Litigation Insights

MAY 2025

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Moore's Federal Practice®

—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

ABSTENTION

Younger Abstention

Gristina v. Merchan

131 F.4th 82, 2025 U.S. App. LEXIS 5721 (2d Cir. Mar. 12, 2025)

The Second Circuit has held that a district court properly applied Younger abstention to refrain from exercising jurisdiction in an action challenging a state court's denial of a motion to unseal transcripts of a criminal trial, when an appeal of that denial was still pending in the state courts.

JUMP TO SUMMARY

APPEALS

Notice of Appeal

Osborne v. Belton

131 F.4th 262, 2025 U.S. App. LEXIS 5522 (5th Cir. Mar. 10, 2025) (per curiam)

The Fifth Circuit holds that the designation of a postjudgment order in a notice of appeal ordinarily encompasses not only the underlying final judgment, but also any other postjudgment rulings that preceded the designated order.

JUMP TO SUMMARY

SUMMARY JUDGMENT

Verified Pleading as Affidavit

Gowen v. Winfield

130 F.4th 162, 2025 U.S. App. LEXIS 5030 (4th Cir. Mar. 4, 2025)

The Fourth Circuit holds that a verified complaint must be treated as the equivalent of an opposing affidavit for summary judgment purposes when it is based on personal knowledge—even if it is uncorroborated, self-serving, and filed by a pro se prisoner.

JUMP TO SUMMARY

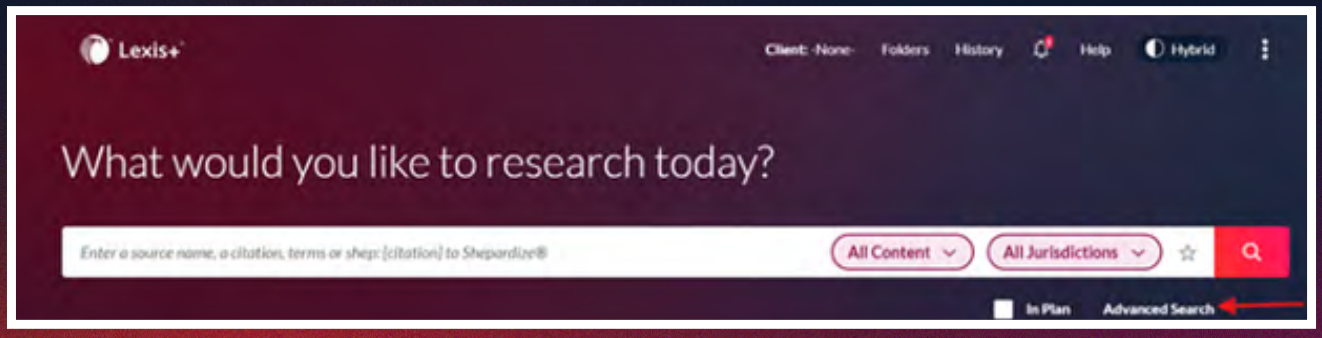
Using Segment Searching for Specific Content Types on Lexis+®

By Meghan Atwood, Esq., LexisNexis® Solutions Consultant

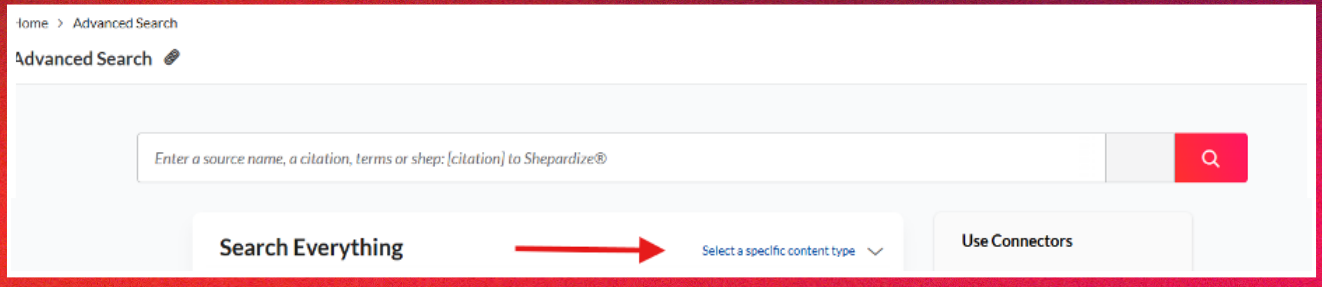
Many seasoned Lexis+® legal researchers often know their preferred segments to use for more specific searches in their most frequent content types (e.g., "writtenby(Alito)" in Cases to find opinions written by Justice Alito). But how can a researcher use segment searching in less familiar content types? The Advanced Search templates in Lexis+ will be the answer!

Let's start with the basics: what is segment searching on Lexis+? All documents of the same type, in Lexis+, will have a common structure, which is composed of natural parts referred to as segments. For example, in Cases you can find segments for name, date, court, opinion and dissent, among others. Lexis+ users can restrict their searches to a specific segment of a document, such as the name of a case opinion or the text of a statute section. Different types of documents will have different segments. As such, a case will not have the same segments as a newspaper article. Many researchers find segment searching to be especially useful in the following examples: finding opinions written by a particular judge; locating cases involving a specific party; finding particular words or phrases in the title of a news article; searching terms only in the text of the section of a statute. Of course, there may be other search scenarios where answers are desired in a specific part of a document.

How can you take advantage of segment searching on Lexis+? Begin by clicking the Advanced Search link on the landing page of Lexis+. In fact, it is located on the right under the main search box (see screenshot below).



Then click the link at the top that says, "Select a specific content type" (see screenshot below).



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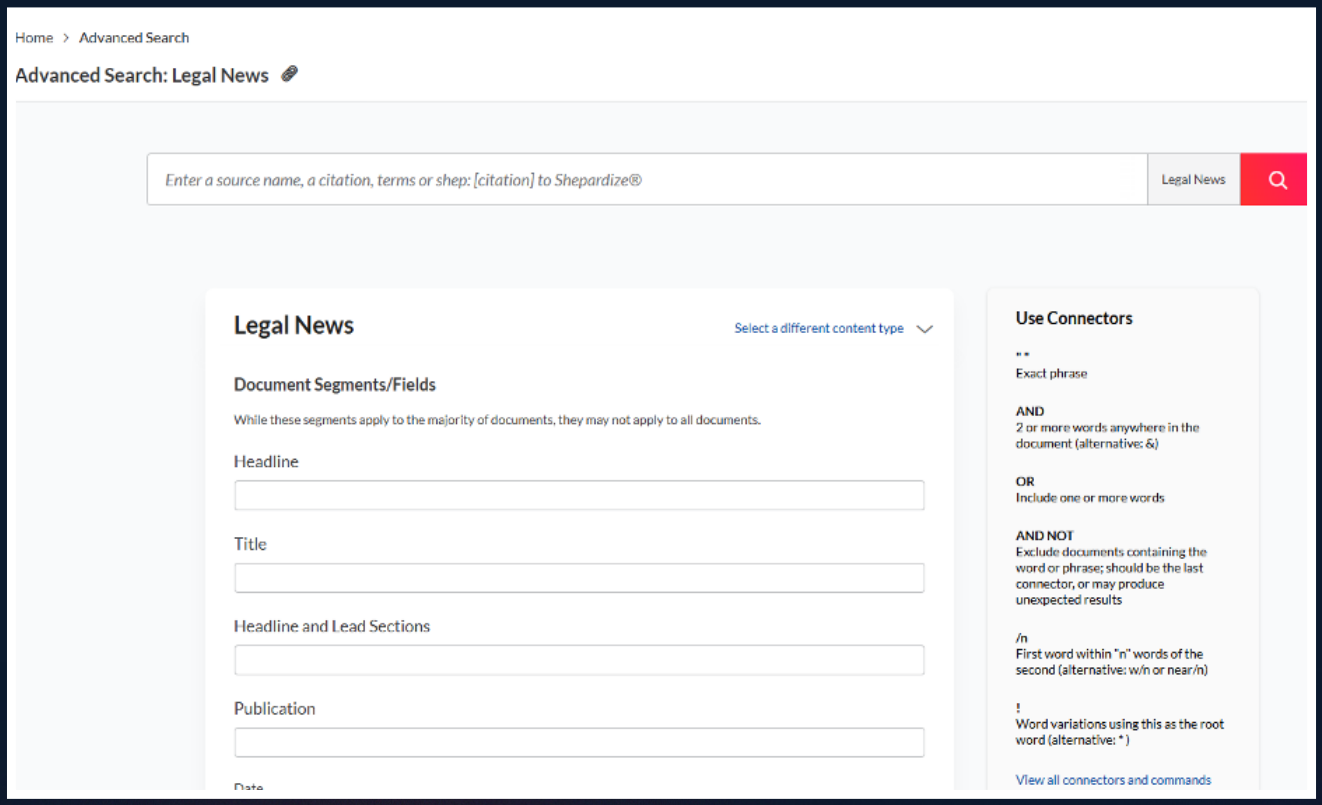
From here, you will be presented with the content type choices. Now, you can click on your desired content type. Once you do, an Advanced Search template with relevant segments will appear. For example, here is the template for Legal News, where you can take advantage of the Headline or Headline and Lead Sections segments to only search those parts of Legal News documents:



Once you enter text into the fields, your search is built automatically in the search box above and displays the segment name in front of your search followed by your search in parenthesis. Example: hlead(cryptocurrency w/5 fraud). You can always use these segment shortcuts for future searches. Also, note the "Segment Examples" link on the right side of the Advanced Search page. You can click the image, and it will pop up, expanded, indicating how the individual segments cover separate parts of the typical document. This is an image file, so if you would like to save it, right-click and choose "Save image as."

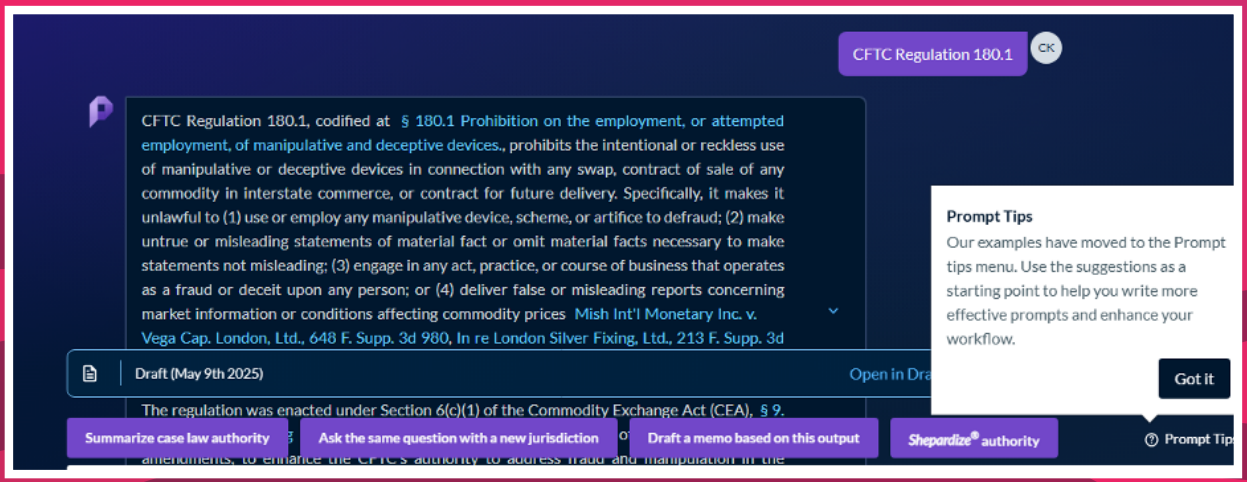
If you have any questions on segment searching, please contact your LexisNexis Solutions Consultant.

Lexis+® Tools: All things Regulations for Federal Agencies

Regardless of your role, the use of regulations is a key part of the workflow of those that work within Federal Government agencies. However, the landscape of regulations is ever-changing and complex, which can make it difficult to keep track of and understand all of the material you may need. At LexisNexis®, we understand this difficulty and are ready to help you advance your workflow and optimize your efficiency. Below, please find a host of tools curated for you and your agency centered around regulatory research.

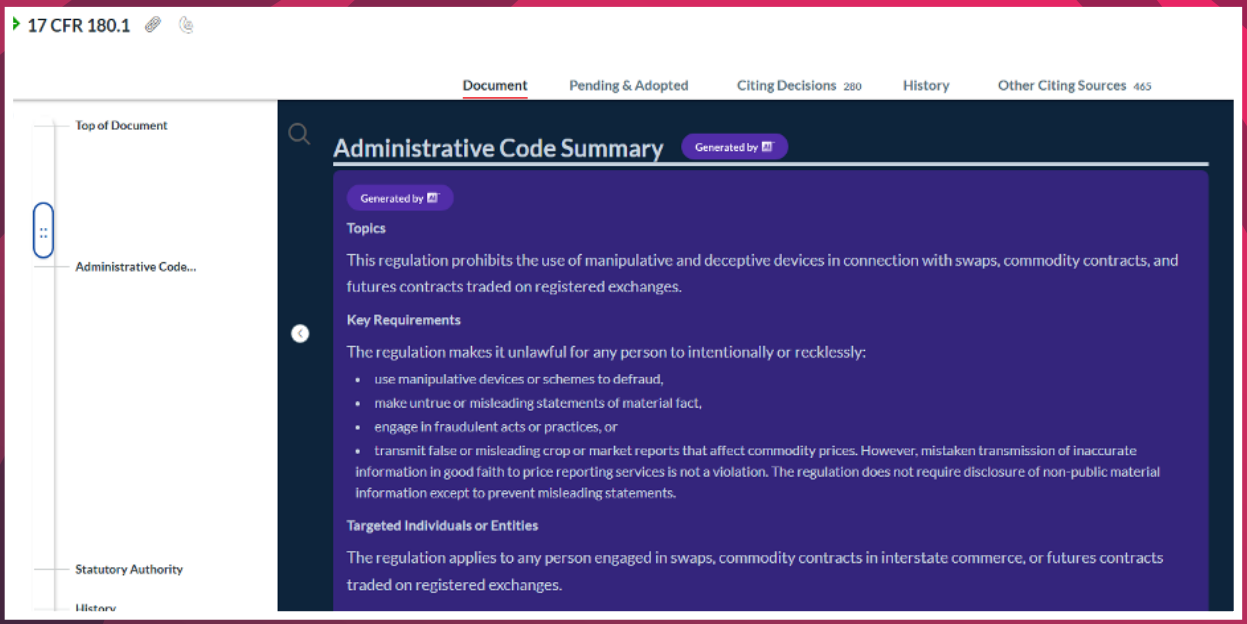
Lexis+ AI™ with Protégé™

Go to your Summarize feature in Protégé and simply enter the Regulation you want summarized.



Automatic Administrative Code Summaries

On Lexis+ AI, you can search for any regulation and Protégé will automatically create an Administrative Code Summary within the regulation itself. This way, you can get a clear idea of what is being covered by the regulation in a succinct summary right at the top of the page.



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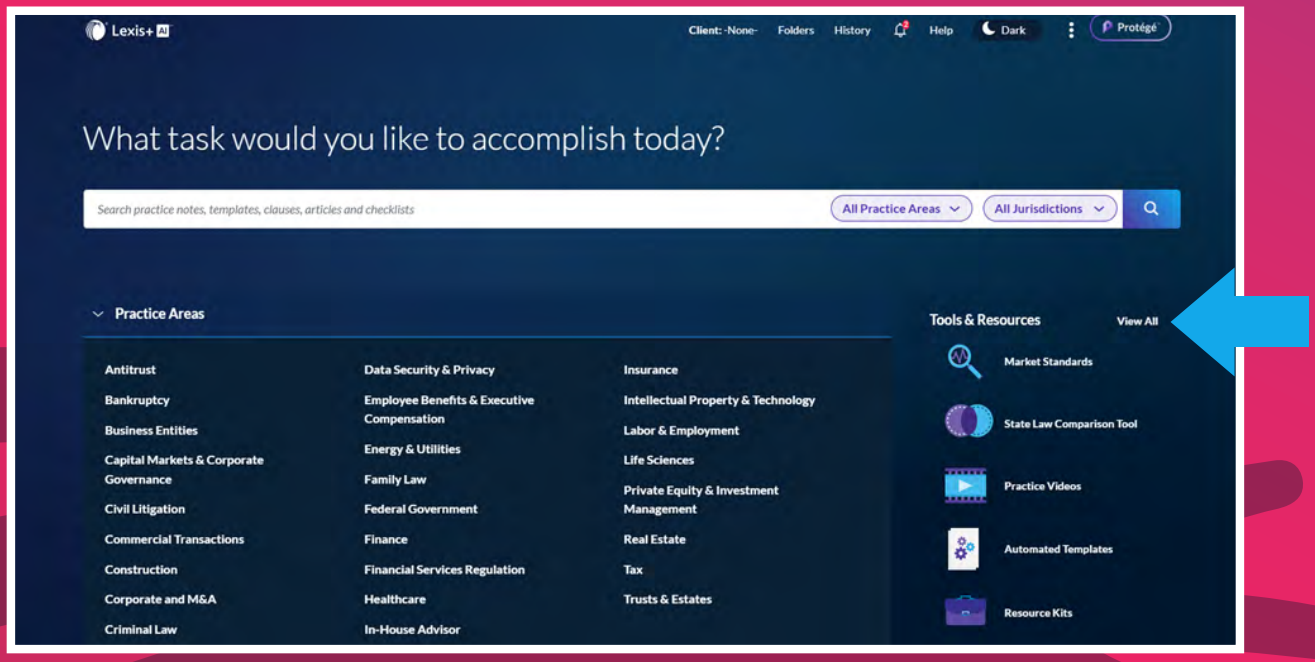
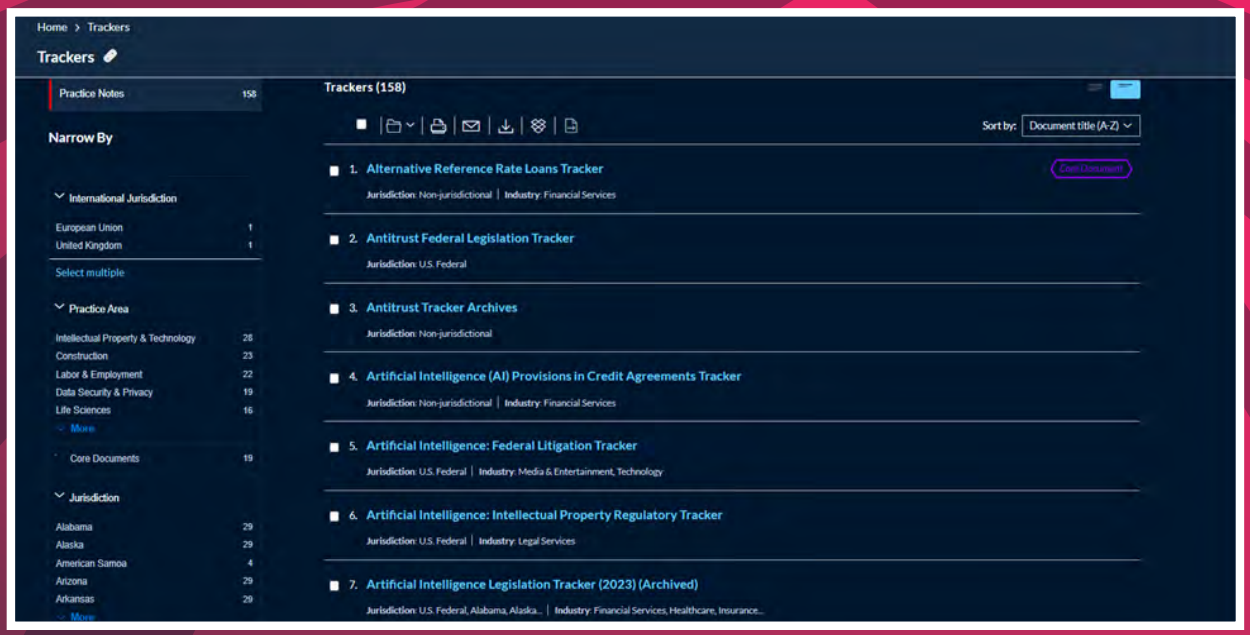
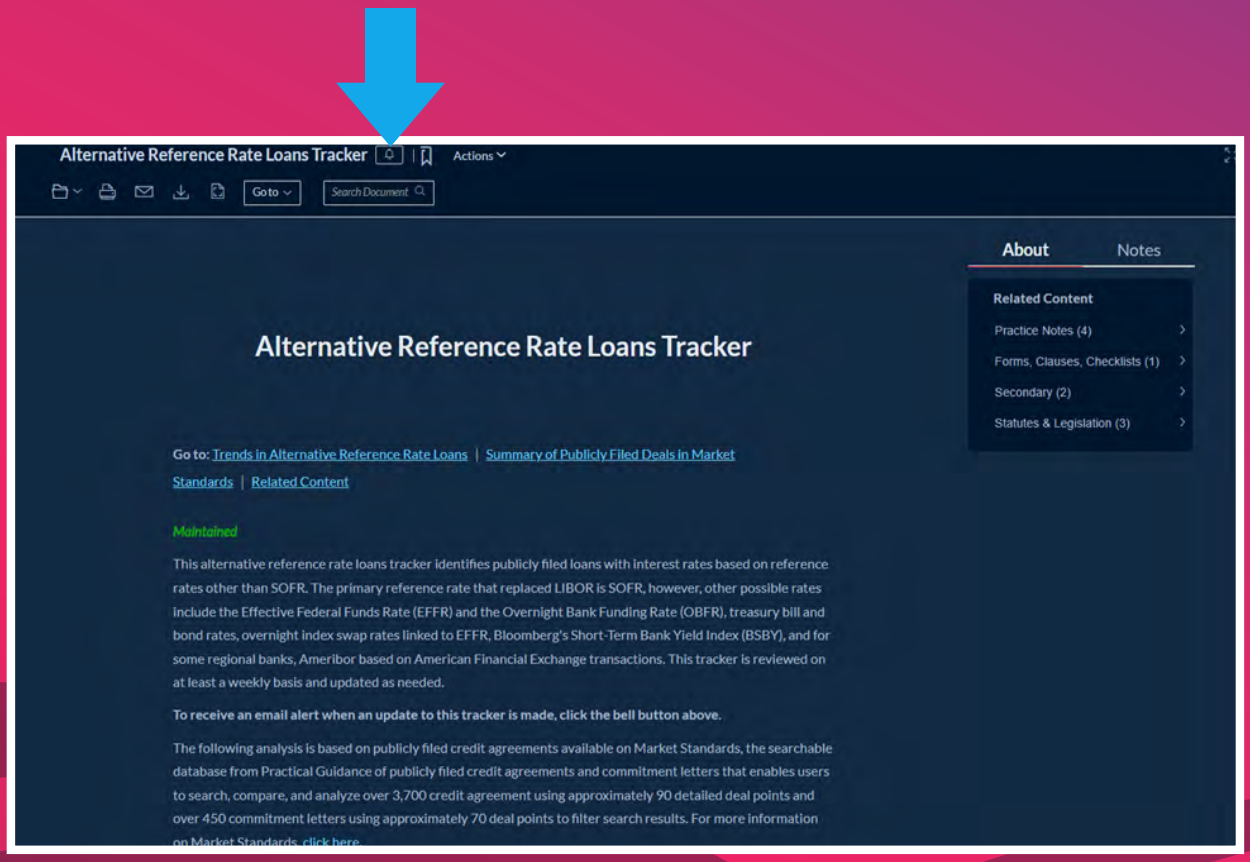
Get Immediate Notifications of changes to Regulations

- **Trackers**
  To set up a tracker, the first step is going to be navigating to Practical Guidance from the Lexis+® home screen, which can be done by utilizing the experience dock on the left-hand side of the screen. Once on the Practical Guidance home screen, select the "View All" icon under Tools and Resources to find the trackers tool toward the bottom of the popup.



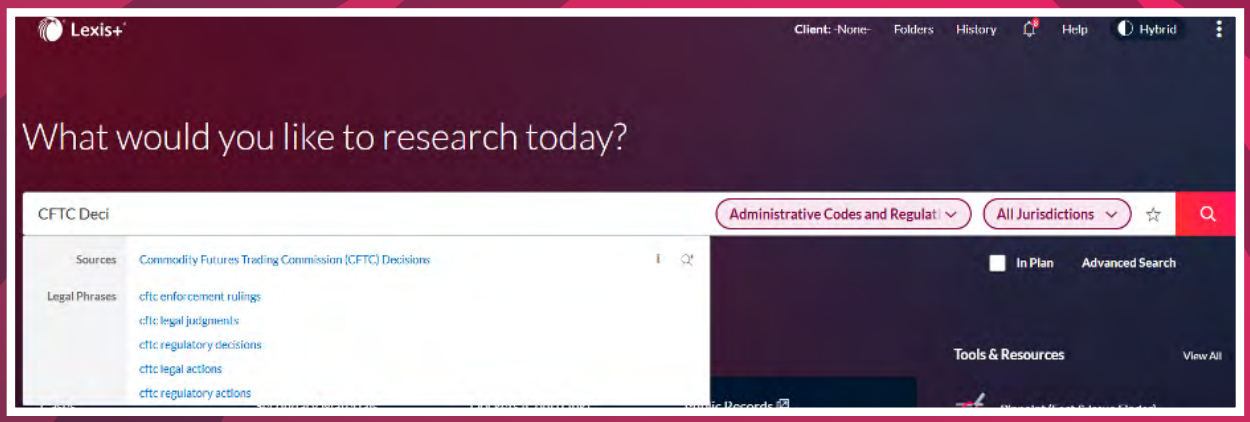


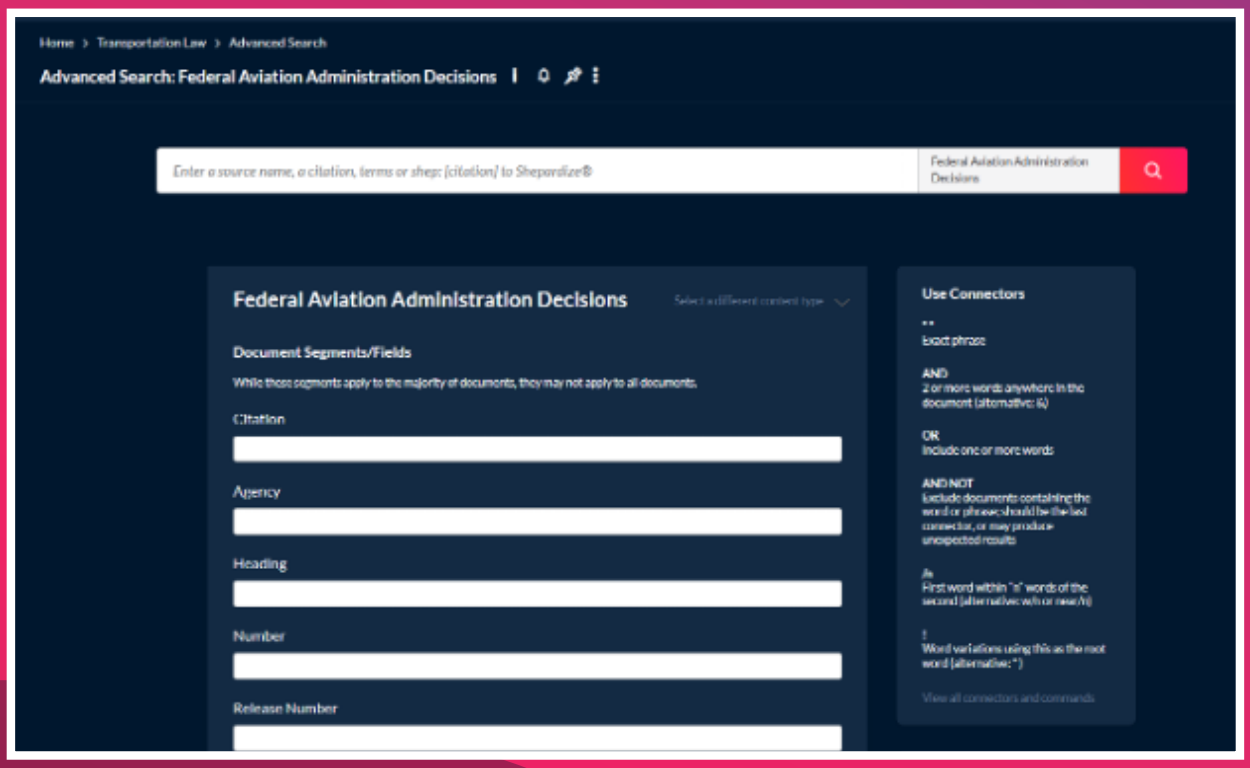
From here, you can then dive into any of the available trackers to view the incredible depth of material covered on Practical Guidance. Within a tracker, you can then set up an alert to make sure that you are always up to date on any updates covered by the tracker.

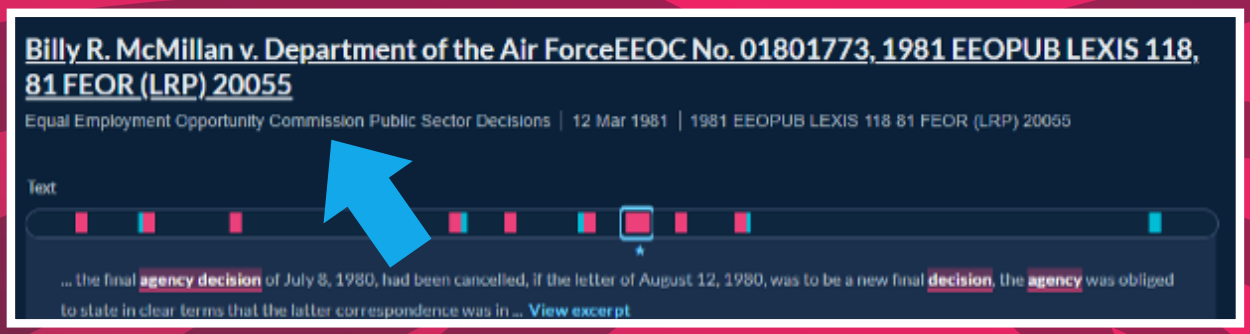


Find Agency Decisions

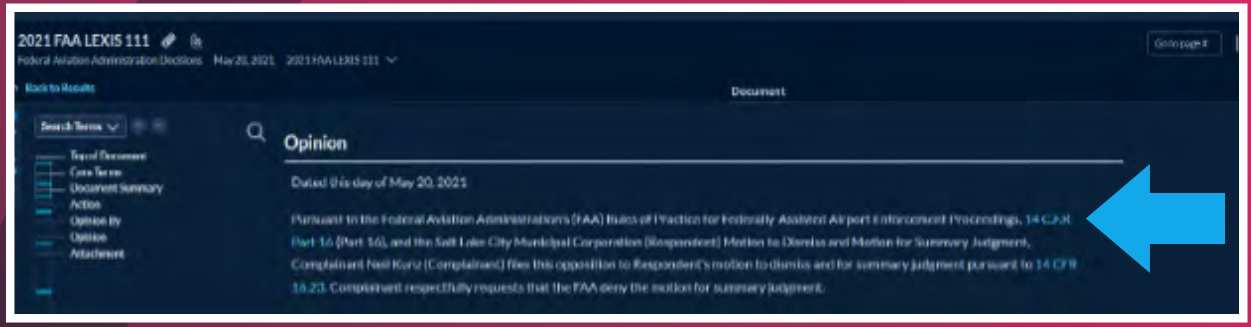
On Lexis+®, you can find agency decisions by searching by agency or by browsing the practice area tab. To search for specific agency decisions start typing in the search bar and set your content filter to Administrative Codes or Regulations or use the explore tab and click into a practice area and then search within for agency decisions.





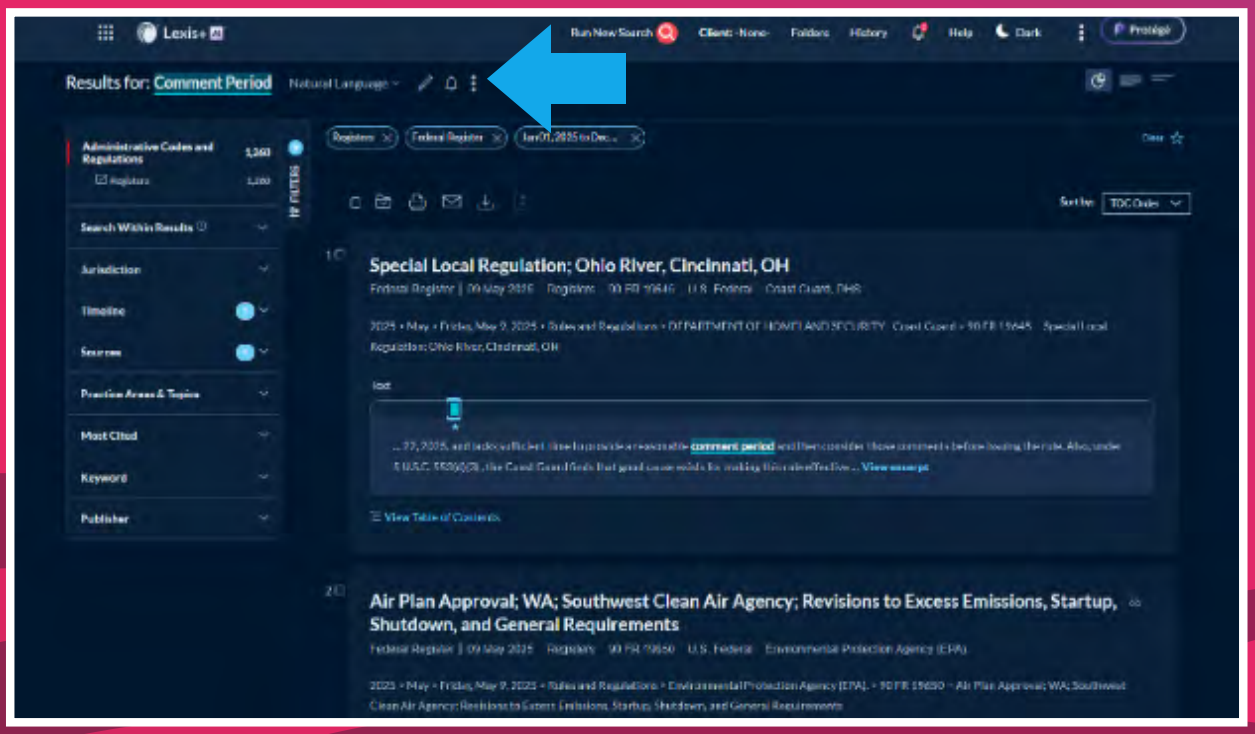


Within an agency decision, such as in the decision shown below, you can then notably find hyperlinks to relevant regulations, such as 14 C.F.R Part 16. By selecting the hyperlink, you will immediately navigate to the regulation in question, which demonstrates one of the core advantages of Lexis+'s integrated and streamlined approach to legal research.



Setting an Alert in the Federal Register

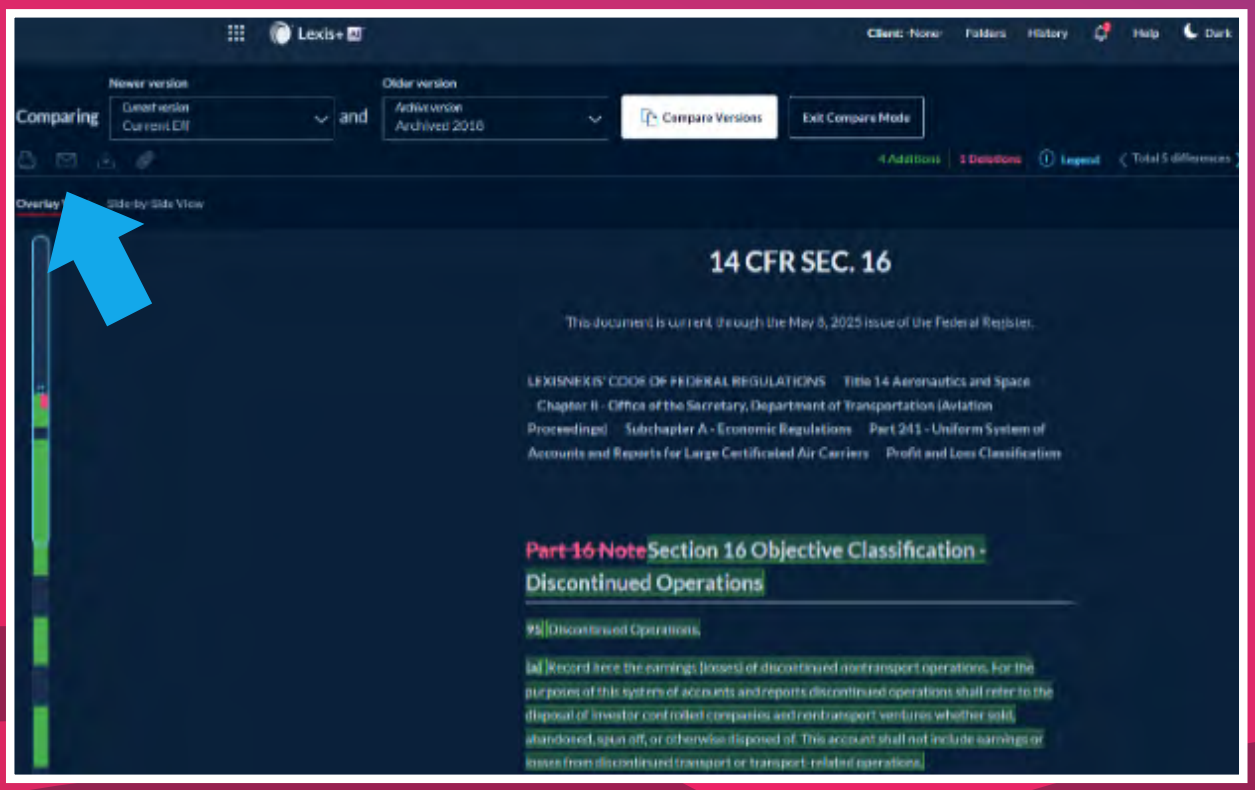
On Lexis+ you can utilize the highly important Federal Register to stay up to date on new regulations and proposed rules, which can be accessed by either searching or browsing. Within the Federal Register, you can also set up an alert, such as the alert below, which focuses on updates revolving around the comment period for new regulations.

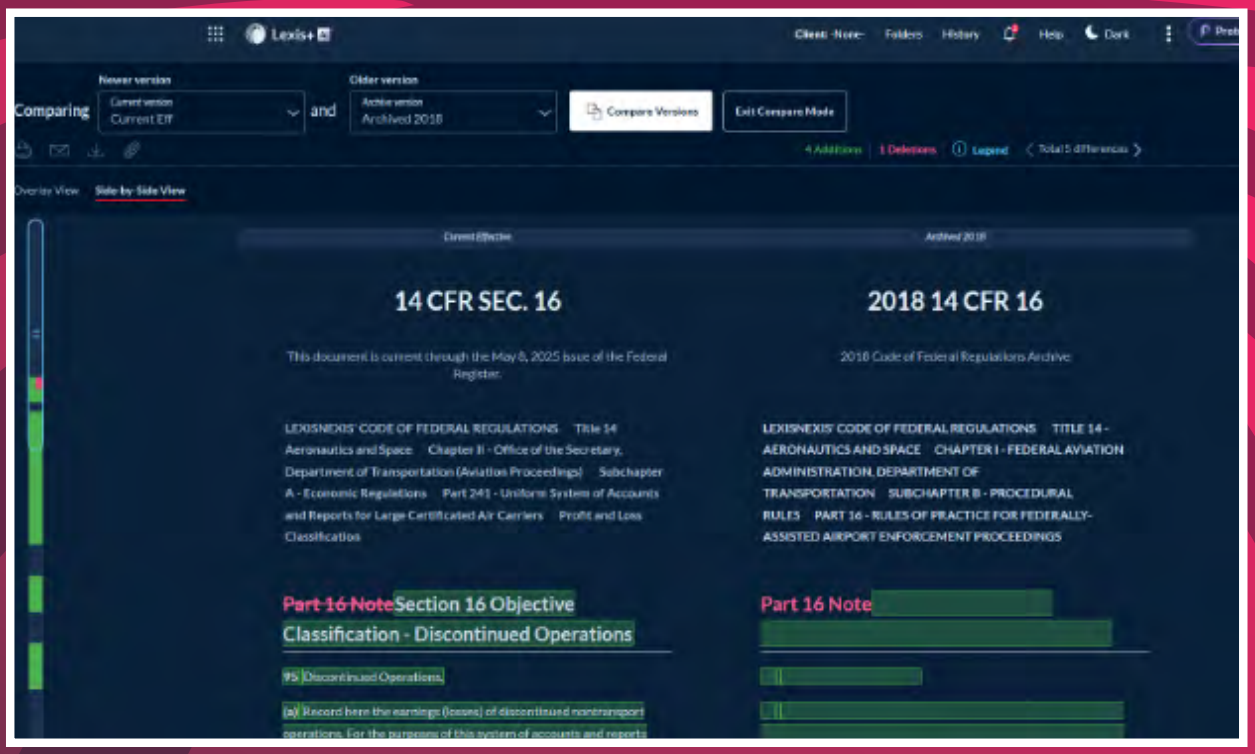


Identify changes quickly with Lexis+ Compare Tools

Use Compare Versions on Lexis+ to quickly compare different year versions of a statute, legislation, or regulation section to an archived version. Within a regulation, if you see the large "Compare Versions" button on the right side of the screen, that will be your indicator that Lexis+'s Compare Tools are available for your given regulation.

Within the Compare Tools, you then have the option to select your archived version to compare against the current effective version, along with selecting between viewing changes with the overlay or side-by-side view.


Lexis+
Comparing
and
Compare Versions
Exit Compare Mode
14 CFR SEC. 16
Part 16 NoteSection 16 Objective Classification - Discontinued Operations


Lexis+
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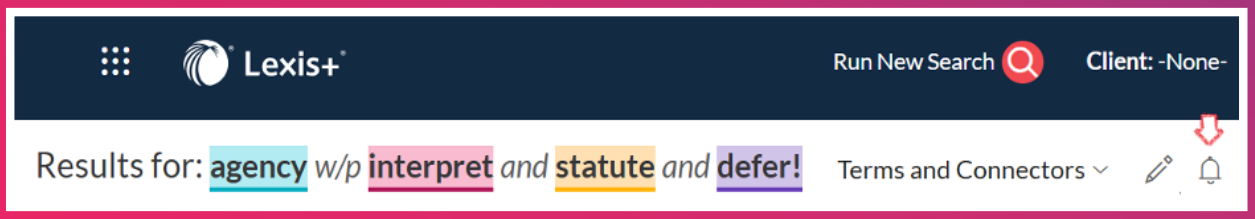
Part 16 Note

Get Immediate Updates on News, Legislation and Cases with Alerts.

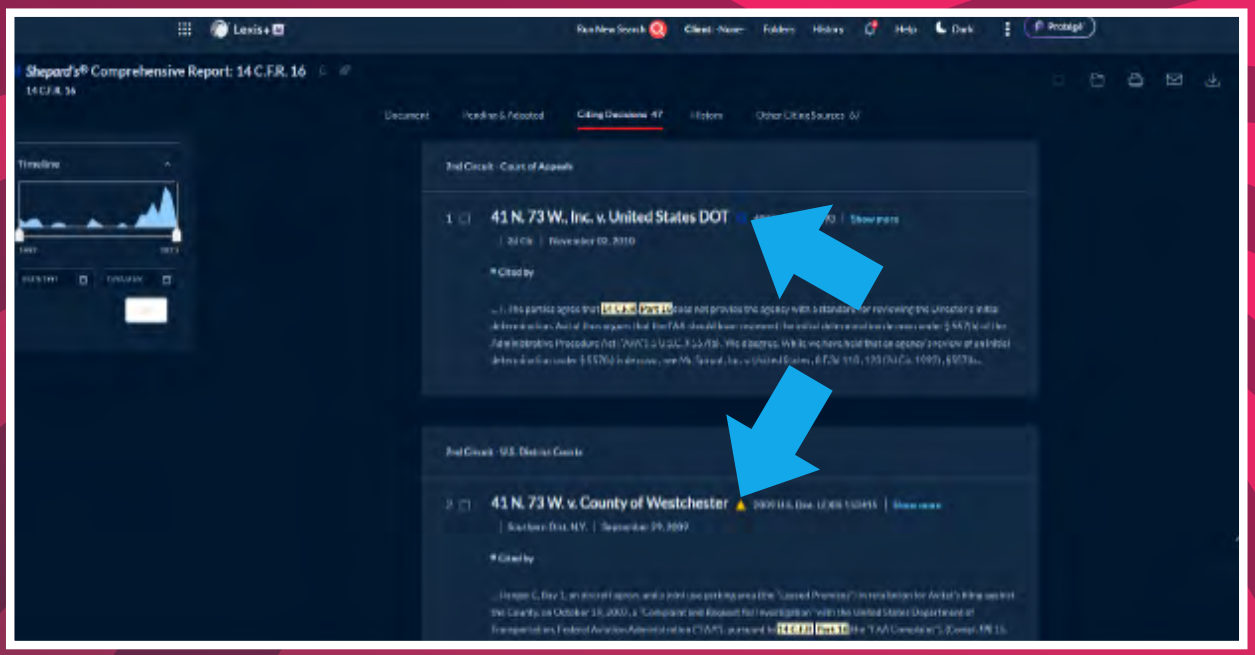


- **Legislative Alert:** You can create an alert to monitor changes to a bill going through the legislative process. You can create these alerts from a full text bill or a bill tracking document.

- **Pending Legislative Alert:** You can create an alert to monitor for new and pending legislation that may amend, repeal, or enact a change to a specific statute. You can create a Pending Legislative Alert from a full text statute document.

Ensure Your Regulation is Good Law

Shepard's® is available across Lexis+® as the premier citation service for legal research needs. Using *Shepard's*®, you can *Shepardize*® a regulation to confirm that what you are citing is good law. *Shepard's* can be seen in numerous places across Lexis+ in the form of signals, indicators and more. Below, you can find an example of a *Shepard's* report for a regulation, and the legend for understanding what the various signals and colors mean across *Shepard's*.



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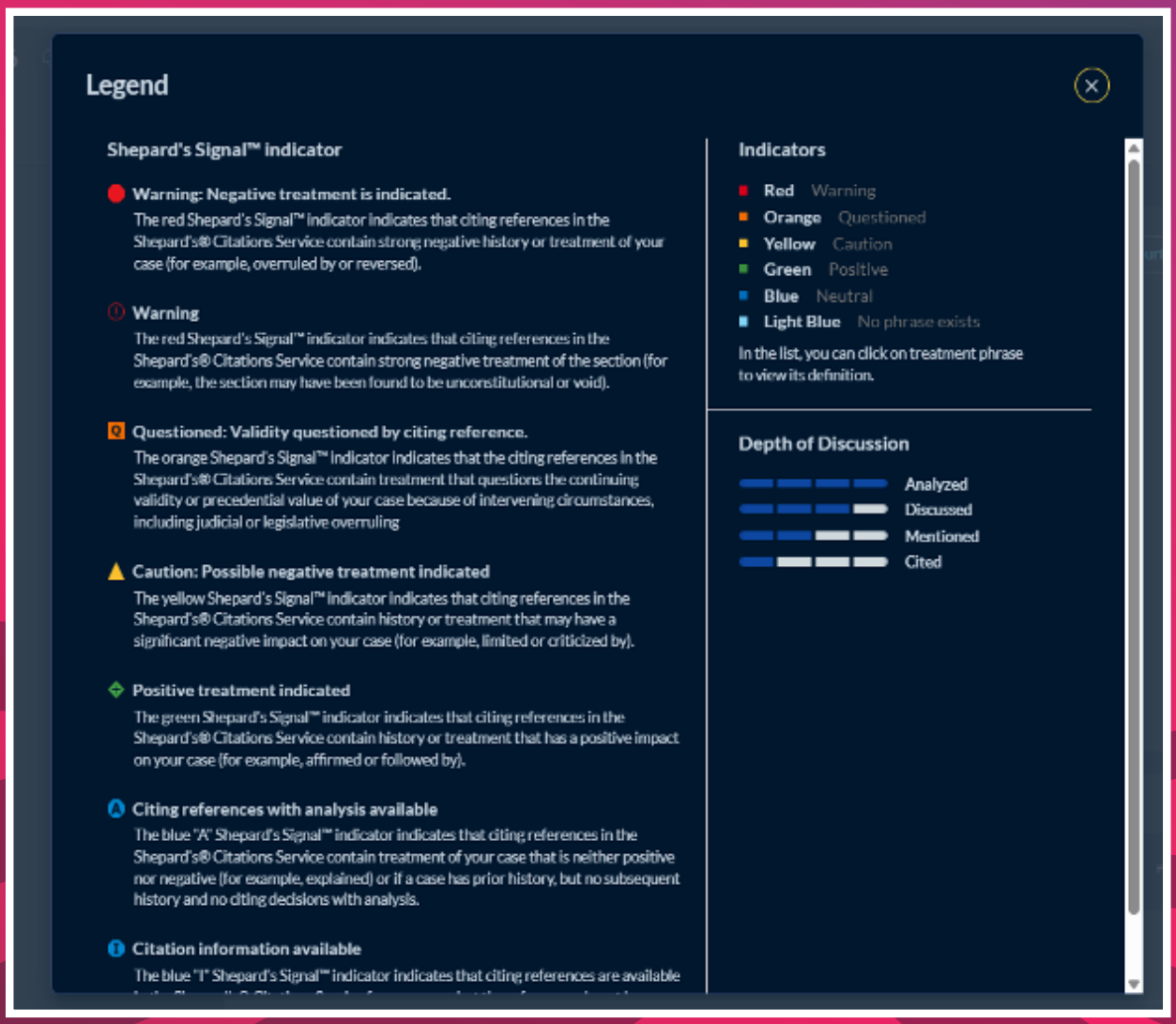
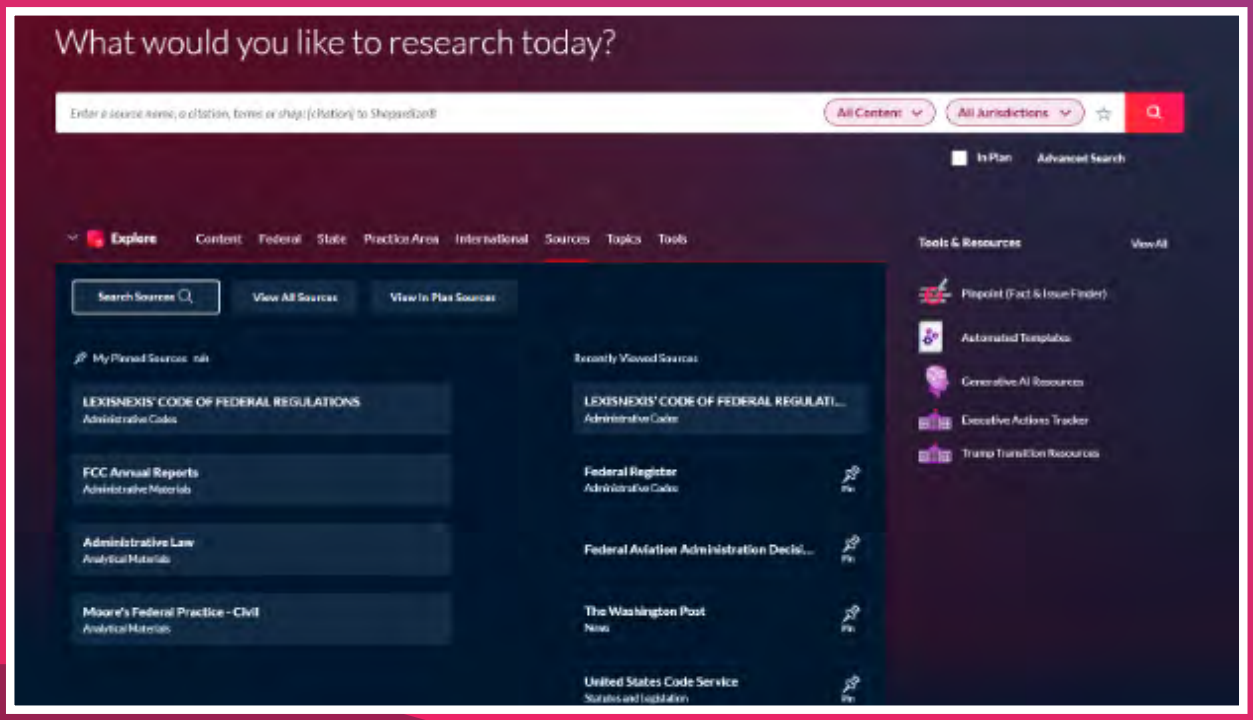


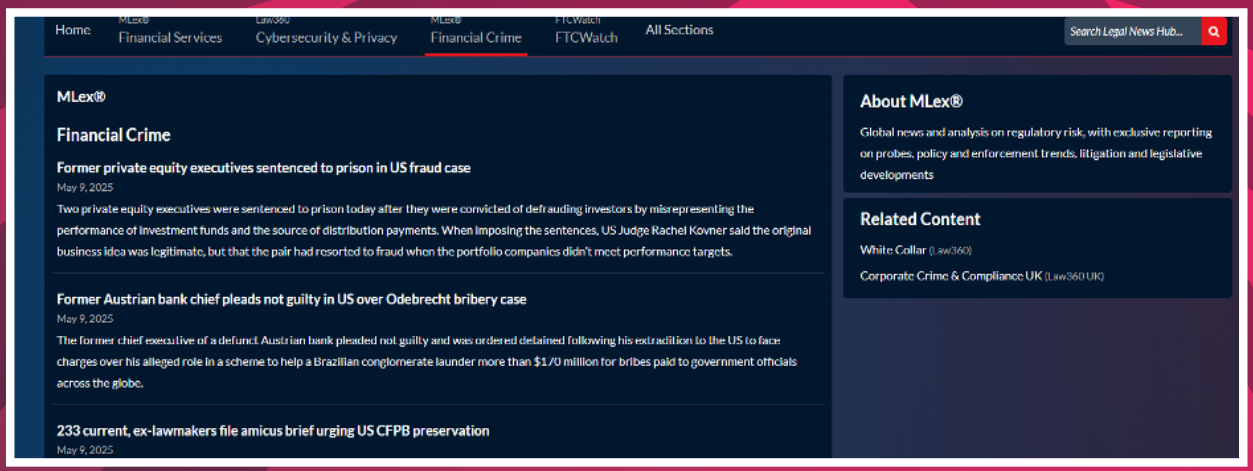
Save the CFR Right to the Home Screen

Within the CFR itself, you have the power to save your source right to the home screen using the pin source icon just to the right of the source's title. If you know you are going to be working with the CFR frequently, you can make it convenient to find, along with all of your other sources. On the home screen, you can find your pinned sources under the Sources tab un the Explore Bar, which can optimize your efficiency when it comes to source location.



Go Further with MLex®

Expand your regulations research to the global scale utilizing MLex®. MLex is your comprehensive news research software with a specific focus on regulations and their impact, which will allow you to stay up to date on the most important developments as they occur, in terms of your regulations research.



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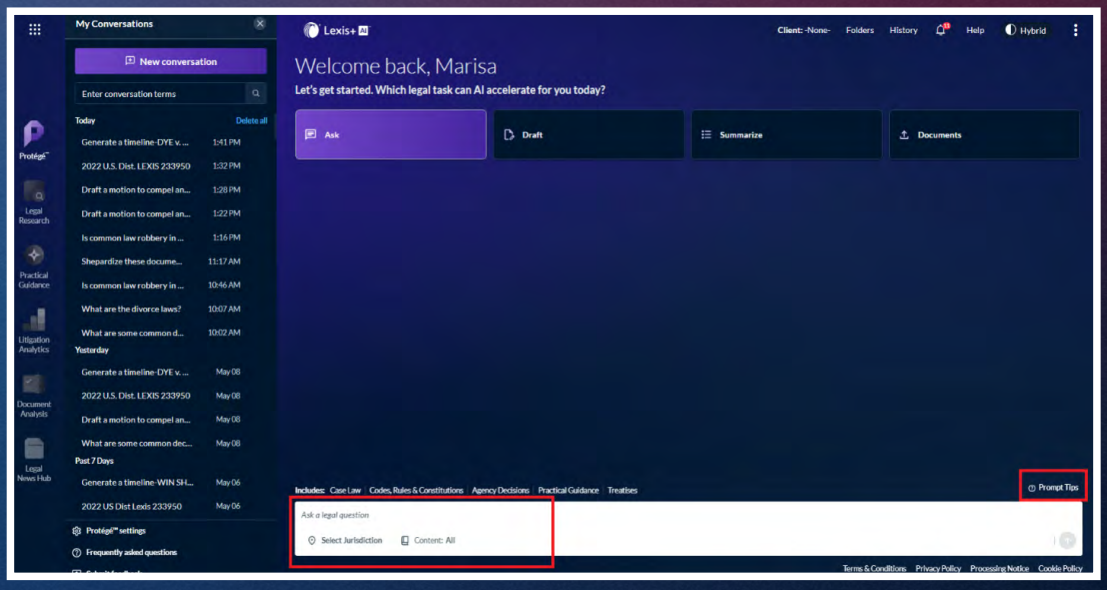
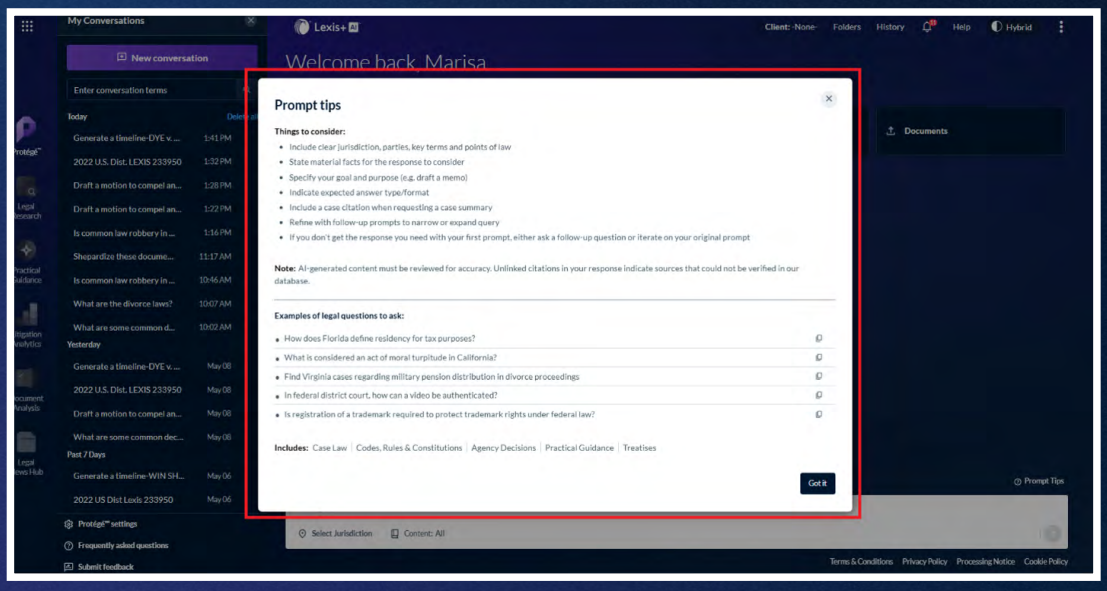
Protégé's New Streamlined Homepage

By: Marisa Beirne

The Protégé homepage has been streamlined and updated! Now, whether you are in Ask, Draft, or Summarize, the sample prompts have been relocated to "Prompt Tip" hyperlink. Simply click the "Prompt Tips" hyperlink and you will have helpful prompting tips as well as sample prompts to help you craft the most efficient prompts! See screenshots below for better detail.

Additionally, the All-Jurisdiction Pre-Search filter and the All-Content Pre-search filter have been relocated to right below the white search bar at the bottom of the homepage. Both updates were made to streamline the look and feel of the homepage. For any questions or AI training inquiries please do not hesitate to reach out to your US Courts Team!





ABSTENTION

Younger Abstention

Gristina v. Merchan

131 F.4th 82, 2025 U.S. App. LEXIS 5721 (2d Cir. Mar. 12, 2025)

The Second Circuit has held that a district court properly applied Younger abstention to refrain from exercising jurisdiction in an action challenging a state court's denial of a motion to unseal transcripts of a criminal trial, when an appeal of that denial was still pending in the state courts.

The plaintiff pleaded guilty in state court to one count of promoting prostitution in the third degree in September 2012. State-court Justice Merchan, one of the defendants in the present federal action, sentenced her to six months' imprisonment and five years' probation. She did not appeal her conviction.

Nearly 10 years after her guilty plea, the plaintiff filed a motion requesting that Justice Merchan unseal various transcripts from proceedings related to her criminal case. In the brief submitted with her motion, she argued that she had a right to view or copy the court documents or records, because viewing or copying the records would be necessary for taking legal action regarding her case or for receiving counsel about prospective legal matters.

On March 22, 2021, Justice Merchan issued an order addressing the plaintiff's various unsealing requests. The order noted that one of the requested transcripts was not sealed and another most likely should not have been sealed and would be reviewed in camera to confirm.

Regarding the three other documents, the order observed that the September 25, 2012, transcript had been transcribed by a court reporter who was no longer employed, and the supervising court reporter would determine whether it was sealed once it was retrieved from storage. The order further observed that the remaining two transcripts (from August 13 and August 16) related to proceedings in which the plaintiff was not directly involved. However, the court reporter had already provided copies of the sealed transcripts to the plaintiff due to a clerical error.

Regarding these remaining two transcripts, Justice Merchan concluded that the plaintiff had failed to meet her burden to demonstrate why they should be unsealed, and she had not provided justification for remaining in possession of the mistakenly released transcripts. He ordered that these two transcripts remain sealed and that the plaintiff return the copies that she had erroneously received.

On June 7, 2021, the plaintiff filed a petition for a writ of prohibition or mandamus with the state court's intermediate appellate court (the "Article 78 petition"), requesting a judgment requiring unsealing of the August 13, August 16, and September 25 transcripts. The petition named, among others, Justice Merchan and then-District Attorney Cyrus Vance as defendants, and it asserted federal due process and equal protection claims.

The appellate court denied and dismissed the petition without comment on October 14, 2021, and on January 11, 2022, it denied the plaintiff's motion for leave to appeal. On June 16, 2022, the state's highest court denied the plaintiff's motion for leave to appeal.

However, on October 20, 2021, before the state courts' denials of leave to appeal, the plaintiff filed this action in the U.S. District Court for the Southern District of New York.

The federal suit again named Justice Merchan and then-District Attorney Vance as defendants in their official capacities. Like the state-court petition, the federal suit claimed that Vance's opposition to and Justice Merchan's denial of the plaintiff's motion to unseal violated her federal due process and equal protection rights. The federal suit sought injunctive and declaratory relief ordering unsealing of transcripts. The defendants moved to dismiss the complaint for lack of subject-matter jurisdiction pursuant to *Younger* abstention, and alternatively the Rooker-Feldman doctrine, and for failure to state a claim due to judicial and prosecutorial immunity

The district court dismissed the plaintiff's complaint without prejudice on May 19, 2022, concluding that *Younger* abstention was warranted because the decision to seal or unseal transcripts, at issue in the state-court petition, involved a "quintessentially judicial function." Alternatively, the district court held that the Rooker-Feldman doctrine prohibited direct review of the state trial court's order denying unsealing because it was a final state-court judgment.

The plaintiff appealed.

***Younger* Applies If Further State-Court Remedies Are Available at Time of Filing Federal Complaint.** The Second Circuit began by noting that the *Younger* abstention doctrine embodies the "longstanding public policy against federal court interference with state court proceedings." Thus, although federal courts have an obligation to decide cases within the scope of federal jurisdiction, *Younger* spotlights classes of cases in which equitable relief should be withheld to avoid undue interference with state proceedings.

The court explained that the doctrine identifies three categories of such exceptional cases: (1) when there is a pending state criminal prosecution, (2) when there is a pending civil enforcement proceeding, or (3) when there is a pending civil proceeding uniquely in furtherance of the state courts' ability to perform their judicial functions. The Second Circuit noted that in an earlier case, it had observed that federal courts "should refrain from interfering with core state court civil administrative processes, powers, and functions that allow the state courts to adjudicate the matters before them and enforce their judgments" (quoting Cavanaugh v. Geballe, 28 F.4th 428, 434 (2d Cir. 2022)).

The issue in this case was whether the plaintiff's Article 78 petition fell within *Younger*'s third category. The Second Circuit noted that a civil proceeding is "pending" if further state appellate remedies are available at the time of filing the federal complaint. The court emphasized that the *Younger* abstention issue is "not continuously re-evaluated throughout the pendency of a proceeding," thus rejecting the dissent's argument that the proceedings are not pending for purposes of *Younger* if the state court proceedings become final at any point during the federal proceeding.

The Second Circuit further elaborated by underscoring one of *Younger*'s "fundamental" purposes: the need to avoid duplication of legal proceedings. The court noted that two outcomes would likely occur if abstention were to be evaluated at the time of the federal court's decision rather than the time of filing. Either courts that properly abstained under *Younger* would be consistently reversed because the state proceedings would likely have ended by the time the federal cases reach the courts of appeals, or district courts would "sit on their hands" to avoid reversal, waiting to issue decisions until state proceedings came to an end. "Both outcomes would result in a federal court proceeding looming over the state court proceeding."

Moreover, a rule calling for evaluation of the *Younger* abstention issue at the time of decision would create an incentive for plaintiffs to file duplicative proceedings in federal court before the end of their state-court

proceedings, hoping that the state-court proceedings would have ended by the time the district court or court of appeals ruled on the merits.

The court emphasized that the *Younger* doctrine is a rule of comity that is intended to avoid interfering with ongoing state proceedings. Adopting a different approach would allow the federal action to loom over the state-court proceeding and would not enhance the dignity of the state sovereign.

The Second Circuit held that the district court properly considered whether *Younger* abstention should apply. The plaintiff had filed her complaint in federal court before receiving a decision regarding her motion for leave to appeal the Article 78 denial. Thus, it was possible that her state-court petition could have been favorably resolved, obviating the need to address the questions raised before the district court.

Denial of Unsealing Request Was Uniquely in Furtherance of State Court's Ability to Perform Its Judicial Function. The Second Circuit found that the first two *Younger* categories plainly did not apply here.

As to the third category, the court concluded that both the underlying order sealing records from the plaintiff's criminal proceeding and the Article 78 petition to unseal those records were uniquely in furtherance of the state court's ability to perform its judicial function. State-court sealing orders are "critical to the court's administration of its cases, its recordkeeping, and its ability to maintain the integrity and, when necessary, the confidentiality of its proceedings."

The Second Circuit noted that the Supreme Court had not comprehensively defined what it means for a pending civil proceeding to be "uniquely in furtherance of" a state court's ability to perform its judicial function. But the court of appeals found decisions applying the third category to civil contempt orders and postjudgment bond and lien requirements to be instructive. The Supreme Court found these orders and requirements to be uniquely in furtherance of a state court's judicial function because they are "processes by which the State compels compliance with the judgments of its courts," and they implicate the state's interest in protecting the authority of the judicial system, so that its orders and judgments are not rendered nugatory [see Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14–15, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987)].

The court rejected the dissent's suggestion that *Younger*'s third category should be restricted to cases involving the coercive enforcement of the state's judicial orders. In the context of the second category, the Supreme Court rejected the notion that whether a pending civil enforcement proceeding is within *Younger*'s ambit should depend on an inquiry into whether the underlying suit was coercive rather than remedial, observing that such an inquiry was neither necessary nor helpful [see Sprint Communs., Inc. v. Jacobs, 571 U.S. 69, 80 n.6, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013)]. The Second Circuit reasoned that though this observation was in the context of the second category, "it undercuts the idea that coercion is necessary for *Younger* abstention under any category."

The Second Circuit also rejected the dissent's argument that *Younger's* third category should be restricted to instances involving actual enforcement of the state-court judgment, emphasizing that it encompasses both (1) challenges to processes by which the state compels compliance with judgments of its courts and (2) challenges to the way that state courts manage their own proceedings.

In the instant case, the court found that there was no doubt that the challenge to the order denying unsealing was fundamentally a challenge to the way the state courts managed their own proceedings. "Sealing court records is one of dozens of procedural decisions that are necessarily made by a state court in any given case to manage and

advance its own proceedings. . . . [T]he choice to seal or disclose sensitive records and proceedings is the very sort of decision that a court must make to efficiently conduct its business while balancing the right to access against the need to either protect witnesses or ensure the defendant's right to a fair trial" (internal quotation marks omitted).

Further, the Second Circuit reasoned that decisions to unseal implicate the interest that every state court has in exercising supervisory power over its own records and files. The authority to decide whether to seal records in criminal proceedings "is extremely important to the State, as it involves balancing the right of access to courts with, among other things, a defendant's Sixth Amendment right, the safety of alleged victims, and the protection of confidential law enforcement investigative procedures."

The court concluded that complying with the plaintiff's request to order the court to unseal its judicial records would require reaching into an ongoing state civil action to meddle with internal administrative management of the state court's own proceedings. Setting such a precedent would impede state-court proceedings by encouraging litigants that were unhappy with procedural orders to create duplicative legal proceedings in federal court. Thus, reversing the district court would undermine *Younger*'s underlying principle of respecting state functions and leaving state institutions free to perform their separate functions in their separate ways.

The Second Circuit held that the district court properly refrained from exercising jurisdiction because intervening at this stage would implicate "all of the evils at which *Younger* is directed."

Holding. The Second Circuit affirmed the district court's dismissal of the plaintiff's complaint on the basis of *Younger* abstention. Because it affirmed on the basis of *Younger* abstention alone, the court did not reach the plaintiff's remaining arguments regarding the district court's application of the Rooker-Feldman doctrine.

Dissent. Judge Menashi dissented, arguing that Younger abstention should not have applied because the case did not involve the limited and extraordinary circumstances required for a federal court to abstain under *Younger*. "The [state] courts will carry on just as well even if a federal court decides whether [the plaintiff] has a right to see the transcripts."

APPEALS

Notice of Appeal

Osborne v. Belton

131 F.4th 262, 2025 U.S. App. LEXIS 5522 (5th Cir. Mar. 10, 2025) (per curiam)

The Fifth Circuit holds that the designation of a postjudgment order in a notice of appeal ordinarily encompasses not only the underlying final judgment, but also any other postjudgment rulings that preceded the designated order.

Background. In this disability-discrimination and retaliation suit brought under the Fair Housing Act [42 U.S.C. § 3601 et seq.] and state law, the district court granted the plaintiffs' motion for summary judgment. After the district court denied the defendant's motion for relief under Civil Rule 60(b), he moved under Civil Rule 59(e) for reconsideration of the denial of the Rule 60(b) motion [see Fed. R. Civ. P. 59(e), 60(b)]. The defendant then appealed to the Fifth Circuit.

Scope of Appeal. As a threshold matter, the Fifth Circuit had to determine the appropriate scope of appellate review. In particular, the court considered which of the district-court's decisions—the grant of summary judgment, the order denying the defendant's Rule 60(b) motion, and the order denying the defendant's Rule 59(e) motion—were within the appellate court's jurisdiction to review. The court of appeals concluded that it could properly review only the order denying the defendant's Rule 60(b) motion.

Construing Notice of Appeal. The court of appeals first considered whether the three district-court decisions were within the scope of the defendant's notice of appeal. The appellate panel concluded that all of them were.

Appellate Rule 3(c)(5), which was added in 2021, states that "[i]n a civil case, a notice of appeal encompasses the final judgment . . . if the notice designates: . . . (B) an order described in Rule 4(a)(4)(A)" [Fed. R. App. P. 3(c)(5)]. Appellate Rule 4(a)(4)(A) refers to postjudgment orders in the district court, including orders under Civil Rules 59 and 60 [Fed. R. App. P. 4(a)(4)(A)]. Applying these provisions to the present case, the appellate panel easily determined that by expressly designating the order denying the Rule 59(e) motion to reconsider the grant of summary judgment, the defendant's notice of appeal also encompassed the underlying summary judgment.

The appellate panel next considered whether the notice of appeal should also be construed to encompass the district court's order denying the defendant's Rule 60(b) motion, which was issued after the grant of summary judgment and before the denial of the Rule 59(e) motion. The court of appeals concluded that any order disposing of a postjudgment motion prior to the specific postjudgment order designated in the notice of appeal should also be construed as included in the notice of appeal.

The court explained that Appellate Rule 3(c)(5) was added to "reduce the unintended loss of appellate rights" caused by courts that restricted their review of postjudgment orders to those specifically listed in notices of appeal [see Fed. R. App. P. 3, Advisory Committee Note of 2021]. The court described the provision as embodying a "mirror image" of the merger rule, under which an appeal from a final judgment permits review of all rulings that led up to the judgment. While the general merger rule looks backward from the final judgment, encompassing all interlocutory orders, Appellate Rule 3(c)(5) looks forward from the final judgment, encompassing all postjudgment orders up to and including the order designated in the notice of appeal.

The court also noted that under Appellate Rule 3(c)(6), an appellant may designate part of a judgment or appealable order "by expressly stating that the notice of appeal is so limited," and "[w]ithout such an express statement, specific designations do not limit the scope of the notice of appeal" [Fed. R. App. P. 3(a)(6)]. The court pointed out that this intimates that the default rule is that related orders are within the scope of the notice of appeal.

The court observed that reading the notice of appeal as encompassing any postjudgment order that preceded the order expressly designated in the notice was consistent with its general policy of liberal construction of notices of appeal [see R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist., 703 F.3d 801, 808 (5th Cir. 2012) (court will treat notice of appeal relatively liberally when intent to appeal undesignated or mislabeled ruling is apparent and there is no prejudice to adverse party)].

Accordingly, the court of appeals held that if a notice of appeal designates a postjudgment order, any orders disposing of postjudgment motions between the time of the underlying judgment and the designated postjudgment order should be construed as being included in the notice of appeal. This meant that, in this case, the defendant's notice of appeal included the district court's order denying his Rule 60(b) motion.

This conclusion about what district-court decisions were encompassed by the notice of appeal did not, however, resolve the question of the appellate court's jurisdiction. The court also had to consider whether the notice was timely as to each of the three decisions, as well as whether each decision was final for purposes of appealability.

Timeliness of Appeal. The Fifth Circuit panel explained that a party seeking review of a district court's final judgment or order has multiple avenues by which to seek relief, each with its own time constraints. One option is to appeal to the court of appeals by filing a timely notice of appeal (usually within 30 days after entry of the judgment or order) [see Fed. R. App. P. 4(a)(1)(A)]. Alternatively, a party can move for one of several limited forms of review performed by the district court itself. For example, the party can move under Civil Rule 59(e) to alter or amend the judgment within 28 days of entry of the judgment [see Fed. R. Civ. P. 59(e)]. Another district-court option is to move under Civil Rule 60(b) for relief from the judgment or order, which must be done within a "reasonable time," usually no more than a year after entry of the judgment or order [see Fed. R. Civ. P. 60(c)(1)]. Importantly, if a party files one of these two motions in the district court "within the time allowed by those rules," the time to file an appeal runs for all parties "from the entry of the order disposing of the last such remaining motion" [Fed. R. App. P. 4(a)(4)(A)].

In a civil action, a timely notice of appeal is a jurisdictional requirement, meaning that the court of appeals cannot review a judgment or order absent the timely filing of a notice of appeal [see Bowles v. Russell, 551 U.S. 205, 214, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007); United States v. McDaniels, 907 F.3d 366, 370 (5th Cir. 2018)].

In this case, the Fifth Circuit panel found that the notice of appeal was untimely as to the district court's grant of summary judgment. The defendant had not filed a notice of appeal within 30 days after the entry of summary judgment. And although the defendant filed a Rule 60(b) motion in the district court within the time allowed, the court of appeals concluded that Appellate Rule 4(a)(4)(A)'s exception to the general 30-day rule for filing a notice of appeal did not apply. To reset the notice of appeal deadline via a Rule 60(b) motion, the motion must be filed "within the time allowed for filing a motion under Rule 59" [Fed. R. App. P. 4(a)(4)(A)(vi)], that is, 28 days after entry of the judgment [see Fed. R. Civ. P. 59(e)]. In this case, the defendant filed his Rule 60(b) motion 355 days after entry of the judgment, too late to reset the start of the time for appeal. The court of appeals therefore did not have jurisdiction to review the district court's underlying grant of summary judgment.

The Fifth Circuit panel did conclude, however, that the notice of appeal was timely as to the district court's order denying the Rule 60(b) motion. Because the defendant moved under Rule 59(e) for reconsideration of the denial of his Rule 60(b) motion within the 28 days allowed for a Rule 59(e) motion, the 30-day clock for appealing the district court's order denying the Rule 60(b) motion was reset and began to run anew when the district court ruled on the Rule 59(e) motion. Because the defendant filed his notice of appeal within 30 days of the district court's ruling on his Rule 59(e) motion, his notice of appeal of the order denying his Rule 60(b) motion was therefore timely.

The court of appeals also concluded that the notice of appeal was timely as to the order denying the Rule 59(e) motion, because it was filed within 30 days of that order's entry [see Fed. R. App. P. 4(a)(1)(A)].

In sum, the Fifth Circuit panel concluded that the notice of appeal was untimely as to the grant of summary judgment, so there was no appellate jurisdiction to review it. By contrast, the notice of appeal was timely as to both the order denying the Rule 60(b) motion and the order denying the Rule 59(e) motion. But in order to exercise appellate jurisdiction over those orders, the appellate panel had to ascertain whether they met the finality requirement for appellate review.

Finality. The courts of appeals "have jurisdiction of appeals from all final decisions of the district courts of the United States" [28 U.S.C. § 1291]. The Fifth Circuit panel acknowledged that an order denying a Rule 60(b) motion does qualify as a final decision for this purpose [see Taylor v. Johnson, 257 F.3d 470, 474–475 (5th Cir. 2001)].

An order denying a Rule 59(e) motion, however, is not treated the same as a Rule 60(b) order. When a party appeals an order denying a Rule 59(e) motion, the ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing court takes up only one judgment [see Banister v. Davis, 590 U.S. 504, 509, 140 S. Ct. 1698, 207 L. Ed. 2d 58 (2020) ("The court thus addresses any attack on the Rule 59(e) ruling as part of its review of the underlying decision.")].

The appellate panel concluded that in this case, it was appropriate to review only the order denying the defendant's Rule 60(b) motion. The Rule 60(b) motion was a "final decision" of the district court. But because the underlying judgment attacked by the Rule 59(e) motion was the district court's order denying the Rule 60(b) motion, the order deciding the Rule 59(e) motion merged with it and was not separately reviewable.

Denial of Rule 60(b) Relief Was Not Abuse of Discretion. Turning to the merits of the appeal, the Fifth Circuit held that the district court had not abused its discretion in denying Rule 60(b) relief.

The court of appeals explained that under Rule 60(b), a district court may relieve a party from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) that the judgment is void; (5) that the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief [Fed. R. Civ. P. 60(b)]. The burden of establishing at least one of the grounds for Rule 60(b) relief is on the movant [see Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167, 173 (5th Cir. 1990), abrogated on other grounds by Little v. Liquid Air Corp., 37 F.3d 1069 (5th Cir. 1994) (en banc)].

Reviewing the record below, the court of appeals concluded that the defendant had not established any of the grounds for Rule 60(b) relief.

Disposition. Because the district court had not abused its discretion in denying Rule 60(b) relief, the Fifth Circuit affirmed the district court's order.

SUMMARY JUDGMENT

Verified Pleading as Affidavit

Gowen v. Winfield

130 F.4th 162, 2025 U.S. App. LEXIS 5030 (4th Cir. Mar. 4, 2025)

The Fourth Circuit holds that a verified complaint must be treated as the equivalent of an opposing affidavit for summary judgment purposes when it is based on personal knowledge—even if it is uncorroborated, self-serving, and filed by a pro se prisoner.

Background. Jason Wayne Gowen, a pretrial detainee at the Lynchburg Adult Detention Center in Lynchburg, Virginia, was placed in solitary confinement for 125 days after raising grievances about the condition in cells and encouraging other inmates to do the same. Gowen, acting pro se, filed a § 1983 claim in the U.S. District Court for the Western District of Virginia against the correctional officers. Gowen alleged that the officers' retaliatory actions in response to his grievance violated his First Amendment rights, and that they failed to provide him with due process when they placed him in solitary confinement, violating his Fourteenth Amendment rights.

The officers moved to dismiss Gowen's claims. The district court dismissed Gowen's First Amendment retaliation claim after finding that Gowen failed to plead sufficient facts to show that his protected conduct was a substantial motivating factor for his placement in solitary confinement. And after limited discovery, the officers moved for summary judgment on Gowen's Fourteenth Amendment claim, alleging that Gowen failed to exhaust his administrative remedies; that the officers did not violate Gowen's substantive or procedural due process rights; and that even if they did violate Gowen's rights, the officers' qualified immunity precluded the suit.

Gowen responded with a 22-page handwritten memorandum addressing each of the arguments advanced by the officers except for the exhaustion argument, which he had addressed in his verified complaint and which he incorporated by reference into his memorandum in opposition. In his verified complaint, Gowen made sworn assertions regarding his exhaustion of available administrative remedies, including that he sent multiple informal requests and grievances regarding his placement in solitary confinement and that the officers told him that he could not appeal that placement decision.

The district court granted the officers' motion for summary judgment on Gowen's Fourteenth Amendment claim. The court concluded that because Gowen did not address the officers' exhaustion argument in his opposition memorandum, he effectively conceded that he had not exhausted his administrative remedies. Despite recognizing that Gowen's verified complaint directly disputed the officers' failure-to-exhaust claim, it discounted the sworn statements in his verified complaint as "unsubstantiated and conclusory assertions."

Gowen appealed and in his brief requested review of both the dismissal of his First Amendment claim and the summary judgment on his Fourteenth Amendment claim. The Fourth Circuit determined that Gowen had pleaded the necessary elements of a claim for First Amendment retaliation and reversed the district court's dismissal of that claim and remanded for further proceedings.

Exhaustion of Administrative Remedies. Regarding Gowen's Fourteenth Amendment claim, the Fourth Circuit started its analysis noting that under the Prison Litigation Reform Act, an inmate's lawsuit may be defeated for failing to exhaust all available administrative remedies [see 42 U.S.C. § 1997e(a)]. However, before it could reach the exhaustion issue, the court said it had to determine if Gowen had forfeited any argument that he had exhausted his administrative remedies.

Affidavits and Verified Complaints May Not Be Cast Aside at Summary Judgment. Citing circuit precedent, the Fourth Circuit declared that if a verified complaint is based on personal knowledge it must be treated as the equivalent of an opposing affidavit for summary judgment purposes. The court explained that a verified complaint based on personal knowledge is akin to an opposing affidavit for summary judgment purposes, and as such it may not be cast aside at summary judgment—even if it is uncorroborated, self-serving, or filed by a pro se prisoner. The court noted that at summary judgment, the court must not weigh evidence or draw inferences in order to resolve factual disputes.

Because Gowen preemptively addressed the issue of exhaustion in his verified complaint, the court found that he did not have to do it again by submitting an affidavit in response to the officers' summary judgment motion. Thus, the court concluded that Gowen had not forfeited his arguments relating to exhaustion of his available administrative remedies.

Finally, citing sworn statements presenting facts that Gowen exhausted all available administrative remedies to contest his solitary confinement, the court concluded that Gowen submitted sufficient evidence to preclude summary judgment in favor of the officers on his Fourteenth Amendment claim. Therefore, the district court's conclusion that Gowen failed to respond to the officers' exhaustion argument was incorrect.

Accordingly, the Fourth Circuit vacated the summary judgment order and remanded the case for further proceedings on Gowen's Fourteenth Amendment claim.