THE LEGAL RESEARCH CORNER



Uncovering Legislative History in Colorado

When the outcome of a court case or another legal matter hinges on a specific section of the Colorado Revised Statutes ("CRS"), attorneys and other interested parties often want to research the history of that section to determine how it came into existence and how it has evolved over time. Such information may be helpful to attorneys in persuading a judge (or an opposing party in a settlement) of the merit of their position or in assessing the merits of their own case, which may impact on how the case is handled.

In the field of legal research, practitioners may perform a "legislative history" by locating documents that provide some insight into a legislative body's intent or purpose in enacting (or declining to enact) specific laws. However, the term "legislative history" also refers to the actual physical collection of documents that is created through this process. Generally, researchers create a legislative history by compiling the documents produced as a bill makes its way through the two houses of a legislative body; for example, the U.S. Congress or a state's legislature. Such documents include committee reports, transcripts of floor debates, and House or Senate bills that preceded the final version of the bill.¹

At the federal level, legal researchers can use a variety of tools, both print and electronic, to locate legislative history documents. However, in Colorado there is no print or electronic source that provides access to legislative history of documents such as committee reports or debate transcripts. Therefore, conducting a legislative history in Colorado requires a little extra effort on the part of researchers.

Beginning a Legislative History Search

Practitioners should begin any legislative history search with a check of the Colorado statute itself. The next step is to look at the Session Laws of Colorado and then search for new articles on the subject of the legislation. Each of these research areas is described in more detail below. An example is used for searching CRS \S 1-7.5-104 of the Mail Ballot Election Act to give readers an idea of how to go about such a search.

Using Annotations

Using CRS § 1-7.5-104 of the Mail Ballot Election Act, start by looking at the section itself. The annotations at the end of each section list other materials, such as cases, law review articles, and legal encyclopedia entries that refer to the section and may provide useful information about how the section has been interpreted by the courts.

Researchers also should consult both published sets of the statutes (Bradford's Colorado Revised Statutes and West's Colorado Revised Statutes Annotated) because each set may include annotations not provided by the other.² Legislative history researchers need to check for any annotations at the beginning of the act in which the section appears. Using the example noted above, at the beginning of Article 7.5, there is an annotation to an article in *The Colorado Lawyer*, entitled "Voting Under Colorado's Mail Ballot Election Act," which may be a useful resource for general information about this act.

Consulting the Session Laws

In both sets of the statutes, the history of each section (including information about when it was enacted and how many times it has been amended) is provided directly after the section itself, before the annotation. For example, the history of CRS § 1-7.5-104 is listed in the following formats:

Bradford's Colorado Revised Statutes:

Source: L. 92: Entire article R&RE, p.753, § 10, effective January 1, 1993.

L. 93: (2) amended, p.1422, § 82, effective July 1. L. 94: (1) amended, p.1166, § 39, effective July 1.

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Members of CoALL will attempt to answer as many questions as possible, either individually or as part of this department. The information provided in this space is for educational purposes only and is not intended as legal advice. No endorsement or recommendation is made of any product named in this department. Department contributors are CoALL members and include Martha Keister, Wanda McDavid, Mariann Storck, and Shannon Vicic. For more information about CoALL, see: http://www.aallnet.org/chapter/coall.

West's Colorado Revised Statutes Annotated:

Repealed and reenacted by Laws 1992, H.B. 92-1333, § 10, eff. Jan. 1, 1993. Amended by Laws 1993, H.B. 93-1255, § 82, eff. July 1, 1993; Laws 1994, H.B. 94-1286, § 39, eff. July 1, 1994.

In Bradford's *Colorado Revised Statutes* history, the "L." refers to the *Session Laws of Colorado*, the publication that contains the final versions of bills passed during each year's legislative session(s). The "L." is followed by the year of the volume, the page number in the *Session Laws* where the CRS section appears, and the date that the law became effective.

The history section of the West set lists the year that the section was enacted into law (or amended), the House Bill that includes the section, and the date that the law became effective. To locate a specific House Bill in the Session Laws, researchers can use the "Table of Enacted House Bills," which appears in the final bound volume of the Session Laws for each year.

The first item listed in the history of a section always is a reference to the law that added the section, whereas the subsequent listings refer to the amendments to the section. From the history of CRS § 1-7.5-104, it is clear that § -104 of the Mail Ballot Election Act was enacted in 1992 and has been amended twice, in 1993 and 1994.

By consulting the Session Laws, researchers can track, over time, any changes to a specific section. Additions to the statutes are shown in capital letters, whereas deletions are shown with dashes through the words. For example, in the amendment listed in the Session Laws of 1993 ("L. 93: (2) amended, p.1422, § 82, effective July 1"), the only modification to § -104 was that the word "general" was deleted from CRS § 1-7.5-104(2).

Searching for News Articles

After referring to the Session Laws of Colorado for information about the history of a section, researchers should try searching Colorado news files in Lexis/Nexis™ or Westlaw® for news articles about any legislation that has affected the section. The years provided in the Session Laws should help users limit their searches to specific date ranges. To better formulate their searches, researchers may want to contact the customer service departments for Lexis/Nexis,™ (800) 543-6862, or Westlaw,® (800) 733-2889, for advice on the best terms and connectors to use.

When searching news files, keep in mind that the wording in the statutes may not be the wording that a newspaper reporter would use. Therefore, it is important to come up with commonly used synonyms for the key terms used, such as "election" or "ballot" or "voting." Moreover, news articles written at the time may feature comments from legislators about their reasons for supporting (or not supporting) a specific law.

For laws passed prior to 1994, practitioners can consult the paper and microfilm resources at the Denver Public Library ("DPL") in downtown Denver, 10 W. Fourteenth Ave. Pkwy. DPL has *The Denver Post* on microfilm back to 1894 and the *Rocky Mountain News*, back to 1859. The library also has an index of all names in the news from 1865 to 1895; prominent persons and stories (1885–1995); and a current index of *The Denver Post* (1979–current). Another source for older newspapers is the Colorado Historical Society.⁴ Both *The Denver Post* and *Rocky Mountain News* may be searched at their respective websites.⁵ The online index begins in 1989 for both papers. Searching is free, but there is a charge for reprints of articles.

Legislative history researchers also should search any files in Lexis/Nexis™ or Westlaw® that provide access to articles from legal publications (law reviews, bar journals, and legal newslet-

ters). Those who are not interested in learning about similar laws in other states should limit the search to Colorado's legal periodicals. Researchers also can try searching the Index of $Legal\ Periodicals$ ("ILP") file through $Lexis/Nexis^{\text{TM}}$ or $Westlaw^{\text{B}}$ for references to other legal articles about the act.

However, electronic research will not help researchers who are looking at a law passed prior to 1978 (Lexis/Nexis™) or 1981 (Westlaw®). Neither the ILP nor *Current Law Index* ("CLI") prior to 1981 is available electronically from either vendor. However, the Colorado Supreme Court Library, Westminster Library at the University of Denver ("DU"), and the University of Colorado ("CU") at Boulder Law Library retain and maintain both the ILP and CLI back to 1888.

Digging Deeper

Researchers who need more information than that described above will have to make a trip to the Legislative Council, Legislative Legal Services, and possibly the State Archives. Unfortunately, the state of Colorado does not publish written comprehensive legislative histories. Beginning in 1973, with the passage of the Colorado Sunshine Law, the legislature began taping the legislative committee hearings and the floor sessions of both Houses of the legislature. To begin research of primary materials, researchers need to know the bill number and committee assignment for the statute section in question.

Legislative Council Library

Researchers may next need to make a stop at the Legislative Council library located in the basement of the State Capitol Building in downtown Denver. According to the Legislative Council's website, the role of the Council "is to . . . respond to requests for research and constituent services . . . and perform other centralized legislative support services." On occasion, the Legislative Council publishes in-depth research reports on legislation. Determining whether or not there is a written report is simple because the Legislative Council Library has a print list of reports organized by year. In the case of § -104 of the Mail Ballot Election Act, however, there was none.

An alternate source of written reports is the DU Westminster Library (http://pacman.law.du.edu) or CU Boulder Law Library (http://lawpac.colorado.edu), which have cataloged the reports. To search, type the words "Colorado Legislative Council" and one or more descriptive words in the keyword search box and review the results. In our hypothetical case, the researcher might use "Colorado Legislative Council election." Because the Mail Ballot Election Act deals with elections, the Legislative Council Library staff alerted this researcher to the Secretary of State's annual publication, entitled *Colorado Election Laws: Primary and General*, which was found at the DPL. However, there was nothing in the election report explaining legislative intent.

The next step would be to try to talk to the original sponsor(s) of the bill and any lobbyists for the more recent legislation. The Legislative Council Library has "Daily Legislative Status Sheets." The Daily Status Sheets may contain any and all of the following: sponsor and lobbyist names, dates that the committee reported on the bill, when the bill passed the second and third readings, when the bill was introduced in the Senate, what Senate committee it was assigned to, the dates of the committee report, second and third readings, and the date of the Conference Committee Report. This information will be helpful if the researcher actually has to listen to audiotapes of the various proceedings.

By examining the Status Sheet for 1992, by House Bill 92-1333, the researcher for our hypothetical case may find sponsor and lobbyist names. For example, the bill sponsor was Grant, and the bill was assigned to the House Judiciary Committee. If contact with the sponsor(s) or lobbyist(s) is important, that information can be found in the Colorado Legislative Directory (aka The Pink Book), at the Colorado General Assembly website. 9 Also see the Registered Professional Lobbyists: State of Colorado Registered Legislative Liaisons and Professional Lobbyist Employers (formerly the Professional Registered Lobbyist). 10 Another publication to check is the Volunteer Registered Lobbyist. 11

For many acts, a telephone call to the bill sponsor may be helpful, but researchers often will find that the changes in the bill as it moved through both Houses ultimately have to be reviewed. Changes made during this process may reveal legislative intent. The Colorado Legislative Council Library (as well as the DU Westminster and CU Boulder Libraries) has copies of Colorado House and Senate Journals. 12 Access to possible related information is by date, as referenced in the Daily Status Sheet. Changes to the text of the bill, such as deletions or insertions are marked.

No official textual transcripts of the hearings or floor debates exist. In Colorado, as a result of the GAVEL amendment, 13 a hearing is conducted for every bill assigned to a committee. There are no set guidelines or requirements for hearings and, as a result, the value of the audiotapes that record hearings varies a great deal. Some hearings may cover the need for a particular bill and the ramifications of the passage of a bill. Some testimonials of witnesses may be authoritative and others may have dubious value. The content and value of floor debates vary as

Attorney Matthew J. Hogan Elected President of the Board of Directors Of the Denver Children's **Advocacy Center**

The Denver Children's Advocacy Center ("DCAC") is an organization whose goal is to reduce the trauma of child abuse and victimization in a nurturing, childcentered environment. It provides treatment opportunities for child victims of trauma and their families and develops multi-disciplinary teams of professionals who work to improve the evolution, investigation, and prosecution systems on the behalf of children.

Denver attorney Matthew J. Hogan, who is a partner in the Public Finance Department in the Denver office of Ballard Spahr Andrews & Ingersoll, LLP, recently was elected President of the Board of Directors of the DCAC. Hogan received his Bachelor's degree from Georgetown University in 1984; a Master's in Business Administration from the University of Denver ("DU") School of Business Administration in 1988; and a J.D. degree from the DU School of Law in 1988. He is a member of the Colorado Bar and American Bar Associations, as well as the National Association of Bond Lawyers.

well. Some may include clarification of a bill's purpose or the detailed account of the bill's value.

Consequently, if the House and Senate Journals do not satisfy the researcher's needs, the next step is to review the legislative summary minutes of proceedings for the committee hearings and floor debates produced by the Legislative Council. The summaries are cursory in nature, serving as access points to the audiotapes of hearings. The summaries include meeting dates; times; locations; committee members who are present, as well as the names of those who are absent; the names of any witnesses or lobbyists; and the names of any others who may be called to testify. The summaries also include the bills that will be discussed and a reporting of the how each member voted.

State Archives

Summaries of the minutes of legislative proceedings are available at the Legislative Council Library, as well as at the State Archives. 14 They may be accessed by bill number and subject. Savvy researchers will review the summaries, Status Sheets, House and Senate Journals, and Calendars (the Calendar provides an agenda for the daily activities of each House) for each chamber before listening to a particular tape. The State Archives requires that individuals make an appointment to use the audio equipment. In addition to listening to the tapes and taking handwritten notes, researchers should consider bringing a tape recorder and blank tapes so that appropriate sections can be recorded for transcribing at a later date. It should be noted that the original audiotapes may be of poor quality or may not shed any light on the legislative intent.

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Office of Legislative Legal Services

Researchers also may access the website of the Office of Legislative Legal Services ¹⁵ or visit the office itself in the basement of the State Capitol Building to see what information is available. The Office of Legislative Legal Services prepares the bills, resolutions, and memorials introduced in the General Assembly. Under Joint Rule 21(d) of the Senate and House of Representatives, no bill may be introduced in either House unless first approved as to form by the Office of Legislative Legal Services. In addition, most amendments and all Conference Committee Reports are prepared by the Office of Legislative Legal Services.

The Governor's Role

The governor may or may not make a statement when signing a bill into law. Statements are generally issued as press releases. Today, press releases and sound/video files are available on the Internet on the governor's website, organized by date. ¹⁶ Internet access started approximately in 1999. Paper copies of the press releases for earlier governors are at the State Archives, with the individual governor's papers. Veto letters are attached to bills that were presented but not signed. These also are collected at the State Archives. The veto letters appear to have more substance than the signature statements.

Governors' comments may be reported in the local newspapers (*The Denver Post* and *Rocky Mountain News*), ¹⁷ as well as the *Denver Business Journal*. ¹⁸ A subscription is necessary to receive full text of articles. However, for the *Denver Business Journal*, searching is free and the results include the dates of articles.

Case Law Interpretation of Statutes And Other Secondary Sources

Several traditional methods are used for locating cases that interpret statutes. Case annotations appear in both Colorado sets of printed statutes.¹¹ The print sets of state *Shepard's Citations* also have statute sections that may yield cases.²¹ The public online version of the Colorado statutes, now provided by LEXISNEXIS,™ includes case annotations as well as other materials.²¹ If the state has adopted a uniform or model law that other states also have adopted, persuasive arguments may be made using case law from other jurisdictions. Another source for locating case law interpretation of statutes includes treatises on state law, such as the *Colorado Practice Series*,²²² among others.

Finally, many secondary sources may assist with legislative histories. For example, *The Annual Survey of Colorado Law*, published each year since 1970 by CBA-CLE, ²³ may have a discussion of the targeted statutory change in the annual edition for the year in which the change took place or a new statute was created. The *Annual Survey* is organized topically. It also contains a table of cases at the end, organized by the same topic headings as the chapters. The following libraries have all editions: DU Westminster, CU Boulder, and the Colorado Supreme Court Law Library.

Conclusion

Uncovering legislative intent and documents can be as simple as turning on a personal computer and accessing electronic files of statutes, news, and law review articles. The more recent the legislation, the easier is the task. The job becomes more involved with older legislation, especially that occurring prior to

1994. Furthermore, for researchers who need to discover every detail of intent, the process will be time consuming and elusive. Despite this, practitioners who persevere will find the project interesting and may be rewarded. Remember that practitioners are not alone; law librarians are available to assist lawyers in completing such a project.

NOTES

- 1. For general information on researching legislative history, see "Colorado Legislative History," Handout #34, Westminster Law Library, at http://www.law.du.edu/library/libinfo/reference/handouts/34colorado %20legislativehistorysg.pdf; Dong, "Uncovering Colorado Legislative Law—Making and Legislative Intent," 25 Colorado Libraries 39 (1999); and Kunz et al., The Process of Legal Research, 5th ed. (New York, NY: Aspen Law & Business, 2000).
- 2. Beginning in 2003, Bradford will publish the statutes only on CD-ROM. The print version will be published by LexisNexis™ Matthew Bender.
- 3. Petrock and Dingess, "Voting Under Colorado's Mail Ballot Election Act." 21 The Colorado Lawver 941 (May 1992).
- 4, 1300 Broadway, Denver CO; (303) 866-3682; http://www.colorado history.org.
- 5. See http://www.denverpost.com/Stories/0,1413,36%257E25%257E.00.html and http://www.denver.rockymountainnews.com/archive, respectively.
- 6. As noted above, the applicable Session Law for the example of Mail Ballot Election Act of 1992 can be identified by looking at CRS § 1-7.5-104. Bradford's *Colorado Revised Statutes*, Sess. Law 1992 at 753; West's Colorado Revised Statutes Annotated. H.B. 92-1333.
- See the Colorado Legislative Council website: http://www.state.co.s/gov_dir/leg_dir/lcs.htm.
- 8. DPL has an excellent collection of government publications on the fourth floor. The collection includes Colorado statutes and some Colorado agency reports. See Colorado Election Laws, primary and general, aka the Colorado Election Code. The call number at the DPL Government publications is S4.5/EL2/Year (insert appropriate year).
 - 9. See http://www.state.co.us/gov_dir/stateleg.html.
- 10. This is available at the State Publications Library, 201 E. Colfax, #314, Denver, CO; (303) 866-6725; http://www.cde.state.co.us/stateinfo.
- 11. This is available from the Finance Clerk, House of Representatives, Room 271, State Capitol, Denver, CO 80203; (303) 866-2904.
- 12. The Colorado House and Senate Journals are the official record of the Colorado legislature. They are organized by date and include such items as the voting record of each legislator by bill, status of each bill, a listing of all committee and committee assignments, and the sponsors of each bill.
- 13. "GAVEL" stands for "Give a Vote to Every Legislator." It is a 1988 amendment to Colo. Const., Art. 5, § 22a, and was passed by initiative. It prevents the arbitrary pocketing of bills by committee chairs.
- 14. The office is in the basement of the Centennial Building, Floor 1B, Room 20, 1313 Sherman St., Denver, CO; (303) 866-2358.
 - 15. See http://www.state.co.us/gov_dir/leg_dir/olls/olls1.htm.
 - 16. See http://www.state.co.us/gov_dir/governor_office.html.
 - 17. See note 5, supra.
- 18. The *Denver Business Journal* website is: http://www.bizjournals.com/denver.
 - 19. See note 2, supra, and accompanying text.
- 20. See Shepard's Colorado Citation, Colorado Springs, LexisNexis™ Shepard's.
- 21. See http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0.
- 22. Colorado Practice Series (Eagan, MN: West Group) (current year).
- 23. For information on the *Annual Survey*, call CBA-CLE at (303) 860-0608; toll-free, in-state: (888) 860-2531; or visit http://www.cobar.org. ■