

1989

Handbook on Virginia Civil Procedure, A Guide to Legal Research in Virginia

Gail Starling Marshall

Steven D. Hinckley
University of Richmond

Follow this and additional works at: <http://scholarship.richmond.edu/lawreview>

 Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Gail S. Marshall & Steven D. Hinckley, *Handbook on Virginia Civil Procedure, A Guide to Legal Research in Virginia*, 23 U. Rich. L. Rev. 293 (1989).

Available at: <http://scholarship.richmond.edu/lawreview/vol23/iss2/7>

This Book Review is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

BOOK REVIEWS

HANDBOOK ON VIRGINIA CIVIL PROCEDURE, Second Edition. By W. Hamilton Bryson. Charlottesville, Va.: The Michie Company, 1989. 591 pages, \$45.00.

*Reviewed by Gail Starling Marshall**

Professor Bryson's *Handbook on Virginia Civil Procedure*¹ ("Handbook") which is now out in an expanded second edition, was written as an introduction to Virginia civil procedure for the students who study with him at the T.C. Williams School of Law at the University of Richmond. However, it will find an appreciative audience among two other distinct and occasionally overlapping groups of readers: active litigators who seek a ready reference on Virginia's civil-law procedures and practices, and legal history buffs who enjoy an excursus on the Anglo-American antecedents of Virginia's sometimes unique approach to civil litigation.

An insight into the author's perspective is given in his "Introduction," wherein he notes: "the zeal to reform must be done within the context of historical development . . . [and] [t]he reasons for the old law must be understood before it is changed, or the 'seamless web' of the law may be torn unnecessarily."² Any Virginia lawyer who has filed a *quo warranto* action or defended on the ground of misjoinder of parties will be favorably struck, when comparing this volume with other procedural treatises, by the rich historical context in which present rules are discussed. For

* Deputy Attorney General for Judicial Affairs, Office of the Attorney General of the Commonwealth of Virginia; B.A., 1963, Vanderbilt University; LL.B., 1968, University of Virginia School of Law.

1. The predecessor of this book was published in 1979 as *Notes on Virginia Civil Procedure*. That volume was greatly expanded in 1983 and came out under the title *Handbook on Virginia Civil Procedure*. The presently published second edition of this *Handbook* is treble the size of the original 1979 work.

2. W. HAMILTON BRYSON, HANDBOOK ON VIRGINIA CIVIL PROCEDURE at xviii (2d ed. 1989).

example, the new edition, like the first, has a particularly interesting and extended discussion of the development of the common law and of equity jurisdiction. The arcane nomenclature and attenuated relevance of some historical passages, however, can make for rough going. While one might agree with the author that "[t]he successes of our predecessors should not be lightly discarded,"³ one might not necessarily endorse the length of discussion devoted to them.

As to the more immediately relevant and oft-debated question of whether Virginia should follow the Federal lead and merge the pleading of common law and equitable claims (now administered by one court but separate in pleadings), the author, in a departure from his otherwise descriptive, value-neutral text, makes clear his view that this would be a "tear" without benefit. Professor Bryson argues that "[t]he present system has the advantage of forcing the plaintiff's attorney to think through the theory of his client's claim before filing the action."⁴

In its role as a guide to present day procedures, the new edition adds a valuable compendium of Virginia rules, statutes, and cases as they relate to computations of time limits important to the practitioner. There is also a new section devoted to mediation and an expansion of the discussion of Virginia's law relating to arbitration. The reader will also find a more detailed treatment of motions after verdict, costs and the use of commissioners in chancery. The only important new procedural development which appears to have been omitted is the establishment by the General Assembly, on a limited basis, of small claims courts within the General District Court for the adjudication without attorneys of claims under \$1000.⁵

The *Handbook* gives the practitioner new to Virginia a handy reference to the peculiarities of Virginia law in such common areas of civil practice as pleading, discovery, trial and post-trial procedures. In addition, it reminds those already active in Virginia practice of litigation tools available, but not often used, such as the possibility of a jury of three in which each party may select one juror and those two select a third.⁶ Unlike arbitration, the trial in

3. *Id.*

4. *Id.* at 80.

5. VA. CODE ANN. §§ 16.1-122.1 to -122.7 (Repl. Vol. 1988).

6. *Id.* § 8.01-359(D).

such a case is still presided over by a judge and is conducted in accordance with all other rules governing Circuit Court proceedings.

In general, the *Handbook's* style is to present rules and procedures almost in outline form. However, it does contain a new and useful conceptual framework in which to analyze the entire confused area of statutes of limitation and repose. The author makes clarifying distinctions between statutes which extinguish the remedy but not the underlying cause of action ("pure" statutes of limitation); time limitations in statutes that create new rights ("special" statutes of limitation); and statutes of limitation which begin to run at a time certain without regard to date of legal injury ("nonclaim" statutes, such as Virginia Code Section 8.01-250 limiting architects' and contractors' liability to five years from completion of their work). The clarity with which these distinctions are made and the persuasiveness with which the analysis is presented as to the divergent consequences regarding jurisdiction and pleading which flow from each, has not, however, as the author confesses, found full adoption in judicial pronouncements.⁷

While written principally for law students, the *Handbook* would be a greater aid to practitioners if, in following editions, Professor Bryson would include a statutory and rule index in addition to the subject matter index. In addition, future editions would aid the reader if the principal places in which Virginia civil procedure departs radically from its federal counterpart were discussed. Even without these features, it is clear that an ever expanding number of practitioners are including Professor Bryson's works (this *Handbook* and the invaluable *Virginia Circuit Reports* which he edits), along with *Burks Pleading and Practice*, on their short list of necessary reference works for the active Virginia litigator.

7. See, e.g., *School Bd. of Norfolk v. Limited States Gypsum Co.*, 234 Va. 32, 360 S.E.2d 325 (1987); *Harper v. City Council of Richmond*, 220 Va. 727, 261 S.E.2d 560 (1980).

A GUIDE TO LEGAL RESEARCH IN VIRGINIA, Edited by John D. Eure. Charlottesville, Va.: Committee on Continuing Legal Education, Virginia Law Foundation, 1989. 235 pages. \$19.85.

*Reviewed by Steven D. Hinckley**

As legal research materials continue to grow in volume and sophistication, it becomes increasingly difficult for researchers to stay abreast of the primary and secondary source materials available to help them find and analyze the law. As a consequence, there is a constant need for up-to-date, comprehensive guides designed to lead researchers to the materials that can be used to resolve particular kinds of legal questions. There are many outstanding general legal research treatises that present exhaustive analyses of the basic elements of legal bibliography.¹ However, as good as these works are at providing researchers with solid research methodologies, they are, necessarily, general in scope and of limited value to researchers who must delve into the idiosyncracies and minutiae of the legal materials of a particular state. Due to state-by-state historical variations and the divergent forms of local legal publications, legal research in each state presents its own unique set of problems and possibilities.

It is in this setting that a state research guide can be invaluable.² With the exception of a helpful, but now dated, bibliography of

* Associate Law Librarian, T.C. Williams School of Law, University of Richmond; B.S., 1976, Grand Valley State College; J.D., 1979, University of Toledo.

1. Among the most often used general legal research treatises are M. COHEN & R. BERING, *HOW TO FIND THE LAW* (8th ed. 1983); J. JACOBSTEIN & R. MERSKY, *FUNDAMENTALS OF LEGAL RESEARCH* (1977); M. PRICE, H. BITNER, & S. BYSIEWICZ, *EFFECTIVE LEGAL RESEARCH* (4th ed. 1979); M. ROMBAUER, *LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH, & WRITING* (4th ed. 1983); C. WREN & J. WREN, *THE LEGAL RESEARCH MANUAL* (2d ed. 1984).

2. As of 1984, one or more state legal research guides had been published for each of seventeen states: California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Nebraska, New Jersey, New Mexico, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin. For complete bibliographic information and a comparative analysis of each state's research guides, see generally Snyder, *State Legal Research Guides*, 4 *LEGAL REFERENCE SERVICES Q.* 3 (1984). In four additional states: Indiana, Maryland, Missouri and Virginia, and the District of Columbia, bibliographies listing local legal materials have been prepared under the auspices of the Government Documents Special Interest Section of the American Association of Law Libraries. *Id.* at 15 n.12.

state publications,³ no guide of this kind has existed to assist researchers in the use of Virginia legal materials. *A Guide to Legal Research in Virginia* ("Guide"), the recently published collaborative effort of the Committee on Continuing Legal Education of the Virginia Law Foundation and the Young Lawyers Section of the Virginia Bar Association, is designed to fill this void by providing "attorneys, paralegals, students, and other interested persons with an overview of the published sources in which research on Virginia law can be performed."⁴ In fact, the *Guide* is a welcome and much-needed publication. It is likely that advanced legal researchers and attorneys with a great deal of familiarity with legal materials will be satisfied with the overview of Virginia legal materials the *Guide* presents. However, like many ground-breaking efforts, the *Guide* is not without its problems. Paralegals, students, and the lay public may find the *Guide* to be lacking in the detail and instructional content that separates a true research guide from mere annotated bibliographies.

The *Guide* consists of ten chapters, all but one of which is authored by a different Virginia practitioner. The single exception to this format is a chapter written by a law librarian who also holds a law degree. After a brief introductory chapter outlining the organization and general principles of the book, Chapters Two through Six present discussions of Virginia constitutional law, statutory law, case law, administrative law, and local law, respectively. Chapters Seven and Eight list the major secondary materials, periodicals, indexes, and practice aids available to assist researchers in finding and analyzing Virginia law. Chapter Nine is entitled "Quick Finding Guide" and is an attempt to match the type of information needed by a researcher with the source or sources for that information "at a glance." Finally, Chapter Ten provides information concerning the law libraries of five of the state's law schools.⁵

Researchers will appreciate the format of the *Guide*. The book is spiral bound which allows the book to remain open at any section

3. M. AYCOCK, J. LICHTMAN, & J. STINSON, A LAW LIBRARIAN'S INTRODUCTION TO VIRGINIA STATE PUBLICATIONS (1981).

4. Committee on Continuing Legal Education, Virginia Law Foundation, A GUIDE TO LEGAL RESEARCH IN VIRGINIA, at 1 (1989).

5. The five law schools are: The University of Virginia School of Law, the College of William and Mary's Marshall-Wythe School of Law, the University of Richmond's T.C. Williams School of Law, the Washington and Lee University School of Law, and the George Mason University School of Law.

of interest without fear that it will close suddenly. The book is compact and lightweight, and its portability makes it possible for users to carry a copy in their briefcases or bookbags. With the exception of the Chapter Ten photo-reduction of law school library user's guides, the typeset used throughout the book is clear and readable. The *Guide* presents both a cumulative table of contents and individual contents tables preceding each chapter. Finally, the index appearing on pages 227 through 235 is better than many indexes prepared for similar books in other states. The editors have made every attempt to provide an index listing for all materials discussed in the various chapters, and more importantly, have provided ample cross references leading researchers to appropriate index terms.

The real strength of the *Guide* appears within Chapters Two through Eight in its listings of most of the primary and secondary source materials available to researchers relevant to the subjects covered by those chapters. While not every citation appears to be bibliographically correct in every detail, each is complete and accurate enough to enable a user to find or ask for the materials cited. Practitioners should appreciate the fact that, in most cases, the authors have also included the publishers' names and complete or partial addresses, so that it is possible for the *Guide's* users to inquire about ordering materials for their own offices or libraries. The *Guide's* value to law office managers and firm librarians would be greatly enhanced by the addition of a chapter or appendix in which all titles cited throughout the book are listed by category (e.g., statutes, reporters, secondary materials, etc.) with complete bibliographic and publisher information, current prices, and, for multivolume sets, an estimate of the linear shelf space required to house the sets.

While it is useful to have a single source that provides a comprehensive list of Virginia legal materials, legal information specialists know that leading researchers to relevant titles is only a small part of the battle. More importantly, they must also be shown how to use the materials. A book that claims to be a legal research guide, rather than an annotated bibliography, should augment all citations with instructional text explaining how the cited materials work and explain any special features or problems that researchers can expect to encounter. Unfortunately, the *Guide* offers little original textual material to fulfill the editor's promise that the *Guide* includes research "tricks of the trade" known to the au-

thors.⁶ As a result, the *Guide's* value to inexperienced researchers, such as students, paralegals, and laymen, is problematic at best.

A perfect example of what the *Guide* could be appears in Chapter Three's discussion of the Michie Company's notoriously inadequate Code of Virginia indexes,⁷ in which the author offers strategies to overcome the obvious shortcomings of these volumes. By reading the author's cautionary note concerning the Code of Virginia indexes, researchers who have little or no experience with the set will have a fighting chance to find relevant statutes. It is this kind of instruction that the *Guide* should, but does not, consistently offer.

Other notably strong examples of original material include a brief, yet frank assessment of the difficulties one can expect to face when researching Virginia legislative materials;⁸ a discussion of each major state administrative agency, complete with addresses and information concerning the availability of agency documents;⁹ and a list of local law libraries available to practitioners and/or the general public in various state locations, including addresses, hours, and telephone numbers.¹⁰ In each case, the authors provide useful information and research insight that is not readily available elsewhere.

Another useful feature that experienced researchers may appreciate is Chapter Ten's "Quick Finding Guide" which lists the sources of particular types of Virginia legal information without accompanying explanatory or instructional text. The "Quick Finding Guide" may be a satisfactory research aid for the researcher who has used all of the sources listed and merely needs a reminder of the best sources for particular information. The most glaring problem with this chapter is its failure to relate back to the earlier chapters in which one would expect that each of the sources listed would be fully described. For example, if a researcher wants to find the *Southeastern Reporter* citation for a case published in the *Virginia Reports* and is referred by the "Quick Finding Guide" to the "blue section of the *Virginia Blue and White Book*,"¹¹ he or she should be able find a complete discussion of the *Virginia Blue and*

6. A GUIDE TO LEGAL RESEARCH IN VIRGINIA, *supra* note 4, at v.

7. *Id.* at 30-31.

8. *Id.* at 26, 34.

9. *Id.* at 59-66.

10. *Id.* at 76-80.

11. *Id.* at 126.

White Book somewhere in the *Guide*, and the page(s) of the book on which this discussion appears should be listed in the "Quick Finding Guide." Neither is the case in the current *Guide*. In fact, it appears that a number of sources cited in Chapter Nine, including the one used in the example above, are listed for the first and only time in the "Quick Finding Guide," thus providing no help to researchers who are not familiar with the cited source. By reformulating the "Quick Finding Guide" to make it consistent with the rest of the *Guide*, Chapter Ten could become an ideal ready reference tool for both experienced and inexperienced researchers.

Despite an admirable attempt to bring editorial harmony to a work written by eight authors, several areas of inconsistency should be noted. First, proper citation form for Virginia materials is provided in several chapters and overlooked in others. Although an introductory instruction advises users to consult *A Uniform System of Citation* in cases where citations are not provided,¹² researchers could have been spared that additional step if proper citation examples had been provided in each chapter, or in a separate appendix.¹³ Second, there is an uncomfortable intermingling of federal and state research citations in a number of the chapters. Federal materials are exhaustively covered in many other publications, and the *Guide* is not strengthened by its inclusion of these cites. If the editors and authors insist on providing information concerning federal sources, they would do better to include a separate chapter or appendix discussing these materials. Third, the *Guide* does not present an overall philosophy concerning the role of automation in researching Virginia law. Although LEXIS, WESTLAW, and the online Virginia Legislative Information System receive cursory treatment in several chapters, very little is actually said about the relative advantages and disadvantages of these databases *vis-à-vis* the conventional sources discussed throughout the *Guide*. Computer-assisted legal research is now such an everyday part of modern law practice that the authors do researchers a disservice by glossing over the role of computer databases as sources for Virginia legal materials.

In general, the *Guide* provides users with accurate and up-to-date references to Virginia information sources. However, despite the claim that this is the 1989 edition, at least one section of the

12. *Id.* at 5.

13. A good example of this kind of appendix can be found in L. CHANIN, REFERENCE GUIDE TO GEORGIA LEGAL HISTORY AND LEGAL RESEARCH, at 137-41 (1980).

Guide is already woefully outdated, and one will find other bits of information sprinkled throughout the book that are less than timely. The best example of this problem is Chapter Ten's discussion of the law school libraries at the University of Virginia, College of William and Mary, University of Richmond, Washington and Lee University, and George Mason University. Ninety-four of the book's total 235 pages are devoted to these library profiles, each of which consists of a page to a page and one-half of original material, followed by the user's guides prepared by each law library. The user's guides, reprinted *in toto* in the *Guide*, are as much as three years old. As a result, much of the information contained therein is no longer accurate. The case of the *University of Richmond Law Library User's Guide*, printed on pages 187 through 204, is indicative of the problem: it is the 1985 version of the *User's Guide*, and there have been three editions published since that one first appeared in late 1985. The 1985 edition announces policies that have changed drastically or are no longer in effect, presents maps and location tables that no longer accurately reflect the locations of collections within the library, and does not list all current professional staff members. This also appears to be the case for the other law library guides reprinted in Chapter Ten. Since it behooves the state's academic law libraries to have accurate information about their facilities in the hands of all potential patrons, it is likely that each institution would have gladly provided the *Guide's* editors with their latest user's guide had they been asked. Speaking from first-hand information, no request of this kind ever came to the University of Richmond Law Library. As a result, outdated material was used which will be a source of confusion for library users and the library staff. From the appearance of the other institutions' guides, the problem runs throughout Chapter Ten. It is regrettable that the editors chose to proceed without obtaining current library guides.

Despite the significant problems discussed above, *A Guide to Legal Research in Virginia* at least partially fills the long-standing need for a comprehensive research guide for Virginia legal materials. The *Guide* presents a great deal of useful information in a compact package, and at \$19.85, it is difficult not to recommend it as an appropriate purchase for anyone interested in Virginia legal research. However, inexperienced researchers must be aware that the *Guide* presupposes a certain level of familiarity with the sources discussed which will make the *Guide* frustrating for the less experienced researcher to use. In addition, all users should be

alert for occasional misstatements and outdated information. As an ambitious first effort, the *Guide* represents a good start. It is expected that future editions will strive to smooth out some of the wrinkles that exist in the 1989 edition.

