

TEXAS

PRETRIAL

PRACTICE

Volume 1

Hon. Scott Brister (Ret.)
Dan S. Boyd, Esq.

James Publishing



Contact us at **(800) 440-4780** or www.jamespublishing.com

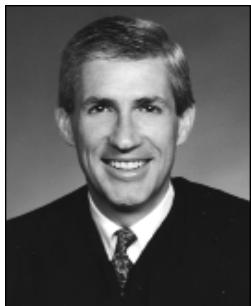
Copyright © 2013
James Publishing, Inc.
ISBN: 1-58012-062-8

All rights reserved.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, seek the services of a competent professional.

Rev. 1, 12/01
Rev. 2, 11/02
Rev. 3, 11/03
Rev. 4, 12/04
Rev. 5, 12/05
Rev. 6, 12/06
Rev. 7, 12/07
Rev. 8, 3/09
Rev. 9, 2/11
Rev. 10, 4/13

ABOUT THE AUTHORS



Justice Scott Brister (Ret.) is an honors graduate of both Duke University and the Harvard Law School. After graduation, he served as briefing attorney for Chief Justice Joe Greenhill of the Texas Supreme Court, and then as an associate with the law firm of Andrews Kurth, LLP. In 1989, he was appointed by Gov. Bill Clements as judge of the 234th District Court in Harris County, and was re-elected to that position three times over the next eleven years. He was selected as Administrative Judge of the Harris County Civil District Courts in 1998 and 1999. In 2000, Judge Brister was elected as an Associate Justice of the First Court of Appeals, and eight months later was appointed by Gov. Rick Perry as Chief Justice of the Fourteenth Court of Appeals.

In 2003, Justice Brister was promoted again, returning to the Texas Supreme Court as a Justice. He retired from the Texas Supreme Court in 2009 to return to private practice as the head of the appellate section at Andrews Kurth, LLP. In addition to his previous service as a briefing attorney of that Court, he has served on the Supreme Court's Rules Advisory Committee, as well as on task forces appointed to study sanctions and jury reforms. He is Board Certified in Civil Trial Law and Personal Injury Law. He is married to Julie Brister, and has four daughters.



Dan S. Boyd founded the Boyd Law Firm, P.C., in 2001. Before founding his small firm dedicated to litigation and arbitration, Mr. Boyd spent more than twenty years as a senior partner in three large national law firms. For two of those (Baker & McKenzie and Johnson & Gibbs) he served as national chair of the firm's Litigation Practice Group.

Mr. Boyd is also a former Chairman of the Business Litigation Section of the Dallas Bar Association. Mr. Boyd began his career doing trial work for Vinson & Elkins in Houston. During part of that time (1981), he served as Editor of the Houston Lawyer.

Mr. Boyd was an Adjunct Professor of Law at S.M.U. Law School from 1984 to 1987, where he taught Trial and Appellate Procedure. He has been board certified in Civil Trial Law since 1986, Civil Appellate Law since 1988, and has successfully tried dozens of jury trials in complex litigation. Mr. Boyd has spoken frequently at seminars and published numerous papers and articles on civil litigation and legal ethics. His writings have been cited for authority by several appellate courts, including the Supreme Court of Texas.

Since 1988, Mr. Boyd has also served on the Board of Directors and the Executive Committee of the Franklin & Eleanor Roosevelt Institute, Hyde Park, New York.

EDITORIAL ADVISORY BOARD

Thomas J. Brandt, Esq.
Sheinfeld, Maley & Kay
Houston, TX

William J. Chriss, Esq.
Corpus Christi, TX

David Cohen, Esq.
Austin, TX

Curtis L. Cukjati, Esq.
Cacheaux, Cavazos, Newton, Martin & Cukjati, L.L.P.
San Antonio, TX

E. Conry Davidson, Esq.
Cacheaux, Cavazos, Newton, Martin & Cukjati, L.L.P.
San Antonio, TX

Sylvia M. Demarest, Esq.
Demarest, Smith, Jones, Giunta & Moore, P.L.L.C.
Dallas, TX

Robert B. Gilbreath, Esq.
Jenkens & Gilchrist
Dallas, TX

Mark K. Glasser, Esq.
King & Spalding, L.L.P.
Houston, TX

Kent C. Krause, Esq.
Dallas, TX

Nick C. Nichols, Esq.
Abraham, Watkins, Nichols & Friend
Houston, TX

EDITORIAL STAFF

Managing Editor
Donna M. Cole, Esq.

Contributing Editors
Ward Miller, Esq.
Neil Stadtmore, Esq.

Production
Taylor Hudson
Amanda Winkler

TABLE OF CONTENTS

TABLE OF CONTENTS

Chapter 1	Taking the Case
Chapter 2	Presuit Activities
Chapter 3	Statutes of Limitations
Chapters 4-5	Reserved
Chapter 6	Parties
Chapter 7	Subject Matter Jurisdiction of Texas Trial Courts
Chapter 8	Personal Jurisdiction
Chapter 9	Forum Selection: Venue, Forum Non Conveniens, and Removal
Chapter 10	Citation and Service of Process
Chapters 11-13	Reserved
Chapter 14	Pleadings
Chapter 15	Attacking the Pleadings
Chapter 16	Motion Practice
Chapter 17	Temporary Restraining Orders and Temporary Injunctions
Chapter 18	Interlocutory Appeals and Mandamus Proceedings
Chapter 19	Pretrial Extraordinary Remedies
Chapters 20-23	Reserved
Chapter 24	All Discovery
Chapter 25	Privileges
Chapter 26	Requests for Disclosure
Chapter 27	Inspection of Documents and Other Things
Chapter 28	Depositions
Chapter 29	Physical and Mental Examinations
Chapter 30	Interrogatories
Chapter 31	Requests for Admission
Chapter 32	Discovery Disputes
Chapters 33-35	Reserved
Chapter 36	Summary Judgment
Chapter 37	Default Judgment and Dismissals
Chapter 38	Settlement and Alternative Dispute Resolution (ADR)
Tables	
Index	

EXPANDED TABLE OF CONTENTS

CHAPTER 1 TAKING THE CASE

I. Initial Client Contact

II. Case Assessment and Valuation

A. Weigh Costs and Benefits

B. Evaluate Client

C. Consider Ethical Factors (State Bar Rules)

1. State Bar Rules Govern
2. Is There a Conflict of Interest?
3. Corporate Affiliate Conflicts

D. Evaluate Fee Sources

III. After Assessment and Valuation

A. Initial Steps

B. Prepare for Case Conference

C. Consider Fee and Cost Arrangements

1. Preliminary Considerations
2. Factors in Selecting Fee Arrangement
3. Time-Based (Hourly-Rate) Billing
4. Contingency Fees
5. Retainers
6. Other Fee Arrangements
7. Costs and Expenses

D. Prepare to Formalize Attorney-Client Relationship

1. Preliminary Considerations
2. Ethical (State Bar Rules) Guidelines and Requirements
3. Draft Proposed Engagement Contract
 - a. In All Cases*
 - b. In Hourly-Rate Billing Arrangements*
 - c. In Contingency-Fee Arrangements*
 - d. In Other Arrangements*

IV. Case Conference

A. Overview

B. Information to Obtain

C. Information to Convey

V. Taking Over From Prior Counsel

TABLE OF CONTENTS

CHAPTER 2 PRESUIT ACTIVITIES

I. Investigation

A. Preliminary Considerations

B. Methods and Sources for Investigation

1. Preliminary Considerations
2. Witnesses
3. Documents
4. Experts
5. Other Sources of Information

C. Protecting the Results of Your Investigation

II. Litigation Planning

A. Pre-Filing Resolution

1. Negotiation
2. Alternative Dispute Resolution

B. Plaintiff's Considerations

1. Legal Research
2. Parties
3. Causes of Action
4. When to File
5. Where to File
 - a. Personal Jurisdiction
 - b. State or Federal Court?
 - c. State Subject Matter Jurisdiction

C. Defendant's Considerations

III. Presuit Communications, Notices, and Demands

A. Communicating With the Opposition

B. Presuit Notice Requirements

C. Other Presuit Requirements

D. Insurance Coverage Issues

E. Fee Issues

CHAPTER 3 STATUTES OF LIMITATIONS

I. Overview

A. General Points

B. Sources of Law

C. Notice of Claim Requirements

D. Laches

II. When Limitations Period Begins: Accrual

A. General Points

B. Continuing Torts and Contracts

C. Written Acknowledgment

III. When Limitations Period Expires: Filing

A. General Points

B. Effect of Errors in Parties

C. Relation-Back Rule

1. Counterclaims and Cross-claims
2. Amended Pleadings
3. Added, Omitted and Substituted Parties

D. Effect of Service After Limitations Deadline

IV. Determining Applicable Limitations Period

A. Contract Actions

1. Contractual Limitations Agreements
2. Specific Contract Claims
3. Real Estate Contracts

B. Torts

1. Intentional Torts
 - a. *Injury to Persons*
 - b. *Injury to Property*
2. Negligence
3. Premises and Product Liability
4. Business and Commercial Claims
5. Defamation and Malicious Prosecution
6. Fraud and Related Claims
7. Claims Governed by Federal Limitations

C. Health Care Negligence Claims (Medical Malpractice)

1. Two Years From Accrual
2. Time of Accrual
3. Extension by Notice of Claim
4. Discovery Rule and Fraudulent Concealment
5. Other Tolling Provisions

D. Other Professional Negligence Claims

1. Attorneys (Legal Malpractice)
2. Accountants and Auditors
3. Engineers

E. Negotiable Instruments

F. Adverse Possession

G. Family Code Actions

TABLE OF CONTENTS

H. Claims by or Against Governmental Entities

I. Derivative Claims

J. Other Actions

VI. Fraudulent Concealment and the Discovery Rule

A. Fraud and Fraudulent Concealment

1. Application and Effect
2. What Constitutes Fraudulent Concealment
3. Duty to Disclose

B. Discovery Rule

1. Application and Effect
2. Qualifying Injuries
3. End of Suspension
4. Application to Specific Causes of Action

VI. Tolling and Extension Rules

A. General Points

B. Defendant's Absence From State

C. Minority and Unsoundness of Mind

1. General Points
2. Minority
3. Unsound Mind

D. Death

E. Filing in Court Without Jurisdiction

F. Extension by Agreement

G. Other Tolling Provisions

H. Tolls in Federal Statutes

VII. Statutes of Repose

A. General Points

B. Architects, Engineers, and Designers

C. Builders and Repairers

D. Surveyors

E. Manufacturers and Sellers of Products

F. Others

VIII. Constitutional Issues

A. Open Courts

B. Retroactive Application of Amendments

[CHAPTERS 4 AND 5 RESERVED]

CHAPTER 6 PARTIES

I. General Concepts

II. Capacity to Sue or Be Sued

A. Preliminary Considerations

B. Minors and the Mentally Incompetent

1. Nature of Legal Disability
2. Representatives for Persons Under Legal Disabilities
3. Appointment of Guardian Ad Litem
4. Discharge of Guardian Ad Litem
5. Duties of Guardian Ad Litem
6. Liability of Guardian Ad Litem
7. Fees
8. Settlement Hearing
9. Distribution of Proceeds for Minors and Incapacitated Persons
10. Minor's Negligence
11. Testimony by Minor or Incapacitated Person

C. Other Individuals

1. Indigents
2. Inmates
3. Pro Se Parties

D. Corporations

1. Basic Legal Provisions
2. Corporation in default on Franchise Taxes
3. Dissolved Corporation
4. Sold or Merged Corporation
5. Foreign Corporation Without Authorization

E. Partners and Partnerships

F. Limited Partnerships

G. Estates and Trusts

H. Other Entities

I. Misnamed Parties

J. Challenging Capacity

III. Standing to Sue

A. General Concepts

B. Actions in Which Standing May Be an Issue

C. Challenging Standing

IV. Substitution

A. Assumed Names

B. Death

C. Other Substitutions

V. Joinder

A. Adding Parties to a Lawsuit

1. Methods of Adding Parties
2. Alternatives to Joinder
3. Advantages of Joining Parties
4. Disadvantages of Joining Parties

B. Permissive Joinder

1. Requirements for Permissive Joinder
2. Proper Permissive Parties

C. Necessary and Indispensable Parties

1. Basic Concepts
2. Necessary Parties: TRCP 39(a)
3. Parties Made Necessary by Statute
4. Indispensable Parties: TRCP 39(b)

D. Impleader

1. Nature and Purpose
2. Responses to Impleader
3. Improper Impleader Parties

E. Mass Torts

F. Procedures

1. Methods of Joining Parties
2. When Leave of Court Required
3. Time for Joinder
4. Venue

G. Objecting to Absence of Parties

H. Objecting to Joinder: Motions to Strike or Sever

1. Motion to Strike
2. Motion to Sever
 - a. Purpose and Effect
 - b. Grounds
 - c. Objections to Severance
 - d. Procedure
 - e. Appeals

VI. Interpleader

A. Preliminary Considerations

B. Requirements

C. Pleading and Proving Interpleader

1. Filing and Pleadings
2. Response by Rival Claimants
3. Discharge of Stakeholder
4. Attorney Fees

D. Proceedings After Discharge

E. Federal Interpleader Actions

VII. Intervention

A. Nature and Purposes

B. Grounds

C. Procedure

D. Venue

1. General Rules
2. When Intervening Plaintiff Lacks Proper Venue
3. Hearing; Appeal

E. Challenging Intervention

F. Hearing

G. Appeal

H. Post-Intervention Developments

VIII. Class Actions

A. Nature and Purpose

B. Advantages and Disadvantages of Class Actions

C. Requirements for Class Actions

1. In General
2. Prerequisites for All Class Actions
3. Types of Class Actions Maintainable
4. Predominance and Superiority [TRCP 42(b)(3)]
5. Is a Class Action Superior to Other Available Methods? [TRCP 42(b)(4)]

D. Filing and Pleading Class Actions

E. Class Certification

1. Pre-Certification Proceedings
2. The Certification Motion
3. The Certification Hearing
4. The Certification Order
5. Notice to Class
6. Interlocutory Appeal
7. Post-Certification Developments
8. Trial

F. Final Disposition

1. Settlement
2. Final Judgment

TABLE OF CONTENTS

G Derivative Actions

1. In General
2. Pleading Requirements
3. Procedure

CHAPTER 7 SUBJECT MATTER JURISDICTION OF TEXAS TRIAL COURTS

I. Overview

A. General Points

1. Scope of Chapter
2. Related Concepts
3. Raising Lack of Jurisdiction

B. Strategic Considerations

II. District Courts

III. County-Level Courts

A. Constitutional County Courts

B. Statutory County Courts

IV. Justice Courts and Municipal Courts

A. Justice Courts

B. Small Claims Courts

C. Municipal Courts

V. Probate Jurisdiction

VI. Amount in Controversy

A. General Points

B. Aggregation of Claims

C. Pleading Amendments

D. Inclusions and Exclusions

E. Judgment

V. Substitute Judges

A. Active Judges

B. Assigned Judges

CHAPTER 8 PERSONAL JURISDICTION

I. General Points

- A. Overview*
- B. Related Concepts*

II. Federal Due-Process Limits

- A. General Points*
- B. Minimum Contacts*
 - 1. General Points
 - 2. Purposeful Availment
 - 3. General and Specific Jurisdiction
- C. Fair Play and Substantial Justice*
 - 1. General Points
 - 2. Burden Analysis
 - 3. Interest of Texas
 - 4. Convenience and Efficiency
 - 5. Social Policy

III. Jurisdiction Based on Presence

- A. General Points*
- B. Individuals*
 - 1. Texas Residents
 - 2. Nonresident in Texas When Served
 - 3. Nonresident Doing Business in Texas
- C. Corporations*

IV. Jurisdiction Based on Consent

- A. Contractual Consent*
- B. Waiver by Appearance*
 - 1. General Points
 - 2. What Constitutes a General Appearance
 - 3. Filing Pleadings and Motions
 - 4. Participating in Discovery
 - 5. Seeking Ruling From Court
 - 6. Other Actions Not Constituting Waiver
- C. Registered Agents and Authorization to Do Business*

V. Long-Arm Jurisdiction Over Nonresidents

- A. General Points*
- B. Doing Business in Texas*

TABLE OF CONTENTS

C. Contracts

1. General Points
2. Specific Texas Contacts
3. Specific Contracts and Clauses

D. Professional Services

1. What Subjects Professional to Jurisdiction
2. What Subjects Client to Jurisdiction

E. Torts

1. General Points
2. Specific Torts

F. Stream of Commerce Doctrine

G. Real and Personal Property

H. Agents, Affiliates, Alter Egos, and Parties in Privity

I. Family Law Cases

VI. In Rem and Quasi in Rem Jurisdiction

VII. Pleading and Challenging Jurisdiction

A. Plaintiff's Petition

B. Defendant's Special Appearance

C. Response to Special Appearance

D. Discovery

E. Hearing

1. Timing and Type
2. Burden of Proof
3. Merits of Suit
4. Forms of Evidence

F. Disposition

G. Appeal

H. Challenging Foreign Judgments for Lack of Personal Jurisdiction

CHAPTER 9 FORUM SELECTION: VENUE, FORUM NON CONVENIENS, AND REMOVAL

I. Overview

A. General Points

B. Significance of Venue

II. Determining Venue

A. General Points

B. Mandatory Venue

1. Land
2. Government Entities
3. Injunctions and Prior Litigation
4. Other Mandatory Venue Statutes
5. Forum Selection Clauses

C. Permissive Venue

1. Individual Defendant's Residence
2. Entity Defendant's Principal Office
3. Where Events or Omissions Occurred
 - a. General Points
 - b. Examples of Specific Claims (under pre-1995 law)
4. Plaintiff's Residence
5. Other Permissive Venue Statutes

D. Venue in Multi-Party and Multi-Claim Cases

1. General Points
2. Multiple Plaintiffs
3. Multiple Defendants
4. Multiple Claims
5. Dismissed and Added Parties and Claims

E. Establishing Venue by Waiver

III. Selecting and Pleading Venue

A. Selecting

B. Pleading Techniques

IV. Challenging Improper Venue

A. General Points

B. Who Can Challenge

C. Whether to Challenge

D. How to Challenge

E. Opposing Challenge

F. Reply to Opposition

G. Hearing and Evidence

H. Disposition

1. Ruling on Merits
2. Motion Granted
3. Further Proceedings

I. Appeal

TABLE OF CONTENTS

V. Transfer From Proper Venue

A. General Points

B. For Convenience and Interests of Justice

C. For Impartial Trial

D. For Coordinated Pretrial Proceedings in Multi-District Litigation (MDL)

1. Motion for Transfer
2. Subsequent Proceedings in MDL Court
3. Remand for Trial

VI. Dismissal From Proper Venue (Forum non Conveniens)

A. General Points

B. Personal Injury and Wrongful Death Actions

1. Standards
2. Bringing Motion
3. Hearing and Appeal

C. Child Custody Actions

D. Common Law Forum non Conveniens

E. Contractual Forum non Conveniens

1. In General
2. Defenses
3. Procedure

VII. Choosing Between Federal and State Court

A. Plaintiff's Initial Choice

1. Subject Matter Jurisdiction
2. Strategic Considerations
 - a. *General Points*
 - b. *Territorial Jurisdiction, Venue, and Applicable Law*
 - c. *Procedure and Evidence*
 - d. *Discovery*
 - e. *Judges and Juries*

B. Removal to Federal Court

1. Strategic Considerations
2. Grounds for Removal
 - a. *Federal Question*
 - b. *Diversity*
 - c. *Specific Removable and Nonremovable Actions*
3. Deadline for Removal
 - a. *Removal Based on Initial Pleading*
 - b. *Removal Based on Subsequent Developments*

4. Removal Procedures
 - a. *Notice of Removal*
 - b. *Who May Remove*
 - c. *Consent of Other Defendants*

C. Remand to State Court

1. Grounds for Remand
 - a. *Initial Grounds*
 - b. *Grounds for Remand Arising After Removal*
2. Deadline for Remand
3. Procedures for Remand
 - a. *Motion to Remand*
 - b. *Hearing and Disposition*
 - c. *Review*
 - d. *Costs and Attorney's Fees*

CHAPTER 10 CITATION AND SERVICE OF PROCESS

I. Overview

- A. General Points**
- B. Methods of Service**
- C. Documents Included**
- D. Time for Service**

II. Whom to Serve

- A. Individuals**
- B. Corporations**
- C. Insurance Companies**
- D. Estate and Trusts**
- E. Unincorporated Entities**
- F. Governmental Entities**
- G. Defendants in Other Countries**

III. Standard Service

- A. Personal Delivery**
- B. Certified or Registered Mail**

IV. Substituted Service Per Rule 106(b)

- A. Prerequisites**
- B. Permissible Means**
- C. Procedure**

TABLE OF CONTENTS

V. Substituted Service on Statutory Agents

A. General Points

B. Service on Secretary of State

1. On Nonresidents Under Long-Arm Statute
2. On Corporations Under Business Corporations Act
3. On Limited Partnerships Under RLPA
4. On Limited Liability Companies
5. Procedure

C. Service on Transportation Commission Chair

D. Service on Commissioner of Insurance

E. Service on Texas Securities Commissioner

VI. Substituted Service on Business Agents

A. Service on Person in Charge of Business

B. Service on Employee or Agent

C. Service on Agent of Unauthorized Insurer

VII. Service by Publication

A. Who Can Be Served by Publication

B. Prerequisites

C. Procedure

VIII. Pleading Service Facts

A. General Points

B. Service on Employees or Registered Agents

C. Service on Statutory Officials

IX. Who May Serve Process

X. The Citation

A. Preparation

B. Requirements

XI. Return of Service

A. General Points

B. Successful Service

1. General Points
2. Timing
3. Where Service Occurred

4. Who Was Served
5. Capacity of Person Served
6. How Process Was Served
7. What Was Served
8. Server's Signature, Authority, and Verification

C. Unsuccessful Service

D. Return of Service by Certified Mail

E. Return of Substituted Service per Rule 106(b)

F. Return of Service on Statutory Agents

1. General Points
2. Certificate of Service From Statutory Agent
3. Return Receipt to Statutory Agent

G. Return of Service by Publication

XII. Amending Citation and Return of Service

A. Grounds

B. Procedure

XIII. Waiver of Service

A. Written Waiver

B. Waiver by General Appearance

XIV. Challenging Citation and Service

A. General Points

B. Motion to Quash

C. Motion for New Trial

1. Time Limits
2. Defendant's Burden and Evidence to Meet It
3. Preserving Issue for Appeal

D. Direct Appeal

E. Restricted Appeal

F. Bill of Review

1. Procedure
2. Defendant's Burden and Evidence to Meet It
3. Appeal

[CHAPTERS 11 THROUGH 13 RESERVED]

CHAPTER 14 PLEADINGS

I. All Pleadings

- A. Basic Points*
- B. Judicial Admissions in Pleading*
- C. Format*
- D. Statements Adopted by Reference*
- E. Verification*
- F. Exhibits*
- G Sanctions for Frivolous Pleading*
 - 1. Basic Points
 - 2. Under TRCP 13
 - 3. Under CPRC Chapter 9
 - 4. Under CPRC Chapter 10

II. The Petition

- A. Filing to Commence Suit*
- B. Drafting Steps and Strategies*
 - 1. Initial Steps
 - 2. Styles and Goals of Petition
- C. “Building Blocks” of Petition*
 - 1. Basic Points
 - 2. The Prayer
- D. Pleading Causes of Action*
 - 1. Basic Points
 - 2. “Fair Notice” of Claims
- E. Joinder of Claims and Elections of Remedies*
 - 1. Joinder of Claims
 - a. *Permissive Joinder*
 - b. *Compulsory Joinder*
 - i. *All Claims*
 - ii. *Counterclaims*
 - 2. Election of Remedies
- F. Alleging Particular Matters*
 - 1. Discovery Control Plan Level
 - 2. Party-Related Matters
 - 3. Subject Matter Jurisdiction
 - 4. Other Matters

III. Before Answering

IV. The Answer

A. Basic Points

B. General Denial

C. Special Denials

1. Matters Defendant Must Verify
 - a. *Basic Points*
 - b. *Specific Matters to Be Verified*
2. Other Matters Specially Pledged

D. Affirmative Defenses

1. Basic Points
2. Particular Defenses
 - a. *Listed Under TRCP 94*
 - b. *Other Affirmative Defenses*

E. Special Exceptions

F. Pleas in Abatement

V. Counterclaims and Cross-Claims

A. Counterclaims

1. Basic Points
2. Compulsory Counterclaims
 - a. *Basic Points*
 - b. *Same Transaction or Occurrence*
3. Permissive Counterclaims

B. Cross-Claims

1. Basic Points
2. Procedure

C. Response

VI. Amended and Supplemental Pleadings

A. Amended Pleadings

1. Basic Points
2. Effects of Amendment
3. Amending to Avoid Dismissal
4. Leave *Not Required* (at Least Seven Days Before Trial)
5. Leave *Required* (Less Than Seven Days Before Trial)
6. Challenge to Amendment

B. Supplemental Pleadings

CHAPTER 15 ATTACKING THE PLEADINGS

I. Special Exceptions

A. Nature and Purpose

B. Compared With Other Pretrial Pleadings

1. Demurrer
2. Other Motions

C. Tactical Considerations

D. Advantages

E. Disadvantages

F. Types of Pleading Defects Subject to Special Exceptions

G. Effect of Failure to Challenge Pleading Defects

1. Under TRCP 90, 91
2. Under Waivers Concerning Trial Objections

H. Procedure

1. Part of Defensive Pleadings
2. Hearing
3. Ruling
4. Review of Ruling

II. Plea to the Jurisdiction

A. Nature and Purpose

B. Compared With Other Pretrial

C. Procedure

D. Grounds

III. Plea in Abatement

A. Nature and Purpose

B. Grounds

1. Action Pending in Another Court
 - a. *Proceedings in Texas Courts*
 - b. *Other Proceedings*
2. Defects in the Pleadings
 - a. *Parties*
 - i. *Lack of Capacity*
 - ii. *Failure to Join Parties*
 - b. *Allegations*

C. Procedure

1. The Plea
2. Response
3. Hearing
4. Order
5. Review

CHAPTER 16 MOTION PRACTICE

I. Overview

II. Motion Docketing Systems

III. Preparing, Serving, and Filing the Motion

A. Formal Requirements

B. Essential Elements of Motion: Notice, Factual Basis, Law

1. Notice Requirements
2. Affidavits and Exhibits
3. Brief in Support of Motion
 - a. Practice and Procedures
 - b. Summary of Argument
 - c. Factual Orientation
 - d. Citing Authority
 - e. Styles to Avoid

C. Serving the Motion

1. Service Requirements
2. Methods of Filing and Service
3. Certificate of Service

D. Filing the Motion

IV. Opposing the Motion

V. Hearing on the Motion

A. Tactical Considerations

B. Challenging the Judge

1. Overview
2. Disqualification
 - a. Basis

TABLE OF CONTENTS

- b. Grounds*
 - i. Previous Representation*
 - ii. Financial Interest in Case*
 - iii. Relationship to the Parties*
 - 3. Recusal
 - 4. Special Cases
 - a. Visiting Judges*
 - b. Other Special Cases*
 - 5. Procedure
- C. Oral Argument**

VI. Court's Decision on the Motion

VII. Emergency and *Ex Parte* Motions

VIII. Motions for Reconsideration

CHAPTER 17 TEMPORARY RESTRAINING ORDERS AND TEMPORARY INJUNCTIONS

I. Overview

II. Grounds and Defenses

- A. General Points**
- B. Probable Right to Relief**
- C. Probable Injury**
- D. Lack of Adequate Remedy at Law**
- E. Preservation of Status Quo**
- F. Other Equitable Considerations**
- G. Defenses**

III. Subject Matter

- A. Covenants Not to Compete or Disclose**
 - 1. Covenants Not to Compete
 - 2. Covenants Not to Disclose
- B. Anti-Suit Injunctions**
- C. Other Proper Subjects for Injunctions**
- D. Improper Subjects for Injunctions**

IV. Jurisdiction, Venue, and Parties

A. Jurisdiction and Venue

B. Parties

1. Who May Seek Relief
2. Persons Bound

V. Procedure

A. Checklists for Applicant

B. Timing

C. Preparing Application

D. Responding to Application

E. Hearing

1. Notice of Hearing
2. Order of Hearing

F. Preparing TRO or TI Order

1. General Points
2. Reasons for Issuance
3. Persons Enjoined
4. Acts Enjoined
5. Time for Compliance
6. Trial Setting

G. Bond

H. Issuance of Writ

I. Service of TRO and TI

VI. Trial Court Oversight

A. Extension of TRO

B. Reconsideration of Denied TI

C. Dissolution and Modification of TRO and TI

1. Ex Parte TRO
2. TI

D. Enforcement by Contempt

VII. Interlocutory Appeal

A. TRO

B. TI

1. General Points
2. Procedure
3. Scope of Review
4. Mooting of Appeal

VIII. Wrongful Injunction

- A. Grounds*
- B. Procedure for Action on Bond*
- C. Damages*

CHAPTER 18 INTERLOCUTORY APPEALS AND MANDAMUS PROCEEDINGS

I. Interlocutory Appeals

- A. General Points*
- B. Types of Interlocutory Appeals*
- C. Special Procedures for Interlocutory Appeals*

II. Mandamus Proceedings

- A. General Points*
- B. Requirements*
- C. Common Uses of Mandamus*
- D. Procedure*

CHAPTER 19 PRETRIAL EXTRAORDINARY REMEDIES

I. Overview

- A. Types of Remedies*
- B. Statutory and Constitutional Considerations*
- C. Property Exempt From Extraordinary Remedies*
- D. Trial and Appeal of Pretrial Remedies*

II. Attachment

- A. Nature of Remedy*
- B. Grounds*
- C. Issuance of Writ*
- D. Defendant's Motion to Dissolve, Modify, or Substitute Property*
- E. Replevy*
- F. Claims by Third Parties: Trial of Right of Property*
- G. Remedies for Wrongful Attachment*
- H. Final Judgment*

III. Garnishment

- A. Nature of Remedy*
- B. Grounds*
- C. Issuance of Writ*
- D. Garnishee's Response*
- E. Controverting Answers*
- F. Debtor's Motion to Dissolve, Modify, or Substitute Property*
- G. Replevy*
- H. Claims by Third Parties: Trial of Right of Property*
- I. Suit for Wrongful Garnishment*
- J. Final Judgment*

IV. Receivership

- A. Nature of Remedy*
- B. Grounds*
- C. Application for Receivership*
- D. Qualifications, Powers, and Duties of a Receiver*
- E. Litigation By and Against Receiver*

V. Sequestration

- A. Nature of Remedy*
- B. Grounds*
- C. Issuance of Writ*
- D. Defendant's Motion to Dissolve or Modify*
- E. Replevy*
- F. Claims by Third Parties: Trial of Right of Property*
- G. Suit for Wrongful Sequestration*
- H. Final Judgment*

VI. Lis Pendens

- A. Nature of Remedy*
- B. Grounds*
- C. Filing Lis Pendens*
- D. Motion to Cancel or Expunge Lis Pendens*
- E. No Action for Wrongful Filing of Lis Pendens*

[CHAPTERS 20 THROUGH 23 RESERVED]

CHAPTER 24 ALL DISCOVERY

I. Purpose, Governing Law, and Filing Requirements

- A. Purpose, Goals, Drawbacks*
- B. Governing Law*
- C. Filing Requirements*

II. Right to Discovery

- A. Basic Points*
- B. Limits on Discovery*

III. Scope of Discovery

- A. Must Be Relevant*
- B. Matters Discoverable*
 - 1. General Points
 - 2. Experts
 - 3. Insurance and Indemnity Policies
 - 4. Settlement Agreements
- C. Matters Usually Outside Scope*
 - 1. Limitations on Scope
 - 2. Privileged Matter
 - 3. Work Product
 - 4. Other Matters

IV. Planning and Timing

- A. Planning Strategies*
 - 1. Basic Points
 - 2. Establish Goals
 - 3. What Discovery Devices to Use
- B. Sequence of Discovery*
- C. Timing Factors*
 - 1. For Discovering Party
 - 2. For Responding Party

V. Stipulations

- A. Basic Points*
- B. Confidential Information*

VI. Supplementary and Amended Responses

CHAPTER 25 PRIVILEGES

I. General Concepts

A. Overview

1. Definitions, Purposes
2. Creation, Content, and Duration
3. Impact on Discovery
4. Governing Law

B. Procedures

C. Waiver

1. Basic Points
2. By Whom
3. How
 - a. Elements
 - b. Unprivileged Disclosure
 - c. Place Privileged Information at Issue
4. Extent of Waiver

D. Compelling Disclosure

II. Lawyer-Client Privilege

A. Summary and Tactics

B. Elements of a Privileged Communication

1. A “Communication”
 - a. Means of Communication
 - b. Substance of Communication
2. Purpose of Communication
3. Confidentiality
 - a. Client; Lawyer; Their Agents
 - b. Experts
 - c. Joint Defendants; Common-Interest Clients

C. Exceptions

1. Crime-Fraud Exception
 - a. Summary of Rules
 - b. Procedure for Raising “Crime-Fraud” Exception
2. Relevant to Administration of Deceased Client’s Estate
3. Relevant to Lawyer-Client or Client-Client Dispute

D. Procedures and Duties

1. Invoking Privilege; Preserving Confidences
 - a. Standing
 - b. Counsel, Court, Others
2. Compelling Disclosure

TABLE OF CONTENTS

III. Work Product

A. General Points

B. Elements of Privilege

1. Rule Requirements
 - a. *Material and Communications*
 - b. *Prepared "In Anticipation of Litigation or for Trial"*
 - c. *"Of an Attorney"*
2. Examples: Information From a Witness

C. Procedures

1. Invoking Privilege
2. Waiver
3. Obtaining Non-Core Work Product

IV. Joint Defense / Common Interest / Joint Clients

V. Consulting Experts

VI. Self-Incrimination

A. Summary of Rules

B. Use in Civil Litigation

C. Applications

D. Procedures

1. Asserting Privilege
 - a. *Standing*
 - b. *Making the Objection*
 2. Adjudication
- #### *E. Consequences of Invoking Privilege*
1. Court Sanctions and Insurance Rates
 2. Avoiding Sanctions
 3. Informing Jury That Holder Asserted Privilege

VII. Trade Secrets

A. Summary of Rule

B. What Is a Trade Secret?

C. Preliminary Concerns in Litigation

D. Protective Orders for Trade Secrets

1. Uses
2. Requirements
3. Contents

4. Requesting Order
 - a. *By Consent*
 - b. *By Contested Motion*
 - i. *Procedure*
 - ii. *Adjudication*

E. Sealing Court Files

VIII. Physician-Patient Communications

- A. Summary and Purpose of Rule**
- B. Elements of a Privileged Communication**
 1. Who Is Privy to Communication
 2. “Communication” Defined
 3. Contents of “Communication” vs. Other Facts
 4. Confidentiality
 5. Purposes of Consultation and Communication
- C. No Privilege for “Necessary” Disclosures**
- D. No Privilege in Certain Actions**
- E. Asserting Privilege; Privilege Termination**

IX. Mental Health Communications

- A. Summary of Rule and Purposes**
- B. Elements of a Privileged Communication**
 1. Privy to Communication
 2. Topic and Purpose of Consultation and Communication
 3. Exceptions: No Privilege in Certain Circumstances
- C. Procedures**

X. Spousal Communications

- A. Summary of Rule and Purpose**
- B. Elements of a Privileged Communication**
- C. Procedures**

XI. Communications to Members of the Clergy

- A. Summary of Rule and Purpose**
- B. Elements**
- C. Procedures**

XII. Other Privileges

- A. Settlement & Mediation**
- B. News Media Sources & Information**

TABLE OF CONTENTS

- C. Privacy*
- D. Apex Executives*
- E. Adoption*
- F. AIDS Test*
- G. Medical Peer Review*
- H. Polygraph Tests*

CHAPTER 26 REQUESTS FOR DISCLOSURE

I. General Points

II. Making a Request

- A. Format*
- B. Areas of Inquiry*
- C. Filing and Service*

III. Response and Objections

- A. Deadline for Response*
- B. Drafting Response*
- C. Specific Responses*

IV. Supplementation of Responses

- A. General Points*
- B. Procedure*

V. Motions

- A. General Points*
- B. Motions by Requesting Party*
- C. Motions by Disclosing Party*

VI. Trial and Appeal

- A. Admission of Answers in to Evidence*
- B. Exclusion of Matters Not Disclosed*
- C. Appeal*

CHAPTER 27 INSPECTION OF DOCUMENTS

I. Party Document Requests

A. General Points

B. Using Requests With Other Discovery Tools

C. Steps to Obtain Documents

1. Prepare Requests
 - a. Form
 - b. Format
 - c. Substance
 - i. General Points
 - ii. Category Requests

2. Particular Types of Documents

3. Serve and File

4. Track Response

D. How To Respond and Produce

1. Initial Steps

2. Time to Respond

3. Failure to Timely Respond

4. Possession, Custody or Control

5. Locate, Collect and Examine Items
 - a. General Points
 - b. Locate Items
 - c. Collect Items
 - d. Examine Items

6. The Response
 - a. General Points
 - b. Drafting Points
 - c. Objections
 - i. General Points
 - ii. Specific Objections
 - d. Dealing With Problem Requests
 - i. Overbroad, Vague, or Ambiguous
 - ii. Unduly Burdensome
 - e. Protect Confidential Information
 - f. Service and Filing

7. Prepare for Production

8. Supplementation and Amendment of Responses and Production

E. Inspection and Copying

F. Discovery Disputes

TABLE OF CONTENTS

II. Nonparty Document Inspection

A. Overview

B. Document Subpoenas

C. Deposition Subpoenas

1. General Points
2. How to Subpoena
3. Responding to Subpoena

III. Medical Records

IV. Public Records

A. Overview and Strategies

B. Texas Public Records

1. General Points
2. Procedure
3. Referral to Attorney General

C. Federal Public Records

1. Authority and Exceptions
2. Procedure

V. Request or Motion for Entry Upon Property

A. General Points

B. Procedure

CHAPTER 28 DEPOSITIONS

I. Overview

A. General Principles

B. Types of Depositions

II. Functions

A. General Points

B. Using Deposition Testimony At and After Trial

C. Use in Conjunction With Other Discovery Devices

III. Taking a Deposition

A. Preparation

1. Procedure
 - a. Select Deponent
 - b. Choose Location

- c. Schedule Deposition*
- d. Notice a Party's Deposition*
- e. Subpoena a Nonparty Deponent*
- f. Select Recording Method*
- g. Deposition Officers*
- h. Interpreters*
- 2. Substantive Preparation
 - a. General Considerations*
 - b. Prepare Outline*
 - c. Organize Exhibits in Advance*

B. Conducting the Deposition

- 1. Getting Started
- 2. Review Document Requests
- 3. Examination and Cross-Examination
 - a. General Considerations*
 - b. Experts*
- 4. Suspending or Adjourning a Deposition
 - a. Suspending*
 - b. Adjourning*
- 5. Court's Involvement
 - a. Generally*
 - b. Sanctions and Orders Compelling Discovery*

IV. Defending a Deposition

A. Response to Notice (and Subpoena)

- 1. Objections to Notice
- 2. Document Production
- 3. Witness Designation

B. Preparation

- 1. Introduction
- 2. Guidelines for Witness
- 3. Guidelines for Experts

C. Conduct During the Deposition

- 1. General Points
- 2. Objections

V. Preparing Transcript for Use at Trial

CHAPTER 29 PHYSICAL AND MENTAL EXAMINATIONS

I. General Points

A. Overview

TABLE OF CONTENTS

B. Who Is Subject to Exam

- 1. Parties
- 2. Non-Parties

C. Preliminary Considerations

II. Setting the Logistics

A. Overview

B. Examiner

- 1. General Points
- 2. Challenging Discoverer's Designee

C. Location

D. Time

E. Manner and Scope

F. Conditions

G Costs

III. Requesting Exam

A. Grounds

B. Procedure

IV. Response and Reply

V. Preparing for and Conducting Exam

VI. Subsequent Motions and Appeal

VII. Report of Examining Physician

A. General Points

B. Examinee's Option to Get Report

C. Discoverer's Reciprocal Right to Reports

CHAPTER 30 INTERROGATORIES

I. General Points

II. How to Use Interrogatories

A. General Points

B. Types of Interrogatories

III. Propounding Interrogatories

A. Format

B. Preliminary Parts

C. Areas of Inquiry

1. General Points
2. Facts
3. Documents

D. Filing and Service

IV. Responding to Interrogatories

A. General Points

B. Deadline for Response

C. Service and Filing

D. Drafting Responses

1. General Points
2. Format
3. Verification of Responses
4. Option to Produce Records
5. Identifying Witnesses
6. Objections
 - a. General Points
 - b. Specific Objections
 - c. Dealing With Problem Requests
 - d. Protect Privileged Information

V. Supplemental and Amended Answers

A. General Points

B. Procedure

VI. Motions

A. General Requirements and Procedures

B. Extend Time to Answer

C. Obtain Protective Order

D. Obtain Leave for Late Amendment or Supplementation

E. Missing, Evasive, or Incomplete Answers

VII. Evidence Issues

A. Answers as Evidence

B. Excluding Evidence at Trial

CHAPTER 31 REQUESTS FOR ADMISSION

I. General Points

- A. Overview*
- B. Scope of RFAs*

II. How to Use RFAs

- A. General Strategies*
- B. Documents*
- C. Use With Other Discovery Tools*

III. Propounding RFAs

- A. Drafting Format and Techniques*
- B. Service and Filing*

IV. Responding to Requests

- A. General Points*
- B. Response Deadline*
- C. Drafting Points*
 - 1. Format
 - 2. Responses
 - a. Substantive Answers*
 - b. Objections*
 - i. Form of Objection*
 - ii. Specific Grounds*

V. Motions

- A. General Points*
- B. Motions by Requesting Party*
 - 1. Motion Challenging Answer or Objection
 - 2. Motion to Confirm Deemed Admission
 - 3. Sanctions for Failure to Admit (Post-Trial Motion)
- C. Motions by RFA Respondent*
 - 1. Motion to Extend Time to Respond
 - 2. Motion for Protective Order
 - 3. Motion to Amend or Withdraw Response
 - a. General Points*
 - b. Elements*
 - c. Procedural Strategies*
 - d. Appeal*

VI. Use of Responses at Trial

- A. Admission of Answers Into Evidence*
- B. Effect of Admissions*

CHAPTER 32 DISCOVERY DISPUTES

I. General Requirements and Procedure

- A. Before a Motion*
- B. Making a Motion*

II. Motions to Compel Discovery

III. Motions for Sanctions

IV. Motions for Protection from Discovery

[CHAPTERS 33 THROUGH 35 RESERVED]

CHAPTER 36 SUMMARY JUDGMENT

I. Overview

- A. Basic Points*
- B. Advantages*
- C. Disadvantages*
- D. MSJ on the Pleadings*
- E. Evidence Overview*

II. Partial Judgments and Adjudications

- A. Partial Summary Judgment*
- B. Designating Undisputed Facts*

III. No-Evidence MSJ [TRCP 166a(i)]

- A. Basic Points*
- B. Responding to No-Evidence MSJ*
- C. Movant's Reply to MSJ Response*

IV. Requirements for Summary Judgment

A. No Genuine Issue of Material Fact

1. “Material Fact”
2. “No Genuine Issue” (i.e., No Dispute)

B. Party Entitled to Judgment “As a Matter of Law”

V. Burdens on MSJ—and How to Meet Them

A. Ordinary MSJ [TRCP 166a(c)]

1. Movant’s Initial Burden
2. Non-Movant’s ‘Response Burden’
3. If Plaintiff Is Movant
4. If Defendant Is Movant
5. If Both Parties Are Movants

B. No-Evidence MSJ [TRCP 166a(i)]

VI. Evidence

A. Basic Points

1. “MSJ Evidence”
2. Examples of Improper or Incompetent Evidence
3. Evidence Filed Late
4. Use of Discovery Products
5. Interested and Expert Witnesses
 - a. *Interested Witnesses*
 - b. *Expert Witnesses*

B. Affidavits

1. Basic Points
2. Strategies
3. Effective Drafting
4. Preparing Affidavits
5. Exhibits and Authentication

C. Depositions

1. Basic Points
2. Using Deposition Extracts

D. Interrogatory Answers

E. Requests for Admission Responses

F. Pleadings

G. Other Methods of Establishing Facts

VII. Whether to Move for Summary Judgment

A. Basic Points

B. How to Decide

VIII. Initiating MSJ

A. How and When to Move

B. Preparing MSJ Papers

1. The Motion
2. Other Supporting Papers

IX. Opposing Summary Judgment

A. Initial Steps and Strategies

B. The Response

1. Basic Points
 2. Deadline
 3. Stating “Issues”
- ### *C. Objections and Special Exceptions*
1. Objections
 - a. Basic Points*
 - b. Objection That MSJ Is Improper*
 - c. Objection to MSJ Evidence*
 - i. Basic Points*
 - ii. Examples: Defects in Form*
 - iii. Examples: Defects in Substance*

2. Special Exceptions on MSJ

D. Continuance to Gather More Evidence

E. Amending the Targeted Pleading

X. MSJ Movant’s Reply to Opposition

XI. Cross-Motion for Summary Judgment

XII. Hearing

XIII. Judgment and Order

A. Basic Points

B. Sanctions

XIV. Post-Judgment Motions

XV. Appeal

CHAPTER 37 DEFAULT JUDGMENT AND DISMISSALS

I. Default Judgment

A. Basic Points

B. No-Answer Default

1. Basic Points
2. Bars and Hurdles to Judgment
 - a. Basic Points
 - b. Failure to Serve Amended Petition
3. Motion for Judgment
 - a. Basic Points
 - b. Timing
 - c. Motion Papers
 - i. Basic Points
 - ii. Proposed Judgment
 - d. Opposing the Motion
4. Hearing on Damages
 - a. Liquidated Damages
 - b. Unliquidated Damages
 - c. Defendant's Participation

C. Post-Answer Default

1. Basic points
2. The Trial

D. Default Judgment as Discovery Sanction

E. Interlocutory and Final Judgments

1. Interlocutory Judgment
2. Final Judgment
 - a. General Requirements and Procedures
 - b. In Default Judgment Cases

F. Relief From Default Judgment

1. Motion for New Trial (MNT)
 - a. Basic Points
 - b. Procedures
 - c. Legal Grounds
 - d. Equitable Grounds: The Craddock Test
 - i. Basic Points
 - ii. Default Was Mistake—Not Intentional
 - iii. Meritorious Defense
 - iv. New Trial Would not Injure Plaintiff
 - e. If Defendant Was Served by Publication
 - f. Appellate Review
 - i. Appealability of Trial Court's Order
 - ii. Review

2. Bill of Review
 - a. *Basic Points*
 - b. *Required Showings*
 - i. *Basic Points*
 - ii. *Default Was Due to Extrinsic Act*
 - iii. *Absence of Defendant's Negligence*
3. Restricted Appeal
4. Collateral Attack
 - a. *Basic Points*
 - b. *No Extrinsic Evidence, Except . . .*

II. Nonsuit (Voluntary Dismissal)

- A. Basic Points**
- B. Res Judicata Effect of Nonsuit**
- C. Other Effects of Nonsuit**
 1. Basic Points
 2. On Defendant's Affirmative Claims
 3. On Sanctions
- D. Whether to Take Nonsuit**
 1. Reasons to Nonsuit
 2. Reasons *Not* to Nonsuit
- E. Methods for Taking Nonsuit**

III. Involuntary Dismissal

- A. Grounds**
 1. Want of Prosecution (DWOP)
 - a. *Court's Inherent Power*
 - i. *Conduct Triggering Court's Use of Power*
 - ii. *Factors Bearing on Exercise of Discretion*
 - b. *Under TRCP 165a*
 2. Other Grounds
- B. Dismissal With or Without Prejudice**
- C. Procedures**
 1. Basic Points
 2. For Want of Prosecution Under TRCP 165a
 - a. *Dismissal Procedures*
 - b. *Motion to Reinstate After Dismissal*
 - i. *Basic Points and Requirements*
 - ii. *Deadline for Motion*
 - iii. *Required Showing*
 - iv. *Court Order*
 - v. *Appellate Review*

CHAPTER 38 SETTLEMENT AND ADR

I. Settlement

A. Case Evaluation

1. Why Try to Settle?
2. When Should You Settle?
3. Tax Consequences
4. Impact on Government Benefits
5. Ethical Responsibilities

B. Negotiation

1. General Points
2. Plaintiff's Perspective
 - a. Settlement Letters or Brochures
 - b. Negotiations With Insurers
3. Insurer's Perspective

C. The Court's Role

1. General Points
2. Settlements Requiring Court Approval

D. Mechanics and Effects of Settlements

1. Requirements
2. Types of Settlements
 - a. General Types
 - b. Structured Settlements
3. Settlement Documents
4. Multiparty Tort Actions
 - a. General Points
 - b. Intentional Torts
 - c. Most Tort Actions
 - d. Subsequent Trial
5. Offers to Settle and their Effect on Awards of Litigation Costs

E. Enforceability of Settlements

1. Settlements as Contracts
2. Settlements as Judgments

II. Alternative Dispute Resolution

A. General Points

B. Court Ordered ADR

1. ADR Procedures
2. Third Party Facilitators

C. Contractual ADR

1. Arbitration
 - a. Overview
 - b. Drafting Arbitration Agreements

- c. Initiating Arbitration*
- d. Arbitration Procedures*
- e. Award*

2. Mediation

- a. Overview*
- b. The Mediation Process*
 - i. Overview and Roles*
 - ii. Agreement*

TEXAS

PRETRIAL

PRACTICE

Volume 2

Hon. Scott Brister (Ret.)
Dan S. Boyd, Esq.

James Publishing



Contact us at (800) 440-4780 or www.jamespublishing.com

Copyright © 2013
James Publishing, Inc.
ISBN: 1-58012-062-8

All rights reserved.

This publication is designed to provide accurate and authoritative information in regard to the Subject Matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, seek the services of a competent professional.

Rev. 1, 12/01

Rev. 2, 11/02

Rev. 3, 11/03

Rev. 4, 12/04

Rev. 5, 12/05

Rev. 6, 12/06

Rev. 7, 12/07

Rev. 8, 3/09

Rev. 9, 2/11

Rev. 10, 4/13

TABLE OF CONTENTS

TABLE OF CONTENTS

For expanded Table of Contents, please see pages F-9 through F-48 in Volume 1

Chapter 1	Taking the Case
Chapter 2	Presuit Activities
Chapter 3	Statutes of Limitations
Chapters 4-5	Reserved
Chapter 6	Parties
Chapter 7	Subject Matter Jurisdiction of Texas Trial Courts
Chapter 8	Personal Jurisdiction
Chapter 9	Forum Selection: Venue, Forum Non Conveniens, and Removal
Chapter 10	Citation and Service of Process
Chapters 11-13	Reserved
Chapter 14	Pleadings
Chapter 15	Attacking the Pleadings
Chapter 16	Motion Practice
Chapter 17	Temporary Restraining Orders and Temporary Injunctions
Chapter 18	Interlocutory Appeals and Mandamus Proceedings
Chapter 19	Pretrial Extraordinary Remedies
Chapters 20-23	Reserved
Chapter 24	All Discovery
Chapter 25	Privileges
Chapter 26	Requests for Disclosure
Chapter 27	Inspection of Documents and Other Things
Chapter 28	Depositions
Chapter 29	Physical and Mental Examinations
Chapter 30	Interrogatories
Chapter 31	Requests for Admission
Chapter 32	Discovery Disputes
Chapters 33-35	Reserved
Chapter 36	Summary Judgment
Chapter 37	Default Judgment and Dismissals
Chapter 38	Settlement and Alternative Dispute Resolution (ADR)

Tables

Index

(This page intentionally left blank.)