Raiders of the (no longer) Lost ARK (Administrative Regulations of Kentucky)

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State regulatory law is a somewhat arcane area, even though it applies to everything from whether you can get your client unemployment insurance when she is laid off from Ford Motors, to how many fish you can catch with a valid Kentucky fishing license, to the cleanliness of the tattoo parlor where your brother got that Cocaine Bear logo inked on his bicep. Kentucky regulations can set your clients’ rights to certain benefits, allow them to engage in specific business activities and protect them from harmful actions by the professionals they use.

While state regulations are always changing, once a right vests under a piece of regulatory language, that right often remains even when the regulation changes. Thus, for that issue, the older regulation still is valid—and you, as a lawyer, need to find it.

A typical situation arises in the context of state pensions, especially teachers’ pensions, which could be governed by both pension and education regulations. For example, say a teacher retires who had two separate periods as a public teacher, separated by a time as a principal. Legal precedents may dictate that the pension authority should calculate payouts based on the regulations in place at the time of those events years ago. Similar situations could arise in state tax disputes, environmental law and construction law.

Finding old regulations used to require visiting one of the very few law libraries, like the University of Louisville, which had taken the effort to collect and preserve all of them. However, recently the Kentucky Legislative Research Commission digitized the entire archive of the Administrative Register of Kentucky, and that could allow lawyers to research such issues from their desktops.

To lawyers more used to the Kentucky Administrative Regulations (KAR), Kentucky’s regulatory code, the Register is known moody as an updating tool (if it is known at all). However, when properly used, the new digital Administrative Register archive gives Kentucky lawyers a free tool to trace the history of any state regulation issued since 1975. Well, at least if they can figure out how to do so. It isn’t the most intuitive thing to do.

I’m hoping I can break it down and make it a little easier to figure out.

The Basic Tools of Kentucky Administrative Law

Let’s start by reviewing Kentucky’s two major administrative publications:
The Kentucky Administrative Regulations (KAR) is the code of all regulations in force, roughly equivalent to the Code of Federal Regulations (CFR). It is organized by the name of the agency that creates and enforces the regulations used to oversee an industry or activity. This multivolume code used to be printed annually, but since 2019 it has only been available online on the Kentucky legislature’s site at https://legislature.ky.gov/LAR.

The other resource is the Administrative Register of Kentucky, which is a periodical like People Magazine, except without Kardashians. A new issue is released every month and contains temporary, proposed and permanent and final regulations, along with news of withdrawn regulations and hearings. It is analogous to the Federal Register. It is available online at: https://legislature.ky.gov/LAR/Pages/Registers.aspx. It also can still be ordered as a monthly print publication; e-mail Regina Long at Regina.Long@LRC.KY.GOV, or call (502) 564-8100 for details.

Researching the Regulatory History of an Active Regulation

Suppose you are researching a racing regulation. (If assuming you have the KAR citation. See the sidebar for tips on searching for current regulations.) Once you have the regulation in front of you, read through to the bottom to find the block of regulatory history labeled “History.” You can use it to trace any regulation back to its origin.

It usually looks something like this:

Kentucky Horse Racing Commission 810 KAR 8:010 - Medication; testing procedures; prohibited practices. HISTORY: (45 Ky.R. 1995; 3165; eff. 5-31-2019; 46 Ky.R. 2542; 47 Ky.R. 320; eff. 8-25-2020; 47 Ky.R. 2512; 48 Ky.R. 29; eff. 10-5-2021; 48 Ky.R. 3045; 49 Ky.R. 564; eff. 12-6-2022.)

Interpreting the History note is straightforward once you understand the conventions. Each revision is separated by a semi-colon. Second, “Ky.R.” stands for the “Administrative Register of Kentucky.” Yes, you are right. That is a weird abbreviation but don’t obsess over it because life is too short and Kentucky law is going to throw something weirder at you any moment.

Finally, some (but not all) of the citations have effective dates. Let’s break down the first bit of the History note above:

45 Ky.R. 1995; 3165; eff. 5-31-2019,

If you go to volume 45 of the Administrative Register of Kentucky and find page 1995, you will get the first version of the KHRC’s drug testing regulations. On page 3165 of that same volume, the regulation has been amended in its final version, which the note says went into effect on May 31, 2019.

Occasionally a regulation will be old enough that it has a citation to a type of regulation prior to the establishment of the current administrative system in 1975. Feel free to call your local librarian if you have one of these citations and we’ll try to help you puzzle it out.

So, in my example, you have eight revisions to look up across six volumes of the Kentucky Administrative Register, all available on the LRC website. Sometimes you can get by just by looking up the oldest version of the language you are most concerned about and compare it with the newest version to see if it has changed.

If you must pull all eight citations the process might be tiresome—but at least you don’t have to find parking at UofL.

Free Tool for a Difficult Task

As you see, researching the “historical history” of regulations is a little complicated, but you now have the tools to do so at your fingertips. For lawyers regularly researching state pensions or trying to clear industrial properties for development, this will be the best tool for the task. It might be a little tedious to use, but nowhere near as painful as what your brother will go through getting that stupid bear tattoo removed when he is hired as a conservation officer by the Kentucky Department of Fish & Wildlife.

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Finding current regulations in the KAR

If you know the regulatory agency or have the citation to the KAR, go to title-outline at https://apps.legislature.ky.gov/LAR/titles/. Scan down to the title, chapter and regulation from there. (For example, the citation 810 KAR 8:020 translates to title 810, chapter 8 and regulation 020.)

If you don’t have the citation and are looking for the regulation, there are two ways of searching (at least theoretically). You can use the search engine — which is very crude — or, if you know the agency, you can click down through the title-outline linked to above. I prefer the latter because this method shows me how the regulations are organized, and I can see the regulatory scheme as a whole.

Nonetheless, if you use the search engine, be sure that it is set to the Administrative Regulations tab: https://apps.legislature.ky.gov/lrcsearch#tabs-2.