

# Chapter 5: Litigation Support Through Research

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## Chapter Outline:

- ✓ § 5.1 The Paradox of Litigation Skills
- ✓ § 5.2 Interactive Study: Form Books
  - *Assignments*

### § 5.1 THE PARADOX OF LITIGATION SKILLS

The best attorneys' work is guided by a tenet that makes their efforts much more productive. The tenet is this:

*Never, ever work when you don't have to.*

In other words, "Don't reinvent the wheel!"

Lawyers do relatively little original work. This is not a criticism. The best and most productive lawyers rely on form books and litigation aids. They don't create the law, but rely on previously existing authority (*stare decisis*.) They find annotations, law reviews, and other material to help them create legal arguments.

The paradox is this: The best lawyers are those who rely on previously created materials. This paradox holds for paralegals just as well as it does for lawyers. When given an assignment by a supervising attorney that calls for the creation of a legal document, the paralegal could take the following initial steps:

- Ask the attorney if he or she has previously created such a document, and in what file it can be found
- Ask other attorneys and paralegals in the firm for examples
- Research within *Westlaw*, *Lexis*, or the law library to locate a form

Assume that in your first job you are asked to draft a Motion for Summary Judgment. Ask yourself:

- *Do I start from scratch?*
- *Is there a possibility that the firm has a previously created example of that document?*
- *Maybe even a form?*
- *Or, if I'm lucky, maybe even a template?*

The most important legal writing skill being developed in this chapter, as well as throughout this manual, is that of *form manipulation*. You want to be able to create a new document once provided with a valid example. That example can come from your attorney, your own files, a form book, or a combination of all these sources.

### *Templates*

These are previously created computer files that the paralegal uses by filling in the blanks or making changes to fit the current client's case.

### *Forms*

Examples of documents, or parts of documents. Typically a form is not a complete document, but may contain just the heading, or (more typically) the body. However, the term "form" is often used as a catch-all for any previously existing document.

### *Form books*

Publications containing examples of various forms. Some form books are very general, while others provide very specific content. When using a form book, typically only the body of the document is provided. The paralegal will need to provide the appropriate caption and other elements of the finished document.

### *Legal Treatises*

These are law books published by a private company that attempt to educate the researcher about the theory and strategies of litigation relating to the project being researched.

Some attorneys use the terms *form books* and *legal treatises* synonymously. Most law libraries, in fact, shelve form books and treatises together. Some books, such as *Am. Jur. Proof of Facts*, are essentially a combination of a form book and a legal treatise, providing not only examples of documents, but also litigation aids such as checklists, sample examination questions, and commentary regarding the subject matter.

## § 5.2 INTERACTIVE STUDY | FORM BOOKS

A form book is a publication that provides examples, templates, guidelines, checklists and other assistance. Form books differ from treatises in that a treatise is a law book written by a private individual on a specific area of law. Treatises typically have some forms related to a specific area of law (in addition to commentary and guides for litigation), but form books provide forms in almost every area of law. For a paralegal, form books provide a wealth of information. Not only does a form make your job easier, it saves your client money and makes you a more productive paralegal. Form books may provide sample interrogatories, requests for admissions, requests for production of documents, deposition questions, and even examples of trial examination questions. Through form books, the paralegal has instant access to thousands of questions that may pertain to discovery preparation. Some form books provide checklists which help ensure all the correct procedures are followed when creating a document or engaging in an activity such as serving process on a defendant. Not only does this make the paralegal's job easier, the result is a higher quality document.

### QuickView § 5.2 | Locating Form Books

#### Westlaw Next

1. Locate the main *Search Query Bar* at the top of the page
2. Type *form* and click the recommended search of *Form Finder*
3. In the *Form Finder* page that opens, enter your *search query* in the main *Search Bar* at top, or navigate to specific forms by selecting database links in the main window
4. Select a form from the list of *search results*
5. Have any relevant documents delivered by printing or email

#### Lexis Advance

1. Click the arrow on the *Filter* button
2. Click on the *Category* option at left, then select the *Forms* check box
3. Enter your search query in the text box at the top
4. View relevant forms listed in the Results Page by clicking on the title
5. Have any relevant forms delivered by printing or email and save

#### Law Library

1. Choose a form book, then locate the index at the end of the set
2. Research your key terms and phrases in the index, which will provide a topic and section number (or other information)
3. Locate the topic and section in the main volumes
4. Look for relevant forms and references to additional authority
5. Always check the pocket part (supplement)

**Assignment § 5.2(a) | Locating Form Books on Westlaw Next**

Westlaw provides thousands of forms online. The trick is finding a few that relate to your client’s situation. If you don’t find a form that is specific to your jurisdiction, which is possible, don’t worry. Since form books typically provide the body of the document, and since the document is somewhat generic in nature, a form that is from a California form book may very well help the paralegal create a document, even if she or he is in Connecticut.

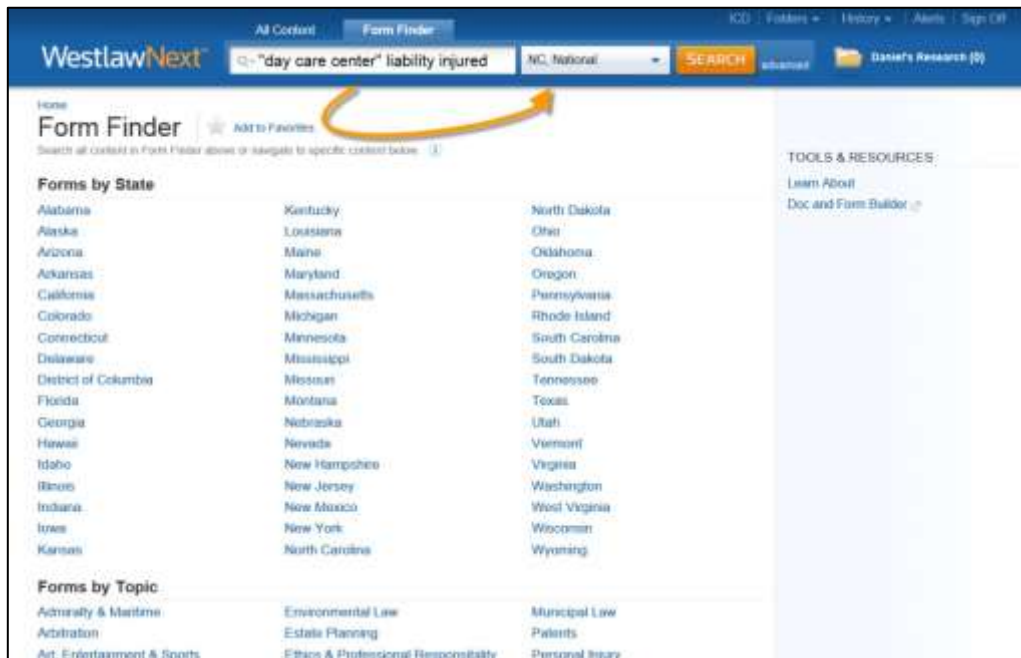
**1. Set your Filter**

Type “form” in the search query text box, and then select Form Finder from the recommendations that appear below.



**2. Enter your Search Query**

The best way to search forms is to simply enter your search query in the text box at top once you are in the Form Finder database page.



However, another option is to select a jurisdiction (such as a specific state), an area of law (such as Bankruptcy), or a specific publication (such as Am. Jur. Legal Forms). Those links, seen in the above image, constantly narrow the scope of the search. A more effective method is to search using the broad Form Finder page described above, and then use the Narrow window options at the left of the Results Page to focus the scope of the results there.

However, if you do choose to research specific publications, the following are good places to start:

*Am. Jur. Pleading and Practice Forms* (Recommended)

A comprehensive set of state and federal pleading and practice forms arranged alphabetically by titles that generally correspond to those found in *American Jurisprudence, 2d*.

*Am. Jur. Legal Forms*


Includes more than 22,000 business and legal forms, enhanced with drafting guides, checklists, practice aids, and notes on the use of those forms.

*West's Federal Forms*

Provides procedural forms with accompanying commentary, for use in handling civil and criminal cases in the federal courts.

**Not authorized message**

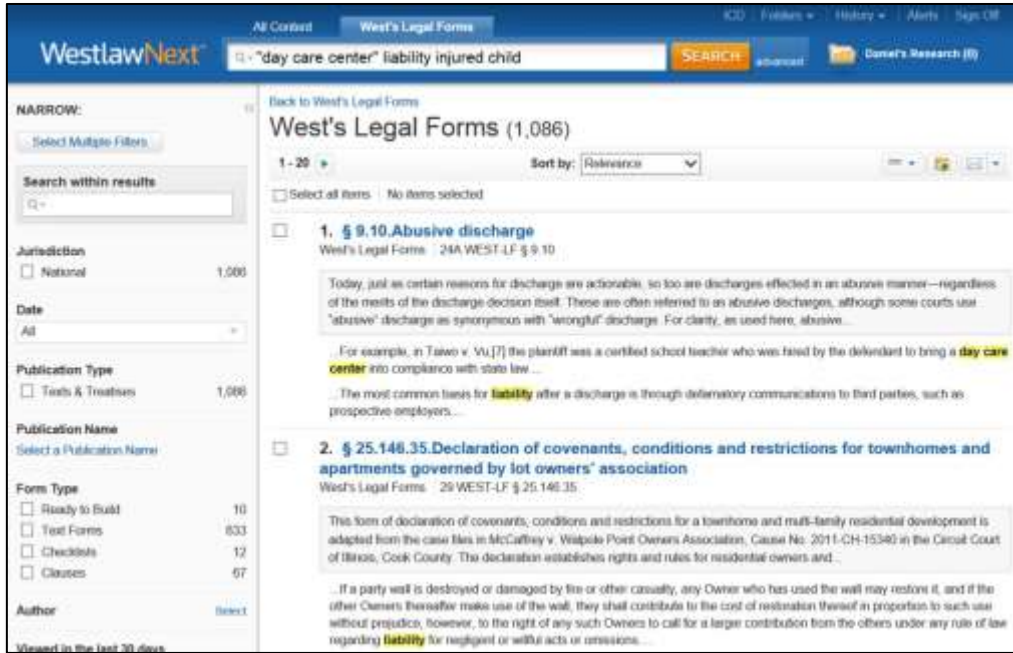
As a student, you will likely not have access to every database. Don't be frustrated by this. Some of the blocked databases are simply collections of multiple form books to which you will have individual access. Also, even law firms typically have limited subscriptions. You will likely have access to more sources under your student subscription than many lawyers have under their plans. In fact, many of the databases under your subscription are part of the *Premier Thomson Reuters Database* plan.

 **Information**  

Your request to access **FORMFINDER** cannot be processed because use of this database is not authorized under your subscription agreement.

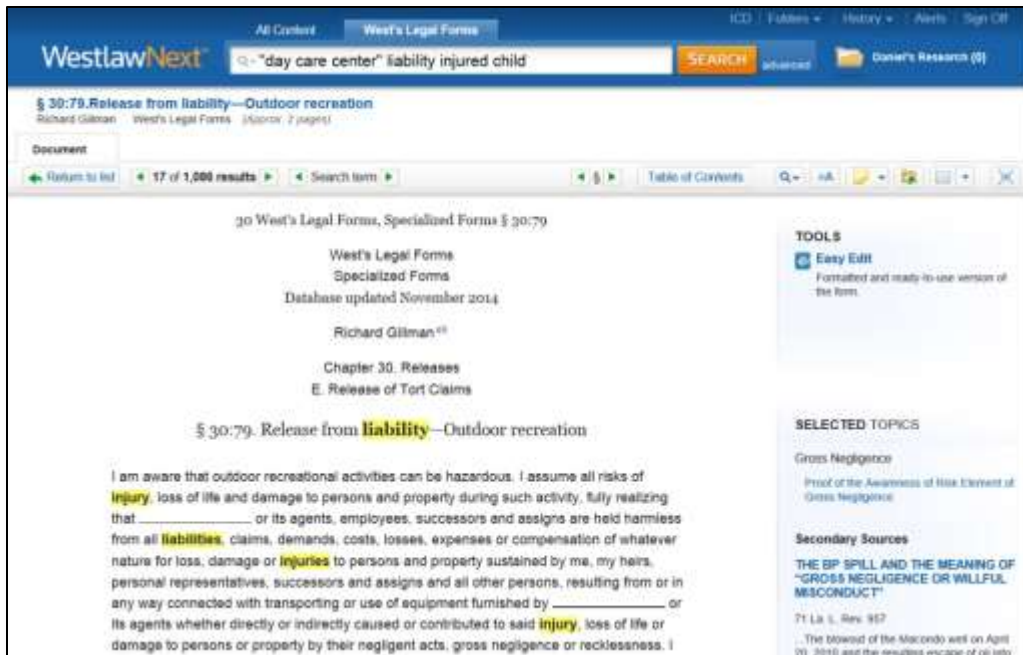
3. Select a form link from the Results Page

You will be provided with links and short summaries for dozens of forms, with those being most relevant to your query presented first.



4. Review an relevant results by clicking on the title link

The researcher will use the same navigation tips previously provided. Use the Results List as a quick link tool so that you may quickly navigate to any desired forms from the Results Page.



5. *Copy-and-Paste the relevant portion of the form*

Once a desired form has been identified, the paralegal may download, print, or email the form using the document delivery tools. However, these cost the attorney (and ultimately the client) money. Instead, highlight the desired text to copy-and-paste into a *Word* document.

To copy-and-paste from a Web page:

1. Hold down the *left click button* at the *start point* of the desired text
2. *Drag your mouse* to the end of the text, then release the button
3. The text will be highlighted. *Right click* that text, and select *Copy*
4. *Paste* the material into a *Word* document.

Do not expect to find an exact form for your client. Instead, expect to find an outline of sorts. This way you will not be starting from scratch.

**Checklist § 5.2(a) | Researching Form Books in *Westlaw Next***

- In the *Search Query Text Box*, type *Forms* and select *Form Finder*
- Type your *Search Query* and click *Search*
- Select the desired form from the *Results Page*, then copy

**Comment: A Very Special Form Book**

*Am. Jur. Proof of Facts (POF)* is an especially valuable research tool. It is usually referred to as a form book, but is actually more of a hybrid between a form book, a treatise, and a litigation aid.

*POF* includes articles, forms, checklists,

interview questions and answers, references to other authority, and, most uniquely, “proofs,” which are lists of facts that will have to be established in order to win a legal argument. It is a fascinating, and powerful, set of books.



Learning to utilize this powerful resource is **highly recommended**, both in the law library and online using *Westlaw Next*. (Not available on *Lexis Advance* at this time.)

**§ 27. Direct examination of classroom aide**

**Background information**

**Q.** Ms. Roma, what is your occupation?  
**A.** I am a paraprofessional in special education.

**Q.** By whom are you currently employed?  
**A.** [Names current school].

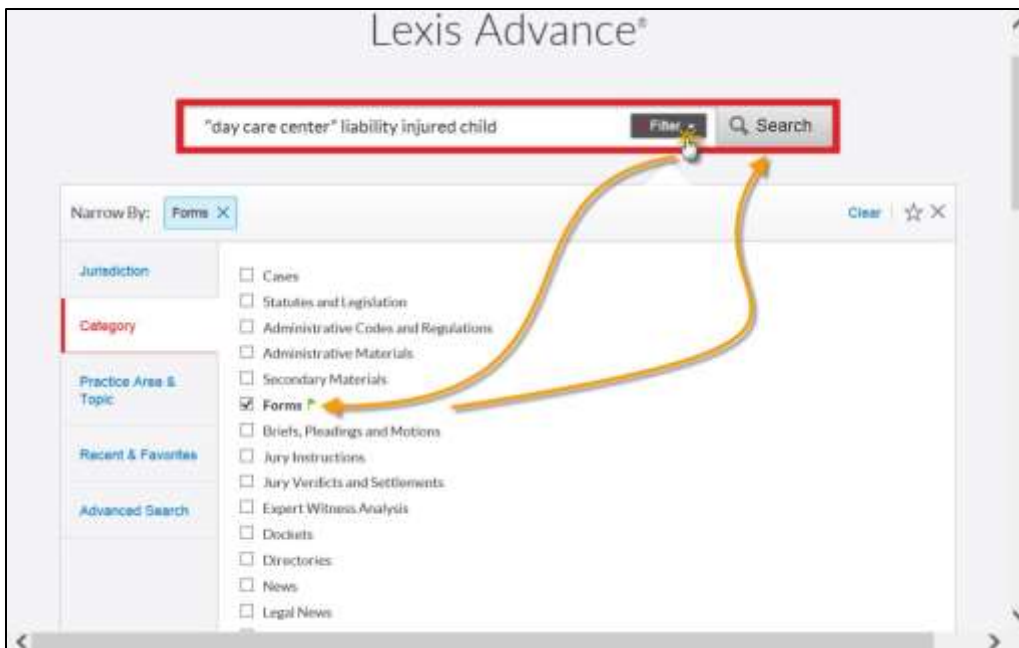
**Assignment § 5.2(b)** | Locating Form Books in *Lexis Advance*

Lexis provides thousands of forms online. In fact, forms and other litigation aids could arguably be the strength of this online research tool.

1. *Select your filters*

At the right of the *Search Query Box*, click on the *Filter* button. You will notice that there are several options on the left. Click the **Category** link.

From the list that appears in the main window, click the checkbox next to Forms.

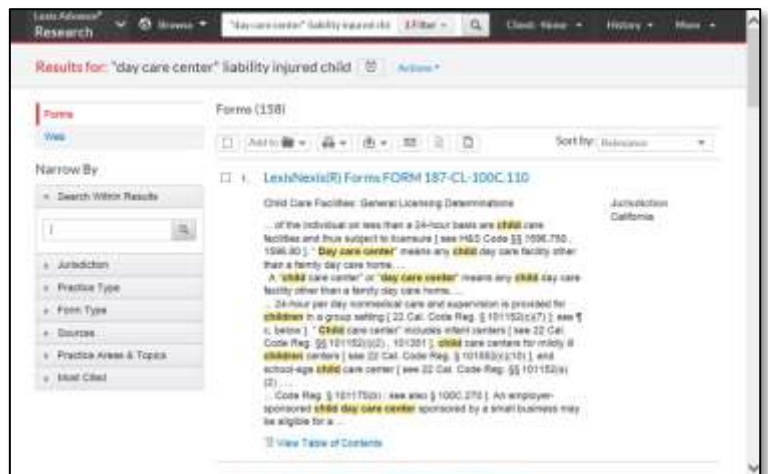


2. *Enter a search query*

In the *Search Query Box*, type your search query and click on **Search**.

3. *Review form excerpts from Results Page*

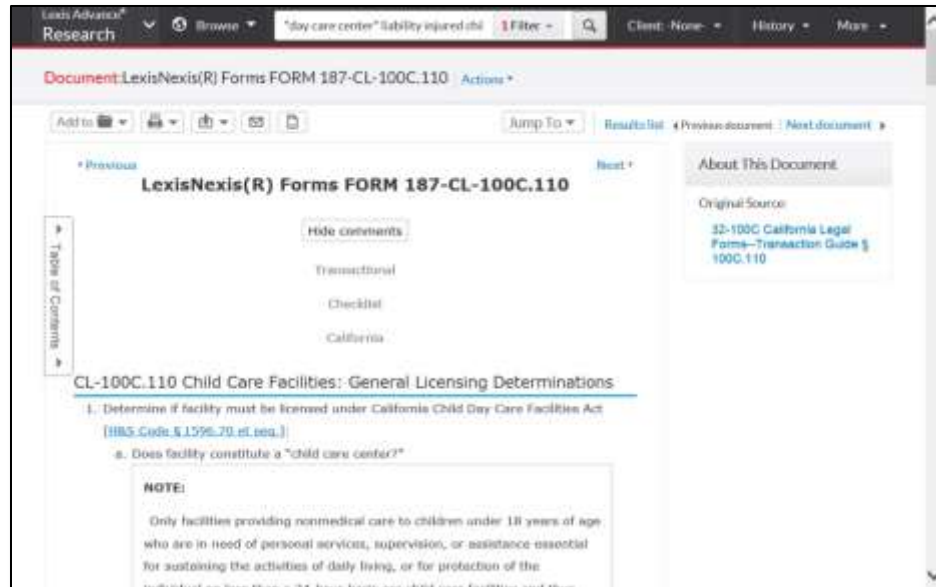
The *Results Page* will provide short portions from forms that relate to your search query. Scan through the results to see if any look promising.





4. *View relevant forms*

In the *Results Page* click on the title of any forms that appear to be relevant. That complete form will now open.



Forms found in formbooks are typically not complete documents. Instead, they are important parts of a document. For instance, a form may be just a paragraph or two that constitute a “Cause of Action.” As a paralegal, you would collect any of those “Cause of Action” paragraphs that are relevant and then copy and paste them into your own complaint. So, think of online forms as a process of assembly.

*Lexis* provides different tools depending on the publication from which the form came. One of the most helpful is the *Checklist* link. If the form includes a checklist, this link takes you straight there.

*Am. Jur. Proof of Facts* is especially good at providing useful checklists.

5. *Copy-and-Paste the relevant portion of the form*

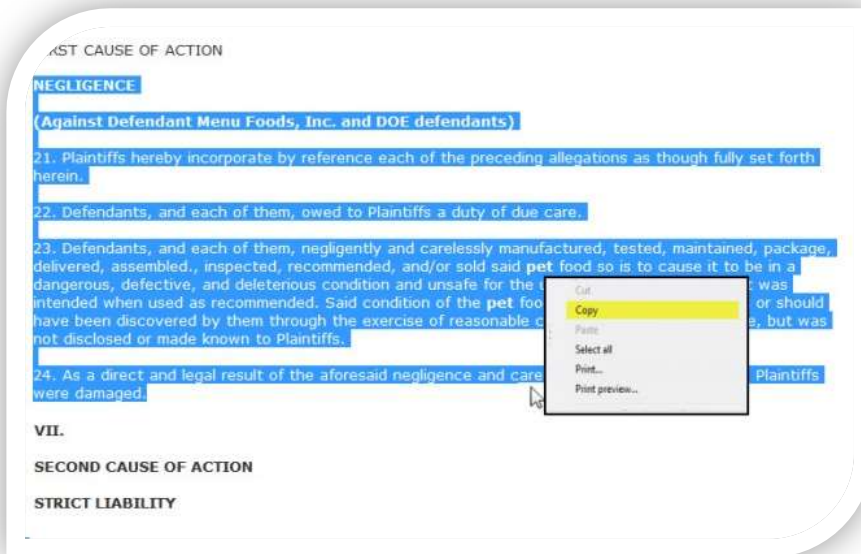
Once you have found a form that is relevant, it is likely that you will not use the entire form. You may want to pick and choose elements. When drafting a complaint, for example, it is especially helpful to search the page for the *Causes of Action*. If you find a cause of action that is close to what you need, copy and paste that part of the form.

You will learn how to create a complaint in the following chapter. As you study that portion of the manual, keep in mind that you will have the online services to help you with almost all elements of your complaint, but especially for the *Causes of Action*.

Once a desired form has been identified, the paralegal may download, print, or email the form using the document delivery tools. However, these cost the attorney (and ultimately the client) money. It does not cost to highlight the desired text to copy-and-paste into a *Word* document.

To copy-and-paste from a Web page:

1. Place the cursor at the *start point* of the desired text
2. Hold down the *left click button* on your mouse
3. *Drag the mouse* to the end of the desired text, then release the button
4. The text will be highlighted. *Right click* on that text, and select *Copy*
5. *Paste* the material into a Word document.



**Checklist § 5.2b | Researching Form Books in Lexis Advance**

- Click on the Filters button
- Click the Forms checkbox
- Enter a *query* at the top
- Select the desired forms from the *Results Page*, then copy-and-paste to a *Word* document

**Assignment § 5.2(c) | Locating Form Books in the Law Library**

A question may arise at this point that is quite understandable. With so many thousands of forms at my fingertips using *Westlaw* and *Lexis*, why should I even bother with the law library?

There are two very good reasons.

*You will likely not have access to both Westlaw and Lexis*

There are very few firms in the country that subscribe to both *Westlaw* and *Lexis*.

- If *Am. Jur. Pleading and Practice Forms* is your favorite forms database, but your firm subscribes to *Lexis*, you are out of luck.
- If *Bender's* is one of your favorite databases, but your firm subscribes to *Westlaw*, likewise, you are out of luck.

In both of the above circumstances, using the law library to locate a form which you have not been able to locate online may be necessary.

*You may not have access to either Westlaw or Lexis*

Firms that subscribe to online legal research services must pay for the minutes used and the amount of subscribers on the plan. Firms looking to save costs may decide not to provide all paralegals with access to the online service to which they subscribe.

In addition, in tough economic times there are some firms that decide to cut costs by not subscribing to *Westlaw* or *Lexis*. If one of the newer online services is subscribed to, those services do not have the form books and litigation aids provided in *Westlaw* or *Lexis*.

*Cost-limiting factors*

You may have clients who can't afford online research, or even if the client can afford it, there may be times when you want to conduct some initial research because you are not certain whether the idea you have will pan out. It is empowering to know you can take an hour of your own time at a law library to conduct initial research, and if the research is productive, tell the attorney about it and bill the client. If not, you have only spent an hour of two of your own time.

*Locating the Books*

Every law library differs in terms of its choice of form books, but following are some very powerful tools that most libraries contain. Try to locate and research within each of them in your law library.

*Am. Jur. Proof of Facts*

One of the most powerful of all form books. This set of books is worth the trip to the law library all by itself. Includes sample discovery, deposition questions, examination questions, checklists, and even lists of elements that must be proven in order for a claim to be successful at trial. Use this set of books!



*Am. Jur. Pleading and Practice Forms*

An excellent source for general litigation with extensive forms.



*Am. Jur. Trials*

A very powerful tool that provides not just forms, but trial strategy lists, checklists, and other litigation aids.



*Bender's Discovery Forms*

An extremely useful form book, this multi-volume, three-ring binder set contains hundreds of discovery examples. Because it is in binder form as opposed to a standard bound book, it will take some adjusting. After using it a couple of times you will find it quite user-friendly.



*Am. Jur. Legal Forms*

Includes more than 22,000 business and legal forms, enhanced with drafting guides, checklists, and practice aids.



*West's Legal Forms*

Provides extensive transactional forms, commentary, checklists, analysis, and expert guidance in over 14 major areas of law.



Before trying to use the above form books, refer to the following guide to *Using the Form Books*.

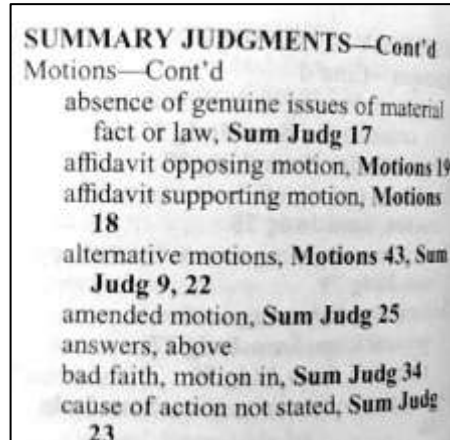
*Using the Form Books*

The form books in the law library are the original versions of those now collected in online databases. The method for accessing them is straightforward.

**1. Begin in the index**

Each form book in the law library has an index. Research your key terms in the index. Once you have located your subject matter as a general topic, review the subtopics for your other terms.

For example, if the researcher is seeking an example of a supporting affidavit for a Motion for Summary Judgment, the initial terms researched might be *summary judgment* or *affidavit*. If the researcher successfully locates *summary judgment* as a topic, he or she should then look for *affidavit* as a subtopic. (See above.)



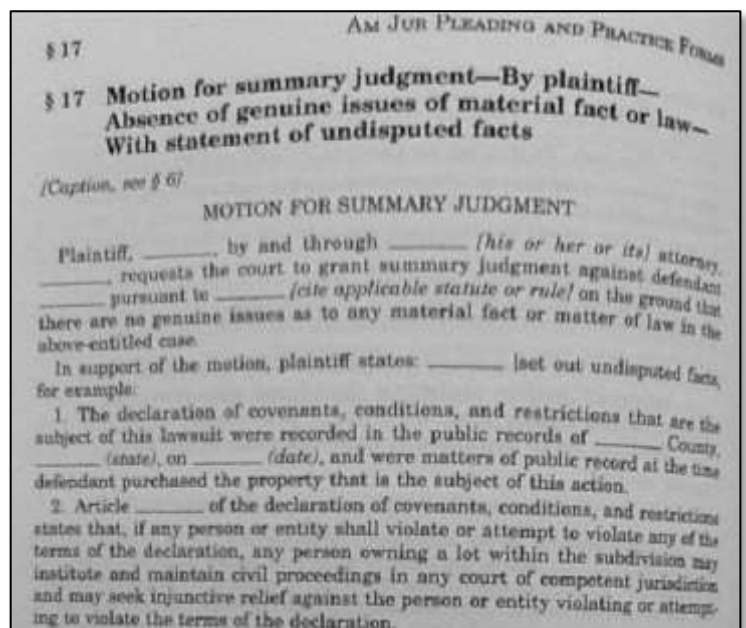
The index will provide the researcher with information leading to the main volumes, usually a *topic* and *section number*, such as *Motion 18*. In that case, the researcher would locate the volume containing the topic *Motion*, and then locate section number *18*.

**2. Go to the main volumes**



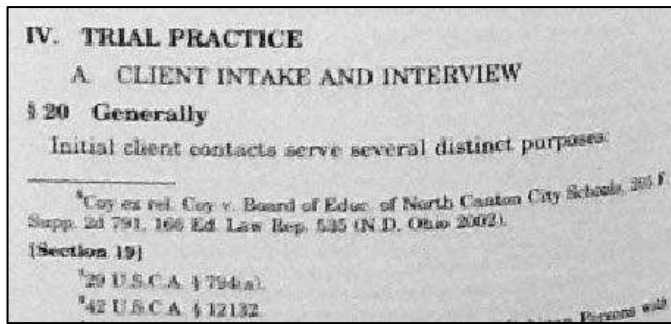
The topics are listed on the spine of the main volumes. Pull out the desired volume, locate the part within the volume covering the topic, and look up the section number.

The value of the form book is that it provides the body of the document. The body is generally generic as to content. The paralegal will use a caption and signature typically used by the firm for that jurisdiction.



**3. Check for additional authority**

The main function of form books is, obviously, to provide forms. However, there are sometimes references to additional sources, such as statutes, cases, or possibly additional forms. They will usually be included in footnotes. Be alert for such references and make note of them in case you need to broaden the scope of your research.



**Checklist § 5.2(c) | Researching Form Books in the Law Library**

- Locate the *Index* to the form book being researched
- Research your key terms in the *Index*
- Identify relevant *Topic & Section Numbers* in the *Index*
- Locate the corresponding *Topic & Section Number* in the *Main Volume*
- Choose relevant forms, and be aware of references to additional authority
- Always check the pocket part (supplement)

## CHAPTER 5 WRAP-UP

### WHAT YOU SHOULD KNOW...

After reading this chapter you should know the following:

- The functions and purposes of form books and treatises
- How to research forms on *Westlaw Next*
- How to research forms on *Lexis Advance*
- How to research forms in the law library
- The reason why knowing how to use the law library to research for forms is particularly important

### ASSIGNMENTS

For this chapter you will be required to complete the following (unless otherwise instructed):

**Assignment § 5.2(a)** Due Date: / /

*Research forms using Westlaw*

**Assignment § 5.2(b)** Due Date: / /

*Research forms using Lexis*

**Assignment § 5.2(c)** Due Date: / /

*Research forms using the law library*

