, status¹² and disciplinary history.

California attorneys can become certified legal specialists in one or more of 19 legal specialties including bankruptcy, elder law, family law, immigration law and tax law. Individuals can search for <u>certified legal specialists</u> (link provided in search box under "more search options" or by using the Advanced Attorney Search (scroll down to the bottom of the page)).

The <u>State Bar</u> also includes information on how to file a <u>complaint</u> against an attorney.

<u>Martindale-Hubbell</u> is a national directory of lawyers. Its publisher, LexisNexis, has made the database available at no charge. Lawyers may be searched by name or by specialty and geographic region. The <u>Advanced Search Feature</u> also allows searching by language or law school attended.

<u>Avvo.com</u> also provides a national database of lawyers. In addition to providing biographical information, Avvo.com provides ratings for attorneys based on its own proprietary ratings system.

Lawyers identified through either <u>Martindale-Hubbell</u> or <u>Avvo.com</u> should be checked in the California State Bar <u>Attorney Search</u> database for active status and disciplinary history.

California Judges

Biographical information on California judges may be found on individual court Web sites. The Judicial Council provides a full <u>listing of courts</u> and their Web sites.

Biographical information may also be found in *Judicial Profiles* published by the Daily Journal Corporation. This multi-volume set includes information on state court judges as well as federal judges sitting in California. Check your local law library's catalog or call the reference desk to find out if you have access to the print volumes.¹³ The *Judicial*

¹³ For a directory of California County Law Libraries, see <u>Your Public Law Library</u> or <u>Appendix C</u> of this publication. Contact information and links to the libraries' Web sites are included (when available).

¹² Statuses include active, inactive, not entitled to practice law, disbarred, and resigned. Only active members can practice law.

Profiles are also available on the <u>Daily Journal's</u> Web site but require both a subscription and a fee.

The <u>California Commission on Judicial Performance</u> is an independent state agency responsible for investigating complaints of judicial misconduct and for disciplining judges. Its jurisdiction includes all judges of California's superior courts, justices of the Court of Appeals and Supreme Court, and former judges for conduct prior to retirement and resignations. See its <u>Web site</u> for additional information, including instructions on <u>how to file a complaint</u> against a judge.



Selected Bibliography

Print Sources:

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- Daniel Martin. Henke's California Law Guide, 8th ed. (LexisNexis Matthew Bender, 2006)
- Larry D. Dershem. California Legal Research Handbook, 2nd ed. (W.S. Hein & Co., 2008).
- John K. Hanft. Legal Research in California, 6th ed. (Thomson West, 2007)

Internet Sources:

• Secondary Sources

Nolo Press: http://www.nolo.com/

California Courts Self Help Center: http://www.courts.ca.gov/selfhelp.htm
AskNow's Law Librarian Service: http://www.247ref.org/portal/access law3.cfm

• California Constitution

http://www.leginfo.ca.gov/const.html

• California Statutory Law

A History of the California Initiatives: http://www.sos.ca.gov/elections/init history.pdf

Legislative Counsel's Official California Legislative Information:

http://www.leginfo.ca.gov or http://leginfo.legislature.ca.gov/

California Codes: http://www.leginfo.ca.gov/calaw.html

California Legislative Information beta: http://leginfo.legislature.ca.gov/

(accessed on Nov. 2, 2011).

• California Legislative Process

California's Legislature: http://www.leginfo.ca.gov/califleg.html

California Bill Information: http://www.leginfo.ca.gov/bilinfo.html

Chart of Legislative Process: http://www.leginfo.ca.gov/pdf/Ch_09_CaLegi06.pdf

California Statutes: http://www.leginfo.ca.gov/statute.html California Legislative History Checklist, LA Law Library:

http://www.lalawlibrary.org/research/pathfinders/califleghistory/default.aspx

California State Archives: http://www.sos.ca.gov/archives/

• California Legislative Intent Research Services

Legislative Intent Services: http://www.legintent.com/ (800) 666-1917 Legislative Research Inc.: http://www.lrihistory.com/ (916) 442-7660

Jan Raymond Legislative History & Intent: http://www.lhclearinghouse.com/

(888) 676-1947

• California Cases

California Courts Web site: http://www.courts.ca.gov

California Supreme Court: http://www.courts.ca.gov/courts/supreme/.htm

California Courts of Appeal: http://www.courts.ca.gov/courts/courtsofappeal/.htm

California Superior Courts: http://www.courts.ca.gov/superiorcourts.htm

California Cases: http://www.courts.ca.gov/opinions/.htm

SCOCAL: http://scocal.stanford.edu/

• California Regulations and Regulatory Decisions

California Office of Administrative Law: http://www.oal.ca.gov/

California Code of Regulations: http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-

1000&Action=Welcome

California State Web Site: http://www.ca.gov/

State Agency Directory: http://www.ca.gov/CaSearch/Agencies.aspx

California City and County Municipal Codes

California Constitution: http://www.leginfo.ca.gov/const.html

California Local Codes and Charters, U.C. Berkeley Institute of Governmental Studies:

http://igs.berkeley.edu/library/cagovdocs/calcodes.html

• California County Law Libraries (see also Appendix C of this publication)

Council of County Law Librarians: http://www.cccll.org/

Listing of County Law Libraries: http://www.publiclawlibrary.org/find.html

Los Angeles Law Library: http://www.lalawlibrary.org/default.aspx

Bernard E. Witkin Alameda County Law Library:

http://www.co.alameda.ca.us/law/index.htm

San Diego County Public Law Library: http://www.sdcpll.org/

• California Attorneys

California State Bar: http://calbar.ca.gov/Home.aspx

Attorney Search: http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch

Lawyer Regulation: Overview of Attorney Discipline System:

http://calbar.ca.gov/Attorneys/LawyerRegulation.aspx

Martindale-Hubbell Law Directory: http://www.martindale.com/ or

http://www.lawyers.com/

Avvo.com: http://www.avvo.com/

• California Judges

California Courts: http://www.courts.ca.gov/courts.htm

California Commission on Judicial Performance: http://cjp.ca.gov/ How to File a Complaint: http://cjp.ca.gov/file_a_complaint.htm

Daily Journal: http://www.dailyjournal.com/