

Commercial Litigation Reference Center

HOW TO USE:

- 1) Review the reference center subject matter to find the area of commercial litigation that concerns you and that you wish to inquire about.
- 2) Take note of the reference numbers following the terms you believe to most closely describe the type of law applicable to facts in your case.
- 3) Click the “[Do I Have A Case](#)” button; complete the form; and briefly list the basic facts that occurred in your case, in chronological order with dates.
- 4) Then, simply list the reference numbers you took note of in item number 2 above.
- 5) Send the transmittal to [The Pursley Law Firm](#) and a legal representative will contact you to give you insight regarding your claim and rights.

— A —

Abandonment of Actions

Dismissal of actions, 37:365

Partial summary judgment, abandonment as nonsuit, 36:62

Abatement of Proceedings

See also **Plea in Abatement**

Failure to give notice of claim, 3:22

Venue, transfer motion does not abate proceedings, 9:177, 9:199

Abuse of Discretion. See Discretion of Court

Accord and Satisfaction

Affirmative defense, 14:318

Accounts and Accounting

Escrow account. See **Escrow Account**

Statutes of limitations

Accountants and auditors, professional negligence or malpractice, 3:276–278

Open account or account stated, 3:135

Partnership accounting, 3:136

Sworn account

Allegation in petition, 14:222

Special denial requiring verification, 14:283

Temporary injunction freezing account, interlocutory appeal, 17:332

Ad Valorem Tax Suits. See Taxes

Addresses, Telephone Numbers, and Web Addresses

Corporation’s notice of address change, Secretary of State, 10:164

Government searches, websites for, 2:47

Texas Secretary of State, 10:50

Administrative Proceedings

Exhaustion of remedies. See **Exhaustion of Administrative Remedies**

Plea in abatement, pending proceedings, 14:385, 15:182

Service, review of administrative agency’s action, 10:20, 10:86

Admissions

See also **Requests for Admissions**

Amended pleadings, original pleading used as admission, 15:61

Depositions

Party-opponent's admissions, 28:31

Settlement leverage, admissions as, 28:23

Failure to answer as deemed admission, 14:244, 14:258, 14:265

Interrogatories, 30:64

Judicial admissions

Pleadings, 14:16–18, 14:471

Service, 10:528

Summary judgment motion, 36:311, 36:346

Adoption

Statutes of limitations

Generally, 3:317

Discovery rule, effect on adoptee's claim to inherit from birth parent, 3:419

Adverse Possession

Statutes of limitations, 3:302–312, 3:473

Advertising

Deceptive advertisements, effect on jurisdiction, 8:292, 8:331

Doing business in state, effect of advertising for Texas business on jurisdiction, 8:216

Affidavits and Declarations

Authenticating affidavit, 36:271

Capacity defense, affidavit supporting, 6:188

Class action certification, affidavits submitted after certification order, 6:697

Common interest (joint defense) privilege, 25:284

Contempt for violation of injunction, affidavit supporting motion for, 17:310

Corporate status, denial of by affidavit, 14:279

Corporation's agent cannot be found, showing diligence in affidavit or return of service, 10:162

Default judgment motion, affidavit defendant not in military, 37:55

Discovery disputes, use of affidavits, 32:11, 32:16

Fraudulently-joined defendants, 9:495

Impartial trial, affidavits supporting or opposing motion for transfer from proper venue, 9:325, 9:327, 9:329

Indigency, affidavit of, 6:100, 17:254

Inmates, 6:107–108

Jurat, 14:51

Motions, 16:58–66, 16:148

Physical and mental examinations, affidavits included with motion for order for Rule 204 exam, 29:135, 29:151

Plea in abatement, 15:218

Plea to jurisdiction, 15:134, 15:143

Presuit investigation, perpetuating testimony with affidavits of witnesses, 2:62

Request for production and inspection, affidavits supporting motions to compel or for sanctions, 27:273

Requests for admissions, motion for relief from RFA response, 31:206, 31:208, 31:220

Service

Common interest (joint defense) privilege, service of affidavits before hearing, 25:284

Delays in service, affidavit explaining, 10:32

Motion for new trial, 10:556

Publication, affidavit's residence unknown or defendant transient, 10:248

Publication, supporting affidavit, 10:264–265
Substituted service under Rule 106(b), affidavit supporting motion, 10:129–132
Special appearance, 8:382–384, 8:391, 8:424, 8:426–428, 8:437
Summary judgment motion. See **Summary Judgment**
TRO or temporary injunction supported by affidavits, 17:177, 17:205
Undisclosed witness, affidavit of for summary judgment, 30:160
Venue improper, affidavits supporting or opposing motion, 9:229, 9:236–237,
9:243, 9:254–255
Verifying affidavit, 14:49–50

Affirmative Defenses

Arbitration. See **Arbitration**
Assumption of risk. See **Assumption of Risk**
Bankruptcy. See **Bankruptcy and Insolvency**
Counterclaim compared, 14:308
Defective statement of affirmative defense, challenging, 14:313
Duress. See **Duress**
Estoppel. See **Estoppel**
Fraud. See **Fraud and Misrepresentation**
Identifying defenses, 14:307
“Inferential rebuttal” compared, 14:310
Justification, 14:353
Laches. See **Laches**
Liberal construction, 14:312
“Matters in avoidance” of defense, affirmative defenses to affirmative defenses,
14:297, 14:309, 14:334
Nature and effect of, 14:304
Other affirmative defenses, 14:342–367
Pleading if in doubt, 14:311
Release. See **Release**
Res judicata. See **Res Judicata**
Response to, 14:452
Special exceptions to raise affirmative defense, 14:374, 15:02, 15:70
Statute of frauds. See **Statute of Frauds**
Statutes of limitations. See **Statutes of Limitations**
Summary judgment motion, 36:02, 36:389
TRCP 94, defenses under, 14:318–337
Waived unless pleaded, 14:305–306, 14:337
Waiver. See **Waiver**

Agents and Agency

Discovery rule, effect on accrual of cause of action, 3:413
Foreign corporation without certificate of authorization to do business, capacity of
agent to sue, 6:145
Jurisdiction issues, 8:200, 8:329–333
Physical and mental examinations, 29:21
Privilege holder, waiver issue, 25:54
Settlement, principles of agency, 38:45
Substitution of parties, 6:266
Tolling provisions, 3:455

Agreements. See Contracts

Alcohol or Drug Abuse

Physician-patient privilege, 25:466, 25:500, 25:502
Self-incrimination, privilege against, 25:318

Alcoholic Beverages

Dram Shop claims, statute of limitations, 3:180

Aliens

See also **Citizenship**

Diversity jurisdiction, 9:434

Jurisdiction, 8:74

Allegations. See Petitions

Alter Ego

See also **Corporations**

Nonresidents, long-arm jurisdiction over agents, affiliates, alter egos, and parties in privity, 8:328–341, 8:409, 8:425

Statutes of limitations

Derivative tort claims, 3:342, 3:344

Discovery rule, 3:420

Tolling provisions, 3:510

Alternative Dispute Resolution (ADR)

Generally, 14:236

Arbitration. See **Arbitration**

Case conference, informing client to possibility of ADR, 1:268

Choices of ADR procedures, 38:173

Confidentiality, 38:177

County ADR systems, 38:175

Court ordered ADR

Procedures, 38:182–190

Third party facilitators, 38:196–198

Engagement contract, provision for dispute resolution, 1:204

Mediation. See **Mediation**

Presuit activities, 2:78–81

Referral order, 38:174, 38:184

“Settlement weeks,” 38:176

Statutory framework, 38:172

Trial by special judge, 38:174

Amended and Supplemental Pleadings

Admission, original pleading used as, 15:61

Amount in controversy, 7:112–114

Basics, 14:458–462

Challenging amendment, 14:502–506

Citation and return of service, moving to amend, 10:357, 10:372

Dismissal, curing defect to avoid, 14:476–478

Effects of amendment, 14:468–471

Impleader, 6:351

Joinder of parties. See **Joinder**

Leave not required, 14:484–488

Leave required, 14:494–496

“Live” pleadings, 14:468, 14:513

Misidentification or misnomer of party, amended pleading substituting correct name, 6:174, 6:267

Plea to jurisdiction, amending petition to bring within court’s jurisdiction, 15:150

Refusal to amend, 14:478, 15:115

Removal, effect of amended pleadings on, 9:495, 9:508

Repleading, 14:462, 14:478, 15:15, 15:52, 15:110, 15:112–113

Request to amend denied, record to preserve error on appeal, 15:114

Service. See **Service of Process and Papers**

Special appearance not verified, amendment, 8:382

Special exceptions sustained, opportunity to amend, 15:112–113, 36:31

Standing, insufficient facts alleged, 6:230

Statutes of limitations. See **Statutes of Limitations**
Summary judgment motion, amending pleadings. See **Summary Judgment**
Supplemental pleadings, 14:468, 14:512–516
Trial by mutual consent, amending pleadings to conform to proof, 15:86
Venue, 9:167, 9:179, 9:191

Amendments and Modifications

Amended and supplemental responses. See **Supplementary Responses**
Arbitration award, modification of, 38:244
TRO or temporary injunction, modification of, 17:286–287, 17:292–296

Amount in Controversy. See Jurisdiction

Annulment

Statute of limitations, 3:318

Answer

Alternatives to answering, 14:230–238
Basics, 14:244–250
Counterclaims, 14:397
General denial, 8:379, 14:256–259
Injunction hearing, default for failure to file answer to suit, 17:186
Interpleader, denial of, 6:478
Misnamed or misidentified defendant, answer required, 6:179
No notice of proof of loss, 14:285
Plea in abatement. See **Plea in Abatement**
Scire facias, dismissal or default for failure to answer, 6:258
Service
 Business Corporation Act, time to answer extended, 10:148
 Craddock requirements, failure to answer, 10:562
 Motion to quash, 10:537–538
 Publication, service by, 10:267
 Secretary of State forwarding process, effect on time to answer, 10:195
 Transportation Commission Chair's service of process, time for answer, 10:203
Special appearance, answer, and response, 8:379, 8:390–391
Special denials, matters requiring verification
 Generally, 14:264
 Assumed name, 6:242, 14:287
 Capacity, denial of, 14:276
 Consideration, lack of or failure of, 14:282
 Corporate or partnership status, denials of, 14:279
 Failure to verify as admission, 14:265
 Faulty verification, attacks on, 14:269
 Genuine indorsement or assignment, denial of, 14:281
 Genuine written instrument, denial of, 14:280
 Joinder of parties defective, 14:278
 Motion to abate, 14:270
 Pendency of similar suit, 14:277
 Personal knowledge required, 14:268
 Requirements for verification, 14:267
 Sworn account, denial of, 14:283
 Truth appears of record, exception, 14:266
 Usury, 14:284
 Workers' compensation defenses, 14:286
Special exception to defects in pleading. See **Special Exceptions**
Specially pleaded matters
 Conditions precedent, 14:294
 "Inferential rebuttal" issues, 14:298

- “Matters in avoidance” of defense, 14:297
- Signature on negotiable instruments, 14:296
- Trespass claim title to realty suit, 14:295
- Transfer of venue, effect of motion, 9:222–224
- Truth appears of record, exception, 14:266
- Uninsured motorist claims, 14:288

Appeals

- Administrative appeals, service, 10:86
- Citation and service, challenging, 10:562–568, 10:574–579, 10:584–590, 10:596–600, 10:606–616
- Class actions, 6:722–732, 6:759
- Contempt, 17:315, 17:318
- Default judgment
 - Generally, 37:224–225, 37:230–231
 - Preserving right to appeal by new trial motion, 37:155
 - Restricted appeal, 37:264–268
- Deposition testimony made part of record for purposes of appeal, 28:32
- Discovery disputes, review of record in consideration of “death penalty” sanctions, 32:39
- Dismissal, 6:409, 37:400, 37:434, 37:466–469
- Forum non conveniens motion, 9:379, 9:401
- Guardian ad litem, 6:42, 6:62, 6:68
- Injunctions. See **Injunctions**
- Interlocutory appeals. See **Interlocutory Appeals**
- Interpleader, 6:517
- Intervention, 6:569–571, 6:590–594
- Joinder, appeal of order dismissing case for failure to join, 6:409–410
- Judge’s personal knowledge of disputed facts, appeal by bystander’s bill of exceptions, 16:210
- Misjoinder of parties, review of order striking or severing, 6:455–456, 6:457
- No-evidence summary judgment motion, 36:83
- Nonsuit, effect of, 37:316, 37:332
- Physical and mental examinations, appeal by mandamus of order on motion, 29:168
- Plea in abatement, 15:238–239
- Presuit considerations if representing defendant, when to appear, 2:170
- Recusal motion, 16:246
- Refusal to amend pleadings, 14:478, 15:115
- Reinstatement after dismissal, 37:434, 37:466–469
- Remand order, 9:600–605
- Request for production and inspection of federal public records, appealing adverse determination, 27:375
- Request to amend denied, record to preserve error on appeal, 15:114
- Restricted appeals
 - Challenging service, 10:584–590
 - Default judgments, 37:264–268
 - Special appearance orders, 8:447
- Settlement judgment, 38:167
- Shareholder derivative actions, no interlocutory appeal available, 6:794
- Special appearance, interlocutory appeal, 8:439, 8:444–450, 18:25
- Special exceptions, 15:104, 15:115, 15:120–121
- Standing, de novo standard of review, 6:232
- Statutes of limitations, reasonable time to bring suit, 3:581
- Striking misjoined party, abuse of discretion standard for review of order, 6:418

- Summary judgment motion
 - Generally, 36:530–536
 - Late-file response or opposition evidence, preserving record on appeal, 36:397
 - New trial motion after summary judgment, preserving issue for appeal, 36:523
 - Partial summary judgment, interlocutory order and finality, 36:60–61, 36:505–506
 - Preservation of objections on appeal, 36:409
 - Reversal favored, 36:25
 - Statement of grounds for decision, effect of, 36:507
 - Trial-court error, preserving, 36:534
- Temporary injunction, interlocutory appeal. See **Injunctions**
- Transfer of proceedings for purposes of impartial trial, review of local prejudice motion, 9:333
- Venue order, 6:393, 9:251, 9:290–296
- Zoning appeals, joinder of parties, 6:333

Appearance

- Citation and service, waiver by general appearance, 10:514–518
- Contempt hearing, 17:313
- Corporation's appearance, 6:118
- Dismissal of actions, failure to appear, 37:378
- General appearance, 8:162–166, 8:380
- Inmate's personal appearance, 6:108
- Motion subject to special appearance, 8:171
- Motion to quash as, 14:232
- Personal representative, effect of appearance by, 6:161, 6:255
- Service
 - Challenging service, 10:529–530
 - Effect of minor's appearance in court, 10:41
 - General appearance, waiver of service by, 10:514–518
- Special appearance
 - Interlocutory appeal, 8:439, 8:444–450, 18:25
 - Pleading and challenging jurisdiction, 8:368–371, 8:376–385
 - Seeking ruling from court, 8:186–188
- Transfer of proceedings from proper venue, special appearance objecting to personal jurisdiction, 9:303
- TRO or temporary injunction hearing, effect of defendant's appearance, 17:202
- Venue improper, transfer motion combined with special appearance challenging jurisdiction, 9:225, 14:234
- Waiver of objection to jurisdiction by appearance, 8:156–157, 8:162–165, 8:170–173

Applications

- Bench warrant, 6:108
- Minors and incompetent persons, application for order for investment of settlement funds, 6:81
- Public records, application for, 27:349
- Scire facias, writ of, 6:256

Appraisals

- Presuit investigation, 2:54

Arbitration

- See also **Alternative Dispute Resolution (ADR); Mediation**
- Affirmative defense, 14:319
- Alternative to answering petition, 14:236
- Arbitrators, choosing, 38:217
- Award, 38:241–245

- Class action, 6:615
- Distinction between mediation and arbitration, 38:190, 38:204
- Drafting agreement, 38:214–218
- Engagement contract, provision for dispute resolution, 1:204
- Initiating arbitration, 38:222–224
- Interlocutory appeal, 18:27
- Jurisdiction, forum selection clause in agreement, 8:150
- Mandamus, 18:82, 18:83
- Motion to compel, 38:223
- Overview, 38:204–208
- Plea in abatement, 14:386, 15:183
- Presuit activities, 2:78–80
- Procedures, 38:230–236

Architects, Engineers, and Designers

- Professional negligence, statute of limitations and statute of repose, 3:284–286
- Summary judgment motion, 36:33

Asbestos Claims

- Discovery rule and statute of limitations, 3:431
- Forum non conveniens, 9:352
- Injunctive relief, public interest, 17:66
- Stream of commerce doctrine, 8:314

Assault and Battery

- Statute of limitations, 3:158

Assignment

- Cause of action assigned as part of collusive settlement void, 38:106
- Denial of assignment, verification of, 14:281
- Diversity, effect of assignments to defeat, 9:496
- Jurisdiction, 8:339, 8:367
- Standing of assignees, 6:214
- Substitution of parties, assignees and transferees, 6:264

Associations

- See also **Unincorporated Associations**
- Standing, 6:221

Assumed Names. See Substitution of Parties

Assumption of Risk

- Affirmative defense, 14:320
- Injury during commission of crime, 14:354

Attachment

- Constitutional county courts, issuance of writs, 7:52
- Contempt, 17:313
- District courts, jurisdiction for issuance of writs, 7:40
- Final judgment, 19:160-162
- Grounds, 19:70-77
- Issuance of writ, 19:90-100
- Justice courts, issuance of writs, 7:75
- Motion to dissolve, modify, or substitute property, 19:110-112
- Nature of remedy 19:60-61
- Remedies for wrongful attachment, 19:150-152
- Replevy, 19:120-122
- Service on Sundays, 10:29
- Statutory county courts, issuance of writs, 7:63
- Third parties, 19:130-137

Attorney General

- Corporation in default on franchise taxes, forfeiture of corporate privileges proceedings filed by attorney general, 6:124
- Intervention, 6:544
- Joinder, unconstitutionality of statute claims, 6:331
- Objection by attorney general to RFA prejudicing State of Texas, 31:04
- Request for production and inspection referred to attorney general for confirming decision, 27:356–360

Attorney-Client Privilege

- Compelling disclosure, 25:216–218
- Discovery of core work product under exceptions to attorney-client privilege, 24:94
- Documents, 25:118
- Duty of attorney regarding privileged information, 25:208–211
- Elements of privileged communication
 - Client, client's agent, or client's attorney, 25:138–146
 - Common-interest clients, 25:161
 - Experts, 25:152–155
 - Joint defendants, 25:160
 - Means of communication, 25:110–111
 - Purpose of communication, 25:128–133
 - Substance of communication, 25:116–122
- Exceptions
 - Generally, 25:103
 - Administration of deceased client's estate, 25:186–187
 - Crime-fraud exception, 25:166–170, 25:176–180
 - Disputes between lawyer-client or client-client, 25:192–194
- Joint defense. See **Common Interest (Joint Defense) Privilege**
- Overview
 - Client, educating, 25:104
 - Motions, groundwork for, 25:106
 - Scope of privilege, 25:102
- Physical and mental examinations, preparing examinee, 29:158
- Standing to invoke privilege, 25:200–204

Attorney-Client Relationship

- Class actions, 6:592
- Client's lack of legal competence, counsel's ethical duty to see appointment of legal representative, 6:16
- Conflicts of interest. See **Conflicts of Interest**
- Discovery
 - Client to help identify evidence needed, 24:125
 - Confidential information, consulting client, 24:177
 - Involving client in discovery, 24:112
 - No discovery planned in Level 1 case, informing client, 24:108
 - Request for production (see Request for production and inspection, below)
 - Response to requests for admissions, consulting with client, 31:78
- Drafting proposed engagement contract
 - Generally, 1:194–208
 - Contingency-fee arrangements, 1:226–232
 - Fixed fees, 1:238
 - Hourly-billing arrangements, 1:214–220
 - Maximum and minimum fee limits, 2:239
- Formalizing attorney-client relationship
 - Engagement contract (see Drafting proposed engagement contract, above)
 - Ethical guidelines and requirements, 1:186–189
 - Preliminary considerations, 1:176–180

- Review of engagement contract, 1:273
- Initial client contact. See **Initial Client Contact**
- Interrogatories, 30:51, 30:98
- Presuit investigation
 - Documents of client, 2:28
 - Good faith investigation of client's claim, "reasonable inquiry," 2:02
 - Informing client of investigation costs, 2:04–05
 - Interviewing client, 2:16
- Prior counsel, taking over case from, 1:282–285
- Request for production and inspection
 - Client responsibilities for locating, collecting, and examining items, educating and working with client, 27:124, 27:126–127
 - Confidential information, consulting with client, 27:221
 - Consulting client, 27:45
 - Response, contacting client, 27:94
- Sanctions, conflicts of interest between attorney and client, 27:273
- Settlement, ethical responsibilities, 38:34–38
- Substitution of counsel, 1:284
- Terminating prior counsel, 1:282–285
- Termination by client, 1:232
- Venue, client convenience, 9:12
- Withdrawal of attorney, 1:206–207

Attorneys

- Appointment of attorney ad litem
 - Minors and incompetents, 6:23
 - Service by publication, 10:271, 10:274
- Authentication by attorney, 36:272
- Case assessment and valuation. See **Case Assessment and Valuation**
- Case conference. See **Case Conference**
- Class actions, 6:644–645, 6:709
- Competence, 1:58–59
- Concurrent or dual representation, 1:68
- Conflicts of interest. See **Conflicts of Interest**
- Disciplinary proceedings. See **Disciplinary Proceedings**
- Disqualification. See **Disqualification of Attorneys**
- Ethics. See **Ethics**
- Frivolous pleadings, 14:66, 14:80
- In-house counsels' names, knowledge of, 27:154
- Information sharing networks for lawyers, 29:52
- Initial client contact. See **Initial Client Contact**
- "Insider information" learned from potential client, 1:02
- Investigation of case. See **Investigation**
- Joint defense. See **Common Interest (Joint Defense) Privilege**
- Jurisdiction, 8:260–265
- Malpractice. See **Legal Malpractice**
- Organizational entity, representation of, 1:75–76
- Petitions, prayer for fees, 14:138
- Presuit activities. See **Presuit Activities**
- Prior counsel, taking over case from, 1:282–285
- Sanctions, conflicts of interest between attorney and client, 27:273
- Service by, 10:313
- Summary judgment motion, affidavits of attorneys, 36:235
- Withdrawal of attorney, 1:206–207

Attorneys' Fees

See also **Costs**

Affirmative defense

Political subdivision's attorney-fee exemption, 14:343

Unreasonable fee, 14:367

Agreements on fees (engagement contract). See **Attorney-Client Relationship**

Amended or supplemental pleadings, 14:506

Amount in controversy, inclusion or exclusion of attorney fees, 7:120

Attorney-client privilege, 25:120

Case assessment and valuation. See **Case Assessment and Valuation**

Case conference, 1:272

Class actions, 6:606, 6:622, 6:765

Combination contingency/fixed fees, 1:161

Combination contingency/hourly-billed fees, 1:162

Contingency fees, 1:138–140, 1:170, 1:189

Default and default judgments, 37:84

Discovery disputes, motion for sanctions, 32:42

Engagement contract, drafting. See **Attorney-Client Relationship**

Ethical guidelines and requirements, 1:186–189

Factors in selecting fee arrangement, 1:118–124

Fixed-fee agreements, 1:156–159

Forfeiture of fee, attorney's breach of fiduciary duty to client, 1:07

Garnishment, 19:294

Guardian ad litem fees assessed against plaintiff's counsel, 6:67

Hourly-rate (see Time-based (hourly-rate) billing, below)

Initial client contact, explaining consultation fee and factors in setting, 1:22–23

Interpleader, 6:497, 6:500–506, 6:524

Jurisdiction, 8:271

Maximum and minimum fee limits, 1:160

Nonsuit, 37:325, 37:341

Preliminary considerations, 1:108–112

Presuit considerations, 2:107, 2:212–214

Reasonable fees, 1:186–187

Remand, 9:592, 9:610–612

Request for production and inspection, 27:112, 27:273, 27:360

Requests for admissions, 31:106, 31:151, 31:165–167

Retainers, 1:146–150, 1:169, 1:216–218, 1:272

Settlement, effect on fees, 38:04, 38:114

Shared fees, 1:163, 1:188

Shareholder derivative actions, 6:792

Special exceptions, failure to plead statutory basis for attorney fees, 15:66

Time-based (hourly-rate) billing, 1:130–132, 1:169

Unconscionable, unreasonable, or excessive fee, 1:186, 14:367

Venue improper, sanctions for knowingly filing in, 9:185

Wrongful injunction, 17:388

Audiotaping. See **Video- and Audiotaping**

Auditors

Statute of limitations for professional negligence, 3:277

Authentication

Depositions, obtaining information to authenticate documents, 28:24, 28:78

Laws of foreign state, authenticating for purpose of judicial notice, 36:318

Motions, authenticating documents attached to affidavits, 16:66

Request for production and inspection of documents, 27:19, 27:257

Requests for admissions, authenticating documents, 31:34–35, 31:44, 31:61

Summary judgment motions, authenticating affidavits for documents and objections to, 36:271, 36:287, 36:443

Automobile Accidents. See **Motor Vehicle Accidents**

— B —

Back Pay

Discrimination awards, tax consequences, 38:20

Bad Faith

See also **Good Faith**

Dismissal of action as sanction, 37:392

Frivolous pleadings, 14:72, 14:80

Guardian ad litem, 6:52

Interpleader, 6:497

Physician-patient privilege, ex parte communications, 25:473

Presuit considerations, avoiding bad faith pleadings, 2:173

Stowers Doctrine, insurer's failure to settle, 2:207, 38:66, 38:74

Summary judgment motions, 36:234, 36:514–516

Bankruptcy and Insolvency

Alternatives to answering petition, 14:233, 14:237

Collusive bankruptcy settlements, 38:106

Default judgment conflicts with bankruptcy stay, collateral attack, 37:275

Discharge in bankruptcy as affirmative defense, 14:322

Standing, 6:219

Statutes of limitations, tolling, 3:518

Successor-in-interest of insolvent insurer, jurisdiction, 8:336

Venue, effect of one party's bankruptcy on, 9:139, 9:266

Bench Warrant

Inmate as witness in court, 6:108

Beneficiaries

See also **Heirs**

Joining beneficiaries and trustee, 6:163, 10:68

Bias

Judge's bias or prejudice, recusal, 16:204–209

Physical and mental examinations, impeaching designated examiner for bias, 29:52

Bifurcation

Class actions, 6:744

Bill of Review

Default judgments. See **Default and Default Judgments**

Service and citation challenged, 10:590, 10:596–600, 10:606–616

Special appearance orders, 8:447

Statute of limitations for petition to set aside prior default judgment, 3:351

Venue. See **Venue.**

Blood, Fluid, or Tissue Tests

Blood tests for alcohol or drugs, 25:466

Paternity tests. See **Paternity**

Physician-patient privilege, information obtained by examination, 25:466

Self-incrimination, privilege against, 25:318

Bonds and Undertakings

Attachment, 19:95, 19:121, 19:134

Default judgment, bond for stay of execution, 37:219

Garnishment, 19:198, 19:251, 19:264

Lis pendens, 19:542

Minors and incompetent persons, bond required for manager of proceeds awarded to, 6:82
Nonresident criminal defendant, effect of signing recognizance bond on jurisdiction, 8:228
Performance bond barring suit by assignee, effect on standing, 6:214
Receivership, 19:345
Sequestration, 19:415, 19:441
Statute of limitations on personal representative's bond, 3:124
TRO or temporary injunction, 17:139, 17:248–254
Wrongful injunction, action on bond. See **Injunctions**

Breach of Contract

See also **Contracts**
Affirmative defense, ambiguity of contract, 14:345
Discovery rule and statute of limitations, 3:423
Injunctions, stipulating damages not adequate remedy, 17:51
Jurisdiction in breach of non-competition clause, 8:237
Lease breached, jurisdiction, 8:251
Mediation agreement, 38:268
Settlements, 38:160, 38:166–168
Standing of non-signatory, 6:213
Statute of limitations, 3:36–37
Venue, 9:104

Briefs

Class certification order, brief for interlocutory appeal, 6:725
Overview
 Generally, 16:72–76
 Argument, summary of, 16:82–83
 Briefing schedule, 16:147
 Citing authority, 16:96–97
 Facts, 16:88–90
 Reply briefs, 16:146
 Styles to avoid, 16:102–103
Physical and mental examinations, reply brief to motion for order for Rule 204 exam, 29:153
Request for production and inspection, brief for hearing on motion for protective order for nonparty subpoena duces tecum, 27:318
Summary judgment motion and response in opposition, 36:366, 36:390
Temporary injunction, timely filing of brief for interlocutory appeal, 17:343, 17:347

Builders and Repairers

Statutes of repose, 3:546–554

Burden of Proof

Adverse possession, statute of limitations, 3:303
Agency, 8:330
Amended pleadings, burden of showing surprise or prejudice, 14:503
Attorney-client privilege, 25:216
Capacity to sue or be sued, burden of proof in plea in abatement, 6:194
Class action certification, 6:608, 6:611
Criminal contempt, 17:306
Default judgment, 37:210, 37:239, 37:247
Discovery disputes, 32:11
Discovery rule, 3:395
Forum non conveniens dismissal motion, 9:377, 9:400
Fraudulent concealment of claim, proving intent, 3:368
Fivolous pleadings, 14:74

Interpleader, 6:422, 6:514
Interrogatories
 Business records or public records response, 30:150–151, 30:153
 Service, 30:89
Intervention, 6:568, 6:584
Jurisdiction, 8:63, 8:369, 8:408–409
Mass torts, objecting to joint trial, 6:365
News media privilege, 25:610
No-evidence summary judgment motion, 36:77–78, 36:82, 36:91, 36:170–173
Physical and mental examinations, good cause requirement, 29:108–110
Plea in abatement, 15:172, 15:226
Plea to jurisdiction, 15:134
Pleadings groundless and brought in bad faith, 14:74
Presuit considerations, 2:108
Privileges, 25:40, 25:94–95
Reinstatement after dismissal, 37:453
Remand, federal subject matter jurisdiction, 9:591
Request for production and inspection, 27:249, 27:274
Requests for admissions, 31:122, 31:180, 31:190, 31:197
Requests for disclosure, good cause or lack of prejudice for failure to supplement responses, 26:55
Self-incrimination, privilege against, 25:338
Service and citation challenged
 Generally, 26:32
 Bill of review, 10:606–612
 Direct appeal, 10:575
 New trial motion, 10:552–556
 Restricted appeal, 10:586
Shareholder derivative actions, determination of best interests of corporation not made in good faith, 6:790
Special appearance, 8:369, 8:381, 8:408–409
Special exceptions, 15:70
Standing, 6:231
Statutes of limitations defense, delay in service and relation-back rule, 3:65
Summary judgment. See **Summary Judgment**
Trade secrets, protective order, 25:405, 25:428
Venue, 9:252
Witness's competence, 6:95

Business Disparagement

Statute of limitations, 3:192

Business Records

Computer records, 27:06, 27:65, 27:139, 27:157, 27:240
Interrogatories, business records response, 30:77, 30:150–155
Requests for admissions, establishing document as, 31:37
Self-incrimination, privilege against, 25:325–326

— C —

Calendar

Case conference, 1:24
Docket. See **Docket**
Federal and state courts compared on issue of trial calendar, 9:474

Request for production and inspection, calendaring response dates and deadlines, 27:92–93

Special exceptions, calendaring early, 15:79

Capacity to Sue or Be Sued

Assumed name, capacity of proper party, 6:244

Challenging capacity

Burden of proof, 6:194

Form of objection, 6:191

Nonparties, no objection, 6:189

Plea in abatement, 6:190, 6:193–197, 15:188–192

Substitution of party with capacity, 6:197

Truth of matter appears in record, 6:188

Verified objection, 6:186, 6:192

Waiver of objection, failure to file verified plea as, 6:187

Condominiums, 6:170

Corporations

Appearance by attorney, 6:118

Default on franchise taxes, 6:124–128, 6:268

Defects of parties, objection raised by verified pleading, 6:139

Dissolved corporation, 6:132–135, 6:269

Divisions of corporation, 6:120

Foreign corporation without authorization, 6:142–146

Foreign corporations, 6:121

Sold or merged corporation, 6:138–139, 15:192

Standing and capacity in corporate claims, 6:205

Subsidiaries of corporation, 6:119

Decedent's estate, 6:160–162

Definition of capacity, 6:06

Dismissal of actions, no capacity, 37:391

ERISA plans, 6:169

Family Code cases, 6:225

Government entities, 6:167

Guardian ad litem. See **Guardian Ad Litem**

Incompetent persons. See **Minors and Incompetent Persons**

Judgment limited to party's capacity, 6:08

Limited partnerships, 6:156–158

Minors. See **Minors and Incompetent Persons**

Misnomer or misidentification of parties. See **Parties**

Objection to capacity by verified pleading, 6:07, 6:186, 6:192

Partners and partnerships, 6:150–152

Plea in abatement, parties lack of capacity, 15:188–192

School districts, 6:168

Service, capacity of person served, 10:414–419

Settlement agreements, capacity of parties, 38:94

Shareholders, 6:125, 6:216, 15:191

Special denial requiring verification, denial of capacity, 14:276

Standing compared to, 6:203–205

Substitution of parties. See **Substitution of Parties**

Successor representative, objection to capacity of, 6:260

Trusts, 6:163

Unincorporated associations, 6:166

Capias

Enforcement of injunction by contempt, 17:313, 17:318

Carriers for Hire

Statute of limitations, 3:128

Case Assessment and Valuation

Client, evaluating, 1:46–50

Costs and benefits, weighing, 1:34–41

Ethical factors

Conflict of interest, 1:02, 1:64–78

Rules of Professional Conduct, 1:56–59

Fee sources, evaluating, 1:84–86

Referrals and return business, 1:50

Steps after assessment and valuation, rejection letter or acceptance of case, 1:92–94

Case Conference

Engagement contract. See **Attorney-Client Relationship**

Information to convey to client, 1:266–272

Information to obtain at conference, 1:251–261

Initial client contact, describing case conference to prospective client, 1:19

List of things for client to bring to case conference, 1:25

Overview, 1:244–246

Preliminary case plan, 1:102

Preparing for, 1:100–102

Case Tracking, Discovery Control Plan Levels. See Discovery Control Plan Levels

Cause of Action

Assignment of causes of action as void, 38:106

Constructive knowledge and discovery rule, effect on accrual of cause of action, 3:413

Defendant's residence determined at time cause of action arises, 8:107

Defined, 14:144

Discovery rule, inapplicability to statutory causes of action, 3:394

Dismissal of actions, failure to state cause of action, 37:386

Jurisdictional facts, 8:416–417

Justiciable interest, lack of distinguished from failure to state cause of action, 15:68

Petitions. See **Petitions**

Pleading facts that negate cause of action, summary judgment, 15:09

Presuit considerations, 2:104–110

Settlement negotiations, drafting petition with elements of causes of action, 38:53

Special exception, failure to plead cause of action, 15:15

Statutes of limitations

Restriction on legislative abrogation of common law causes of action, 3:578

Retroactive application of legislative amendments, 3:588–592

Statutory causes of actions, statutes of limitations abrogating, 3:582

Stowers cause of action against insurer for negligent failure to settle third-party claim, 2:207, 38:66, 38:74

Unjoined claims, splitting cause of action, 14:171

Validity of cause of action, presumption of, 8:416, 9:253

Causes of Actions

Attorney fees permitted by causes of actions, presuit consideration, 2:107

Certificate of Deposit

Statute of limitations, enforcing payment of, 3:296

Certificates and Certification

Assumed name certificate, 6:244

Class actions, certification of. See **Class Actions**

Conference, certificate of

Compel production, motion to, 27:272

Discovery, 24:11, 32:03, 32:23

Motions, 16:08–11, 16:40
Physical and mental examinations, certificate of conference included with motion for order for Rule 204 exam, 29:134
Request for production and inspection, 27:271
Requests for admissions, 31:86, 31:138–139
Summary judgment motion, conference regarding sanctions, 36:516
Trade secrets, protective order, 25:424

Depositions

Non-stenographic recordation means, certification by deposition officer, 28:106
Requirements for deposition officer's certification, 28:322
Foreign corporations, certificate of authority to do business, 6:142–146
Inmate's certified of copy of trust account balance for in forma pauperis proceeding, 6:107
Joinder, required certifications, 6:389
Jurat, 14:51
Last known address, certificate of, 10:305, 37:53
Notary public. See **Notary Public**
Pleadings, certification by signing, 14:89
Request for production and inspection, 27:38, 27:273
Requests for disclosure, signature as certification by counsel or party of compliance with Rules of Civil Procedure, 26:08
Service, certificate of. See **Service of Process and Papers**

Change of Venue. See **Transfer of Proceedings**

Charitable Trusts. See **Trusts and Trustees**

Charts, Checklists, and Questionnaires

Case conference

Information to convey to client, checklist of, 1:276
Information to obtain, checklist of, 1:261
Pre-conference questionnaire, 1:252
Deposition, chart for choosing location, 28:52
Interrogatories, responding to, 30:96
Requests for admissions, using RFAs as proof checklist for uncontested facts, 31:24
Summary judgment motion, checklist for response, 36:376
Summary judgment motion, checklists of advantages and disadvantages, 36:326–327
Temporary injunction, checklist for applicants, 17:161
TRO, checklist for applicants, 17:160

Checks

Statutes of limitations, enforcing payment of, 3:294–295

Child Abuse

Minors, testimony by, 6:94

Child Custody

Forum non conveniens, 9:384–386
Jurisdiction, 8:347–351
Mental examinations, 29:125
Service on Sundays, limitations on, 10:29

Child Support

Contempt, punishment for, 17:317
Jurisdiction, 8:116, 8:350–351
Statutes of limitations, 3:322

Choice of Law

Comparison of forum selection clause, 8:149
Jurisdiction, 8:246–247

Statutes of limitations, 3:14–15

Citation. See **Service of Process and Papers**

Citizenship

See also **Aliens**

Diversity jurisdiction, 9:434, 9:494–497, 9:525

Civil Rights Claims

Statutes of limitations, 3:335

Class Actions

Absent class members, protection by court, 6:606

Advantages and disadvantages, 6:618–622

Arbitration, 6:615

Bifurcation, 6:744

Certification of class

Hearing on certification, 6:694–699

Interlocutory appeal, 6:722–732, 18:21

Motion for certification, 6:683, 6:688–690

Notice to class, 6:716–719

Order for certification, 6:703–712

Post certification, 6:736–740

Pre-certification proceedings, 6:680–684

Trial, 6:744–745

Collateral estoppel, comparison to, 6:612

Construction of cases and statutes. See **Construction and Interpretation**

Deceptive Trade Practices Act (DTPA), 6:610

Decertification, 6:710, 6:722, 6:739

Defined, 6:604

Discovery, 6:667, 6:682, 6:710, 6:740

Federal and state parallel class actions, 6:613

Final judgment, 6:762–766

Injunctions, 17:146

Insurance Code, unlawful insurance practices, 6:609

Intervention, 6:532

Joinder, TRCP 39 inapplicable to class action, 6:312

Notice, 6:650, 6:663, 6:672, 6:994, 6:716–718, 6:751–752

Partial and multiple class actions, 6:708

Pleading, 6:672–675, 6:754

Post certification, 6:736–740

Prerequisites

Adequacy of class counsel, 6:644–645

Adequacy of representative parties, 6:637–638, 6:642

Commonality, predominance test, 6:633–634

Conflicts of interest, 6:640–641, 6:644

Defendant class representative, 6:646, 6:652, 6:653

Financial ability to prosecute case, 6:642, 6:644

Four prerequisites for all class actions, 6:626

Integrity of representative party, 6:639

Litigation shortcomings of class representative, 6:642–643

Numerosity, 6:630–632

Typicality, 6:635–636

Right to proceed as class action not automatic, 6:611, 6:613

Settlement, 6:622, 6:681, 6:748–759, 38:87

Shareholder derivative actions. See **Shareholder Derivative Actions**

Statute of limitations, 3:511, 6:614, 6:725

- Subclasses, 6:708
- Superiority to other available methods, factors in determining, 6:660–669
- Suspension of normal rules for parties, 6:605
- TRCP 42, patterned after federal rule, 6:07–608
- Trial, 6:744–745
- Types of class actions, 6:627, 6:650–654
- Unnamed class members not parties, 6:727, 6:738, 6:740, 6:757–758

Clergy Communication Privilege

- Elements of privilege, 25:590–591
- Holder and claimants, 25:596
- Purpose, 25:585
- Summary of privilege, 25:584
- Waiver, 25:597

Clerk of Court. See **Court Clerks**

Closely-Held Corporations

- Shareholder derivative actions, 6:771

Codefendants

- See also **Multiple Parties**

- Attorney-client privilege, joint defense rule, 25:160
- Common interest (joint defense) privilege. See **Common Interest (Joint Defense) Privilege**
- Confidentiality duty between joint defendants, 25:289
- Contribution. See **Contribution**
- Cross claims, 14:434
- Discovery against, 24:31
- Removal to federal court, consent of other defendants, 9:546–550
- Request for production and inspection of documents or things, serving requests on codefendants, 27:07
- Requests for disclosure, names of potential codefendants, 26:16
- Venue, 9:178, 9:199

Collateral Estoppel

- Class actions, comparison to collateral estoppel, 6:612
- Defensive collateral estoppel, affirmative defense, 14:344
- Summary judgment motion, judgments from other cases to support, 36:318

Collateral Source Income

- Admissibility of insurance information, 24:74

Common Interest (Joint Defense) Privilege

- Generally, 25:160–161
- Affidavits, use of, 25:284
- Agreement, requirements for, 25:286
- Client's participation, limiting, 25:288
- Confidentiality, duty of, 25:289
- Defined, 25:280
- Disqualification of counsel, 25:285
- Extension of attorney-client privilege, 25:281
- Federal court, elements in, 25:283
- Joint client exception, 25:287
- Plaintiffs, application to, 25:282
- Purpose, 25:280
- Waiver, 25:289

Common Law

- Dissolved corporation's capacity, 6:132
- Enforcement of foreign judgments, statute of limitations, 3:356
- Forum non conveniens, 9:392–401

Indemnity claims, statute of limitations, 3:353

Injunctions

Common law equitable grounds, 17:14

Wrongful injunction, covenant not to compete, 17:82-83

Compelling Discovery. See **Discovery Disputes**

Competency

See also **Minors and Incompetent Persons**

Incompetency tolling statute, examination of plaintiff, 29:14

Physician-patient privilege exceptions at competency proceedings, 25:499

Summary judgment motion, affidavit of affiant's competence, 36:436

Witness's competence, 6:95

Complex Litigation

See also **Class Actions; Multiple Parties**

Case assessment and valuation, 1:39-40

Joinder of parties resulting in more complex case, 6:287

Level 3 Discovery Control Plan, 14:190, 24:143

Mass torts

Joinder, 6:360-365

Special appearance orders, review of, 8:445

Request for production and inspection, 27:21, 27:125, 27:256

Settlement of multiple party tort actions. See **Settlement**

Severance, 6:440

Computer Records

Request for production and inspection of, 27:06, 27:65, 27:157, 27:240

Computers and PCs

Computer hacking, statute of limitations, 3:195, 3:425

Computer-assisted research charges, engagement contract provision for, 1:201

Conflicts of interest database, creating, 1:78

Damages, computer programs to determine value of case, 38:56

Electronic transmission, privilege and confidentiality issues, 25:111

Internet. See **Internet**

Request for production and inspection

Deleting computer files permanently, software for, 27:157

Document storage/retrieval system and imaging/scanning systems, 27:264

Document-control system, using file intake log or computer database, 27:147, 27:160

Summaries, litigation support software, 27:263

Time and billing computer programs, 1:130

Concealment

"Affirmative defense to affirmative defense", matter in avoidance of defense, 14:297, 14:309

Client's identity, attorney-client privilege to conceal, 25:119

Fraudulent concealment of claim, effect on statute of limitations. See **Statutes of Limitations**

Conferences

Case conference. See **Case Conference**

Certificate of conference. See **Certificates and Certification**

Moderated settlement conference, 38:188

Pretrial conferences. See **Pretrial Conferences**

Confidentiality

See also **Disclosure**

Alternative dispute resolution, 38:177

Communicable diseases, reporting requirements, 25:491

Initial client contact, 1:14-17

Interrogatories, confidentiality agreement, 30:100, 30:207

Joint defendants, duty of confidentiality, 25:289

Mediation statements, 25:602

Privileges. See **Privileges**

Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Requests for admissions, confidential documents submitted under seal for in camera inspection, 31:180

Settlement, confidentiality clauses, 38:38

Conflicts of Interest

Case assessment and valuation, 1:02, 1:64–78

Class actions, 6:640–641, 6:644

Initial client contact, discussing conflicts, 1:02

Rules of Professional Conduct, 1:64–78

Trust, joining beneficiaries not required if no conflict of interest, 6:163

Ward's guardian or next friend's conflict of interest, appointment of guardian ad litem, 6:26–27, 6:36, 6:44

Conflicts of Law

Default judgment conflicts with bankruptcy stay, collateral attack, 37:275

Depositions, elimination of stenographic transcription, 28:100

Multiple party cases, conflicting mandatory rules on venue, 9:138

Statutory injunctive relief and common law requirements, 17:16

Substituted service under Rule 106(b), conflict regarding specificity of order on manner of service, 10:134

Consent

Conflicts of interest, client's informed consent to, 1:02, 1:67

Disclosure of client's confidences, client's consent to, 25:208

Jurisdiction based on consent, 8:138–150, 8:201, 8:246, 8:287, 8:380

Privileged information, consenting to disclosure, 25:73

Removal to federal court, consent of other defendants, 9:546–550

Represented opponent, consent to communicate with, 2:180

Settlement, 38:12, 38:45

Special appearance, 8:380

Trade secrets, consent to protective order, 25:416–419

Trial by mutual consent, effect of pleading defects, 15:86

Conservatorship. See Guardianship or Conservatorship Proceedings

Consideration. See Contracts

Consolidation of Actions

Alternative to joinder, 6:275

Discretion of court to grant consolidation instead of joinder, 14:164

Conspiracy

Default judgment, conspiring to suborn perjury, 37:252

Jurisdiction, 8:293, 8:330

Statute of limitations, civil conspiracy, 3:159

Venue, 9:106

Constitutional County Courts

Subject matter jurisdiction, 2:161, 7:48–55

Constitutional Law

Class actions, members' due process entitlement to notice, 6:650, 6:694

Contempt, criminal and civil, 17:306–307, 17:312–313, 17:318, 17:324

Default judgment, due process violation, 37:187, 37:245

Dismissal, due process requirements

“Drop” dockets (dismissal docket), 37:418–420, 37:422–423

Hearing, 37:408

Notice, 37:407–408, 37:417–420
Reinstatement motion, hearing on, 37:408
Disqualification of judges, 16:166, 16:172
Election Code violations, freedom of speech and association as affirmative defense, 14:350
Federal question jurisdiction, 2:148, 9:433
Injunctions
 Appeal to Texas Supreme Court, temporary injunction based on holding regarding constitutionality of state statute, 17:337
 Civil statutes, constitutionality of, 17:111
 Contempt, criminal and civil, 17:306–307, 17:312–313, 17:318, 17:324
 Criminal statutes, 17:121
 Denial of constitutional rights as imminent irreparable injury, 17:36
 “Gag order,” 17:122
 Speech, prior restraints of, 17:122
Jurisdiction, federal due process limits. See **Jurisdiction**
Medical malpractice claims (health care liability statute), statute of limitations, 3:251, 3:259
Physical and mental examinations, 29:05
Privacy, 25:616
Promissory notes, due process and jurisdiction, 8:251
Religion, exercise of. See **Religion**
Requests for disclosure, witness statements, 26:19
Self-incrimination. See **Self-Incrimination, Privilege Against**
Service, due process requirements
 Generally, 10:02, 10:93, 10:148, 10:202, 10:221
 Publication, 10:250–251
Standing, 6:202, 6:210
Statutes of limitations, 3:578–583, 3:588–592
Statutes of repose, 3:526, 3:592
Texas State Constitution, role in subject matter jurisdiction, 7:04
Unconstitutionality of statute claims
 Affirmative defense, 14:366
 Joinder of attorney general, 6:331

Construction Defects

Architects, engineers, and designers. See **Architects, Engineers, and Designers**
Builders and repairers. See **Builders and Repairers**
Statutes of repose. See **Statutes of Repose**

Construction and Interpretation

See also **Definitions**

Action “commenced,” 15:173

Attorney-client privilege

 Broad or narrow construction, 25:217

 Crime-fraud exception, 25:167

Class actions

 Monetary damages claims, applicability of TRCP 42(b)(1)(A), 6:650

 Notice of certification, reasonable effort, 6:719

 Predominance test on commonality, 6:654-656

 TRCP 42 and FRCP 23, 6:608

Corporations

 Forfeiture of corporate privileges, charter, or certificate of authority distinguished from dissolution of corporation, 6:124

 Transacting business compared to doing business, 6:124, 6:142

Default judgment, “conscious indifference,” 37:193

Depositions, elimination of stenographic transcription, 28:100
Discovery right broadly construed, 24:24
Discovery sanctions
 Pre-*TransAmerican* cases, effect of, 32:35
 Remington, effect of failure to obtain pretrial ruling on sanctions, 32:37
Dismissal
 Court order setting mass dismissal, notice of grounds for dismissal, 37:422
 “Drop” docket procedure for dismissing case, 37:416, 37:418–420, 37:422–423
 Imputed notice of dismissal, 37:418
 Motion to “retain” (case), 37:420–421, 37:423
 Reinstatement hearing, 37:435
District courts, residual jurisdiction, 7:34
Doing business, 2:128–129
“Dominant” jurisdiction, 15:172–173
Federal and state courts, applicable law, 9:451
Fiduciary shield doctrine, 8:331
Fraudulently-joined defendants, 9:495
Guardian ad litem, reasonable fee, 6:57
Interrogatories, duty to provide “reasonably available” information, 30:99
Intervention
 Essential or indispensable need, intervenor lack proper venue, 6:563
 Liberal construction of pleadings, 6:726
Medical malpractice
 “Course of treatment” rule, 3:235
 “Hospitalization” rule, 3:235
“Motion to strike,” 15:25
Parole evidence rule, 36:445
Parties, misnomer distinguished from misidentification, 6:172
Permissive joinder, same transaction or occurrence, 6:296
Physical and mental examinations
 Comparison of Rule 204 and FRCP 35, 29:04
 Distinction between state of mind and mental condition, 29:117
 “In controversy” requirement, 29:116–125
Physician-patient privilege
 Communication, broad definition, 25:464
 “Information obtained by examination,” 25:466
 “Information transmitted,” 25:465
 Narrow construction of privilege, 25:452
 Ramirez requirement, physical, mental, or emotional condition, 25:498
 Tarasoff-type duty to warn potential victims in mental health context, 25:492
Pleadings
 Affirmative defenses, liberal construction, 14:312
 Alternative grounds and inconsistent theories, 14:11
 Amended pleadings, liberal construction, 14:458
 Amended or supplemental pleadings determination, 14:515
 Compulsory counterclaims, same transaction or occurrence and logical relationship and other tests, 14:420–421
 Election of remedies doctrine, 14:184–185
 “Fair notice” of claims, 2:109, 14:04, 14:08, 14:154–156
 Groundless and bad faith pleadings, 14:74
 Jurisdiction, liberal construction of petitions, 14:209
 Liberal construction of, 14:07, 14:24
 Relation back statute for amended pleadings, 14:460
Remand, “procedural defects,” 9:574–575

Removal

Jurisdiction strictly construed, 9:595
“Other paper,” effect on deadline for removal, 9:524

Request for production and inspection

Broad interpretation of request, 17:158
Constructive possession, 27:118
Description, reasonable particularity of, 27:48, 27:158, 27:200
Fishing expeditions and ordinary discovery distinguished, 27:10
Texas and federal case law compared, 27:04

Self-critical analysis privilege, *Kneeland* case, 25:295

Self-incrimination, privilege against, use and derivative immunity and transaction immunity, 25:358

Service

“Attorney for service” and “attorney in fact,” 10:59
Comparison of Rule 106(b) substituted service with substituted service on employee or agent, 10:237
Distinctions between long-arm statute and statutes governing entities (Business Corporation Act and Revised Limited Partnership Act), 10:148
“Doing business,” 10:221
Motor vehicle collision cases, general long-arm service versus nonresident motorist long-arm statute, 10:204
Nonresident, “minimum contacts,” 10:93, 10:148, 10:202, 10:221
“Participation at trial”, restricted appeal, 10:586
“Person in charge,” 10:219–225, 10:295
Publication, nonresidency or absence, 10:248
Substituted service under Rule 106(b), conflict regarding specificity of order on manner of service, 10:134

Settlement

Acceptance of check, 38:95
Collusive settlements, 38:106
Consideration, 38:96
Stowers Doctrine, insurer’s failure to settle, 2:207, 38:66, 38:74

Severance, time for motion, 6:444

Special appearances, party not amenable to process, 8:377

Special exceptions narrows interpretation of allegation, 15:45

Statutes of limitations

Discovery rule, 3:392–394
Judicial interpretations, 3:583
“Lack of jurisdiction,” 3:494
“Open courts” provision, 3:578–582, 3:592
Reasonable time to bring suit, 3:581
Single publication rule, 3:202

Statutes of repose inapplicable to owners or tenants, 3:540, 3:552

Stream of commerce doctrine and *Asahi Metal* case, 8:308–314

Summary judgment motions

Conclusory fact statements versus factual inferences, 36:188–189
Conclusory statements, 36:444
Hearing as “trial,” 36:470
“Mother Hubbard” clause, 36:506
No-evidence summary judgment motion, adequate time for discovery, 36:80–

81

Qualified statement, 36:190

Tarasoff-type duty to warn potential victims, 25:492, 25:546

Venue

Forum selection clauses, 2:133, 8:377, 9:64–66
Meanings of “accrued”, “occurred”, and “substantial,” 9:93
Multiple party cases, conflicting mandatory rules, 9:138
One-for-all rule, 9:150–153
“Principal office,” 9:85

Visiting judge, timely objection to, 16:225

Constructive Discharge

Statute of limitations, 3:165

Consultants

See also **Experts and Expert Witnesses**

Attorney-client privilege, 25:152

Discovery of consulting experts, 24:63, 24:100

Matters outside scope of discovery, 24:100

Presuit investigation, use of consulting experts, 2:39

Requests for disclosure, 26:20

Treating physician, physician-patient privilege, 25:485

Consumer Contracts

Forum selection clauses, 8:145

Venue, 9:130

Consumer Credit Code

Statute of limitations for violations of, 3:129

Contempt

Fines, 17:315–316

Injunction, violation of, 17:155, 17:234, 17:302–318

Judgment of contempt and commitment order, 17:314

Motion for, 17:310–311

Recusal motion, contempt hearing after improper, 16:164, 16:223

Repleader, failure to comply with order, 14:462, 14:478

Request for production and inspection, 27:273, 27:319

Special appearance affidavit false, nonresident affiant subject to contempt, 8:383

Continuance

Amended pleadings, 14:485, 14:504–506

Discovery disputes, continuance of hearing to file affidavits, 32:16

No-evidence summary judgment motion, adequate time for discovery, 36:80, 36:94

Request for production and inspection, continuance for supplementation of responses and production, 27:249

Requests for disclosure, continuance for supplementation of responses, 26:55

Response in opposition to summary judgment motion, 36:399

Settlement, requesting continuance of trial date, 38:81

Special appearance, 8:402, 8:410

Summary judgment motion and response, 36:80, 36:94, 36:398–399, 36:458–463, 36:479

Venue improper, continuance of hearing on motion to permit discovery, 9:25

Contracts

See also **Breach of Contract**

Consideration

Pleading failure and lack of consideration as affirmative defense, 14:325

Settlement agreements, 38:96

Special denial requiring verification, 14:282

Counterclaims, 14:426

Engagement contract. See **Attorney-Client Relationship**

Forum selection clauses

Generally, 9:64–66, 9:406–409

Defenses, 9:414–418

- Jurisdiction based on contractual consent, 8:138–150, 8:247
- Presuit considerations, 2:133
- Procedures, 9:422–425
- Scope of review on appeal, 8:450
- Special appearance versus motion to dismiss, 8:377
- Long-arm jurisdiction over nonresidents based on contracts. See **Jurisdiction**
- Mediation agreements. See **Mediation**
- Modification of contract as affirmative defense, 14:357
- Notice of claim requirements, 3:21
- Pre-nuptial agreements, statute of limitations for enforcement, 3:319
- Real estate contracts. See **Real Property**
- Reformation of contract, statutes of limitations, 3:137, 3:147
- Seaman's suit for maintenance and cure, statute of limitations, 3:219
- Settlement agreements. See **Settlement**
- Standing, 6:213–214
- Standstill agreement for settlement negotiations, 14:236
- Statute of frauds. See **Statute of Frauds**
- Statutes of limitations, 3:36–37, 3:114–117, 3:122–141, 3:137
- Tortious interference with contract, 3:193
- Venue. See **Venue**

Contribution

- Joinder of parties, 6:282, 6:320
- Settlement, 38:132–133, 38:138–139, 38:144–145, 38:151
- Severance of contribution claim, 6:320, 6:439
- Statute of limitations, 3:354

Contributory Negligence

- Affirmative defense, 14:321

Conversion

- Statute of limitations, 3:170, 3:297, 3:426
- Venue, 9:107

Corporations

- See also **Alter Ego**

- Assumed names. See **Substitution of Parties**

- Capacity to sue or be sued. See **Capacity to Sue or Be Sued**

- Closely-held corporations, 6:771

- Co-owners in corporation and real estate, abuse of discretion to strike intervention, 6:542

- Construction of cases and statutes. See **Construction and Interpretation**

- Deposition notice, 28:46

- Directors and officers

- Alter ego allegation, 8:337, 8:409, 8:425

- Fiduciary shield doctrine, 8:331

- Jurisdiction over, 2:125, 8:129, 8:132, 8:331–332

- Liability for debts of corporation in default on franchise taxes, 6:126, 6:135

- Presuit jurisdiction considerations, 2:125

- Dissolution of corporations. See **Dissolution of Corporations**

- Diversity jurisdiction, 9:434

- Foreign corporations. See **Foreign Corporations**

- Jurisdiction. See **Jurisdiction**

- Plea in abatement, 15:191

- Privilege waived by corporate agent, 25:54

- Request for production and inspection, knowledge of in-house counsels' names, 27:154

- Requests for admissions, reasonable inquiry requirement, 31:110

Self-incrimination, privilege against, 25:326
Service. See **Service of Process and Papers**
Shareholder derivative actions. See **Shareholder Derivative Actions**
Shareholders. See **Shareholders (Generally)**
Standing, 6:205–206, 6:216
Statutes of limitations, 3:342, 3:344, 3:420, 3:510
Subsidiaries. See **Subsidiaries**
Venue, 9:84–85

Costs

See also **Expenses and Expenditures; Fees**
Agreements between attorney and client regarding costs, 1:169–170, 1:198, 1:200–202, 1:231
Amended pleadings surprise opponent, cost-award taxed to party, 14:506
Amount in controversy, inclusion or exclusion of costs, 7:121
Case assessment, out-of-pocket costs, 1:41
Class actions, notice of certification, 6:716–717
Depositions, 28:23, 28:39
Discovery
 Expert witness, costs of deposing, 24:66
 Planning discovery, weighing costs, 24:122
 Sanctions' motion, award of expenses, 32:42
 Stipulations to minimize expense of, 24:111
 Undue expense as drawback of, 24:03
Document production, cost of copies, 28:242
Guardian ad litem fees taxable as costs, 6:65
Indigents. See **Indigents**
Interpleader, 6:508
Nonsuit
 Delay of refiled suit when new docket number assigned, 37:349
 Taxing costs on complete nonsuit, 37:295
Physical and mental examinations, 29:88–89
Reimbursement. See **Reimbursement**
Remand order assessing costs, review of, 9:603
Request for production and inspection, 27:08, 27:112
Requests for admissions, 31:02, 31:68, 31:106, 31:151, 31:164–165
Requests for disclosure of medical records versus subpoena, 26:22
Retainer, 1:169, 1:202, 1:218
Security for costs, dismissal for failure to file, 37:393
Service, 10:104, 10:316, 10:324
Settlement offers, effect on, 38:152-155
Special Master, 28:216
Summary judgment motions, 36:20
Taxing costs, 6:65, 14:506, 37:295

Counterclaims

Generally, 14:176–178
Advantages and disadvantages, 14:394–395
Affirmative defenses, comparison to, 14:308
Amount in controversy, 7:97, 7:107
Answer or separate pleading, counterclaim in, 14:397
Compulsory counterclaims
 Basics, 14:408–416
 Same transaction or occurrence, logical-relationship and other tests, 14:420–421

- Definition, 14:392
- Form and style, 14:399
- Interpleader filed as, 6:465, 6:497
- Jurisdiction, 8:379, 14:400
- Nonsuit, effect on unraised compulsory counterclaim, 37:306
- Objection to severance of compulsory counterclaim, 6:438
- Permissive counterclaims, 14:426–429
- Persons who can counterclaim, 14:396
- Purpose, 14:393
- Relief available, 14:393
- Removal, 9:539
- Requirements, 14:398
- Response, 14:453
- Service, 10:21, 14:402
- Settlement, effect on pending counterclaim, 38:124
- Special appearance, 8:379
- Statute of limitations, 3:77, 3:82–90, 14:401
- Venue, 9:159
- Wrongful injunction, action on bond as counterclaim, 17:380–381

County-Level Courts

- Constitutional county courts. See **Constitutional County Courts**
- Statutory county courts. See **Statutory County Courts**

Court Clerks

- Citation, issuance by county clerk, 10:18, 10:322–323, 10:341, 10:343
- Clerk's record, 37:268
- Depositions
 - Foreign deposition, clerk of court issuing notice of requisite form to summon witness, 28:13
 - Nonparty deponent subpoena, 28:86
- Motion hearing date, 16:48, 16:50, 16:153
- Service by mail or publication by clerk, 10:312
- Service in other states, server's signature on return of service notarized, 10:419
- Summary judgment motion, fiat order with hearing date, 36:351
- Telephonic hearings on motions, 16:155
- TRO or temporary injunction issued by, 17:260–261
- TRO and temporary injunction, local rules from clerk's office, 17:162

Court Registry

- Interpleader, deposit of funds to court registry, 6:473, 6:485, 6:516
- Minors' and incompetent persons' awards, placing in court registry, 6:80
- Sequestration of unrelated assets, 17:125

Court Reporter

- See also **Record of Proceedings; Transcripts**

- Depositions
 - Documents and exhibits, 28:78
 - Fees, 28:109–110
 - Non-stenographic depositions, 28:100, 28:106
 - Notice of deposition, 28:79
 - Requirements and qualifications for deposition officers, 28:106–112
 - Stenographic reporting of oral deposition, 28:98
 - Telephonic depositions, 28:99
- Reporter's record
 - Formerly statement of facts, 37:268
 - Prior hearing, evidence supporting summary judgment motion, 36:319
- Subpoena of nonparty deponent, issuance by court reporter, 28:86

Summary judgment hearing, no court reporter, 36:498

Covenants Not to Compete

Injunctive relief, 17:78–83

Jurisdiction in breach of non-competition clause, 8:237

Covenants Not to Disclose

Injunctive relief, 17:88–91

Credibility

Interrogatories on criminal convictions, 30:67

Physical and mental examinations, 29:119

Requests for admissions, 31:107, 31:226

Service and citation challenged, credibility issues, 10:567

Special appearance, judge's discretion to determine credibility of witnesses, 8:403

Summary judgment motions, credibility of evidence, 36:121

Creditors

See also **Debts**

Interpleader, similar or related claims not required, 6:477

Intervention, post-judgment collection actions, 6:552

Jurisdiction, borrowing or loaning money in Texas, 8:251

Withdrawing partner's liability to creditors, 6:152

Criminal Law

Affirmative defense, injury during commission of crime, 14:354

Assumed name, failure to register intentional, 6:237

Attorney-client privilege, crime-fraud exception. See **Attorney-Client Privilege**

Clergy communication privilege, 25:591

Conspiracy. See **Conspiracy**

Contempt. See **Contempt**

Depositions in foreign country, criminal act for private attorney to take, 28:13

Injunction, constitutionality of criminal statutes, 17:121

Interrogatories on criminal convictions, 30:67

Nonresident criminal defendant, effect of signing recognizance bond on jurisdiction, 8:228

Physical and mental examinations, criminal background investigation of designated examiner, 29:52

Physician-patient privilege, 25:466, 25:500

Privilege of criminal defendant not to testify compared to privilege against self-incrimination, 25:302

Self-incrimination. See **Self-Incrimination, Privilege Against**

Sexual exploitation by mental health care provider, statute of limitations, 3:228

Cross Claims

Basics, 14:434–439

Comparison of cross claims to counterclaims, 14:437

Impleader, 6:352

Procedures, 14:444–447

Response, 14:453

Service, 10:21

Statute of limitations, 3:66, 3:82–90

Venue, 9:159

Cross-Examination

Class action certification hearing, 6:695, 6:700

Depositions, 28:21, 28:180–188

Guardian ad litem, hearing on fee award, 6:60

Intervention, hearing on venue, 6:568

Requests for admissions, full hearing on motion for relief from RFA response, 31:208

Custodia Legis

- Deposit of disputed funds in escrow account (in *custodia legis*) or personal property held in custodia legis, 17:113
- Interpleaded property held in, 6:489

— D —

Damages

- Amount in controversy, amending pleadings, 7:112–114
- Case conference, 1:256, 1:270–271
- Class actions
 - Bifurcation of liability and damages, 6:744
 - Monetary damages claims, applicability of TRCP 42(b)(1)(A), 6:650
- Computer programs to determine value of case, 38:56
- Default judgment, hearing on damages. See **Default and Default Judgments**
- Failure to mitigate damages, affirmative defense, 14:349
- Injunctions
 - Independent damages action, 17:302
 - Monetary damages inadequate, 17:46, 17:51
 - Wrongful injunction, 17:82, 17:388–390
- Interrogatories, 30:65
- Liquidated damages
 - Affirmative defense, liquidated damages clause as, 14:356
 - Default judgment. See **Default and Default Judgments**
 - Defined, 37:75
 - Pleading, 37:75–76
- Plea to jurisdiction, amending petition to bring within court's jurisdiction, 15:150
- Pleading, 14:219, 37:75–76
- Presuit considerations
 - Causes of action permitting multiple damages recovery, 2:107
 - Damage caps, 2:110
- Presuit investigation
 - Experts to assess damages, 2:37
 - Special damages, verifying or disputed, 2:50
- Punitive damages. See **Punitive Damages**
- Requests for disclosure, calculation of economic damages, 26:18
- Settlement negotiations, documenting damages, 38:55
- Special exceptions, failure to specify maximum amount of damages, 15:62
- Wrongful injunction (see Injunctions, above)

Death

- Attorney-client privilege, 25:186
- Clergy communication privilege, 25:596
- Decedent's estate. See **Decedent's Estate**
- Dismissal of actions. See **Dismissal of Actions**
- Plea in abatement on death of party, 6:248, 6:252
- Plea to jurisdiction, death of party, 15:157
- Spousal communication privilege, effect of death on, 25:561
- Statutes of limitations, tolling provisions, 3:484
- Substitution of parties. See **Substitution of Parties**
- Writ of scire facias on death of party, 6:256–260
- Wrongful death. See **Wrongful Death**

Debts

- See also **Creditors**

Affirmative defense, separate debt of spouse, 14:364
Bankruptcy. See **Bankruptcy and Insolvency**
Collection methods, 2:184–185
Directors and officers, liability for debts of corporation in default on franchise taxes, 6:126, 6:135
Injunctions for enforcement, collection, or stay of judgments, 17:98, 17:128, 17:139
Joinder of parties, debtors and guarantors, 6:328
Jurisdiction, borrowing or loaning money in Texas, 8:251
Loans. See **Loans**
No imprisonment for debt, effect on contempt punishment for contempt for violation of TRO or temporary injunction, 17:317
Notes. See **Promissory Notes**
Quasi in rem jurisdiction, collection of judgments in other states, 8:360
Standing, determining if verified pleading required on corporate debt, 6:206
Sworn-account claim allegation in petition, 14:222
Withdrawing partner's liability for partnership debts, 6:152
Written acknowledgment of debt, new limitations period, 3:52–55
Wrongful injunction preventing collection of judgment, 17:390

Decedent's Estate

Attorney-client privilege, 25:186–187
Capacity to sue or be sued, 6:160–162
Constructive knowledge and discovery rule, effect on accrual of cause of action, 3:413
Death of party. See **Substitution of Parties**
Joinder of parties, title to real property, 6:329
Plea in abatement, 15:190
Plea to jurisdiction, pending probate court proceeding, 15:133
Presuit considerations, 2:95
Probate proceedings. See **Probate Proceedings**
Representative of estate, voluntary appearance by filing suggestion of death, 6:255
Service, 10:66–67, 10:153
Standing of interested person, 6:217
Venue, 9:128

Deceptive Trade Practices Act (DTPA)

See also **Fraud and Misrepresentation**
Affirmative defense, lack-of-consumer status, 14:355
Class actions, 6:610, 6:660, 6:683, 6:732
Health care providers, statute of limitations, 3:226
Jurisdiction, 8:292
Post-answer default, effect on striking, 37:105
Special exceptions, 15:64, 15:70
Statutes of limitations, 3:130, 3:196, 3:427
Venue, 9:108

Declarations. See **Affidavits and Declarations**

Declaratory Relief

Class actions, 6:652
Insurance coverage issues, 6:356
Interpleader, compared to declaratory relief, 6:466
Joinder of parties, 6:327
Nonsuit, effect on counterclaim for declaratory judgment, 37:324
Settlement agreement void, 38:159
Venue issues, 9:25, 9:109

Deeds

Adverse possession, statutes of limitations for recovering, 3:307, 3:309–310

- Justice courts, jurisdiction, 7:74
- Statutes of limitations
 - Enforcement of deed restrictions, 3:151
 - Reformation of deed, 3:147

Defamation

- Jurisdiction, 8:277, 8:285, 8:333
- Privileges, 14:361
- Statute of limitations, 3:202, 3:428
- Subject matter jurisdiction, 7:36
- Truth as affirmative defense, 14:365

Default and Default Judgments

- Answer, default as option to, 14:233
- Appeals. See **Appeals**
- Bill of review
 - Generally, 37:236–239
 - Extrinsic act, default due to, 37:252–253
 - Negligence of defendant, absence of, 37:258–259
 - Official's mistake, 37:253, 37:259
 - Required showings, 37:244–247
- Discovery sanction, default judgment as, 37:118–122
- Equitable grounds for new trial motion (*Craddock* test)
 - Generally, 37:184–187
 - Meritorious defense, 37:200–203
 - Mistake, default not intentional, 37:192–195
 - No injury to plaintiff, 37:208–211
 - Publication, defendant served by, 10:273, 37:216–219
- Final judgment
 - Default-judgment cases, 37:146–148
 - Requirements, 37:136–141
- Hearing on damages
 - Defendant's participation, 37:94–97
 - Liquidated damages, 37:74–76
 - Unliquidated damages, 37:54, 37:61, 37:82–87, 37:120, 37:129
- Injunction hearing, default for failure to file answer to suit, 17:186
- Interlocutory judgments, 37:128–130
- Jurisdiction, failure to allege basis for in petition, 8:366–368, 8:371
- Mistake (see Equitable grounds for new trial motion (*Craddock* test), above)
- Motion for judgment
 - Generally, 37:38–39
 - Basics of motion papers, 37:52–55
 - "Mother Hubbard" clause, 37:62
 - Opposing motion, 37:68–69
 - Proposed judgment, 37:60–62
 - Timing, 37:44–46
- New trial motion
 - Generally, 37:154–157
 - Appellate review, 37:224–225, 37:230–231
 - Equitable grounds (see Equitable grounds for new trial motion (*Craddock* test), above)
 - Grounds, 37:172–178
 - Procedures, 37:162–167
- No-answer default
 - Generally, 37:12–14
 - Amended petition, failure to serve, 37:30–33

- Bars and hurdles to judgment, 37:20–24
- Hearing on damages (see Hearing on damages, above)
- Motion for judgment (see Motion for judgment, above)
- Overview, 37:01–06
- Personal jurisdiction, challenging, petition drafting considerations, 14:216
- Petition, misspelling, misnomer, or misidentification, 14:202
- Post-answer default
 - Generally, 37:102–105
 - Trial, 37:110–112
- Presumptions. See **Presumptions and Inferences**
- Relief from default judgment
 - Bill of review (see Bill of review, above)
 - Collateral attack, 37:274–277, 37:282–285
 - New trial motion (see New trial motion, above)
 - Restricted appeal, 37:264–268
- Scire facias, default for failure to answer, 6:258
- Self-incrimination, privilege against, relief from default, 25:349
- Service. See **Service of Process and Papers**
- Special appearance, 8:379–380, 8:447
- Stay of execution of judgment, bond, 37:219
- Summary judgment motion, failure to answer to petition, 36:346
- Trial, 37:97, 37:110–112, 37:112, 37:121, 37:239
- Venue, effect of motion to transfer, 9:224

Defects in Pleadings. See Special Exceptions

Defenses

- Affirmative defenses. See **Affirmative Defenses**
- Capacity. See **Capacity to Sue or Be Sued**
- Class actions, 6:633, 6:635
- Contempt, 17:312
- Corporation in default on franchise taxes, effect on claims or defenses during period of incapacity, 6:127
- Discovery, 24:50, 24:123
- Federal preemption, 9:489
- Interpleader, claims and defenses not affected by, 6:515
- Interrogatories regarding, 30:62
- Laches. See **Laches**
- Requests for disclosure, 26:17
- Statutes of limitations. See **Statutes of Limitations**
- Summary judgment motion, defense established as matter of law, 36:127
- Unclean hands. See **Unclean Hands**

Definitions

- See also **Construction and Interpretation**
- Affinity, 16:195
- Affirmative defenses, 14:304
- Affirmative defenses to affirmative defenses, 14:297
- Arbitration, 38:190, 38:204
- Bill of review, 10:597
- Capacity, 6:06
- Cause of action, 14:144
- Central docketing system, 16:19
- Citation, 10:18, 10:322
- Civil contempt, 17:305
- Class action, 6:604
- Clerk's record, 37:268

Client, 25:139
Client's representative, 25:140
Comity, 8:15
Common interest privilege, 25:280
Competence, 1:59
Compulsory counterclaim, 14:408
Confidential communication, 25:478, 25:534, 25:591
Consanguinity, 16:194
Constructive contempt, 17:304
Contempt, 17:303
Continuing torts, 3:44, 3:162, 3:171
Core allegations, 14:145
Core work product, 24:94, 25:226
Costs, 1:168
Counterclaims, 14:392
County courts of law, 7:60
Court-by-court docketing system, 16:21
Criminal contempt, 17:305
Cross claims, 14:434
Custodia legis, 6:489
"Death penalty" sanctions, 27:273, 32:39
Derivative tort claims, 3:342
Direct contempt, 17:304
Disclosure, 25:63
Discovery rule, 3:393
Document defined, 27:06
Doing business, 8:209, 8:276
Domestic corporation, 8:127
Dominant jurisdiction, 7:12, 10:33
Duress, 14:323
Electronic documents, 27:06
Emergency motions, 16:276
Estoppel in pais, 14:324
Extrinsic fraud, 37:252
Fiat, 16:48
Final judgment, 37:136
Final or total summary judgment, 36:54
Foreign corporation, 8:130
Fraudulently-joined defendants, 9:495
General appearance, 8:162
Governmental body, 27:341
Health care liability claim, 3:225
Health care providers, 3:225
High-Low agreements, 38:104
Imminent injury, 17:35
Impleader, 6:346
In rem, 8:356
Incapacitated, 6:95
Incapacitated persons, 6:13
Indigency, 6:98
Indispensable parties, 6:309, 6:336
"Inferential rebuttal" issues, 14:298
Injunction, 17:01
Insane, 6:95

“Interest eo nomine,” 7:121
Interlocutory appeal, 18:01
Interpleader, 6:460
Intervention, 6:528
Intrinsic fraud, 37:252
Joint defense privilege, 25:280
Jurat, 14:51
Laches, 3:28
Liquidated damages, 37:75
“Live” pleadings, 14:468
“Major transactions,” 9:64
Mandamus, 18:60
Mandatory injunction, 17:05
Manufacturer, 3:568
“Matters in avoidance” of defense, 14:297, 14:334
Mediation, 38:186, 38:250
Mini trial, 38:187
Minor, 6:12
Moderated settlement conference, 38:188
Modified central docketing system, 16:20
“Mother Hubbard” clause, 36:505, 37:62
Motion, 16:02
“Motion to strike,” 15:25
Necessary parties, 6:308
Neutral witnesses, 28:03
Next friend, 6:21
Non-core work product, 24:94, 25:227
Operative documents, 31:36
Partial summary judgment, 36:54
Party, 6:01
Patient, 25:458, 25:526
Permanent injunction, 17:04
Permissive counterclaims, 14:426
Personal representatives of estate, 6:160
Physician, 25:458, 29:43
Piggybacking, 6:393
Plaintiff, 9:349
Plea to jurisdiction, 15:126
Pleading, 14:01
Plenary power, 37:156
Privileged information, 25:208
Professional (mental health privilege), 25:526
Prohibitory injunction, 17:05
Psychologist, 29:43
Quasi in rem, 8:356
Relevant (discovery purposes), 24:41
Relevant evidence, 24:42
Reporter’s record, 36:319, 37:268
Representative of patient, 25:528
Request for production and inspection of documents or things, 27:05
Residence, 9:349
“Residence” for venue purposes, 9:73
Restricted appeal, 10:584
Retainer, 1:146, 1:149–150

Return of service, 10:350
“Rule 11” agreement (settlement), 38:157
“Rule of threes,” 38:56
“Safe” investments, 6, 82
Scire facias, 6:256
Seller (manufacturing equipment), 3:568
“Settlement weeks,” 38:176
Shareholder derivative actions, 6:768
“Speaking demurrer,” 15:07, 15:188
Special exceptions, 14:372, 15:01, 15:15
Spoliation of evidence, 2:63
Standing, 6:06
Standstill agreement, 14:236
State Bar of Texas (SBOT), 16:38
Statement of facts (obsolete), 36:319, 37:268
Status quo, 17:56
Statutes of limitations, 3:01
Statutes of repose, 3:05
Statutory county courts, 7:60
Strike, 15:25
Structured settlements, 38:103
Subject matter jurisdiction, 7:01
Summary jury trial, 38:189
Telephonic document transfer (Fax), 16:118
Temporary injunction, 17:03
Third-party defendant, 6:346
Third-party plaintiff, 6:346
TRO, 17:02
Ultimate facts, 31:15
Unauthorized insurer, 10:242
Unconscionable fee, 1:186
Unliquidated damages, 37:83
Unsound mind, 3:478
Venue, 7:11, 9:01
Waiver, 25:46
Witness statements, 24:53
Writ of error (restricted appeal), 10:584
Wrongful injunction, 17:373

Delay

See also **Diligence; Laches**

Capacity, delay in challenging as waiver, 6:190
Class actions, delay in certification, 6:688
Death of party, writ of scire facias, 6:257, 6:259
Discovery planning strategy, anticipating delays, 24:110
Dismissal of actions, 37:371
Frivolous or delaying actions. See **Frivolous or Delaying Actions**
Interpleader, 6:474
Interrogatories, when to delay, 30:14
Intervention, 6:549–550, 6:601
Joinder of parties, unreasonable delay of trial, 6:387, 6:432
Misjoinder of parties, severance, 6:454
Nonsuit, delay of refiled suit when new docket number assigned, 37:349
Recusal motion, 16:238, 16:242
Referral order, trial by special judge to avoid delay, 38:174

Request for production and inspection, allowing time for delays, 27:21
Requests for admissions reduce expense and delay, 31:02
Service. See **Service of Process and Papers**

Demand Letters

Arbitration, 38:222
Insurance carriers, 2:205, 2:208
Interpleader, 6:482
Presuit requirement, 2:198
Settlement demand statement, 38:56
Shareholder derivative actions, 6:776
Statute of limitations on guaranty by written demand, 3:132

Demurrers

“Speaking demurrer,” 15:07, 15:188
Special exceptions compared to demurrers, 15:07, 15:14–18, 15:60

Denial. See **Answer**

Deposit of Funds

See also **Interest on Money**
Court registry. See **Court Registry**
Custodia legis. See **Custodia Legis**
Escrow account. See **Escrow**
Guardian ad litem’s liability for not using interest-bearing account for settlement funds, 6:44

Depositions

Generally, 28:01–04
Certificate of nonappearance, 27:273
Compelling discovery, motion for order, 28:222–225
Conducting deposition
 Generally, 28:156–164
 Adjourning, 28:208–209
 Document requests, reviewing, 28:170–175
 Examination and cross-examination, 28:180–188
 Experts (see Experts, below)
 “Review time” for documents produced, 28:78
 Suspending deposition, 28:200–202
Court’s role, 28:214–217
Deadlines for responding party, 24:160–162
Defending deposition
 Generally, 28:254–257
 Conduct during deposition, 28:296–299
 Experts, guidelines for, 28:288–290
 Objections, 28:304–312
 Sanctions, 28:299
 Witnesses, guidelines for, 28:262–283
Deponent, selecting, 28:44–46
Deposition banks, reviewing past depositions to select examiner for physical or mental examination, 29:52
Deposition officers, 28:106–112, 28:318, 28:321–322
Discovery Control Plan Level, time for depositions determined by, 28:03
Document-identification, deposing opponents’ records custodian, 24:146
Exhibits, 28:24, 28:78, 28:146–150, 28:162, 28:175, 28:324
Experts
 Amendment and supplementation, 24:67
 Costs of deposing, 24:66
 Examining and cross-examining, 28:194–195

- Guidelines for defending deposition, 28:288–290
- Testifying experts, discovery of, 24:62
- Testifying experts, scheduling depositions of, 24:65
- Factors in determining whether to use, 24:133
- Fishing expeditions, 24:102
- Interpreters, 28:118–120
- Interrogatories, referring to deposition testimony in responses, 30:127
- Location, choosing, 28:52–56
- Nonparties
 - Document inspection by nonparty, pre-suit depositions, 27:281
 - Invoking privilege against self-incrimination, 25:324
 - Subpoena requirements, 28:45, 28:86–92
- Notice. See **Notice and Notification**
- Objections
 - Notice of deposition, 28:230–235
 - Questions, 28:304–312
 - Severance of compulsory counterclaim, 6:438
- Outline, preparing, 28:138–141
- Overview
 - Generally, 28:18
 - Authenticating documents, 28:24, 28:78
 - Cost-benefit analysis, 28:39
 - Fact gathering, 28:20–21
 - Opposition witness's story, 28:22
 - Progression of discovery when other discovery devices used, 28:38
 - Scope of, 28:19
 - Settlement leverage, depositions as, 28:23
 - Trial and after trial, using deposition testimony at, 28:29–33
- Perpetuate testimony, petition to take deposition before lawsuit filed, 28:12, 28:63
- Protective order, 28:65, 28:234
- Recording method, selecting, 28:98–100
- Requests for admissions used with depositions, 31:43
- Response to notice and subpoena
 - Document production, 28:240–242
 - Motion to quash, 24:160, 28:235
 - Objections to notice, 28:230–235
 - Witness designation, 28:248–249
- Sanctions, 28:222–225, 28:299
- Scheduling time for deposition, 28:62–68
- Scheduling witness for deposition, 24:147
- Second deposition, 28:65
- Self-incrimination, privilege against, 25:309, 25:316, 25:340
- Sequence of discovery in conjunction with other discovery devices, 28:38
- Service, 28:79, 28:88, 28:231
- Special appearance, 8:428
- Special Master, 28:216
- Stipulations, 24:169–170, 28:78
- Subpoenas. See **Subpoenas and Subpoenas Duces Tecum**
- Substantive preparation for taking deposition, 28:126–132
- Summary judgment motion. See **Summary Judgment**
- Suppress deposition, motion to, 28:321
- Transcripts. See **Transcripts**
- Trial and after trial, using deposition testimony at, 28:29–33
- Types of deposition, 28:10–13

Designers. See **Architects, Engineers, and Designers**

Diligence

See also **Delay; Laches**

Dismissal and reinstatement, 37:452

Fraud claim, diligence in discovering, 3:208

Involuntary dismissal, 37:364, 37:372

Service. See **Service of Process and Papers**

Sexual abuse or assault, diligence in discovering assailant's identity after tolling limitations period by filing "Doe" suit, 3:164

Statutes of limitations and discovery rule, diligence in discovering injury, 3:410

Summary judgment motion, affidavit of diligence supporting request for extension of time, 36:352

Directors and Officers. See **Corporations**

Disciplinary Proceedings

Frivolous pleadings, 14:66

Judge's failure to recuse, 16:239

Physician, effect of physician-patient privilege in disciplinary action against, 25:490

Settlement responsibilities, 38:34–38

TRO in attorney disciplinary proceedings, mandamus, 17:325

Disclaimers

Engagement contract, 1:203

Disclosure

See also **Confidentiality**

Campaign contributions to judges, 16:204

Covenants not to disclose, injunctive relief, 17:88–91

Federal court compared to state court regarding mandatory disclosure, 9:465

Initial client contact, explaining what information must be disclosed, 1:16

Mediation statements, 25:602

Privileges. See **Privileges**

Requests for. See **Requests for Disclosure**

Settlement efforts, 38:80

Shared fee agreement, 1:188

Discovery

Admissions, requests for. See **Requests for Admissions**

Arbitration, 38:233

Case conference, eliciting information to outline discovery plans, 2:160

Claims, defenses, and legal contentions, 24:50

Class actions, 6:667, 6:682, 6:700, 6:710, 6:726, 6:740

Confidential information

Generally, 24:176

Agreed protective order, 24:179

Client, consulting, 24:177

Confidentiality agreement, 24:178

Control Plan Levels. See **Discovery Control Plan Levels**

Costs. See **Costs**

Depositions. See **Depositions**

Disclosure, requests for. See **Requests for Disclosure**

Disputes. See **Discovery Disputes**

Documents and tangible things. See **Request of Production and Inspection of Documents and Things**

Drawbacks, 24:03

Enforcement provisions, 24:11

Entry on land or other property, 24:55

Experts. See **Experts and Expert Witnesses**

- Factors in deciding which discovery devices to use
 - Generally, 24:130
 - Consideration of each device, 24:131
 - Depositions, 24:133
 - Document requests, 24:135
 - Interrogatories, 24:134
 - Physical and mental exams, 24:136
 - Requests for admission, 24:137
 - Requests for disclosure, 24:132
- Federal court compared to state court, 9:464–465
- Filing requirements, 24:18–19, 31:70
- Forum non conveniens motion, 9:375
- Goals, establishing
 - Generally, 24:02, 24:120
 - Costs, weighing, 24:122
 - Evidence needed, client and experts to help identify, 24:125
 - Initial steps, 24:121
 - Legal elements, prima facie elements and affirmative defense, 24:123
 - Opponent's case, dissecting, 24:124
- Governing law, 24:08–12
- Inadmissible information, discovery of, 24:43
- Inspection of documents. See **Request for Production and Inspection of Documents or Things**
- Insurance and indemnity policies
 - Applications for insurance, 24:74
 - Potential liability of insurer, 24:73
 - Scope of discovery, 24:72
 - Trial, use at, 24:75
- Interrogatories. See **Interrogatories**
- Intervention, 6:598
- Jurisdiction, 8:178–180, 8:384, 8:390, 8:396–397, 8:428
- Legal or factual assertions, 24:51
- Limits on discovery, 24:30–35
- Matters outside scope of discovery
 - Consulting experts, 24:100
 - Fishing expeditions, 24:102
 - Privileged matter. See **Privileges**
 - “Wishful” claims, support for, 24:101
 - Work product, core and non-core work product, 24:94–95
- Methods of discovery, 24:09
- Nonsuit, 37:340
- Onerous discovery, 24:34
- Physical and mental examinations. See **Physical and Mental Examinations**
- Planning strategies
 - Client involvement, 24:112
 - Delays, anticipation of, 24:110
 - Elements of plan, 24:109
 - No discovery as prudent plan, 24:108
 - Preserving evidence, 24:114
 - Reasons for discovery plan, 24:108
 - Stipulations to reduce expense of discovery, 24:111
 - Written plan, 24:113
- Potential parties, discovery of, 24:54
- Presuit considerations, discovery on jurisdiction issue, 2:127

- Privacy issues, 25:616
- Privileges. See **Privileges**
- Production of documents. See **Request for Production and Inspection of Documents or Things**
- Purpose, 24:01
- Relevancy, 24:40–42
- Requests for admissions. See **Requests for Admissions**
- Requests for disclosure. See **Requests for Disclosure**
- Right to discovery, 24:24–25
- Self-incrimination, privilege against, 25:309, 25:340
- Sequence of discovery
 - Generally, 24:144, 28:38
 - Court fixing sequence, establishing Discovery Control Plan Levels, 24:143
 - Deposition schedule, setting, 24:147
 - Documents, finding, 24:146
 - Example of, 24:148
 - Informal investigation, 24:145
 - No fixed priority or sequence, 24:142
 - Timing problems, 24:149
- Settlement agreements, 24:80–81, 25:603, 38:150
- Scope, matters usually outside of, 24:82–84
- Similar incidents, 24:52
- Special appearance, 8:384, 8:390, 8:396–397, 8:428
- Special exceptions to defects in pleadings compared to discovery, 15:53
- Stipulations, 24:111, 24:162, 24:168–171
- Subpoena, geographical limits on, 24:35
- Summary judgment motion, 36:47, 36:80–81, 36:205–208, 36:345
- Supplementary and amended responses
 - Definitions of amend and supplement, 24:184
 - Failure to amend, consequences of, 24:188
 - Form of, 24:187
 - Late supplementation by consent, 24:189
 - Requirement of, 24:185
 - Time for, 24:186
- Timing factors
 - Discovering party, earliest and latest date allowed under Discovery Control Plan Levels 1 through 3, 24:154–155
 - Discovery Control Plan Levels, effect of, 24:33
 - Responding party deadlines, 24:160–162
 - Sequence of discovery, effect of timing problems, 24:149
- Transfer of proceedings for impartial trial, discovery for motion, 9:328
- Venue, effect of discovery on objection to venue, 9:177
- Witness identities and locations, 24:49
- Witness statements, 24:53

Discovery Control Plan Levels

- Allegation and pleading, 14:190–192
- Amendment of supplemental pleadings affects case's Discovery Control Plan Level, 14:488
- Court fixing sequence of discovery, establishing Discovery Control Plan Level, 24:143
- Court modifying plan for discovery related to amended and supplemental pleadings, 14:469

Depositions

- Redeposing after change in level of Discovery Control Plan, 28:65

- Time allowed for, 24:33, 28:03
- Discovering party, earliest and latest date allowed under Discovery Control Plan Levels, 24:154–155
- No discovery as prudent plan, 24:108
- No-evidence summary judgment motion, adequate time for discovery, 36:81
- Requests for production and inspection, deadlines for, 27:77
- Supplementation of responses to requests for disclosure, deadline for service in Level 1 and Level 2 cases, 26:62
- Time limits, effect of Discovery Control Plan Levels, 24:31, 24:33

Discovery Disputes

Admissions

- Deem matter admitted, motion to, 32:25

- Withdraw admissions, motion to, 32:48

- Agreed protective order for confidential material, 24:179

Compel discovery, motion to

- Generally, 32:22

- Certificate of conference, 24:11, 32:23

- Deem matter admitted, motion to, 32:25

- Foreign jurisdiction, motion for deposition in, 32:27

- Mandamus, 18:80-81

- Procedure, 32:24

- Special appearance, 8:397

- Dismissal of actions, 37:370–372

Motion requesting hearing on objection or claim of privilege

- Generally, 32:10, 32:16

- Burden of proof, 32:10

- Evidence supporting objection or assertion of privilege, 32:15

- Format, 32:12

- Mandamus review, 32:17

- Response to motion, advantages of written response, 32:14

- Service and filing, 32:13

- Strategic considerations, 32:04

- Motions generally, attaching supporting documents to, 16:63

- Pre-suit discovery, motion for, 32:26

Pretrial motions

- Motion to deem matter admitted, 32:25

- Sanctions, effect of failure to obtain pretrial ruling, 32:37

Protective orders

- Generally, 32:50

- Extend or shorten deadlines, motion to, 32:52

- Fishing expeditions, 24:102

- Motion for, 32:49

- Nature of, 32:50

- Onerous discovery, 24:34

- Privilege, invoking, 24:88

- Sanctions' motion denied, issuance of protective order, 32:42

- Sealing court records, motion to, 24:12, 32:51

- Timely filing of motions for, 32:13

- Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Sanctions, motions for

- Against attorneys, §32:35.1

- Authority for, 32:32

- “Death penalty” sanctions (dispositive of entire case), 27:273, 32:39

- Default judgment as discovery sanction, 37:118–122
- Disposition of motion, 32:42
- Failure to identify allegedly privileged documents, §32:38.1
- Frivolous and unfounded motions, 32:33
- Grounds and purposes, 32:34
- Hearing, 32:41
- Pre-*TransAmerican* cases, effect of, 32:35
- Pretrial ruling, failure to obtain, 32:37
- Procedure, 32:40
- Types of sanctions, 32:36
- Violation and sanction, relationship between, 32:35
- Witnesses, duty to supplement answers to identify, 32:38
- Steps before making motion
 - Discovery conference, certificate, 24:11, 32:03
 - Negotiating agreement with opposing counsel, contents of agreement, 32:01
 - Writing stating dispute and suggested resolution, 32:02

Discovery Rule. See Statutes of Limitations

Discretion of Court

- Amendment of pleadings, 14:461, 14:478, 14:496, 14:505
- Citation or return of service defective, court's discretion to permit amendment, 37:176
- Class actions, certification, 6:611, 6:627, 6:650, 6:731
- Continuance, 36:461
- Guardian ad litem
 - Appellate court, abuse of discretion standard in reviewing fees, 6:68
 - Appointment in family law cases, 6:34
 - Fee allocation, 6:65
 - Reasonable fee award, 6:57
- Indigency, 6:99, 6:102
- Injunctive relief, 17:23–25, 17:56, 17:205, 17:207, 17:236, 17:325, 17:353–354
- Interpleader, 6:474, 6:501, 6:516
- Intervention
 - Broad discretion to strike, 6:579
 - Co-owners in corporation and real estate, abuse of discretion to strike intervention, 6:542
 - Delay in filing intervention, 6:550
 - Insurer's subrogation intervention, abuse of discretion to strike, 6:543
 - Review, abuse of discretion standard, 6:594
 - State agency's intervention, striking as abuse of discretion, 6:543
 - Striking petition if intervention does not complicate case as abuse of discretion, 6:529
 - Venue, court's discretion to limit hearing or to allow full hearing, 6:568
- Mass torts, joinder, 6:361
- Minors and incompetent persons, abuse of discretion to limit Section 142 trust payments, 6:85
- Misjoinder, severance, 6:423
- Mistrial, 16:239
- No-evidence summary judgment motion, 36:81, 36:83
- Personal jurisdiction, court's discretion regarding discovery, 2:127
- Physical and mental examinations
 - Court's selection of independent physician not abuse of discretion, 29:36
 - Motion requesting order for, 29:103
 - Person accompanying examinee, 29:81
- Plea in abatement, 15:238

- Plenary power of court to grant new trial and vacate default judgment, 37:156
- Privileges, court abused discretion by ordering production, 25:96
- Reconsideration, motion for, 36:524
- Recusal motion, 16:246
- Referral to ADR, 38:184
- Reinstatement after dismissal, 37:411, 37:468
- Remand to state court, 9:559–560
- Request for production and inspection, motion to extend time to respond, 27:270
- Requests for admissions, 31:151, 31:174
- Separate trials or consolidation instead of joinder, discretion of courts to grant, 14:164
- Severance
 - Abuse of discretion standard of review of order, 6:456
 - Contribution claims, severance as abuse of discretion, 6:320, 6:439
 - Duplication or wasted effort, 6:440
- Special appearance, judge's discretion to determine credibility of witnesses, 8:403
- Special exceptions, 15:104, 15:121
- Striking misjoined party, abuse of discretion standard for review of order, 6:418
- Summary judgment motion, 36:397, 36:461, 36:524
- Supplemental jurisdiction (federal court), 9:436
- Trade secrets privilege, 25:399, 25:435
- Venue improper, 9:257, 9:296

Diseases

- Asbestos claims. See **Asbestos Claims**
- Communicable diseases, reporting requirements, 25:491
- Mass torts, joint or separate trial, 6:365
- Statutes of limitations
 - Discovery rule, 3:431
 - Extension of limitations period by agreement, 3:503

Dismissal of Actions

- Amended pleadings
 - Defects, amending pleadings to avoid dismissal, 14:476–478
 - Omitted defendant, 14:470
- Bill of review denied, 10:600
- Construction of cases and statutes. See **Construction and Interpretation**
- Counterclaim improperly joined, 14:429
- Death
 - Delay in obtaining writ of scire facias justifying dismissal, 6:257
 - Nonsurviving claim dismissed, 6:252
- Decedent's estate named in suit, no appearance by personal representative, 6:161
- Defective pleadings and special exceptions, 15:08–09, 15:24, 15:41
- “Drop” docket procedure for dismissing case, 37:416–420, 37:422–423
- Federal claims dismissed, effect on remand and removal, 9:566
- Forum non conveniens. See **Forum Non Conveniens**
- Hearing, 37:408, 37:420, 37:422–423
- Inmate's frivolous claims, 6:101, 6:107
- Involuntary dismissal
 - Abandonment, 37:365
 - Discretion, factors bearing on exercise of, 37:370–372
 - For want of prosecution under TRCP 165a, 37:411, 37:416–429
 - Lack of due diligence, 37:364
 - Motion to reinstate (see Reinstatement after dismissal, motion for, below)
 - Other grounds, 37:386–393
 - Prejudice, dismissal with or without, 37:398–400

Procedures, 37:406–411
TRCP 165a, 37:378–380
Joinder, appeal of order dismissing case for failure to join, 6:409
Nonparty indispensable, 6:341
Nonsuit. See **Nonsuit**
Notice. See **Notice and Notification**
Orders
Interlocutory or final, 37:410
Joinder, appeal of order dismissing case for failure to join, 6:409
Reinstatement after dismissal, order for, 37:458–461
Repleader, failure to comply with order, 14:462
Requirements for, 37:409
Special appearance, effect of *Antonio* case on alternative order for dismissal
for forum non conveniens, 8:438
With or without prejudice, 37:302, 37:425
Plea in abatement, 15:164, 15:219, 15:238
Plea to jurisdiction, 15:126–127, 15:132
Refusal to amend pleadings, 14:478, 15:115
Reinstatement after dismissal, motion for
Generally, 37:411
Appellate review, 37:466–469
Deadline for motion, 37:442–444
Order, 37:458–461
Requirements, 37:434–437
Showing required, 37:450–453
Repleader, failure to comply with order, 14:462
Request for production and inspection, failure to timely respond, 27:112
Res judicata effect of dismissal with prejudice, 37:400
Retain, motion to, 37:420–421, 37:423
Scire facias, dismissal for failure to answer, 6:258
Self-incrimination, privilege against, relief from dismissal, 25:349
Settlement, agreed motion for joint dismissal, 38:125
Shareholder derivative actions, 6:776, 6:790
Special appearance, effect of *Antonio* case on alternative order for dismissal for
forum non conveniens, 8:438
Special appearance versus motion to dismiss, 8:377
Special exceptions sustained, dismissal without opportunity to amend, 15:112
Statutes of limitations, 3:67, 3:490, 3:492–495
Subject matter jurisdiction, dismissal and refiling for lack of, 7:20
Transfer of proceedings, dismissal for failure to pay new filing fee, 9:275
Venue improper, effect of dismissal on motion for transfer, 9:262

Dispute Resolution. See **Alternative Dispute Resolution (ADR)**

Disqualification of Attorneys

Authentication of document by attorney, 36:272
Class actions, 6:644
Common interest (joint defense) privilege, disqualification of counsel, 25:285
Concurrent or dual representation, 1:68
Imputed disqualification, 1:72–74
Request for production and inspection, possible disqualification of attorney serving
nonparty deposition subpoena, 27:306
Summary judgment motion, attorney as affiant, 36:235

Disqualification of Judges

Class actions, 6:680, 16:189, 16:216
Contempt show cause order, effect of disqualification of visiting judge, 17:318

Docketing system, effect of motion to disqualify judge, 16:22
Motion hearing, challenging judge
 Generally, 16:162–166
 Active judge sitting for another, 16:230
 Basis for, 16:172–173
 Curing grounds for disqualification, 16:216
 Financial interest in case, 16:186–189
 Previous representation, 16:178–180
 Procedures, 16:236, 16:238, 16:240
 Relationship to parties, 16:194–195

Dissolution of Corporations

Capacity of dissolved corporation, 6:132–135, 6:269
Service, 10:52
Statutes of limitations for claims against, 3:352

Dissolution of Marriage

Jurisdiction, 8:346–351, 8:359
Partition of property after divorce, 3:321
Property decree, statute of limitations for enforcement of, 3:320
Publication, service by, 10:269
Restricted appeal, special appearance order, 8:447
Special appearance, 8:436
Statutes of limitations, 3:318
Subject matter jurisdiction, 7:37
Waiver of service, 10:504

Distribution of Proceeds for Minors and Incompetent Persons. See Minors and Incompetent Persons

District Courts

Subject matter jurisdiction, 2:159, 2:162, 7:48–55

Divorce. See Dissolution of Marriage

Docket

Generally, 16:18–24, 16:36
Case maintained on docket, order assigning trial date, 37:428
Dismissal, “drop” docket, 37:416, 37:418–420, 37:422–423
Nonsuit, delay of refiled suit when new docket number assigned, 37:349

Document Requests

Disclosure. See **Requests for Disclosure**
Electronic documents. See **Computer Records**
Production requests. See **Request for Production and Inspection of Documents or Things**

Domicile. See Residence and Domicile

Dram Shop Claims

Statute of limitations, 3:180

Drilling Operations

See also **Oil and Gas**
Injunctive relief, 17:113
Statute of limitations and discovery rule, 3:411

Drug Abuse. See Alcohol or Drug Abuse

DTPA. See Deceptive Trade Practices Act (DTPA)

Due Process. See Constitutional Law

Duress

Affirmative defense, 14:323
Settlement agreements, 38:159
Statutes of limitations, duress not grounds for tolling, 3:513

Election of Remedies Doctrine

Generally, 14:184–185
Affirmative defense, 14:346
Special exceptions, 15:02

Elections (Political)

Campaign contributions to judges, disclosure of, 16:204, 16:215
Election Code violations, freedom of speech and association as affirmative defense, 14:350
Judge's political positions, 16:204
Local election contest, appointment of active or visiting judge outside voting territory, 16:231
Privilege, political vote, 25:617

Electronic Data. See **Computer Records**

Eminent Domain

Venue, 9:36

Emotional Distress

Mental examinations, 29:06, 29:96, 29:117
Statute of limitations, intentional infliction of, 3:162

Employee Retirement Income Security Act (ERISA). See **ERISA Plans**

Employers and Employees

Back pay. See **Back Pay**
Corporate entity's and employee's interests in conflict, notifying employee with "corporate Miranda warning," 25:326
Doing business in state, effect of absence of employees or recruiting employees on jurisdiction, 8:214–215
Government employees. See **Public Entities and Employees**
Injunctive relief
 Covenants not to compete, 8:237, 17:78–83
 Covenants not to disclose, 17:88–91
 Informing employees of terms of order and insuring compliance, 17:156
Jurisdiction issues, 8:328–333
Physical and mental examinations of agents and employees, 29:21
Presuit investigation, use of employment records, 2:51
Retirement benefits. See **Retirement Benefits**
Wrongful termination or constructive discharge, statutes of limitations, 3:165, 3:429

Engagement Contract. See **Attorney-Client Relationship**

Engineers. See **Architects, Engineers, and Designers**

Equitable Estoppel

Affirmative defense, 14:324
Fraudulent concealment compared to, 3:379
Quasi-estoppel as affirmative defense, 14:324

Equitable Relief

Common law, 17:14
Declaratory relief. See **Declaratory Relief**
Default judgments. See **Default and Default Judgments**
Injunctions. See **Injunctions**

ERISA Plans

Affirmative defense, ERISA preemption, 14:347
Capacity to sue or be sued, 6:169
Exclusive federal jurisdiction, 9:432
Plea to jurisdiction, federal preemption, 15:156

Error

Amending pleadings, error to dismiss, 14:478, 14:503

Class actions

Adequacy of representative class party, 6:642

Attorney fees, failure to give notice of, 6:606

Certification without hearing or without proper evidence and cross-examination, 6:695, 6:700

DTPA plea in abatement, 6:683

Notice of certification, error to order defendant to send, 6:716

Settlement, 6:759

Default judgment restricted appeal, error in record, 37:268

Dismissal

Judgment “with prejudice” as erroneous, 34:700

Mass dismissal hearing, error to dismiss counsel announcing readiness for trial, 37:422

No notice of dismissal as error, 37:407

Injunctions, 17:207

Intervention, error to strike for time of filing, 6:549

Mass torts, joinder not error, 6:361

Minors and incompetent persons

Guardian ad litem’s appointment in error, no evidence of adult litigant’s mental incapacity, 6:28

No error in placing award in court registry instead of Section 142 trust, 6:80

Ordering purchase of annuity with settlement funds without application for as error, 6:81

Non-joinder of indispensable party as reversible error, 14:383

Recusal, 16:237, 16:242

Reinstatement

Denial of hearing after affirmative waiver, doctrine of invited error, 37:435

Untimely and erroneous grant of reinstatement after court’s plenary power expired, 37:469

Request to amend denied, record to preserve error on appeal, 15:114

Special appearance, 8:423, 8:434, 8:450

Statutes of limitations, effect of filing with errors in parties, 3:72–76

Summary judgment motion, preserving trial court error for appeal, 36:534

Trust, failure to join beneficiaries not error if no conflict of interest, 6:163

Venue determinations, 9:292–293

Escrow Account

Ethics, trust or escrow accounts, 38:37

Injunctions, deposit of disputed funds in escrow account (in *custodia legis*) or personal property held in *custodia legis*, 17:113

Estate. See Decedent’s Estate

Estoppel

Affirmative defense, 14:324

Answer, 14:248

Collateral estoppel. See **Collateral Estoppel**

Equitable estoppel. See **Equitable Estoppel**

Quasi-estoppel. See **Equitable Estoppel**

Ethics

Case assessment, applicable Rules of Professional Conduct, 1:56–59

Client’s confidences, no disclosure of, 25:208

Client’s lack of legal competence, counsel’s ethical duty to see appointment of legal representative, 6:16

Conflicts of interest. See **Conflicts of Interest**

Contacting opposing party, 2:22, 2:180

Corporate entity's and employee's interests in conflict, notifying employee with "corporate Miranda warning," 25:326

Disciplinary proceedings. See **Disciplinary Proceedings**

Fees, 1:186–189

Nonsuit, "throw-away" claims as unethical tactic, 37:339

Potential wrongdoing, attorney's duty to report, 25:170

Recusal motions, 16:240

Retainers, 1:146

Settlement, 38:34–38

Shared or divided fees, 1:163, 1:188

Trust or escrow account, 38:37

Eviction

Injunctive relief, 17:50, 17:57, 17:124

Justice courts, jurisdiction, 7:73

Statute of limitations, 3:152

Evidence

See also **Burden of Proof**

Affidavits. See **Affidavits and Declarations**

Arbitration proceedings, 38:235

Class action certification hearing, 6:695–609, 6:711, 6:731

Compelling discovery, supporting evidence, 32:24

Credibility. See **Credibility**

Discovery disputes, 32:11, 32:14–15

Exclusion of evidence. See **Exclusion of Evidence**

Exhibits. See **Exhibits**

Foundation, 31:34

Guardian ad litem, evidence supporting fee claim, 6:61–62

Inferences. See **Presumptions and Inferences**

Interrogatories, 30:272–278

Intervention, 6:688

Mass torts, joint trials, 6:365

Mediation statements inadmissible, 25:602

New trial motion, 37:163

Objections. See **Objections**

Plea in abatement, 15:188, 15:204, 15:226

Plea to jurisdiction, 15:134

Preserving evidence

Discovery, 24:114

Documents, advising client not to destroy, 1:29

Perpetuating testimony. See **Witnesses**

Presuit investigation, 2:60

Presuit investigation, Spoliation of evidence, 2:63

Presumptions. See **Presumptions and Inferences**

Privileges. See **Privileges**

Relevancy. See **Relevancy**

Request for production. See **Request for Production and Inspection of Documents and Things**

Requests for disclosure. See **Requests for Disclosure**

Return of service prima facie evidence of proper service, 10:352

Service and citation challenged

Bill of review, 10:607

Direct appeal, 10:577

New trial motion, 10:552–556

Settlement negotiations, offers, or agreements, 38:47, 38:150

Special appearance, 8:422–429
Special exceptions, 15:103
Spoliation of evidence, 2:63
Summary judgment motion. See **Summary Judgment**

Ex Parte Proceedings

Motions, 16:276–279
Physician, notice of defense counsel's ex parte interviews of, 25:473
Physician-patient privilege, ex parte communications, 25:473, 25:498
Privileges, ex parte communications, 25:22
TRO, 17:02, 17:173, 17:177, 17:286–287

Exclusion of Evidence

Interrogatories, 30:124, 30:284–286
Privileges. See **Privileges**
Request for production and inspection, 27:246, 27:249, 27:273
Requests for disclosure, failure to timely respond or to supplement responses, 26:48, 26:55–56, 26:62
Special appearance orders, 8:423, 8:450
Suppress deposition, motion to, 28:321

Exhaustion of Administrative Remedies

Injunctions, 17:129
Plea to jurisdiction, 15:159
Presuit requirement, 2:199
Property taxes, 17:127

Exhibits

Depositions, 28:24, 28:78, 28:146–150, 28:162, 28:175, 28:324
Incorporated into pleadings, 14:56–60
Incorporation by reference. See **Incorporation by Reference**
Motions, 16:58–66
Summary judgment motion, 36:270–272, 36:434

Expenses and Expenditures

See also **Costs; Fees**
Agreements between attorney and client regarding expenses, 1:169–170, 1:200, 1:231
Case assessment, out-of-pocket expenses, 1:41
Child visitation expenses, 8:350
Computers files and electronic data converted to printouts, 27:240
Medical expenses, defendant's payment or offer to pay inadmissible, 38:150
Mental health provider-patient privilege, claims for payment of mental health services, 25:543
Presuit investigation, 2:04–05, 2:53
Reimbursement. See **Reimbursement**
Request for production and inspection, copying multiple sets in multi-party case, 27:262
Requests for disclosure of medical records and bills, 26:22
Settlement, financial considerations, 38:03–04
Travel costs. See **Travel and Travel Expenses**

Experts and Expert Witnesses

Attorney-client privilege, 25:153–155
Depositions. See **Depositions**
Discovery of
Amendment and supplementation of, 24:67
Categories of experts, effect on discovery of, 24:60
Consulting experts, 24:63, 24:100
Costs of deposing expert, 24:66

- Designating testifying experts, time for, 24:64
- Scheduling depositions of testifying experts, 24:65
- Scope of discovery, 24:61
- Testifying experts, discovery tools for obtaining information about, 24:62
- Mandamus on order excluding, 18:85
- Physical and mental examinations, selection of examiner. See **Physical and Mental Examinations**
- Presuit use of experts, 2:36–39, 2:64
- Request for production and inspection of expert reports, 27:68
- Requests for disclosure, testifying experts, 26:20
- Summary judgment motion, 36:220–223, 36:236
- Treating physician as testifying expert
 - Adverse fact witness, 25:472
 - Deposing opponent’s expert, 28:89
 - Physician-patient privilege, 25:485
 - Requests for disclosure, 26:20
- Unsound mind, establishing, 3:478–479

Extending or Shortening Time

- Answer, option to extend time, 14:231
- Discovery disputes, motion to extend or shorten deadlines, 32:52
- Discovery response deadlines, 24:162, 24:169
- Health care negligence claims, extension by notice of claim, 3:242–243
- Interrogatories, response time, 30:109–110
- Motions, 16:49
- Reinstatement after dismissal, motion for, 37:443
- Request for production and inspection, 27:86, 27:105, 27:270
- Requests for admissions, stipulation or motion to extend time for response or objection, 31:85–86, 31:119, 31:174–175
- Requests for disclosure, extensions of time for response, 26:41
- Service
 - Business Corporation Act, time to answer extended, 10:148
 - Written agreement to extension of limitations period, 10:32
- Settlement negotiations, agreement to extend limitations period, 3:378
- Special exception to defects in pleading, 15:06, 15:95
- Statutes of limitations, extension by agreement, 3:502–505
- Summary judgment motion and response in opposition to, 36:352, 36:396, 36:398

— F —

False Arrest

- Statute of limitations, 3:160

False Imprisonment

- Statute of limitations, 3:160
- Venue, 9:110

Family Law

- Child custody. See **Child Custody**
- Child support. See **Child Support**
- Discovery period under Discover Control Plan Level 2, 24:155
- Guardian ad litem
 - Court’s discretion to appoint, 6:34
 - Qualified immunity, 6:52
- Injunctions, 17:08, 17:34, 17:215, 17:250, 17:332
- Jurisdiction, 8:346–351

Physical and mental examinations, 29:01, 29:06, 29:125
Publication, service by, 10:269
Settlement agreement breached, jurisdiction for enforcement, 38:160
Special appearance orders, review of, 8:444–445
Statutes of limitations, 3:316–324
Subject matter jurisdiction, 7:37

Federal Court

Anti-suit injunctions, 17:103
Asahi Metal case, jurisdiction, 8:314
Choosing between federal and state court. See **Federal and State Court, Choosing Between**
Class actions
 Adequacy of representative class parties, comparison of Texas and federal standard, 6:638
 Parallel federal and state class actions, 6:613
 TRCP 42 patterned after federal rule, 6:608
Common interest (joint defense) privilege, 25:283
Concurrent or dual representation, professional rules of conduct, 1:68
Federal arbitration, 38:205
Interpleader. See **Interpleader**
Motions, unnotarized declarations supporting, 16:62
Number of interrogatories, 30:07
Physician-patient privilege, ex parte communications, 25:498
Plea in abatement, 15:180
Removal to federal court. See **Removal to Federal Court**
Request for production and inspection
 Comparison of Texas and federal case law, 27:04
 Constructive possession, 27:118
Requests for admissions, comparison of pleadings between state and federal court on uncontested facts, 31:24

Federal Employer's Liability Act (F.E.L.A)

Statute of limitations, 3:218

Federal Governmental Entities. See **Public Entities and Employees**

Federal Maritime Claims

Statute of limitations, 3:219

Federal and State Court, Choosing Between

Contempt, violation of injunction, 17:308
Discovery, 9:464–475
Judges, juries, and trial calendar, 9:470–474
Presuit considerations, 2:148–152
Procedure and evidence, 9:456–458
Removal to federal court. See **Removal to Federal Court**
Strategic considerations, 9:442
Subject matter jurisdiction, 9:430–436
Territorial jurisdiction, venue, and applicable law, 9:448–451

Fees

See also **Costs; Expenses and Expenditures**
Arbitration, 38:243
Attorney fees. See **Attorneys' Fees**
Court reporter, 28:109–110
Depositions, 28:91, 28:257
Guardian ad litem. See **Guardian Ad Litem**
In forma pauperis. See **In Forma Pauperis**
Jury demand, 14:224

- Motions, filing fees, 16:134
- New trial motion, 37:162
- Nonparty deponent, 27:308
- Requests for admissions, 31:16
- Service
 - Generally, 10:316
 - Costs, fees recoverable as, 10:104
 - Registered agents, fee for information request from Secretary of State, 10:50
- Third party facilitators, 38:197
- Transfer of proceedings, new filing fee required, 9:275

Fellow Servant Doctrine

- Injury by fellow servant as affirmative defense, 14:328

Fiat

- Order setting hearing date, 16:48, 36:351

Fiduciary Duty

- Breach of fiduciary duty, statute of limitations, 3:209
- Class actions, attorney's duty, 6:680
- Death of party, 6:258
- Fiduciary shield doctrine, 8:331
- Fraudulent concealment and statute of limitations, 3:384–386
- Guardian ad litem, 6:49
- Initial client contact, avoid creating fiduciary obligation, 1:07
- Sanctions, conflicts of interest between attorney and client, 27:273
- Standing of heirs to bring breach of fiduciary claims against executor, 6:217
- Venue for breach of fiduciary action, 9:105

Financial Issues

- Attorney fees. See **Attorneys' Fees**
- Attorney's financial assistance to client, 1:70
- Business dealings with client, 1:69
- Case assessment, client's ability to pay, 1:49
- Court costs. See **Costs**
- Disqualification of judges for financial interest in case, 16:186–189
- Expenses. See **Expenses and Expenditures**
- Fees. See **Fees**
- Financial ability to prosecute case, 6:642, 6:644
- Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) and FDIC, tolling statutes of limitations, 3:520
- Net worth
 - Interrogatories on net worth for punitive or exemplary damages, 30:66
 - Request for production and inspection of documents showing net worth, 27:66
- Presuit considerations, defendants' financial condition, 2:97
- Recusal of judge, 16:204, 16:212, 16:216
- Request for production and inspection, offsetting nonparty deponent's financial hardship, 27:309
- Sequestration of unrelated assets, 17:125

Findings of Fact and Conclusions of Law

- Assumed name contested, 6:243
- Choice of law clause, effect on long-arm jurisdiction, 8:149
- Class actions
 - Certification order, 6:707, 6:711
 - Commonality, 6:633, 6:654-656
 - Numerosity, 6:630
- Complete preemption, 9:489
- Contempt, violation of injunction, 17:308

- Default judgment, initial finding of meritorious defense, 37:246
- Dismissal hearing, request for findings, 37:426
- Federal question jurisdiction, 9:433
- General jurisdiction, 8:214
- Guardian ad litem, fee award, 6:63
- Injunctions, 17:28, 17:207
- Intervention, 6:569
- Judge's personal knowledge of disputed facts, disputing by bystander's bill of exceptions, 16:210
- Mental incapacity, 6:95
- Necessary and indispensable parties, 6:341
- Personal jurisdiction, 8:227
- Privileges, findings after in camera review, 25:96
- Reinstatement after dismissal, motion for, 37:461
- Requests for disclosure, findings of good cause or lack of prejudice for failure to supplement responses, 26:55
- Service and citation challenged, finding on motion for new trial, 10:567, 10:578
- Special appearance, 8:437, 8:448–449
- Summary judgment, 36:127, 36:508
- Trade secrets privilege, 25:425
- Unconscionable or excessive fee, 1:186
- Unsound mind, 3:479
- Venue in multiple plaintiff cases, orders granting or denying transfer based on implied finding of improper joinder or intervention, 9:291

Forcible Entry and Detainer. See **Eviction**

Foreclosure

- Statutes of limitations
 - Deficiency suit after foreclosure of real property, 3:149
 - Personal property, lien against, 3:131
 - Real property, lien against, 3:148
 - Tolling provisions, inapplicability, 3:446
 - Wrongful foreclosure, 3:150, 3:269

Foreign Corporations

- Capacity to sue or be sued, 6:121, 6:142–146
- Diversity jurisdiction, 9:434
- Jurisdiction based on presence, 8:128, 8:130–131
- Service, 10:51–52, 10:160–161, 10:221

Foreign Countries

- Anti-suit injunctions, 17:102
- Depositions, 28:13
- Diversity jurisdiction, 9:434
- Foreign nationals, jurisdiction, 8:74
- Nonparty nonresident document inspection, deposition subpoena, 27:299
- Statutes of limitations, 3:15
- Translation of laws for purposes of judicial notice, 36:318

Forum Non Conveniens

- Bases for, 9:339
- Child custody action, 9:384–386
- Common law forum non conveniens, 9:392–401
- Contractual forum non conveniens, forum selection clauses. See **Contracts**
- Dismissal
 - Hearing on motion for, 9:399–400
 - Persons who can request, 9:340

Fair play and substantial justice jurisdiction factors compared to forum non
conveniens, 8:62
Jurisdiction compared to forum non conveniens, 8:13
Multiple party cases, severance and partial dismissal, 9:341
Personal injury and wrongful death actions
Hearing and appeal, 9:374–379
Motion, 9:368–369
Standards depend on plaintiff’s residence, 9:346–352
Purposes, 9:338
Special appearance, effect of *Antonio* case on alternative order for dismissal for
forum non conveniens, 8:438

Forum Selection Clauses. See **Contracts**

Foundation

Requests for admissions, establishing evidentiary foundation for documents, 31:34

Franchise Taxes

Corporation in default on franchise taxes, 6:124–128, 6:135, 6:268

Franchises

Jurisdiction, 8:229, 8:248–249

Fraud and Misrepresentation

See also **Concealment; Deceptive Trade Practices Act (DTPA)**

Affirmative defense, 14:326

Attorney-client privilege, crime-fraud exception. See **Attorney-Client Privilege**

Concealment of claim. See **Statutes of Limitations**

Default judgment due to extrinsic fraud, 37:252

Injunctions, obtaining possession of property fraudulently taken, 17:123

Jurisdiction over fraud and misrepresentation cases, 8:289–291, 8:329, 8:333,
8:367–368

Nonresident, effect of fraud on personal jurisdiction, 8:116

Plea to jurisdiction, fraudulent pleading of jurisdictional amount, 15:153

Settlement agreement, 38:159

Special appearance affidavit false, nonresident affiant subject to sanctions, 8:383

Statutes of limitations, 3:208, 3:210, 3:430

Venue, 9:111

Wills, statute of limitations, 3:358

Fraudulent Transfers

Statutes of limitations, 3:357

Freedom of Information Act (FOIA)

Presuit investigation, 2:45

Request for production and inspection of documents, 27:336–337

Frivolous or Delaying Actions

Discovery disputes, sanctions for frivolous and unfounded motions, 32:33

Dismissal of action as sanction, 37:392

Guardian ad litem, frivolous legal malpractice claim against, 6:50

Inmate’s frivolous claims, dismissal of, 6:101, 6:108

Interpleader, 6:497, 6:502

Pleadings frivolous, sanctions for, 14:66–67, 14:72–74, 14:80–81, 14:88–90

Recusal motion, 16:245

Request for production and inspection, frivolous motion for order compelling,
27:112

Requests for admissions frivolous, oppressive, or harassing, 31:59

Rules of Professional Conduct, 1:57

Summary judgment motion, 36:514

Garnishment

- Controverting answers, 19:230-234
- Final judgment, 19:290-297
- Grounds, 19:180-183
- Issuance of writ, 19:190-200
- Motion to dissolve, modify, or substitute property, 19:240-243
- Nature of remedy, 19:170-172
- Replevy, 19:250-252
- Response, 19:210-215
- Third parties' claims, 19:260-267
- Wrongful garnishment, §§19:280-283

General denial. See **Answer**

Good Faith

- See also **Bad Faith**
- Discovery conference certificate, 32:03
- Guardian ad litem, 6:49
- Nonsuited controversial claim as good-faith settlement gesture, 37:342
- Pleadings, presumption of good faith, 14:74
- Presuit investigation of client's claim, "reasonable inquiry," 2:02, 2:173
- Recusal of judge, good faith motion, 16:240
- Requests for admissions, qualified response made in good faith, 31:109
- Settlement negotiations, insurer's duties, 38:72–73
- "Settlement weeks", good faith participation, 38:176
- Shareholder derivative actions, disinterested determination of best interests of corporation made in good faith, 6:790
- Statute of limitations, breach of duty of good faith and fair dealing, 3:161
- Venue selection, 9:185

Goods

- See also **Products Liability**
- Conspiracy to sell counterfeit parts, jurisdiction, 8:293
- Nonresidents, long-arm jurisdiction over, effect of buying, shipping, or receiving goods, 8:218–219, 8:221–222
- Statutes of limitations, 3:116, 3:123, 3:127
- Stream of commerce doctrine, 8:308–314

Government Benefits. See **Public Benefits**

Government Entities and Officials. See **Public Entities and Employees**

Guarantors

- Joinder of parties, 6:328
- Statute of limitations, suit on guaranty, 3:132

Guardian Ad Litem

- Appointment of
 - Generally, 6:22
 - Adverse interest or conflict of interest of ward's guardian or next friend, 6:26
 - Appointment or replacement at any time, 6:30
 - Discharge before final judgment or by final judgment, 6:36–37
 - Effect of, 6:31
 - Failure to object to appointment as waiver, 6:33
 - Family law cases, 6:34
 - Juvenile court cases, 6:35
 - Motion, 6:29
 - Multiple guardians ad litem, 6:32
 - Settlement proceeds, allocation of, 6:27

When appointment not required, 6:28

Discretion of court. See **Discretion of Court**

Duties

Attorney of ward, hiring and firing, 6:41

Limited to matters related to suit in which appointment made, 6:40

Next friend, replacement of, 6:41

Remove or appeal case, 6:41

Settlement, evaluation and recommendations, 6:43

Settlement funds, providing future investment of, 6:44

Fees

Appeal, fee for, 6:62

Appellate review, 6:68

Evidence supporting fee claim, 6:61

Factors in determining, 6:56

Failure to object to guardian ad litem's appointment as waiver of objection,
effect on fee payment, 6:33

Findings of fact and conclusions of law, 6:63

Hearing on fee award, 6:60

Limited to performance of proper duties, 6:58

Losing party, fee assessed against, 6:65

Negotiated settlement, fee subject to, 6:64

Objection, 6:67–68

Plaintiff's counsel, fee assessed against if guardian ad litem acted as attorney,
6:67

Post-litigation services, no fee for, 6:59

Prevailing defendant, fee assessed against if plaintiff indigent, 6:66

Reasonable fee, determining, 6:57

Liability of

Discharge, no liability for occurrences after, 6:51

Family law cases, qualified immunity, 6:52

Fiduciary duty, 6:49

Legal malpractice, no liability for, 6:50

Litigation, no personal liability, 6:48

Objections

Failure to object to appointment as waiver, 6:33

Lack of guardian ad litem, failure to object as waiver, 6:29

Scope of work performed by guardian ad litem, 6:58

Service, 10:41

Guardianship or Conservatorship Proceedings

Generally, 6:20

Distribution of proceeds for minor or incompetent persons, 6:77

Physical and mental examinations of minors and incompetents, 29:20

Probate jurisdiction, 7:85

Termination of guardian ad litem's services, formal guardianship proceedings after,
6:59

— H —

Habeas Corpus

Bench warrant or attachment (*habeas corpus ad testificandum*), 6:108

Criminal contempt, 17:306, 17:310, 17:318, 17:324

Hague Convention

Service, 10:530

Harassment

- Nonsuit to avoid statutory penalties, 37:341
- Physical and mental examinations, multiple examinations as harassment, 29:45
- Trade secrets, protective order, 25:404
- Vexatious litigants. See **Vexatious Litigants**

Hardship

- Discovery of non-core work product, 24:95
- Injunctions, 17:07
- Physical and mental examinations, time and location hardship for examinee, 29:54, 29:63, 29:68
- Request for production and inspection, offsetting nonparty deponent's financial hardship, 27:309

Health Care Negligence Claim. See **Medical Malpractice**

Hearings

- Class actions, 6:694–700, 6:750, 6:753
- Common interest (joint defense) privilege, 25:284
- Contempt, 17:307–308, 17:313
- Default. See **Default and Default Judgments**
- Discovery disputes. See **Discovery Disputes**
- Dismissal of actions, hearing, 37:408, 37:420, 37:422–423
- Forum non conveniens, 9:374–379, 9:399–400
- Forum selection clause, 9:425
- Guardian ad litem, hearing on fee award, 6:60
- Injunctions. See **Injunctions**
- Interpleader, 6:494
- Intervention, 6:568, 6:584–587
- Jurisdiction. See **Jurisdiction**
- Minors and incompetent persons, settlement hearing, 6:72–73
- Motions, hearing on. See **Motions**
- New trial motion, 37:166
- Perpetuate testimony, notice of deposition before lawsuit filed, 28:63
- Personal jurisdiction, 2:127
- Physical and mental examinations, hearing on motion for order for Rule 204 exam, 29:132
- Plea in abatement, 15:224–226, 15:232–233
- Plea to jurisdiction, 15:143–144
- Privileges, 25:39, 25:94–96
- Recusal, 16:165, 16:241, 16:244
- Reinstatement after dismissal, hearing on motion, 37:435
- Remand, hearing on motion, 9:590
- Request for production and inspection
 - Nonparty deposition subpoena duces tecum, hearing on motion for protective order, 27:318
 - Objection to traveling out-of-state to inspect documents, 27:256
- Requests for admissions, 31:104, 31:208
- Retention hearings, 37:423
- Sanctions, motions for, 32:41
- Sealing court records, hearing on motion to, 32:51
- Settlement for minor without legal guardian, 38:86
- Severance motion, 6:449
- Special exceptions, 15:79, 15:96, 15:102–104, 15:110–115
- Summary judgment motion, 36:347–349, 36:351, 36:496–499
- Transfer of proceedings for impartial trial, 9:329, 9:331
- Venue, 9:175, 9:250–257

Hearsay

- Affidavits supporting motions, 16:61
- Business records exception. See **Business Records**
- Deposition
 - Documents produced at, 28:78
 - Statements not hearsay, use in subsequent actions, 28:33
- Operative documents as nonhearsay, 31:36
- Party-opponent's admissions not hearsay, 28:31
- Requests for admission, 31:36–37, 31:132
- Substituted service under Rule 106(b), hearsay in affidavit supporting motion, 10:132
- Summary judgment motions, authenticating affidavits for documents, 36:271

Heirs

- See also **Beneficiaries**
- Discovery rule, effect on adoptee's claim to inherit from birth parent, 3:419
- Service, 10:66, 10:249
- Standing of heirs to bring breach of fiduciary claims against executor, 6:217
- Statutes of limitations for heirship and inheritance, 3:323
- Writ of scire facias. See **Scire Facias, Writ of**

Holidays. See **Saturdays, Sundays, and Holidays**

Homestead

- Affirmative defense to partition, 14:351

Husband and Wife. See **Spouses**

— I —

Illegality

- Affirmative defense, 14:327

Immunity

- Affirmative defense, 14:352
- Guardian ad litem, qualified immunity in family law cases, 6:52
- Immunity from suit distinguished from affirmative defense, 14:352
- Plea to jurisdiction, government immunity, 15:155
- Presuit considerations, 2:96
- Self-incrimination, privilege against inapplicable, 25:332, 25:358
- Third party facilitators, 38:197

Impeachment

- Deposition testimony, 28:22, 28:30
- Interrogatories on criminal convictions, 30:67
- Physical and mental examinations, 29:52, 29:174
- Physician-patient privilege, 25:511
- Requests for admissions, 31:226–227
- Requests for disclosure
 - Amendment or supplementation of response, use of original responses after, 26:57
 - Exclusion of impeachment witnesses for failure to identify in supplemental response, 26:56
- Summary judgment motions, 36:121

Impleader

- Alternative pleadings permitted, 6:347
- Nonparty liable for plaintiff's claims, 6:346
- Proper impleader parties, 6:356–357
- Responses to impleader

Cross-claims by other defendants, 6:352
Plaintiff amending to assert claims against third-party defendant, 6:351
Third party treated as defendant, 6:350

Statute of limitations, 6:378
Venue, 6:394

In Camera Proceedings

Attorney-client privilege, 25:178, 25:218
Discovery disputes, motion to seal court records, 32:51
Mental health provider-patient privilege, 25:554
Privileges, hearing on, 25:95
Requests for admissions, confidential documents sealed for in camera inspection, 31:180
Trade secrets, protective order, 25:435

In Forma Pauperis

See also **Indigents**
Generally, 6:100
Indigency defined, 6:98
Inmates, dismissal of frivolous claims by, 6:101, 6:107

In Limine Motions

Requests for disclosure, service of amended or supplemental responses untimely, 26:62

In Rem Jurisdiction. See **Jurisdiction**

Inadvertence. See **Mistake, Inadvertence, Surprise, or Neglect**

Incapacity to Sue. See **Capacity to Sue or Be Sued**

Incompetent Persons. See **Minors and Incompetent Persons**

Incorporation by Reference

Exhibits incorporated into pleadings, 14:56–60
Objections, incorporation by reference, 14:39
Special exceptions, improper incorporation by reference, 15:69
Statements adopted by, 14:38–39
Summary judgment motion, 36:204, 36:233
Venue improper, documents incorporation by reference in affidavits for motion to transfer, 9:255

Indemnity

Cross claims, 14:436
Discovery of insurance and indemnity policies. See **Discovery**
Interrogatories, 30:68
Intervention by indemnitors, 6:540
Request for production and inspection of indemnity agreements, 27:69
Requests for disclosure, 26:21
Settlement, indemnity clause regarding liens, 38:127
Statutes of limitations, 3:353

Indigents

See also **In Forma Pauperis**
Attorney, no entitlement to nor requirement to hire, 6:102
Citation, no fee for issuance of, 10:324
Criminal contempt, appointment of counsel, 17:306
Definition of indigency, 6:98
Discretion of court, 6:99
Guardian ad litem fees, 6:66
TRO and temporary injunction, affidavit of indigency, 17:254

Inferences. See **Presumptions and Inferences**

Initial Client Contact

Generally, 1:01, 1:10

- Attorney's objectives, 1:04
- Calendaring case conference, 1:24
- Candor, requesting, 1:17
- Case conference, describing, 1:19
- Client's purpose, 1:05
- Confidential information, 1:14–17
- Conflicts of interest discussion, 1:02
- Consultation fee, explaining and factors in setting, 1:22–23
- Delaying decision on representation, final caution to prospective client orally and in writing, 1:28
- Evaluating client, 1:09
- Explaining steps after initial contact before representation accepted, 1:18
- Fact gathering before accepting representation, 1:11–12, 1:21
- Fiduciary obligation, avoid creating, 1:07
- First telephone call, 1:03
- Keeping client informed, 1:18
- Legal advice, avoid giving, 1:06
- Legal research before deciding on representation, describing, 1:20
- List of things for client to bring to case conference, 1:25
- Listening to client, 1:10
- Marketing yourself, 1:13
- Preservation of records, advising client not to destroy documents, 1:29
- Revealing information, 1:15–16
- Statutes of limitations, discussing and checking to avoid malpractice, 1:27
- Time-frame for deciding on representation, 1:26
- Types of prospective clients, 1:08

Injunctions

- Anti-suit injunctions, 17:96–105
- Application
 - Preparing, 17:172–178
 - Responding to, 17:184–186
- Arbitration, ancillary relief, 38:236
- Bond requirements, 17:139, 17:248–254
- Checklists for applicant, 17:158–159
- Class actions, 6:652, 6:683, 17:146
- Constitutional county courts, issuance of writs, 7:52
- Contempt, enforcement by, 17:155, 17:234, 17:302–318
- Covenants not to compete, 17:78–83
- Defenses
 - Laches, 17:73
 - Unclean hands, 17:70–72
- Definitions, 17:02–05
- Dissolution and modification of TRO or TI
 - Ex parte TRO, grounds for motion to dissolve or modify, 17:286–287
 - Temporary injunction, motion to dissolve or modify, 17:292–296, 17:333
- District courts, jurisdiction for issuance of writs, 7:40
- Ecclesiastical disputes, 17:131
- Ex parte TRO, 17:02, 17:173, 17:177, 17:286–287
- Extension of TRO, 17:272–275
- Family law, injunctions between spouses, 17:08
- Government, suits to enjoin, 17:130, 17:145, 17:157
- Grounds
 - Generally, 17:14–19
 - Lack of adequate remedy at law, 17:44–51

- Other equitable considerations, 17:62–66
- Probable injury, 17:34–39
- Probable right to relief, merit of claim, 17:23–28
- Status quo, preservation of, 17:57–59, 17:236
- Hearings
 - Contempt hearing, 17:313
 - Expedited appeal of interlocutory order, 17:343
 - Notice of hearing, 17:155, 17:192–197
 - Procedures, 17:178, 17:202–208
 - Requesting findings and conclusions, 17:207
 - Setting hearing date, 17:195
 - Temporary injunction, 17:178
- Improper subjects for injunctions, 17:120–130
- Interlocutory appeal, temporary injunction
 - Generally, 17:217, 17:332–337
 - Contempt sought during appeal, 17:308
 - Failure to state reasons in order, 17:222
 - Mooting appeal, 17:293, 17:324, 17:362–364
 - Procedures, 17:342–347
 - Scope of review, 17:352–357
 - Venue improper, 17:139
- Interlocutory appeal, TRO, 17:207, 17:236, 17:324–326
- Issuance of writ, 17:260–261
- Judgments, enforcement, collection, or stay, 17:98, 17:128, 17:139
- Jurisdiction, 17:136, 17:139, 17:140
- Nonsuit, effect on temporary injunction, 37:315
- Notice. See **Notice and Notification**
- Objections, 17:178, 17:184–185
- Overview, 17:01–08
- Parties, 17:144–146
- Persons bound by injunctions, 17:152, 17:157
- Pleading statutory grounds for TRO or TI, 17:16
- Proper subjects for injunctions
 - Constitutionality of civil statutes, 17:111
 - Drilling and mining operations, 17:112
 - General injunction statute, 17:110
 - Liability insurance, duty to defend, 17:115
 - Personal property, in *custodia legis*, 17:113
 - Personal services, business disruption, 17:114
 - Protective orders, §17:116
- Reconsideration of denied temporary injunction, 17:280–281
- Right to be heard, denial of, 17:205–206
- Sequestration of unrelated assets, 17:125
- Service, 10:29, 17:260–261
- Standing, 17:144
- Statutory country courts, issuance of writs, 7:63
- Stay of proceedings, 17:139
- Timing, 17:166–167
- TRO or TI order, preparing
 - Generally, 17:214–217
 - Acts enjoined, 17:234–237
 - Interlocutory appeal, 18:22
 - Persons enjoined, 17:230
 - Reasons for issuance, 17:222–224

- Time for compliance, 17:240
- Trial setting, 17:242
- Venue, 9:52–53, 17:137–139
- Wrongful injunction
 - Bond, procedure for action on, 17:380–383
 - Covenant not to compete, 17:82
 - Damages, 17:82, 17:388–390
 - Grounds, 17:370–374

Inmates

- Filing or appearing in civil litigation, special provisions for, 6:106
- In forma pauperis, 6:107
- Witnesses, inmates as, 6:108

Insolvency. See **Bankruptcy and Insolvency**

Inspection of Documents or Things. See **Request for Production and Inspection of Documents or Things**

Installment Payments

- Accrual of limitations period for breach of installment payment contract, 3:37
- Settlement, court approval of installment payments, 38:88

Insurance

- Admissibility of insurance information, 24:74
- Affirmative defense of insurance policy exclusions, 14:329
- Answer to petition, alternative of notifying insurer, 14:238
- Class actions, 6:609
- Demand, 2:205, 2:207
- Discovery. See **Discovery**
- Impleader of liability insurer not permitted, 6:356
- Injunctive relief, duty to defend, 17:115
- Insurance Code, unlawful insurance practices
 - Class actions, 6:609
 - Statute of limitations, 3:197
- Interpleader of insurance proceeds, 6:464, 6:497
- Interrogatories, 30:68
- Jurisdiction over nonresident insurer, 8:201, 8:250, 8:336, 8:341
- Presuit considerations, 2:106, 2:175, 2:204–207
- Request for production and inspection of insurance agreements, 27:69
- Requests for disclosure, 26:21
- Self-incrimination, privilege against, effect of insured invoking, 25:350
- Service, 10:58–61, 10:210–212
- Settlement
 - Generally, 38:62
 - Defense attorney's duties, 38:72
 - Good faith and fair dealing, 38:73
 - High-balling and low-balling, 38:64
 - Insurance consent clauses, effect of, 38:12
 - Policy limits, 38:65
 - Reserves, 38:63
 - Stowers Doctrine, 2:207, 38:66, 38:74
- Statutes of limitations, 3:513
- Successor-in-interest of insolvent insurer, jurisdiction, 8:336
- Summary judgment motion, 36:127
- Surplus lines insurance companies, service, 10:181
- Unauthorized insurers, service, 10:180, 10:242
- Venue, 9:122

Intent

- Crime-fraud intent, effect on attorney-client privilege, 25:169
- Criminal contempt, 17:305
- Fraudulent concealment of claim, proving intent, 3:368
- Privileges, intent to waive, 25:38, 25:70–72
- Settlement agreement, 38:95

Interest on Money

See also **Usury**

- Amount in controversy, inclusion or exclusion of interest, 7:121
- Guardian ad litem's liability for not using interest-bearing account for settlement funds, 6:44
- "Interest *eo nomine*," 7:121
- Pleading pre-judgment interest, 14:223
- Settlement, tax consequences of interest on, 38:21

Interlocutory Appeal

- Appealable interlocutory orders, 18:03
- Procedures, 18:40-18:46
- Scope of interlocutory appeals, 18:04
- Types of interlocutory appeals, 18:20-18:30

Internet

- Case assessment, investigation of client's assets, 1:49
- Jurisdiction, doing business in Texas, 8:222
- Local rules of counties, 16:05
- Physical and mental examinations
 - Locating physician experts for, 29:46
 - Medline or Nexis search for articles written by examiner, 29:52
- Presuit investigation
 - Generally, 2:47
 - Experts, locating, 2:38
- Web addresses. See **Addresses, Telephone Numbers, and Web Addresses**

Interpleader

- Applicable law, 6:462
- Competing claims, examples of, 6:471–472
- Counterclaim, interpleader filed as, 6:465
- Declaratory relief action, comparison to interpleader, 6:466
- Delay in filing, 6:474
- Deposit in court registry, 6:473, 6:484, 6:516
- Discharge, proceedings after
 - Appeal, 6:517
 - Burden of proof, 6:514
 - Claims and defenses not affected by interpleader, 6:515
 - Interpleader defendants become plaintiffs, 6:512
 - Prevailing party entitled to funds in court registry, 6:516
 - Trial between claimants, 6:513
- Discharge of stakeholder
 - Hearing, time for, 6:494
 - Order of discharge and appeal, 6:496
 - Time for, 6:495
- Doubts resolved in favor of interpleader, 6:475
- Elements of actions, 6:470
- Federal interpleader
 - Attorney fees discretionary, 6:524
 - Importance of, 6:467
 - Requirements for rule interpleader, 6:521
 - State interpleader bars later federal action, 6:525

- Statutory interpleader, requirements and advantages, 6:522–523
- Types of, 6:520
- Insurance proceeds, interpleader of, 6:464
- Jurisdiction, 6:467
- Partial interpleader, 6:476
- Pleadings
 - Alternatives if jurisdiction lacking, 6:484
 - Demand letter instead, 6:482
 - Jurisdiction, 6:483
- Purpose, 6:460
- Response by rival claimants
 - Affirmative claims, filing required, 6:488
 - Custodia legis*, interpleaded property held in, 6:489
 - Standing, 6:490
- Similar or related claims not required, 6:477
- Stakeholder liability, interpleader avoids, 6:461
- Stakeholder's denial of claims, admission of claim not required, 6:478
- Tender of funds unconditional, 6:473
- Types of property, 6:473

Interpretation of Statutes and Cases. See **Construction and Interpretation**

Interpreters

- Depositions, 28:118–120
- Foreign law, authentication of translation, 36:318

Interrogatories

- Confidentiality agreement, 30:100, 30:207
- Consulting experts, 24:63
- Deadlines for responding parties, 24:160–162
- Discovery disputes, attaching interrogatories to motion, 32:12
- Document-identification interrogatories, 24:146
- Drafting responses
 - Generally, 30:122–127
 - Format, 30:132–135
 - Objections (see Objections, below)
 - Records, option to produce, 30:150–155
 - Supplemental responses (see Supplemental and amended answers, below)
 - Verification of responses, 30:140–145
 - Witnesses, identifying, 30:160–166
- Evidentiary issues
 - Answers as evidence, 30:272–278
 - Excluding evidence at trial, 30:284–286
- Factors in determining whether to use, 24:134
- Filing interrogatories and responses, 30:84, 30:116, 30:223
- Fishing expeditions, 24:102
- Legal or factual assertions, discovery of, 24:51
- Motions
 - Extending time to answer, 30:240–243
 - Late amendment or supplementation, motion for leave for, 30:256–257
 - Missing, evasive, or incomplete answers, 30:262–268
 - Procedures, 30:230–235
 - Protective order, 30:248–251
- Objections
 - Generally, 30:172–178
 - Privileged information, protecting, 30:204–209
 - Problem interrogatories, dealing with, 30:192–199

- Specific objections, 30:184–187
- Overview
 - Generally, 30:01
 - Advantages, 30:02
 - Disadvantages, 30:03
 - Entities, 30:06
 - How to use interrogatories, 30:12–14
 - Limit on number of interrogatories, 30:07
 - Parties, 30:04–05
 - Types of interrogatories, 30:20–25
- Propounding interrogatories
 - Areas of inquiry, 30:50–57
 - Documents, 30:74–78
 - Facts, 30:62–69
 - Format, 30:30–36
 - Preliminary parts, 30:42–45
- Requests for admissions used with interrogatories, 31:43, 31:45
- Response
 - Generally, 30:96–100
 - Deadline for, 30:106–110
 - Drafting (see Drafting responses, above)
 - Filing, 30:116
 - Inspection of records, inviting, 30:154
 - Labeling and numbering records, 30:155
 - Service, 30:117
 - Supplemental answers (see Supplemental and amended answers, below)
- Self-incrimination, privilege against, 25:309, 25:316, 25:340
- Service, 30:36, 30:85–91, 30:117, 30:223–224
- Special appearance, 8:396, 8:428
- Special exceptions to defects in pleadings compared to interrogatories, 15:53
- Summary judgment motion, use of interrogatory answers, 30:160, 30:276, 36:294–296
- Supplemental and amended answers
 - Generally, 30:85, 30:214–216
 - Procedures, 30:222–224
- Types of interrogatories, 30:20–25
- Intervention**
 - Advantages and disadvantages of, 6:532
 - Appeal, 6:569–571, 6:590–594
 - Challenging intervention, 6:576–579
 - Citation and service, §6:553
 - Class actions, 6:640, 6:738, 6:757
 - Consent to jurisdiction and venue, §6:556
 - Defined, 6:528
 - Discovery disputes, motion to seal court records, 32:51
 - Discretion of court. See **Discretion of Court**
 - Dismissal order not disposing of intervenor’s claims, 37:410
 - Grounds, 6:536–545
 - Hearing, 6:584–587
 - Legal authority, 6:529
 - Mandamus, 6:572, 6:593–594
 - Multiplicity of suits, avoiding, 6:531
 - Post-intervention, 6:598–601
 - Procedures, 6:548–552

- Purpose, 6:530
- Service, 10:21
- Severance, 6:568, 6:592, 6:601
- Striking
 - Burden on party opposing intervention to file motion to strike, 6:529
 - Error to strike if intervention essential to protect intervenor's rights, 6:543
 - Failure to present evidence establishing venue, striking claims, 6:568
 - Grounds for, 6:579
 - Motion for striking, 6:578, 6:584
 - Multiplicity of issues, striking intervention, 6:542
 - Parallel litigation, effect on striking, 6:545
 - Sua sponte intervention abuse of discretion, 6:577
 - Time of filing intervention, 6:549–550
- Venue
 - Contesting, 9:208
 - General rules, 6:556–557
 - Hearing, 6:568
 - Interlocutory appeal, accelerated appeal, 6:569–571
 - Intervening plaintiff lacks venue, 6:560–564
 - Mandamus, 6:572
 - Multiple plaintiffs, 9:25, 9:291

Investigation

- Case assessment, investigation of client's assets, 1:49
- Case conference, eliciting investigation leads, 1:255, 1:260
- Discovery, informal investigation as first step, 24:145
- Methods and sources for presuit investigation
 - Appraisals, 2:54
 - Documents, 2:28–30
 - Employment records, 2:51
 - Experts, presuit use of, 2:36–39, 2:64
 - Freedom of Information Act, 2:45
 - Internet, 2:47
 - Legal trade organizations, 2:49
 - Medical records and bills, 2:52
 - Necessary methods, 2:10
 - Photographs and videotapes, 2:53, 2:55
 - Possible methods, list of, 2:11
 - Professional investigators, 2:44
 - Site inspections, 2:55
 - Special damages, verify or dispute, 2:50
 - Texas Open Records Act, 2:46
 - Trade organizations and industry standards, 2:48
 - Witnesses, 2:16–22
- Physical and mental examinations, background and qualifications' investigation of designated examiner, 29:52
- Physician, effect of physician-patient privilege in disciplinary investigation against, 25:490
- Presuit investigation
 - Cost of investigation, 2:04–05
 - Good faith requirement, 2:02
 - Methods and sources (see Methods and sources for presuit investigation, above)
 - Protecting presuit investigation results (see Protecting investigation results, below)

- Purpose, 2:01
- Winnable claim, evaluating information to determine, 2:03
- Protecting presuit investigation results
 - Experts, communications with, 2:64
 - Perpetuating testimony, 2:62
 - Preserving evidence, 2:60
 - Privileges, protecting, 2:61
 - Spoilation of evidence, 2:63
- Self-critical analysis, information generated by internal investigations, 25:294–295
- Shareholder derivative actions, 6:777, 6:791
- Summary judgment motion, 36:345

— J —

Joinder

- Advantages of joining parties, 6:277–282
- Alternatives to, 6:274–276
- Class actions, joinder impracticable, 6:630, 6:660
- Compulsory joinder, 14:170–171
- Defective joinder, special denials requiring verification, 14:278
- Disadvantages, 6:286–288
- Federal diversity jurisdiction, effect of fraudulently-joined defendants, 9:495
- Impleader. See **Impleader**
- Intervention, 6:561, 6:563
- Leave of court, 6:376–382
- Mass torts, 6:360–365
- Methods of joining parties
 - Generally, 6:272
 - Amending petition to add plaintiffs, 6:369
 - Defendant’s pleadings, adding parties in, 6:371
 - Original petition, naming parties in, 6:368
 - Part of case, joinder for, 6:273
 - Supplemental petition in responses to opponent’s pleading, filing, 6:370
 - Trial amendment, adding parties by, 6:372
- Motion to sever. See **Severance**
- Necessary and indispensable parties
 - Class actions, 6:312
 - Contributing parties, 6:320
 - Definitions, 6:308–309
 - Dismissal of actions, failure to join indispensable party, 37:389
 - Indispensable parties, 6:311, 6:336–342
 - Necessary parties, 6:308, 6:316–321
 - Non-joinder of party, plea in abatement, 14:383, 15:198–199
 - Objecting to absence (see Objecting to absence of parties, below)
 - Standing problem not cured by joinder, 6:313
 - Statute, parties made necessary by, 6:324–333
 - TRCP 39, 6:310, 6:312
- Objecting to absence of parties
 - Appeal, 6:409–410
 - Available forms for objecting, 6:402
 - Collateral attack for nonjoinder, only nonparty raising, 6:404
 - Court order for joinder of necessary party, 6:405
 - Cure, opportunity to, 6:406

- Direct approach of joining parties yourself, 6:400
- Evidence, 6:405
- Form of objection, verified pleading required, 6:401
- Judgment, effect on absent party, 6:406
- Mandamus, 6:410
- Necessary parties, plaintiff pleading, 6:398
- Nonjoinder, challenging, 6:399
- Time for, 6:403
- Objecting to joinder, motion to strike, 6:414-418
- Permissive joinder, requirements
 - Generally, 6:292, 14:162-164
 - Common question of law or fact, 6:297
 - Joint or several claims, 6:296
 - Presuit considerations, 2:94
 - Proper permissive parties, 6:302-304
 - Same transaction or occurrence, case examples, 6:293-296
- Presuit investigation, 2:17
- Remand, joinder of non-diverse party after removal, 9:567
- Severance. See **Severance**
- Standing problems, no involuntary joinder of party with standing, 6:233
- Strike, motion to, 6:414-418
- Time for, 6:386-389
- Trusts, joining beneficiaries and trustee, 6:163, 10:68
- Unjoined claims, splitting cause of action, 14:171
- Venue, 6:392-394, 9:144-146, 9:150-153, 9:257, 9:291
- Joint Defense Privilege**. See **Common Interest (Joint Defense) Privilege**
- Joint and Several Liability**
 - Joinder of parties, 6:279
- Joint Venturers**
 - Jurisdiction, 8:338
- Judges**
 - Active judge sitting for another, objection to, 16:230
 - Campaign contributions to judges, 16:204, 16:215
 - Class action, disqualification of judge, 6:680
 - Constitutional county court judge, 7:48
 - Disqualification. See **Disqualification of Judges**
 - Federal and state court judges compared, 9:470-473
 - Motion docketing systems, 16:18-24
 - Presuit considerations, deciding where to file, 2:165
 - Recusal. See **Recusal of Judge**
 - Referral order, trial by special judge, 38:174
 - Summary judgment motions, knowing judges' attitudes toward, 36:22, 36:469
 - Visiting judges, objections to, 16:222-225
- Judgment N.O.V**
 - Death after verdict, substitution not required, 6:254
- Judgments**
 - Arbitration award, motion for confirmation, 38:245
 - Assumed name entity, judgment against, 6:240-242
 - Attachment, 19:160-162
 - Class actions, 6:762-764
 - Contempt, 17:314
 - Death of party, 6:255
 - Default and default judgments. See **Default and Default Judgments**
 - Family law judgments, jurisdiction to enforce, 8:351

- Garnishment, 19:290-297
- Injunctions, 17:98, 17:128, 17:139
- Intervention, 6:551, 6:592
- Offset. See **Offset**
- Quasi in rem jurisdiction, collection of judgments in other states, 8:360
- Sequestration, 19:480-482
- Settlements, 38:166–168
- Statutes of limitations
 - Foreign judgments, enforcement of, 3:356
 - Revival and enforcement of judgments, 3:355
- Summary judgment. See **Summary Judgment**
- Wrongful injunction preventing collection of judgment, penalty for, 17:390

Judicial Notice

- Motions, judicial notice of facts, 16:64
- Service, judicial notice of time, 10:60
- Special appearance, judicial notice of facts, 8:423
- Summary judgment motions, public records as method of establishing facts, 36:318

Jurisdiction

- Administrative appeals, service, 10:86
- Amount in controversy
 - Generally, 7:03
 - Aggregation of claims, 7:104–107
 - Counterclaims, 7:97
 - County-level courts, 7:49
 - Determining, 7:94
 - District courts, 7:35
 - Failure to plead, 7:96
 - Inclusions and exclusions, 7:120–121
 - Justice courts, 7:72
 - Nonmonetary relief, 7:98
 - Pleading, 7:95–96
 - Pleading amendments, 7:112–114
 - Probate matters, 7:89
 - Statutory county courts, 7:61
- Answer, challenging jurisdiction as option to, 14:232
- Appearance, waiver of objections to jurisdiction by
 - Generally, 8:156–157
 - Discovery, participating in, 8:178–180
 - Filing pleadings and motions, 8:170–173
 - General appearance, actions constituting, 8:162–165
 - Other actions not constituting waiver, 8:192–195
 - Ruling from court, seeking, 8:186–188
- Challenging jurisdiction (see Pleading and challenging jurisdiction, below)
- Class actions, 6:605, 6:674–675, 6:724–725, 6:728–729
- Comity, 8:15, 15:180
- Consent, jurisdiction based on
 - Contractual consent, 8:138–150
 - Insurance companies, 8:201
 - Registered agents and authorization to do business, 8:200
 - Waiver by appearance (see Appearance, waiver of objections to jurisdiction by, above)
- Contempt, 17:308
- Contracts, 8:226–229, 8:236–242, 8:246–251

- Corporation's forfeiture of corporate privileges for failure to pay franchise taxes, 6:125
- Counterclaims
 - Generally, 14:400, 14:408
 - Compulsory counterclaims, 14:411, 14:414, 14:438
 - Permissive counterclaims, 14:427
- Cross claims, 14:438
- Death of party, 6:252
- Decedent's estate, 6:161
- Default judgments, collateral attack, 37:274–277, 37:282–284
- Defective service of process compared to jurisdiction, 8:15
- Directors, officers, and shareholders of corporations, 2:125, 8:129, 8:132, 8:331–332
- Diversity jurisdiction, 9:434–435
- Dominant jurisdiction, 7:12,, 10:33, 17:98–100, 37:390
- Due process requirements for petitions, 8:366–369
- Employees, effect of absence of employees or recruiting employees on jurisdiction, 8:214–215
- Fair play and substantial justice
 - Generally, 8:62–64
 - Burden of litigating in Texas analysis, 8:70–74
 - Convenience and efficiency, 8:88
 - Interest of Texas, 8:80–82
 - Social policy, 8:94–95
 - Special appearance, 8:422
- Federal due process limits
 - Generally, 8:20–25
 - Fair play and substantial justice (see Fair play and substantial justice, above)
 - Minimum contacts (see Minimum contacts, below)
- Federal question jurisdiction, 2:148, 9:433
- Federal subject matter jurisdiction, 9:430–436
- Foreign corporation not doing business in Texas, personal jurisdiction required, 6:144
- Forum non conveniens compared to jurisdiction, 8:13
- Forum selection clauses. See **Contracts**
- Franchises, 8:229, 8:248–249
- Goods, 8:218–219, 8:221–222
- In rem and quasi in rem jurisdiction, 8:02, 8:341, 8:350, 8:356–361
- Injunctions, 17:136, 17:139
- Interpleader, 6:467, 6:483–484
- Intervention, 6:591
- Minimum contacts, federal due process
 - Generally, 8:30–32
 - Contracts, 8:226, 8:228–229, 8:250
 - General and specific jurisdiction, 2:131–132, 8:03, 8:50–57
 - Purposeful availment, 8:38–44
- Minors and incompetent persons, disbursement and management of funds awarded to, 6:79
- Motor vehicle accidents, service and jurisdiction, 8:287, 10:12, 10:200–204
- Non-joinder of indispensable party deprives court of jurisdictions, 14:383
- Nonresidents, long-arm jurisdiction over
 - Generally, 8:206–209
 - Agents, affiliates, alter egos, and parties in privity, 8:328–342, 8:409, 8:425
 - Contracts, 8:226–229, 8:236–241, 8:246–251

- Doing business in Texas, 2:128–129, 8:206, 8:208–209, 8:214–224
- Family law cases, 8:346–351
- Presuit considerations, 2:128
- Professional services, 8:260–265, 8:270–271
- Real and personal property ownership or use, 8:320–322
- Stream of commerce doctrine, 8:308–314
- Torts, 8:276–279, 8:285–293
- Objections (see Appearance, waiver of objections to jurisdiction by, above)
- Overview, 8:01–07
- Payments sent to or received from Texas, 8:240–241
- Personal jurisdiction
 - Dismissal of actions, no personal jurisdiction, 37:387
 - Due process considerations in obtaining, 2:130–133
 - Jurisdictional facts as elements of claim, 8:417
 - Nonresidents (see Nonresidents, long-arm jurisdiction over, above)
 - Presuit considerations, 2:124–133
 - Subject matter jurisdiction compared, 7:10
- Petition, allegation of jurisdiction, 14:203–211, 14:216
- Physical and mental examinations, party in court's jurisdiction, 29:21
- Pleading and challenging jurisdiction
 - Appeal, 8:439, 8:444–450
 - Burden of proof at hearing, 8:408–410
 - Discovery, 8:384, 8:390, 8:396–397, 8:429
 - Disposition, 8:434–440
 - Evidence at hearing, 8:410, 8:422–429
 - Merits of suit, 8:416–417
 - Order, 8:434–440
 - Plaintiff's petition, 8:366–371
 - Request for hearing on special appearance, 8:385
 - Sanctions, 8:383, 8:440
 - Special appearance by defendant, 8:376–385
 - Special appearance, response to, 8:390–391
 - Timing and type of hearing, 8:402–403
- Presence, jurisdiction based on
 - Generally, 8:100–101
 - Corporations, 8:126–132
 - Nonresident doing business in Texas, 8:120
 - Nonresident in Texas when served, 8:114–116
 - Texas residents, 8:106–109
- Remand to state court. See **Remand to State Court**
- Requests for admissions, reserving jurisdiction for motion for sanctions for failure to admit, 31:165
- Settlement agreement breached, 38:160
- Special appearance (see Pleading and challenging jurisdiction, above)
- Special exceptions, jurisdictional defects on face of pleadings, 15:65
- Standing. See **Standing**
- Statutes of limitations and tolling provisions, filing in court without jurisdiction, 3:490–497
- Subject matter jurisdiction
 - Amount in controversy (see Amount in controversy, above)
 - Constitution of Texas and Legislature, role of, 7:04
 - County-level courts, 7:48–55
 - Defined, 7:01
 - Dismissal of actions, no subject matter jurisdiction, 37:388

- District courts, 2:159, 7:34–42
- Dominant jurisdiction compared, 7:12
- Justice courts, 2:163, 7:72–77
- Personal jurisdiction compared, 7:10
- Plea to jurisdiction. See **Plea to Jurisdiction**
- Presuit considerations, state subject matter jurisdiction, 2:158–165
- Primary or exclusive jurisdiction, §7:14
- Probate jurisdiction, 7:82–89
- Purposed, 7:01
- Raising lack of, no waiver or stipulation, 7:18–20
- State statutes, 7:04–05
- Statutory county courts, 7:60–66
- Strategic considerations, 7:26–28
- Types of Texas trial courts, 7:02
- Venue compared, 7:11
- Texas Supreme Court, review of class certification order, 6:728–729
- Venue distinguished from jurisdiction, 8:12, 9:03–04

Jury Instructions

- “Inferential rebuttal” issues, 14:298
- Objections to jury charge based on defect in pleadings, 15:87
- Petitions, reviewing Pattern Jury Charges during drafting of, 14:110

Jury Trial

- Affirmative pleadings, preserving right to submit questions to jury, 14:258
- Amended pleadings at trial, 14:461
- Assumed name contested, 6:243
- Bill of review, 10:599
- Class actions, 6:744–745
- Continuance. See **Continuance**
- Criminal contempt, 17:313
- Default judgment, 37:97, 37:112, 37:121
- Deposition testimony, using at and after trial, 28:29–33
- Federal and state courts compared on issues of judges, juries, and trial calendar, 9:470–474
- Injunctive relief, 17:203, 17:208, 17:344
- Insurance and indemnity policies, use at trial, 24:75
- Jurisdiction, 8:403, 8:417
- Jury instructions. See **Jury Instructions**
- Mini trial, 38:187
- Physical and mental examination reports exchanged, effect on admissibility at trial, 29:175
- Referral order, trial by special judge, 38:174
- Removal to federal court, avoid waiving jury demand, 9:483
- Requests for admissions, use at trial
 - Binding nature, 31:220
 - Court interpretation, 31:221
 - Impeachment, 31:226
 - Inapplicability in other proceedings, 31:224
 - Objection by respondent, 31:130, 31:215
 - Other parties, affect on, 31:222
 - Other parties, use by, 31:223
 - Pre-amended answer, 31:227
 - Reading into trial record, 31:56, 31:70, 31:214
 - Severed proceedings, 31:225
 - Submission requirement, 31:214

Requests for disclosure, trial use of original responses after amendment or supplementation, 26:57
Self-incrimination, informing jury of assertion of privilege, 25:364–365
Setting case for trial. See **Setting Case for Trial**
Settlement offers or agreements, 38:80, 38:150–151
Subject matter jurisdiction, differences in jury size and role in different trial courts, 7:28
Summary judgment motion avoids jury prejudices, 36:12
Summary jury trial, 38:189
Wrongful injunction, action on bond, 17:382

Justice and Municipal Courts

Answer, timeliness, 14:246
Subject matter jurisdiction
Generally, 7:72–76
Differences in justice and municipal courts, 7:26, 7:28

Justiciable Interest

Intervention, justiciable interest, 6:537
Lack of, 15:68
Ripeness, 15:152
Standing, 15:151

Juvenile Court Proceedings

Guardian ad litem, appointment of, 6:35

— L —

Laches

See also **Delay**
Affirmative defense, 14:330
Defined, 3:28
Injunctions, 17:73
No defense to timely suit, 3:29
TRO or temporary injunction, 17:167

Landlord and Tenant

See also **Eviction; Leases**
Presuit investigation, Texas Apartment Association “Red Book,” 2:48
Service on residential landlords, 10:79
Statutes of repose inapplicable to owners or tenants, 3:540, 3:552
Venue, 9:35

Landslide and Subsidence

Statute of limitations, removal of subjacent support, 3:173

Law Enforcement

Request for production and inspection of documents, Freedom of Information Act (FOIA), 27:367

Lawyer-Client Privilege. See Attorney-Client Privilege

Leases

See also **Eviction; Landlord and Tenant**
Affirmative defense, option to terminate lease as, 14:360
Breach of lease, jurisdiction, 8:251
Manufacturing equipment, inapplicability of statutes of repose to leases of, 3:571
Mineral lease, jurisdiction, 8:367
Oil and gas leases, 8:236, 8:238
Statute of limitations, reformation of lease, 3:147

Legal Disability. See Minors and Incompetent Persons

Legal Malpractice

- Discovery rule, application to, 3:268
- Guardian ad litem, no liability for, 6:50
- Initial client contact, checking statute of limitations immediately to avoid malpractice action, 1:27
- Jurisdiction, 8:260–261, 8:279
- Standing, effect of bankruptcy on malpractice claim, 6:219
- Statutes of limitations, 3:266–271, 3:512

Letters of Credit

- Injunctions, 17:126
- Statute of limitations, 3:133

Letters to Court

- Motions preferred to, 16:03

Libel. See Defamation

License

- Affirmative defense, 14:331
- Jurisdiction
 - Effect of obtaining nonresident insurance license on, 8:201
 - Professional license, 8:260–261
- Physical and mental examinations, physician or psychologist licensing issues, 29:43, 29:46, 29:52, 29:54
- Revocation of license proceedings, mental health provider-patient privilege, 25:541

Liens

- Attorney's lien for fees, 2:213–214
- Settlement considerations, 38:127
- Statutes of limitations
 - Extension of limitations period, written agreement, 3:505
 - Foreclosure of lien, 3:131, 3:148

Limited Liability Companies

- Service, 10:76, 10:176

Limited Partnerships

- Capacity to sue or be sued, 6:156–158
- Debt owed by limited partnership, effect of debt's assignment on jurisdiction, 8:339
- Promissory note, due process and jurisdiction, 8:251
- Service on, 10:75, 10:170–171

Lis Pendens

- Filing, 19:520-528
- Grounds, 19:500-505
- Motion to cancel, 19:540-545
- Nature of remedy, 19:490
- No action for wrongful filing, 19:560

Litigation Planning. See Presuit Activities

Loans

- See also **Promissory Notes**
- Jurisdiction, 8:251, 8:367

— M —

Malicious Prosecution

- Statute of limitations, 3:203, 3:432
- Wrongful injunction, 17:370–371

Malpractice

- Legal. See **Legal Malpractice**

Medical. See **Medical Malpractice**

Mandamus

Anti-suit injunctions in other states, second court's failure to stay dismissal in favor of dominant jurisdiction, 17:101

Arbitration, 18:82-83

Class certification order, Texas Supreme Court mandamus jurisdiction, 6:729

Constitutional county courts, issuance of writs, 7:52

Contempt motion denied, 17:318

Discovery disputes, mandamus review, 18:80-81, 32:17

District courts, jurisdiction for issuance of writs, 7:40

Extraordinary pretrial remedies, 19:52

Governmental entities as party, 6:167

Guardian ad litem, 6:42

Intervention, 6:572, 6:593-594

Joinder, objection to absence of party, 6:410

Misjoinder, severance, 6:454, 6:456

Physical and mental examinations, appeal by mandamus of order on motion, 29:168

Plea in abatement, review of orders granting or denying, 15:239

Privileges, court abused discretion by ordering production, 25:96

Procedure, 18:100-102

Recusal motion, judge's failure to act on, 16:242

Request for production and inspection, 27:274, 27:360

Requirements for mandamus, 18:70-73

Sanction orders, 18:84

Self-incrimination, privilege against, relief from default for dismissal, 25:349

Special appearance orders, 8:445

Special exceptions, mandamus review unavailable, 15:120

Statutory county courts, issuance of writs, 7:63

Temporary injunction, review by mandamus, 17:336, 17:357

TRO, 17:325

Untimely and erroneous grant of reinstatement after court's plenary power expired, 37:469

Venue determinations, 9:292-293, 18:86

Manufacturing Equipment

Statutes of repose, 3:568-571

Marital Dissolution. See Dissolution of Marriage

Maritime Claims

Statutes of limitations, 3:219

Mass Torts. See Complex Litigation

Mediation

See also **Alternative Dispute Resolution (ADR); Arbitration**

Agreement, 38:267-268

Alternative to answering petition, 14:236

Defined, 38:186, 38:250

Distinction between mediation and arbitration, 38:190, 38:204

Motions to dispense with or defer mediation, 38:184

No privilege, 25:602

Overview, 38:250-252

Presuit activities, 2:81

Procedures, 38:257-259

Roles of attorney, mediator, and client, 38:260-262

Medicaid

Settlement, impact on, 38:28-29

Medical Malpractice

- Arbitration, 38:209
- Intervention, 6:531, 6:543
- Jurisdiction, 8:265
- Mental health provider-patient privilege, 25:541
- Physician-patient privilege, 25:502
- Special exceptions to pleadings, 15:45, 15:78
- Statutes of limitations
 - Discovery rule and fraudulent concealment, 3:250–253, 3:411
 - No relation-back, 3:89
 - Notice of claim, extension by, 3:242–243
 - Other tolling provisions, 3:258–261
 - Time of accrual, 3:234–237
 - Tolling provisions, applicability, 3:446
 - 2 years from accrual, 3:224–228
- Summary judgment motion, 36:127

Medical Records

- Physical and mental exams. See **Physical and Mental Examinations**
- Physician-patient privilege, 25:452, 25:465, 25:498, 25:500, 25:502, 25:511
- Presuit investigation, 2:28–29, 2:52
- Request for production and inspection, 27:324–327
- Requests for disclosure, 26:20, 26:22
- Summary judgment motion, objection to failure to attach medical records to affidavit, 36:442

Meet and Confer, Certificate of Conference. See **Certificates and Certification**

Mental Distress. See **Emotional Distress**

Mental Health Provider-Patient Privilege

- Elements
 - Persons privy to communication, 25:526–528
 - Topic and purposed of consultation and communication, 25:534–535
- Exceptions
 - Abuse or neglect of institutionalized resident, 25:545
 - Court-ordered examination, 25:540
 - License revocation proceedings, 25:541
 - Malpractice, 25:541
 - Parent or guardian, disclosure to, 25:547
 - Patient's physical, mental, or emotional condition in issue, 25:544
 - Payment of mental health expenses, claims for, 25:543
 - Waiver, 25:542
- Holder, 25:552
- In camera review, 25:554
- Physician-patient compared, 25:520
- Potential victims, duty to warn under *Tarasoff*, 25:546
- Purposes, 25:519
- Summary of rule, 25:518
- Waiver, 25:542, 25:553

Military

- Depositions officers, requirements when witness in military, 28:107
- Motion for default judgment, affidavit defendant not in military, 37:55
- Statutes of limitations tolled by military service, 3:519

Mini Trial

- ADR, 38:187

Minimum Contacts. See **Jurisdiction**

Mining Operations

See also **Oil and Gas**
Injunctive relief, 17:113

Minors and Incompetent Persons

Attorney-client privilege, client's personal representative asserting, 25:203

Clergy communication privilege, 25:596

Court approval of settlement for minor without legal guardian, 38:86

Distribution of proceeds for

Bond requirement, 6:82

Court registry, funds placed in, 6:80

Investment, court-ordered, 6:81

Methods of distribution, 6:77

Order required, 6:79

Payout by defendant at majority, 6:87

Recommendations on disbursement method by next friend or guardian ad litem, 6:78

Section 142 trust, 6:80, 6:84

Structured settlement with periodic payments, motion by parties for, 6:83

Supplemental needs trust, 6:86

Trial court's role, 6:76

Interrogatories, verification of responses, 30:143

Legal disability, nature of

Appointment of legal representative, counsel's ethical duty to seek, 6:16

Cannot settle litigation, 6:15

Cannot sue or be sued, 6:14

Incapacitated persons, 6:13

Minor, 6:12

Mental health provider-patient privilege. See **Mental Health Provider-Patient Privilege**

Negligence of minor, 6:90–91

Physical and mental examinations, 29:14, 29:20, 29:29

Physician-patient privilege

Competency proceedings, 25:499

Involuntary civil commitments or abuse or neglect proceedings, 25:490

Patient-litigant exception, 25:498

Privilege holder, 25:509

Plea in abatement, 15:189

Removal of disabilities of minority, 6:12

Representatives for

Attorney at litem, 6:23

Guardian ad litem. See **Guardian Ad Litem**

Legal guardian, requirements for, 6:20

Next friend, requirements for, 6:21

Service, 10:41–42, 10:153, 10:508

Settlement hearing, court approval of settlement, 6:72–73

Statutes of limitations

Fraudulent transfers, tolling provision, 3:357

Medical malpractice claims (health care liability statute), 3:259

Tolling rules for minority and unsoundness of mind, 3:464–467, 3:472–473, 3:478–479, 29:14

Tarasoff-duty to warn potential victims in mental health context, 25:492, 25:546

Testimony by, 6:94–95

Misnomer or Misidentification of Parties. See **Parties**
Misrepresentation. See **Fraud and Misrepresentation**
Mistake, Inadvertence, Surprise, or Neglect

Amended pleadings, surprise, 14:470, 14:485, 14:496, 14:502–506
Bill of review, default judgment resulted from official's mistake, 37:253, 37:259
Default judgment, equitable grounds for relief under *Craddock* test. See **Default and Default Judgments**
Denial not verified, amending answer before trial absent plaintiff's surprise, 14:265
Misnomer of misidentification of parties. See **Parties**
Mutual mistake as affirmative defense, 14:358
Omitting named party in amended pleadings, nonsuit, 14:470
Request for production and inspection
 Lack of surprise or prejudice showing for failure to supplement responses, 27:249
 Privileged document inadvertently produced, 27:156–157, 27:224
Requests for admissions, relief from RFA response, 31:196
Settlement agreement, mistake in, 38:159
Special appearance, 8:410, 8:426
Special exceptions, 15:25, 15:44
Striking pleadings, 15:25
Summary judgment motion, late amendment to pleadings, 36:469
Transfer of proceedings, effect of mistake in first motion on reconsideration, 9:285

Mistrial

Judge's discretion to declare, 16:239

Motions

Amend citation, 10:357.10.363, 10:492–497
Amend pleadings, 14:495–496
Arbitration award, motion for confirmation, 38:245
Arbitration, motion to compel, 38:223
Briefs. See **Briefs**
Class certification, motion for, 6:683, 6:688–690
Compelling discovery. See **Discovery Disputes**
Cross motions, 16:07, 16:145
Discovery disputes. See **Discovery Disputes**
Dismissal. See **Dismissal of Actions**
Docketing systems, effect on motion strategies, 16:18–24, 16:36
Essential elements of motion (see Requirements, below)
Ex parte and emergency motions, 16:276–279
Extending or shortening time. See **Extending or Shortening Time**
Hearing
 Active judge sitting for another, challenging, 16:230
 Affidavits, evidentiary hearing on disputed facts in, 16:60
 Date for hearing, 16:48, 16:50, 16:153
 Decision on motion, 16:51, 16:266–270
 Disqualification of judge. See **Disqualification of Judges**
 Election contests, 16:231
 Evidence, 16:154
 Judicial notice, 16:64
 Oral argument, 16:31, 16:52, 16:252–260
 Photocopies of cases or statutes given to judge, 16:156
 Proposed order, 16:260
 Recusal of judge. See **Recusal of Judge**
 Tactical considerations, 16:152–156
 Visiting judges, objections to, 16:222–225
 Written submission, 16:51
In limine motions, 26:62
Interrogatories. See **Interrogatories**

Lis pendens, to cancel, §19:540-19:545
Mediation, motion to defer, alter, or vacate, 38:184
Motions, giving photocopies of cases and statutes to judge at hearing resulting in surprise, 16:156
New trial. See **New Trial**
Opposing motion, 16:140–148
Order, 16:260, 16:266, 16:268–270
Overview
 Generally, 16:02
 Advantage of informal motions, 16:04
 Cross motions, 16:07, 16:145
 Formal versus informal motions, 16:03
 Meet and confer requirements, certificate of conference, 16:08–11
 Pleadings distinguished, 16:06
 Purpose of motion practice, 16:01
 Sources of law, 16:05
 Strategic considerations of whether to file motion, 16:12
Physical and mental examinations, motion for order for Rule 204 exam. See **Physical and Mental Examinations**
Plea in abatement. See **Plea in Abatement**
Preservation of evidence during discovery, 24:114
Pretrial motions, 32:25, 32:37
Protective orders. See **Protective Orders**
Quash. See **Quash, Motion to**
Reconsideration. See **Reconsideration**
Recusal of judge. See **Recusal of Judge**
Reinstatement after dismissal. See **Dismissal of Actions**
Repleader, 14:462
Request for production and inspection. See **Request for Production and Inspection of Documents and Things**
Requests for admissions. See **Requests for Admissions**
Requirements
 Generally, 16:30–42
 Affidavits and exhibits, 16:58–66
 Briefs. See **Briefs**
 Filing, 16:132–135
 Notice requirements, 16:48–52
Retain, motion to, 37:420–421, 37:423
Sanctions. See **Sanctions**
Sealing court records. See **Sealing Records**
Service. See **Service of Process and Papers**
Sever, motion to. See **Severance**
Special appearance motion, 8:378, 8:381–383
Statutes of limitations, 16:49, 16:110, 16:135
Stay. See **Stay of Proceedings**
Substituted service, Rule 106(b) motion and order for service. See **Service of Process and Papers**
Summary judgment. See **Summary Judgment**
Suppress deposition, motion to, 28:321
Transfer of venue. See **Transfer of Proceedings**
Withdrawal of admissions, 32:48
Withdrawal of attorney, 1:206

Motor Vehicle Accidents

Discovery rule and statute of limitations, 3:421

Service and jurisdiction, 8:287, 10:12, 10:200–204
Settlement, court approval of installment payments, 38:88
Statute of limitations, 3:179

Multiple Parties

See also **Complex Litigation**
Anti-suit injunctions, 17:102
Class actions. See **Class Actions**
Codefendants. See **Codefendants**
Counterplaintiffs, 14:411
Death of party, 6:255
Default interlocutory judgment against multiple defendants, 37:130
Diversity jurisdiction, 9:435
Federal and state court, choosing between, 9:435, 9:458
Joint defense and common interest privilege. See **Common Interest (Joint Defense) Privilege**
Mass torts, joinder, 6:360–365
Petitions, joinder against multiple defendants, 14:163
Request for production and inspection, 27:08, 27:258, 27:262
Requests for admissions, 31:52, 31:58
Settlement of multiple party tort actions. See **Settlement**
Venue in multiple party cases. See **Venue**

— N —

Names

Amended pleading omitting defendant, nonsuit, 14:470
Assumed names. See **Substitution of Parties**
Citation, error in defendant's name, 10:337
Misnamed or misidentified parties. See **Parties**
Petitions, allegation of parties names, 14:198
Request for production and inspection, knowledge of in-house counsels' names, 27:154
Requests for admissions, naming parties in title, 31:52
Requests for disclosure of parties' names, 26:16

Neglect. See **Mistake, Inadvertence, Surprise, or Neglect**

Negligence

See also **Contributory Negligence**
Medical malpractice. See **Medical Malpractice**
Minor's negligence, 6:90–91
Professional negligence. See **Professional Negligence**
Settlement and contribution, 38:144–145
Statutes of limitations, 3:178–180
Venue, 9:112

Negotiable Instruments

Promissory notes. See **Promissory Notes**
Specially pleaded matters, signature on negotiable instruments, 14:296
Statute of limitations, 3:170, 3:292–297

Negotiation

Discovery disputes, negotiating agreement with opposing counsel, 32:01
Jurisdiction, effect of contract negotiation and signing in Texas, 8:228–229
Motions, cost of compared to negotiation, 16:01
Presuit activities, negotiating resolution, 2:70–73
Settlement. See **Settlement**

Trade secrets, protective orders, 25:416–419, 25:424

New Trial

Citation and service, challenging. See **Service of Process and Papers**

Default judgment. See **Default and Default Judgments**

Denial of opportunity to amend, raising contention in new trial motion, 15:114

Dismissal erroneously labeled “with prejudice”, preserving error in motion for new trial, 34:400

Service and citation challenged. See **Service of Process and Papers**

Special appearance, 8:368, 8:380, 8:402

Summary judgment, 36:522–523, 36:536

News Media Privilege

Generally, 25:608–610

Non-Competition Agreement. See **Covenants Not to Compete**

Nonparties

Challenging capacity, objection by nonparties not required, 6:189

Contribution claims against nonparties, joinder, 6:282

Depositions. See **Depositions**

Document production, cost of copies, 28:242

Impleader. See **Impleader**

Intervention. See **Intervention**

Necessary and indispensable parties. See **Joinder**

Nonresident nonparty document inspection, deposition subpoena, 27:299

Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Self-incrimination, privilege against, 25:324

Substitution of parties, nonparty as real party interest, 6:265

Trade secrets privilege, 25:399

Nonprofit Corporations

Service, 10:52

Nonresidents. See **Residence and Domicile**

Nonsuit

Amended or supplemental pleading omitting claims or parties, nonsuit, 14:470, 14:513

Effects of nonsuit

Generally, 37:312–316

Defendant’s affirmative claims, 37:322–325

Sanctions, 37:330–332

Methods for taking

Amendment to pleadings, 37:357

Motion to dismiss, 37:356

Notice, 37:354

Oral announcement in court, 37:355

Overview

Complete or partial, 37:292

Court order, need for and effect of, 37:296

Deadline, 37:294

Party requesting, 37:291

Purpose, 37:290

Right to nonsuit, 37:293

Taxing costs on complete nonsuit, 37:295

Partial summary judgment, abandonment as nonsuit, 36:62

Reasons to nonsuit or not to nonsuit, 37:338–342, 37:348–349

Requests for admissions, avoiding deemed admissions by nonsuit, 31:77, 32:224

Res judicata effect of, 37:303–306

Statute of limitations, 3:67, 37:313, 37:348, 37:356–357
Temporary injunction, effect of nonsuit of underlying claim, 17:296
Venue improper, nonsuit prior to determination on motion for transfer, 9:262

Notary Public

Deposition, 28:319
Jurat, 14:51
Motions, affidavits sworn before notary, 16:62
Service in other states, server's signature on return of service notarized, 10:419
Summary judgment motion, deficiencies in affidavit, 36:435

Notes. See Promissory Notes

Notice and Notification

Generally, 3:20–22
Amended pleadings, 14:459
Class actions, 6:650, 6:664, 6:672, 6:694, 6:716–718, 6:751–752
Default judgment, 37:94–95, 37:110–111, 37:122, 37:129, 37:148, 37:177–178
Deposition notice
 Cross-notice, 28:92
 Deadlines for responding party, 24:160
 Marking notice as exhibit, 28:162
 Nonparties, notice and subpoena required, 28:45
 Party's deposition, 28:74–80
 Telephonic deposition, 28:99
Discovery disputes, notice of hearing on motion for sanctions, 32:41
Dismissal
 Court's notice, 37:427
 "Drop" docket procedure for dismissing case, 37:416, 37:418–420, 37:422–423
 For want of prosecution under TRCP 165a, 37:416–420
 Imputed notice, 37:418
 Intent to dismiss, notice of, 37:407
 Notice of grounds for, 37:422
Dissolved corporation, notices to known claimants, 6:134
Ex parte motions, 16:278
Forum non conveniens, notice of hearing on motion, 9:374
Injunctions
 Generally, 17:154–156
 Acts enjoined, adequate notice of, 17:235
 Hearing on TRO or temporary injunction, 17:192–197
 Interlocutory appeal of temporary injunction, notice of, 17:342
 Wrongful injunction, sureties on bond settling without notice to applicant, 17:374
Judicial notice. **See Judicial Notice**
Medical malpractice (health care negligence claims), extension by notice of claim, 3:242–243
Motions, 16:48–52, 16:118, 16:155
No notice of proof of loss, special denial requiring verification, 14:285
Nonsuit, 37:354, 37:358
Perpetuate testimony, notice of deposition before lawsuit filed, 28:63
Physician, notice of defense counsel's ex parte interviews of, 25:473
Plea in abatement, 15:165, 15:205, 15:239
Pleadings giving "fair notice," 2:109, 14:04, 14:08, 14:154–156
Presuit notice requirements, 2:190–192
Public entities, notice of claims against, 3:22, 3:332–334
Publication. **See Publication**
Recusal motion, 16:241

Reinstatement after dismissal, notice of hearing on motion for, 37:437
Removal, 9:514, 9:530–533
Request for production and inspection
 Motion for protective order or to compel discovery, 27:271–272
 Nonparty document inspection, notice of deposition subpoena, 27:307
Sealing court records, motion to in discovery disputes, 32:51
Service, notice requirements, 10:02, 10:123, 10:200, 10:251
Settlement, notice to court by agreed motion for joint dismissal, 38:125
Special appearance, 8:424, 8:444
Special exceptions, failure to give DTPA notice, 15:64
Summary judgment motion, 36:347–349, 36:351, 36:418, 36:478
Venue improper, notice of hearing on motion to transfer, 9:250

Nuisance

Statutes of limitations, 3:47, 3:171, 3:433

— 0 —

Objections

Affidavits supporting motions generally, 16:61, 16:66
Amended pleadings at trial, 14:461
Assumed name entity, failure to file verified denial as waiver of objection to judgment against, 6:242
Best-evidence objection, 36:433
Capacity to sue or be sued. See **Capacity to Sue or Be Sued**
Common interest (joint defense) objection, 25:284
Depositions. See **Depositions**
Disclosure, requests for, 32:22
Discovery disputes, 24:102, 32:11, 32:24
Guardian ad litem. See **Guardian Ad Litem**
Incorporation by reference, 14:39
Injunctions, 17:178, 17:184–185
Interrogatories. See **Interrogatories**
Intervention. See **Intervention**
Joinder of parties. See **Joinder**
Judicial admission, 14:17
Jurisdiction. See **Jurisdiction**
Jury charge based on defect in pleadings, objection to, 15:87
Late amendment, 14:496
Mass torts, objecting to joint trials, 6:365
Misnomer or misidentification of parties, 6:180–181
No-evidence summary judgment motion, 36:80, 36:93, 36:101
Physical and mental examinations. See **Physical and Mental Examinations**
Plea in abatement, 15:166
Plea to jurisdiction, failure to object to omission of verification, 15:141
Privacy, 25:616
Privileges. See **Privileges**
Referral to ADR, 38:184
Relevancy. See **Relevancy**
Removal, 8:194, 9:582
Request for production and inspection. See **Request for Production and Inspection of Documents or Things**
Requests for admissions. See **Requests for Admissions**
Requests for disclosure, 26:47

Self-incrimination, 25:309, 25:330
Settlement agreements, objection to discovery of, 25:603
Severance of misjoined parties, 6:436–440
Special denials, faulty verification, 14:269
Special exceptions to defect in pleadings, failure to make as waiver of objection.

See **Special Exceptions**

Standing, 6:226–228, 6:233
Successor representative, objection to capacity of, 6:260
Summary judgments. See **Summary Judgment**
TRO or temporary injunction, 17:178, 17:184–185
Venue. See **Venue**
Visiting judges, objections to, 16:222–225
Waiver. See **Waiver**

Officers and Directors. See **Corporations**

Offset

Affirmative defense, 14:359
Counterclaims, 14:392–393
Request for production and inspection, offsetting nonparty deponent's financial hardship, 27:309
Venue, 9:113

Oil and Gas

Drilling and mining operations, injunctive relief, 17:133
Jurisdiction, 8:236, 8:238, 8:367

Open Meetings Act

Standing, 6:211

Open Records Act. See **Public Records**

Orders

Amend citation, 10:496
Appeals. See **Appeals**
Case maintained on docket, order assigning trial date, 37:428
Class certification order, 6:704–712
Contempt. See **Contempt**
Depositions, orders for sanctions or compelling discovery, 28:222–225
Discovery disputes, protective orders. See **Discovery Disputes**
Dismissal. See **Dismissal of Actions**
Fiat order setting hearing date, 16:48, 36:351
“Gag order,” 17:122
Hearing on motion, order after, 16:260, 16:266, 16:268–270
Injunctions. See **Injunctions**
Interpleader, order of discharge of stakeholder, 6:496
Intervention. See **Intervention**
Mental examination ordered by court, effect on mental health provider-patient privilege, 25:540
New trial, 37:167
Nonsuit, 37:296, 37:315, 37:354, 37:356
Physical and mental examinations. See **Physical and Mental Examinations**
Plea in abatement, 15:232–233, 15:238–239
Plea to jurisdiction, effect of order granting, 15:133
Pretrial orders, amendment of pleadings, 14:486
Private process server, 10:311
Protective orders. See **Protective Orders**
Purpose of, 16:01
Referral order, 38:174, 38:184
Reinstatement after dismissal, order, 37:458–461

Remand, 9:592, 9:594, 9:600–605
Repleader ordered by court, 14:462, 14:478, 15:15, 15:113
Settlement, order of dismissal, 38:125
“Settlement weeks,” 38:176
Severance order, 6:450, 6:454–456
Show cause order
 Contempt, 17:311, 17:318
 Special appearance hearing, late affidavits, 8:427
Special appearance, 8:423, 8:434–440, 8:444–445, 8:447, 8:450
Special exceptions, 15:111
Striking pleadings, 15:25
Substituted service, Rule 106(b) order. See **Service of Process and Papers**
Summary judgment motion. See **Summary Judgment**
Transfer of proceedings, 9:172, 9:274, 9:285, 9:291
Trial by special judge, referral order, 38:174
Venue, 9:176
Vexatious litigants, order to furnish security, 37:393

Other States

Anti-suit injunctions, 17:102
Borrowing statute, foreign limitations law, 3:15, 3:579
Default judgments, collateral attack, 36:285
Depositions, 28:13, 32:27
Foreign corporations. See **Foreign Corporations**
Judicial notice of laws of, 36:318
Petitions, allegation of jurisdiction, 14:216
Physical and mental examinations, 29:63
Physician or psychologist from, effect of using for physical or mental examination, 29:43
Plea in abatement, action pending in other state, 15:181
Quasi in rem jurisdiction, collection of judgments in other states, 8:360
Request for production and inspection, 27:256, 27:299
Statutes of limitations, 3:15

— P —

Parent-Child Relationship

Adoption. See **Adoption**
Child custody. See **Child Custody**
Child support. See **Child Support**
Contempt, 17:308
Intervention, 6:544
Mental examinations, 29:125
Minor parent relinquishing parental rights waiving service, 10:41, 10:508
Parent relinquishing parental rights waiving service, 10:502
Publication, service by, 10:269
Termination of
 Guardian ad litem, appointment of, 6:34
 Indigent persons, appointment of counsel, 6:102
Wrongful death, standing, 6:223

Parole Evidence Rule

Summary judgment motion, 36:445

Parties

Amended or supplemental pleadings, 14:470, 14:513, 14:515

Assumed names. See **Substitution of Parties**

Capacity to sue or be sued. See **Capacity to Sue or Be Sued**

Codefendants. See **Codefendants**

Compulsory counterclaims, 14:410

Corporations. See **Capacity to Sue or Be Sued**

Counterclaims, 14:396

Cross claims. See **Cross Claims**

Death of party. See **Death; Substitution of Parties**

Decedent's estate, 6:160–162

Definition of party, 6:01

Discovery of potential parties, 24:54

Incompetent persons. See **Minors and Incompetent Persons**

Indigents. See **Indigents**

Injunctions, 17:144–146

Inmates. See **Inmates**

Interpleader, 6:512

Intervention. See **Intervention**

Joinder. See **Joinder**

Limited partnerships, 6:156–158

Minors. See **Minors and Incompetent Persons**

Misnamed parties

- Amendment of petition to correct misnomer, 6:267
- Answer required by misnamed or misidentified defendant, 6:179
- Case examples, 6:176
- Distinction between misnomer and misidentification, 6:172
- Objecting to misidentification, verified pleading required, 6:181
- Objecting to misnomer, 6:180
- Petition, error in, 14:202
- Plaintiff, misnomer and misidentification of, 6:178
- Plea in abatement, 14:384, 15:192
- Pleading and proving misnomer or exception to misidentification, 6:177
- Statute of limitations, 3:72–76, 6:173–180

Multiple parties. See **Multiple Parties**

Necessary and indispensable parties. See **Joinder**

Omitted parties

- Generally, 14:470, 14:513
- Relation-back rule, 3:105-107

Partners and partnerships, 6:150–152

Physical and mental examinations, persons subject to, 29:14–22

Presuit considerations, 2:92–98

Presuit investigation, 2:17, 2:22

Pro se litigants. See **Pro Se Litigants**

Relation-back rule, 3:105-107

Request for production and inspection, serving on parties and nonparties. See **Request for Production and Inspection of Documents or Things**

Requests for admissions

- Service on coparties, 31:03
- Trial, use of RFA response against coparties not permitted, 31:222

Requests for disclosure, 26:16

Service by, 10:313

Sexual abuse or assault, diligence in discovering assailant's identity after tolling limitations period by filing "Doe" suit, 3:164

Special exceptions, persons filing, 15:97

Substitution of parties. See **Substitution of Parties**

Trusts, 6:163
Typical parties, list of, 6:02
Unnamed class members, 6:727, 6:738, 6:740, 6:757–758

Partition

Homestead as affirmative defense to, 14:351
Post-divorce partition of property, 3:321

Partners and Partnerships

See also **Limited Partnerships**
Assumed names. See **Substitution of Parties**
Capacity to sue or be sued, 6:150–152
Diversity jurisdiction, 9:434
Jurisdiction, 8:261, 8:338
Self-incrimination, privilege against, 25:326
Service on, 10:74
Statute of limitations for accounting, 3:136
Venue, 9:86

Paternity

Physical and mental examinations
Generally, 29:125
Experts qualified in paternity testing, 29:91
“In controversy” requirement, 29:06
Statute of limitations, 3:324

Paternity Proceedings

Guardian ad litem, appointment of, 6:34

Payment

Affirmative defense, 14:332
Certificate of deposit, statute of limitations for enforcing payment, 3:296
Checks, statutes of limitations for enforcing payment, 3:294–295
Installment payments. See **Installment Payments**
Jurisdiction, payments sent to or received from Texas, 8:240–241
Medical expenses, defendant’s payment or offer to pay inadmissible, 38:150
Mental health provider-patient privilege, claims for payment of mental health services, 25:543

PCs. See **Computers and PCs**

Penalties. See **Sanctions**

Pending Proceedings

Class actions, 6:638, 6:662
Compulsory counterclaims, 14:412
Intervention, 6:545
Plea in abatement. See **Plea in Abatement**
Plea to jurisdiction, 15:133, 15:154
Probate matters, 7:88
Settlement agreements, 38:97
Special denial requiring verification, pendency of similar suit, 14:277

Personal Injury

See also **Torts**
Affirmative defenses. See **Affirmative Defenses**
Automobile accidents. See **Motor Vehicle Accidents**
Commission of crime, injury occurring during, 14:354
Contribution. See **Contribution**
Forum non conveniens. See **Forum Non Conveniens**
Medical malpractice. See **Medical Malpractice**
Medical records. See **Medical Records**
Physical and mental examinations. See **Physical and Mental Examinations**

Physician-patient privilege. See **Physician-Patient Privilege**

Requests for disclosure of medical records and bills, 26:22

Settlement, tax consequences, 38:18

Wrongful death. See **Wrongful Death**

Personal Property

Default judgment, remedy to recover sale proceeds, 37:219

Entry upon. See **Request for Production and Inspection of Documents and Things.**

Injunctions

Deposit of disputed funds in escrow account (in *custodia legis*), 17:113

Possession, 17:123

Jurisdiction, 8:321–322

Statute of limitations, foreclosure of liens, 3:131

Personal Representatives

Bonds. See **Bonds and Undertakings**

Capacity to sue or be sued, 6:160–162

Clergy communication privilege claimed by personal representative, 25:596

Death of representative, effect on substitution, 6:260

Defining personal representatives of estate, 6:160

Guardian ad litem. See **Guardian Ad Litem**

Joinder of parties, 6:329

Mental health provider-patient privilege, 25:528, 25:552

Minors and incompetent persons. See **Minors and Incompetent Persons**

Physician-patient privilege, 25:501, 25:509, 25:511–512

Service, 10:66, 10:153

Spousal communication privilege, 25:576–577

Standing, 6:215

Trustees. See **Trusts and Trustees**

Venue, 9:128

Writ of scire facias. See **Scire Facias, Writ of**

Petitions

Allegations

Conditions precedent, 14:218

Discovery control plan level, 14:190–192

Jurisdiction, 14:203–211, 14:216

Jury demand, 14:224

Party-related information, 14:198–202

Pre-judgment interest, 14:223

Prior judgment or decision, 14:220

Special damages, 14:219

Special or private Texas Act or law, 14:221

Sworn-account claims, 14:222

Venue, 9:190–191, 14:217

Amount in controversy, pleading, 7:95–96

Attacking. See **Special Exceptions**

Bill of review, pleading requirements, 37:238

Counterclaims, 14:176–178

Default judgment, defective petition, 37:172

Deposition before lawsuit filed to perpetuate testimony, petition for order authorizing, 28:12

Drafting

Basics, 14:124–129

Initial steps, 14:108–111

Prayer, 14:134–139

- Styles and goals, 14:116–119
- Election of remedies doctrine, 14:184–185
- Filing to commence suit, 14:96–102
- Impleader petition, 6:347
- Incurable defect, 14:477
- Intervention, 6:528, 6:548
- Joinder of claims
 - Compulsory joinder, 14:170–171
 - Election of remedies, 14:184–185
 - Permissive joinder, 14:162–164
- Jurisdiction, pleading. See **Jurisdiction**
- Liquidated damages, pleading, 37:75–76
- Misnamed parties, amendment of petition to correct misnomer, 6:267
- Plea in abatement. See **Plea in Abatement**
- Plea to jurisdiction. See **Plea to Jurisdiction**
- Pleading causes of action
 - Generally, 14:127
 - Basics, 14:144–148
 - “Fair notice” of claims, 2:109, 14:154–156
 - Pleading facts that negate cause of action, summary judgment, 15:09
 - Special facts, 2:109
- Service facts, pleading
 - Generally, 10:280–285
 - Amending petition, 10:283–285, 10:424
 - Employees or registered agents, service on, 10:290–296
 - Statutory officials, service on, 10:302–305
- Settlement negotiations, drafting petition with elements of causes of action, 38:53
- Special exceptions. See **Special Exceptions**

Photographs

- Presuit investigation, 2:53, 2:55
- Work product privilege, 25:237

Physical and Mental Examinations

- Advantages of, 29:02
- Civil actions, 29:06
- Conditions
 - Generally, 29:80
 - Examiners, persons assisting, 29:83
 - Objecting to persons attending exam, 29:82
 - Persons accompanying examinee, 29:81
- Constitutionality, 29:05
- Construction of cases and statutes. See **Construction and Interpretation**
- Consulting expert, 29:194
- Costs of exam and travel costs, 29:88–89
- Designee of discoverer, challenging
 - Choice of discoverer not absolute, 29:53
 - Grounds for rejecting designee, 29:54
 - Investigating background and qualifications of designee, 29:52
 - Objecting, 29:55–57
- Determining which exams to request, 29:29
- Disadvantages of, 29:03
- Discoverer’s reciprocal right to reports
 - Failure to provide like reports, 29:195
 - “Like reports”, right to receive, 29:192
 - Requests, form and timing of, 29:193

- Types of reports, 29:194
- Discretion of court. See **Discretion of Court**
- Emotional distress, 29:06, 29:96, 29:117
- Examinee's option to get physician's report
 - Generally, 29:01
 - Delivery of report, limits on, 29:185
 - Earlier exams, reports of, 29:184
 - Failure to produce report, 29:186
 - Request for report, form and timing of, 29:183
 - Right to receive report on request, 29:182
- Examiner (physician or psychologist)
 - Definitions, 29:43
 - Exams not authorized by 204, 29:44
 - Multiple examiners, 29:45
 - Requirements, 29:42
 - Selecting examiner, criteria for, 29:46
- Factors in determining whether to use, 24:136
- Governing law, comparison of Rule 204 and FRCP 35, 29:04
- Limiting tests performed, 29:160
- Location, 29:62–63
- Logistics of exam, written specifications of, 29:36–37
- Mandamus, appeal by, 29:168
- Manner and scope of, 29:74–75
- Mental health provider-patient privilege. See **Mental Health Provider-Patient Privilege**
- Monitoring exam, limiting tests performed or stopping exam, 29:159–161
- Motion compelling exam, 29:01
- Motion for order for Rule 204 exam
 - Generally, 29:102
 - Affidavits, 29:135
 - Authorities, 29:136
 - Circumstances not requiring "in controversy" proof, 29:124–125
 - Condition "in controversy," 29:116–119
 - Conference requirement, 29:130
 - Discretion of court, 29:103
 - Filing and service, 29:142–145
 - Format and contents of motion, 29:134
 - Good cause requirement, 29:108–110
 - Hearing, obtaining, 29:132
 - Moving papers, 29:133
 - Proposed order, 29:137
 - Standing, 29:131
- Multiple or subsequent exams, requesting, 29:08
- Objections
 - Designee of discoverer, challenging, 29:55–57
 - Exchange of report, effect on admissibility at trial, 29:175
 - Persons attending exam, objection to, 29:82
 - Physician selected by court, objection to, 29:36
 - Proposed time creates conflict or undue hardship, 29:68
- One exam per condition, 29:07
- Orders
 - Civil actions, 29:06
 - Compelling examination by order, 29:01
 - Logistics stated in order, 29:36

- Motion for order (see Motion for order for Rule 204 exam, above)
- Motion requesting exam, proposed order, 29:137
- Time and place, 29:68
- Personal injury cases, 29:06, 29:31, 29:45, 29:96
- Persons subject to exam
 - Agents and employees, 29:21
 - Defendants, 29:15
 - Minors and incompetents, 29:14, 29:20, 29:29
 - Non-parties not controlled by parties, 29:22
 - Plaintiffs, 29:14
- Physician-patient privilege. See **Physician-Patient Privilege**
- Preparing examinee, 29:158
- Privilege
 - Communications with examiner not privileged, 29:46
 - Stipulation regarding waiver of privilege, 29:37, 29:96
 - Waiver of, 29:94
- Process, 29:01
- Protective order, 29:68
- Records of examinee's medical history, obtaining or producing previous records, 29:30–31
- Report of examining physician
 - Discoverer's right to reports (see Discoverer's reciprocal right to reports, above)
 - Examinee's option to get report (see Examinee's option to get physician's report, above)
 - Exchange procedure overview, 29:175
 - Exchange of reports, stipulation regarding, 29:37, 29:96
 - Other discovery not precluded, 29:177
 - Preparing report, 29:174
 - Stipulated exams, 29:176
- Response and reply
 - Affidavits and other evidence, 29:151
 - Avoiding exam, other ways of, 29:152
 - Opposition statement, 29:150
 - Reply brief, 29:153
- Sanction for failure to be examined, 29:158, 29:167
- Self-incrimination, privilege against, 25:318
- Service of motion for order for Rule 204 exam, 29:134, 29:142–145
- Stipulations
 - Generally, 24:171, 29:94–96
 - Contents of agreement, 29:08
 - Contingent date and time, partial stipulation to, 29:68
 - Defendant's voluntary submission to exam, 29:15
 - Exchange of report and waiver of privilege, 29:37, 29:96
 - Logistics of exam, 29:36–37
 - Multiple or subsequent exams, 29:08
 - No claim for mental distress, avoiding mental examination, 29:96
 - Non-physician or non-psychologist as examiner, 29:44
 - Recording of exam (audio-video), 29:82
 - Scope and manner of exam, 29:74–75
- Stopping exam, 29:161
- Subpoenas. See **Subpoenas and Subpoenas Duces Tecum**
- Subsequent exam, 29:166
- Time, 29:28, 29:68–69, 29:142–144, 29:186

Timing with other discovery, 29:28
Travel, 29:63, 29:89
Waiver of privilege, 29:37, 29:94

Physician-Patient Privilege

Asserting privilege, 25:508–513
Claims on behalf of patient, 25:501
Construction of cases and statutes. See **Construction and Interpretation**
Elements of privileged communication
 “Communication” defined, 25:464–466
 Confidentiality, 25:478–479
 Contents of “communication,” 25:472–473
 Persons privy to communication, 25:458–459
 Purposes of consultation and communication, 25:484–485
Ex parte communications, 25:473, 25:498
Inapplicability of privilege
 Competency proceedings, 25:499
 Condition of patient at issue, 25:498
 Criminal proceedings, 25:500
 Medical malpractice claims, 25:502
Minors and incompetent persons. See **Minors and Incompetent Persons**
Necessary disclosures, no privilege for, 25:490–492
Summary of rule, 25:450–453
Termination of, 25:513

Physicians

See also **Psychologists**
Jurisdiction, 8:260–265
License issues, 29:43, 29:46, 29:52, 29:54
Medical malpractice. See **Medical Malpractice**
Physical and mental examinations. See **Physical and Mental Examinations**
Physician-patient privilege. See **Physician-Patient Privilege**
Treating physician not retained as expert, 25:485, 26:20
Treating physician as testifying expert. See **Experts and Expert Witnesses**

Plea in Abatement

Administrative proceedings, 14:385, 15:182
Anti-suit injunctions in other states, abatement of second suit, 17:101
Basics, 14:380
Capacity, plea in abatement, 6:190, 6:193–197, 15:188–192
Class actions, 6:683, 6:732
Death of party, 6:248, 6:252
Deceptive Trade Practices Act, notice not received, 15:64
Dismissal of actions, prior action pending, 37:390
Dissolved corporation, 6:132
File as separate motion, 14:381
Grounds
 Defects in allegations, 15:204–205
 Failure to join parties, 15:198–199
 Lack of capacity, 15:188–192
 Pending action, 15:172–175, 15:180–183
 Same or similar subject matter, 14:382
Misnomer, 14:384
Motion, plea as, 15:65, 15:210, 15:218
Nature of plea, 15:164
Non-joinder of party, 14:383
Plea to jurisdiction compared to, 15:132–133

Procedures

- Hearing, 15:224–226
- Order, 15:232–233
- Requirements for plea, 15:210–212
- Response, 15:218–219
- Review, 15:238–239

- Race to courthouse, abatement of second-filed case, 7:12, 14:101
- “Speaking demurrer”, plea in abatement analogous to, 15:188
- Special denial requiring verification, plea in abatement to preserve matters, 14:270
- Specific allegations required, 15:165
- Standing, 6:227–228, 15:67
- Time, 15:166

Plea to Jurisdiction

- Comparison to other pre-trial pleadings, 15:132–135
- Defects in pleadings, §15:129
- Effect of plea, 15:127
- Grounds, 15:150–159
- Motion, plea to jurisdiction as, 15:143
- Nature of plea, 15:126
- Pleadings construed in plaintiff’s favor, §15:128
- Procedures, 15:140–144

Pleadings

Amended and supplemental pleadings. See **Amended and Supplemental Pleadings**

Amount in controversy. See **Jurisdiction**

Answer. See **Answer**

Baseless claims, use of RFAs to eliminate, 31:26

Basics

- Alternative claims and defenses, 14:11
- Defining pleadings, 14:01, 14:06
- Failure to allege element of claim, reasonable inference from pleadings, 14:09
- Fair notice of matters involved, 2:109, 14:07
- Framing case by pleadings, 14:02
- Liberal construction, 14:07
- Misdesignated, misnamed, or misnumbered pleading, 14:10, 15:18
- “Notice” pleading, 14:04
- Permitted pleadings, 14:05
- Statutes of limitations tolled, 14:03

Class actions, 6:672–675, 6:754

Comparison of pleadings between state and federal court on uncontested facts, use of RFAs, 31:24

Construction of cases and statutes. See **Construction and Interpretation**

Counterclaims. See **Counterclaims**

Debt, pleading new promise in action on acknowledgment, 3:55

Discovery rule, 3:395

Exhibits incorporated into pleadings, 14:56–60

Federal claims, effect of artful pleading to avoid federal jurisdiction, 9:489

Filing pleadings before special appearance as waiver of objection to jurisdiction, 8:170–173

Format, 14:24–33

Fraudulent concealment of claim, burden of pleading, 3:368

Frivolous pleadings. See **Frivolous or Delaying Actions**

Incorporation by reference. See **Incorporation by Reference**

Interpleader. See **Interpleader**

Joinder. See **Joinder**

Judicial admissions in pleading, 14:16–18

Misnomer or misidentification of parties. See **Parties**

Motions and pleadings distinguished, 16:06

Petitions. See **Petitions**

Plea in abatement. See **Plea in Abatement**

Plea to jurisdiction. See **Plea to Jurisdiction**

Repleading, 14:462, 14:478, 15:15, 15:52, 15:110, 15:112–113

Requests for disclosure compared, 26:17

Service facts, pleading. See **Petitions**

Shareholder derivative actions, 6:774–778

Special exceptions. See **Special Exceptions**

Standing, determining if verified pleading required on corporate debt, 6:206

Summary judgment. See **Summary Judgment**

Unsound mind, 3:479

Verification. See **Verification**

Plenary Power of Court

Bill of review available after plenary power expires, 37:237

Expiration of plenary power, 37:141

Extension of, 37:460

Filing motion extends plenary period, 37:157

Interlocutory default judgment, court retaining power until case concluded, 37:128

New trial motion vacating default judgment, time limit on court's plenary power, 37:156, 37:164

Oral reinstatement order and docket entry followed by written order during court's period of plenary power, 37:458

Premature reinstatement motion under TRCP 165a(3), no extension of court's plenary power, 37:444

Sanctions imposed after nonsuit, 37:331

Untimely and erroneous grant of reinstatement after court's plenary power expired, 37:469

Unverified reinstatement motion after dismissal, no extension of trial court's plenary power, 37:411, 37:434

Pre-Nuptial Agreements

Statute of limitations for enforcement, 3:319

Predecessor-in-Interest

Jurisdiction, 8:336

Preemption

Doctrine of complete preemption compared to ordinary federal preemption, effect on removal to federal court, 9:489

ERISA preemption, 14:347, 15:156

Federal maritime claims, 3:219

Statutory injunction and common law grounds, 17:16

Premises Liability

Statute of limitations, 3:186

Preserving Evidence. See Evidence

Pretrial Extraordinary Remedies

Attachment. See **Attachment**

Garnishment. See **Garnishment**

Lis Pendens. See **Lis Pendens**

Property exempt, 19:30-19:37

Receivership. See **Receivership**

Sequestration. See **Sequestration**

Statutory and constitutional considerations, 19:20-19:22

Trial and appeal, 19:50-19:52

Types of remedies, 19:01-05

Persuit Activities

ADR. See **Alternative Dispute Resolution (ADR)**

Attorney fee issues, 2:212-214

Causes of action, 2:104-110

Defendant's considerations, 2:170-175

Demand letter, 2:198

Exhaustion of administrative remedies, 2:199

Filing, timing considerations, 2:116-117

Insurance coverage issues, 2:106, 2:175, 2:204-207

Investigation. See **Investigation**

Legal research, 2:86

Negotiating resolution, 2:70-73

Notice requirements, 2:190-192

Opposition, communicating with, 2:22, 2:180-185

Parties, 2:92-98

Perpetuating testimony, 2:62, 28:12, 28:63

Personal jurisdiction, 2:124-133

Physical and mental examinations, effect of pre-litigation exams, 29:166

State or federal court, 2:148-152

State subject matter jurisdiction, 2:158-165

Presumptions and Inferences

Arbitration, presumption of waiver of contractual rights, 38:224

Attorney fees, presuming usual and customary charge as reasonable, 1:186

Cause of action presumed valid, 8:416, 9:253

Certificate of service, 36:369

Class actions, 6:632, 6:711

Clergy communication privilege, 25:596

Competence of witnesses, 6:95

Consideration, overcoming presumption by pleading affirmative defense of failure or lack of, 14:325

Court records, 25:441

Default judgment

 "Mother Hubbard" clause establishing presumption of finality, 37:62

 No presumption of valid issuance, service and return of citation, 37:177

 Nonresident's presumed general appearance on reversal of default and remand for trial, 8:447

Discovery of evidence, effect of privileges on presumption, 25:40

Discovery rule, statutory causes of action, 3:394

Federal court, rebutting presumption against subject matter jurisdiction., 9:430

Foreign corporation's capacity, 6:121

Guardian ad litem fee award, 6:67

"Inferential rebuttal" issues, 14:298, 14:310

Injunctions, 17:222

Judgment of other state, jurisdiction presumed, 37:285

Jurisdictional facts, 8:471

New trial motion, no presumption favoring judgment, 37:231

Notice of proof of loss presumed in absence of verified denial, 14:285

Physician-patient privilege, physician asserting, 25:510

Pleadings

 Failure to allege element of claim, reasonable inference from pleadings, 14:09

 Good faith presumed, 14:74

Return of service, 10:352

Shareholder derivative actions, presumption of commonality and typicality, 6:783
Spoliation of evidence, 2:63
Summary judgment motions, 36:25, 36:119–120, 36:506, 36:532
Transportation Commission Chair’s mailing of process, presumption created by,
10:203
Venue, 9:173, 9:251

Pretrial Conferences

Settlement, 38:80
Witness information, 30:55

Pretrial Motions. See **Discovery Disputes**

Pretrial Orders. See **Orders**

Pretrial Proceedings

Mass torts, joinder for, 6:361

Prisoners. See **Inmates**

Privacy

Generally, 25:616
Statute of limitations for invasion of, 3:163

Privileges

Affirmative defense, 14:361
Attorney-client privilege. See **Attorney-Client Privilege**
Clergy communication privilege. See **Clergy Communication Privilege**
Common interest. See **Common Interest (Joint Defense) Privilege**
Compelling disclosure, hearing, 25:94–96
Creation and duration, 25:12–13
Depositions, privilege, 28:307
Discovery, matters outside scope of
 Generally, 24:86, 25:18–22
 Invoking privilege, 24:88
 List of specific privileges, 24:87
Electronic transmissions, 25:111
Environmental health and safety audit report privilege, 25:295
Ex parte communications, 25:22
Governing law, 25:28–31
Interrogatories, 30:100, 30:173, 30:204–205
Joint defense. See **Common Interest (Joint Defense) Privilege**
Lawyer-client privilege. See **Attorney-Client Privilege**
Mediation statements, 25:602
Mental health provider-patient privilege. See **Mental Health Provider-Patient Privilege**
News media privilege, 25:608–610
Overview
 Generally, 25:01
 Comparison with other evidence rules, 25:03
 Defining privileges, 25:02
 Holders of privilege and nonholder “watchdogs,” 25:04
 Purposes, 25:06
 Qualified versus absolute privilege, 25:05, 25:19–20
Physical and mental examinations. See **Physical and Mental Examinations**
Physician-patient. See **Physician-Patient Privilege**
Political vote, 25:617
Presuit investigation, protecting privileges, 2:61
Privilege log, 25:41
Procedures regarding objecting and refusing disclosure, 25:36–41

Request for production and inspection, 27:36, 27:67, 27:154–155, 27:224, 27:274, 27:317

Requests for admissions, failure to respond as waiver, 31:77

Requests for disclosure, 26:47

Self-critical analysis, information generated by internal investigations, 25:294–295

Settlement offers and negotiations, 25:602–603, 38:47

Spousal communication privilege. See **Spousal Communication Privilege**

Spousal testimony privilege, 25:562

Trade secrets. See **Trade Secrets**

Waiver

Generally, 25:46–47

Elements of waiver, 25:62–65

Person waiving, 25:52–56

Privileged information at issue, character testimony and reliance, 25:80–81

Scope or extent of waiver, 25:86–88

Unprivileged disclosure, 25:70–74

Work product. See **Work Product Privilege**

Pro Se Litigants

Deposition notice, 25:44

Discovery disputes, contacting pro se respondents, 32:03

Indigents, 6:102

Notice of intent to dismiss, 37:417

Reinstatement after dismissal, motion for, 37:436

Requirements, 6:112–114

Probate Proceedings

Constructive knowledge and discovery rule, effect on accrual of cause of action, 3:413

Pre-suit discovery, motion for, 32:26

Service, 10:66

Subject matter jurisdiction, 7:50, 7:62, 7:82–89

Production of Documents and Things. See Request for Production and Inspection of Documents or Things

Products Liability

See also **Strict Liability**

Jurisdiction, 8:286, 8:340

Statute of limitations, 3:187, 3:434

Statutes of repose, manufacturers and sellers of manufacturing equipment, 3:568–571

Stream of commerce doctrine, effect on jurisdiction, 8:308–314

Venue, 9:114

Professional Negligence

Statutes of limitations

Accountants and auditors, 3:276–278

Attorneys, 3:266–271

Engineers, 3:284–286

Professional Services

Jurisdiction, 8:260–265, 8:270–271

Promissory Notes

See also **Loans**

Jurisdiction, 8:251

Laches, effect of, 3:29

Statutes of limitations, 3:132, 3:134

Summary judgment motion, failure to attach note to affidavit, 36:442

Property Settlement Agreements. See Dissolution of Marriage

Property Taxes. See **Taxes**

Protective Orders

Depositions, 28:65, 28:234

Discovery disputes. See **Discovery Disputes**

Interrogatories, 30:248–251

Physical and mental examinations, 29:68

Privileges, 25:37

Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Requests for admissions. See **Requests for Admissions**

Requests for disclosure, 26:47

Self-incrimination, privilege against, 25:359

Trade secret privilege. See **Trade Secrets**

Psychologists

Jurisdiction, 8:260–265

License issues, 29:43, 29:46, 29:52, 29:54

Physical and mental examinations. See **Physical and Mental Examinations**

Public Benefits

Settlement, effect on Medicaid and SSI eligibility, 38:28–29

Public Entities and Employees

Affirmative defense, attorney-fee exemption of political subdivision, 14:343

Capacity to sue or be sued, 6:167

Deposition notice, 28:46

Federal Employer's Liability Act (F.E.L.A), federal statute of limitations, 3:218

Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) and FDIC, tolling statutes of limitations, 3:520

Imputed disqualification of attorney, successive government and private employment, 1:73

Injunctions, 17:130, 17:145, 17:157

Intervention, 6:538, 6:541–543

Notice of claims requirements, 3:22, 3:332–334

Plea to jurisdiction

Plea to jurisdiction

Government immunity, 15:155

Interlocutory appeal, 18:26

Presuit notice requirements, 2:190–191

Public records. See **Public Records**

Qualified immunity of governmental official as affirmative defense, 14:352

Service, 10:84–87

Standing, claims against government entities or officials, 6:210

Statutes of limitations for claims by or against governmental entities, 3:330–336, 3:446

Venue, 9:42–46

Public Policy

Assignment of causes of action, 38:106

Discovery rule, effect on adoptee's claim to inherit from birth parent, 3:419

Interpleader, 6:516

Jurisdiction, interstate and international policy, 8:94–95

"Mary Carter" settlement agreements void, 38:105

Privileges, 25:02

Standing of assignees, 6:214

Statutes of repose, 3:525

Substitution of parties, assignees and transferees, 6:264

Void actions. See **Void or Voidable Actions**

Public Records

FOIA. See **Freedom of Information Act (FOIA)**

Interrogatories, public records response, 30:78, 30:150

Physician-patient privilege, exception for statutorily required records, 25:490

Presuit investigation, 2:30

Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Summary judgment motions, public records as method of establishing facts, 36:318

Texas Open Records Act

Compelling production, 27:334

Presuit investigation, 2:46

Publication

Clerk of court, publication by, 10:312

Motion for new trial, 10:546

Prerequisites, 10:256–258

Procedures, 10:264–275

Who can be served by publication, 10:248–251

Punitive Damages

Amount in controversy, inclusion or exclusion of punitive damages, 7:120

Covenant not to compete, wrongful injunction, 17:82

Interrogatories on net worth, 30:66

Interrogatories on net worth for punitive or exemplary damages, 30:66

Request for production and inspection of documents showing net worth, 27:66

Tax consequences, 38:22

— Q —

Quash, Motion to

Appearance, motion to quash as, 14:232

Citation and service, 10:536–538

Depositions, 24:160, 28:235

Jurisdiction, pleading defects, 8:370, 8:410

Privilege, asserting by motion to quash subpoena, 24:88

Request for production and inspection, quashing nonparty deposition subpoena, 27:314

Service, 8:377, 8:396, 10:536–538

Subpoena, invoking privilege in motion to quash, 24:88

Quasi in Rem Jurisdiction. See **Jurisdiction**

Questionnaires. See **Charts, Checklists, and Questionnaires**

Questions of Law and Fact

Bill of review, 10:599

Class actions, commonality, 6:633, 6:654-656, 6:667, 6:672

Dissolving corporation, notices to known claimants, 6:134

Jurisdiction, 8:403, 8:417

Misnamed parties, intended defendant's knowledge of lawsuit, 6:175

Motions, evidentiary hearing on disputed facts in affidavits, 16:60

Permissive joinder, common question of law or fact, 6:297

Requests for admissions, 31:16–17, 31:36

Statutes of limitations, reasonable time to bring suit, 3:581

Temporary injunctions, 17:25

— R —

Ratification

Affirmative defense, 14:362

Real Estate Investment Trusts

Service, 10:77

Real Property

Adverse possession, statutes of limitations, 3:302–311, 3:473

Class actions, 6:653

Co-owners in corporation and real estate, abuse of discretion to strike intervention, 6:542

Damage to property, 3:170–173

Deeds. See **Deeds**

Default judgment, remedy to recover sale proceeds, 37:219

Eminent domain. See **Eminent Domain**

Entry upon. See **Request for Production and Inspection of Documents and Things.**

Eviction. See **Eviction**

Homestead. See **Homestead**

Injunctive relief, 17:15, 17:18, 17:112, 17:123

Joinder of parties, title to real property, 6:329

Jurisdiction, 8:320–322

Landlord and tenant. See **Landlord and Tenant**

Leases. See **Leases**

License, affirmative defense, 14:331

Partition. See **Partition**

Premises liability, 3:186

Service by publication, unknown landowners, 10:250

Statutes of limitations, real estate contracts, 3:146–152

Subject matter jurisdiction, 7:38

Title. See **Title**

Trespass. See **Trespass**

Venue, 9:37

Receivers and Receivership

Application for receivership, 19:330-347

Dissolved corporation, service on receiver, 10:53

Grounds, 19:320-330

Interlocutory appeal, 18:20

Litigation, 19:380-383

Nature of remedy, 19:310

Qualifications, powers, and duties of a receiver, 19:360-369

Reconsideration

Motions for, 16:284–286

Summary judgment motion, motion for reconsideration after, 36:524

Temporary injunction denied, 17:280–281

Transfer of proceedings, effect of mistake in first motion on reconsideration, 9:285

Record of Proceedings

See also **Court Reporter; Transcripts**

Challenging capacity, truth of matter appears in record, 6:188

Class certification order, record for interlocutory appeal, 6:725

Default judgment restricted appeal, error in record, 37:268

Discovery disputes, review of entire record in consideration of “death penalty” sanctions, 32:39

Guardian ad litem fees, trial court record showing abuse of trial court discretion, 6:68

Injunctions, 17:207, 17:343, 17:346

Partial summary judgment, abandonment of action, 36:62
Plea in abatement, 15:238
Request to amend denied, record to preserve error on appeal, 15:114
Sealing records. See **Sealing Records**
Service
 Bill of review, 10:612
 Default judgment, record supporting, 10:140, 10:162
 Default judgments, strict compliance with service requirements, 37:177
 Direct appeal, 10:576–577
 Insurance Commissioner served, record reflecting basis for substituted service, 10:211
 Restricted appeal, 10:587–588
 Substituted service, record showing strict compliance with rules, 10:186
 Unsuccessful service, facts showing diligence in court record, 10:424
Settlements in open court on record, 38:158
Special appearance, 8:428, 8:448, 8:450
Special denials, effect of truth appearing in record on verification, 14:266
Standing, 6:230
Summary judgment motion, 36:397, 36:409
Venue improper, record of hearing on motion for appeal, 9:251
Wrongful injunction, evidentiary record of action on bond for appeal, 17:383

Recordings. See **Video- and Audiotaping**

Records and Reports

See also **Record of Proceedings**
Business records. See **Business Records**
Communicable diseases, reporting requirements, 25:491
Computer records, 27:06, 27:65, 27:139, 27:157, 27:240
Court-ordered reports as discovery tool, 24:62
Disclosure of documents. See **Requests for Disclosure**
Document-identification, deposing opponents' records custodian, 24:146
Electronic records (see Computer records, above)
Medical records. See **Medical Records**
Physical and mental exams. See **Physical and Mental Examinations**
Physician-patient privilege, exceptions for statutorily required reports, 25:490–491
Presuit investigation of documents, 2:28–30
Production requests. See **Request for Production and Inspection of Documents and Things**
Public records. See **Public Records**
Sealing records. See **Sealing Records**
Service, record of efforts to find and serve defendant, 10:32
Settlements, reporting to court, 38:81

Recusal of Judge

See also **Disqualification of Judges**
Generally, 16:162, 16:200–216
Active judge sitting for another, 16:230
Appeal, 16:246
Curing grounds for, 16:216
Disqualification distinguished from recusal, 16:166
Effect of filing motion, 16:164
Effect of recusal motion on application of motion docketing system, 16:22, 16:162
Hearing, 16:165
Procedures, 16:237–244
Requirements for motion, 16:163
Sanctions, 16:245

Waiver of grounds for, 16:200, 16:240, 26:237

Referral

Objection to court-ordered referral to ADR, 38:184

Trial by special judge, referral order, 38:174

Reformation

Statutes of limitations, 3:137, 3:147

Registration

Assumed name, 6:237

Reimbursement

Costs and expenses, 1:169–170

Default judgment, offer of reimbursement of plaintiff's expenses for new trial motion, 37:211

Engagement contract provision for, 1:202

Reinstatement After Dismissal. See Dismissal of Actions

Relation-Back Rule. See Statutes of Limitations

Release

Affirmative defense, 14:333

Liens, 38:127

Presuit investigation, release for medical records, 2:52

Settlement, 38:96, 38:126, 38:127

Relevancy

Depositions, objection to question during, 28:310

Discovery, generally, 24:40–43

Insurance information, relevancy of, 24:74

Motions, statement of relevant facts, 16:88

Request for production and inspection, 27:210

Income tax returns, 27:64

Net worth, documents showing, 27:66

Overbroad objection to request based on relevance, 27:210

Requests for admissions, 31:12, 31:14

Requests for disclosure, relevancy of settlement agreements, 26:21

Settlement agreements, 24:80–81, 25:603

Religion

First Amendment as affirmative defense, 14:348

Plea to jurisdiction, religious disputes, 15:158

Remand to State Court

Deadline for remand, 9:574–576

Grounds for remand, 9:556–560, 9:566–568

Nonremovable action joined with removable actions, severing and remanding, 9:503

Procedures

Costs and attorney fees, 9:592, 9:610–612

Hearing and disposition, 9:590–594

Jurisdiction, retention of, 9:612

Motion to remand, 9:582–584

Review, 9:600–605

Sanctions under Rule 11 of FRCP, 9:611

Summary judgment motion, reversal on appeal and remand for new trial, 36:536

Transfer of venue determinations, 9:294

Removal to Federal Court

Generally, 9:432

Answer, removal as option to, 14:235

Deadline for removal

Initial pleading, removal based on, 9:514–517

- Subsequent developments, removal based on, 9:522–526
- Federal claims dismissed, effect on remand and removal, 9:566
- Grounds for removal
 - Diversity, 9:494–497
 - Federal question, 9:488–489
 - Grounds arising after filing, 9:510
 - Post-removal developments, 9:508
 - Removal proper despite lack of grounds, 9:509
 - Specific removable and nonremovable actions, 9:502–503
- Guardian ad litem, 6:42
- Jurisdiction, effect of removal on waiver of objection to, 8:194
- Procedures
 - Consent of other defendants, 9:546–550
 - Notice of removal, 9:530–533
 - Persons who may remove, 9:538–540
- Service, effect of removal on, 10:28
- Strategic considerations
 - Generally, 9:480
 - Factors to consider before removing, 9:481
 - Jury demand, avoiding waiver, 9:483
 - Post-removal options, 9:482

Replevy

Attachment, 19:120-122

Garnishment, 19:250-251

Sequestration, 19:440-443

Report. See **Records and Reports**

Reporter. See **Court Reporter**

Request for Production and Inspection of Documents or Things

Generally, 27:01

Admissibility of produced documents, 27:12, 27:325

Case law, 27:04

Category requests

 Middle ground in drafting requests, 27:59

 Purpose, 27:56

 Too broadly drafted category request, 27:57

 Too narrow requests, 27:58

Client, consulting, 27:45

Compelling production

 Motion to, 27:272

 Nonparties, 27:280, 27:286, 27:298

 Nonresident nonparty, 27:299

 Texas Open Records Act, 27:334

Compound requests, avoiding, 27:49

Computer records, 27:06, 27:65, 27:139, 27:157, 27:240

Confidential information, protecting

 Generally, 27:220

 Client, consulting with, 27:221

 Confidentiality agreement, conditional production of documents, 27:222

 Disclosure restriction, 27:220

 Inadvertent disclosure, retrieval of documents, 27:224

 Protective order, stipulation or “assented-to” motion for order, 27:154, 27:220, 27:223

Construction of cases and statutes. See **Construction and Interpretation**

- Contempt, 27:273
- Copying (see Inspection and copying, below)
- Court order not required, 27:02
- Deadlines
 - Failure to timely respond, consequences of, 27:112–113
 - Nonparty deposition subpoena, motions for protective order or objections, 27:316
 - Post-deadline actions, 27:87
 - Public records requests, 27:350
 - Requests in Level 1-Level 3 discovery plans, 27:77
 - Response, 24:160, 27:86, 27:92–93, 27:100–106
 - Supplementation and amendment of responses and production, 27:247–248
- Defective requests, 27:113
- Defining “request” and “document,” 27:05–06
- Depositions
 - Notice including request for production, 28:78
 - Subpoena of nonparty deponent, 28:87
- Description, reasonable particularity of, 27:48, 27:158, 27:200
- Discovery disputes
 - Compelling production (see Compelling production, above)
 - Extend time to respond, motion for, 27:86, 27:105, 27:270
 - Mandamus review, 27:274
 - Protective orders (see Protective orders, below)
 - Sanctions (see Sanctions, below)
 - Using objection instead of motion for protective order, Rule 191.2 conference, 27:271
- Document-control system, file intake log, computer database, electronic storage/retrieval systems, 27:147, 27:160, 27:264
- “Electronic documents” defined, 27:06
- Entry upon property, 27:380-390
- Expert reports, 27:68
- Extension of time, 27:86, 27:105, 27:270
- Factors in determining whether to use request, 24:135
- Filing, 27:80, 27:233
- Fishing expeditions, 24:102, 27:10, 27:57
- Format of request
 - Caption, 27:32
 - Certificate of service, 27:39
 - Definitions section, 27:34
 - Instructions sections, 27:35
 - Privilege list or log, instructing respondent to produce, 27:36
 - Signature, 27:38
 - Time and place for production designation, 27:37
 - Title, 27:33
- Goals and strategies of request, 27:44
- Governing rules, 27:03
- Income tax returns, 27:64
- Indemnity, insurance, and settlement agreements, 27:69
- Individual-item requests, 27:50
- Informal requests, risks of, 27:27
- Inspection and copying
 - Generally, 27:254
 - Computerized document storage/retrieval system or litigation support fir, 27:264

- Inspection before copying, log or record of key documents using bates numbers, 27:259
- Mechanics of copying, 27:261
- Multiple party copying, 27:262
- Multiple party inspection, 27:258
- No inspection before copying, 27:260
- Originals or copies, 27:257
- Place for inspection, effect of out-of-state documents, 27:256
- Summarizing and abstracting documents, 27:263
- Time for, 27:255
- Locating, collecting, and examining items
 - Beyond request's scope, identifying and segregating items, 27:158–159
 - Client responsibilities, educating and working with client, 27:124, 27:126–127
 - Collecting items, 27:144–149
 - Computer files and electronic data, 27:139, 27:157
 - Confidential or privileged information, 27:154–156
 - Destruction of relevant material, preventing, 27:129–130
 - Lawyer's responsibilities, 27:125
 - Locating items, 27:136–139
 - Point person, selection of, 27:128
 - Redacting protected information, 27:156–157
 - Useful information, looking for, 27:160
 - Withholding items, 27:155
- Mandamus, 27:274, 27:360
- Medical records, 27:324–326
- Multiple party case, 27:08, 27:258, 27:262
- Net worth, documents showing, 27:66
- Nonexistent documents, 27:67
- Nonparty deposition subpoenas
 - Enforcement of out-of-county subpoena, 27:296
 - Nonresident deponent, 27:299
 - Objecting, 27:296, 27:317
 - Procedures for subpoena, 27:304–308
 - Resident deponent (travel limits), 27:298
 - Responding to subpoena, 27:314–319
 - Rule and tactics, 27:296
 - Scope of subpoena, 27:297
- Nonparty document inspection
 - Alternatives, 27:280
 - Deposition subpoena (see Nonparty deposition subpoenas, above)
 - Document subpoenas, 27:286–290
 - Informal request, 27:280
 - Pre-suit depositions, 27:281
- Number of requests no limited, 27:11
- Objections
 - Authentication automatic, 27:19
 - Compound requests, 27:49
 - Confidentiality, 27:221
 - Failure to timely respond, waiver of objections, 27:113
 - Nonparty deposition subpoena, 27:296, 27:314, 27:317
 - Overbroad, vague, or ambiguous requests, 27:200–204
 - Particularity lacking distinguished from overbroad objection, 27:57
 - Protective order compared to objection, 27:271
 - Response, objection to, 27:182–194

- Supplementation and amendment of responses and production untimely and prejudicial, 27:247
- Time or place for inspection, 27:255
- Too broadly drafted category request, 27:57
- Unduly burdensome requests, 27:57, 27:210–214, 27:271
- Waiver, 27:113, 27:184, 27:214
- Opposition’s reciprocal requests (“Boomerang” requests), 27:46
- Other discovery tools, using requests with
 - Authentication automatic, 27:19
 - Document requests first, 27:18
 - Following up with more document requests, 27:21
 - Identify documents, 27:20
- Persons who can be made respondents, 27:07
- Physical and mental examinations, request for medical history of examinee, 29:30–31
- Possession, custody, or control, constructive possession, 27:118–119
- Preparing for production
 - Computer files and electronic data, issue of converting electronic data to printouts, 27:240
 - Numbering documents, stick-on labels or “Bates” numbering, 27:239, 27:259
 - Organization of documents, 27:238
- Protective orders
 - Confidential information, 27:154, 27:220, 27:223
 - Delays caused by motion for, 27:21
 - Motion for, 27:271
 - Nonparty deposition subpoena, 27:314, 27:316–318
 - Trade secrets, 27:71
 - Unduly burdensome requests, 27:213–214
- Public records
 - Attorney general, referral of request to for confirming decision, 27:356–360
 - Early request, 27:333
 - Federal public records, Freedom of Information Act, 27:335, 27:366–367, 27:372–375
 - Litigation, role in, 27:332
 - Procedures, 27:348–350
 - Texas public records, 27:334, 27:340–342
- Redacting protected information, 27:156–157
- Relevancy. See **Relevancy**
- Response
 - Calendar response dates and deadlines, 27:92–93
 - Client, contacting, 27:94
 - Coparties, joint responses, 27:167
 - Drafting, 27:174–177
 - Objections, 27:182–194
 - Opposing counsel, contacting, 27:95
 - Overbroad, vague, or ambiguous requests, 27:200–204
 - Reply choices, 27:168
 - Requirement of response, 27:166
 - Reviewing request, 27:92
 - Service, 27:100–104, 27:230–232
 - Unduly burdensome requests, 27:210–214
- Sanctions, 27:03, 27:59, 27:86, 27:112, 27:158, 27:272–273
- Scope of requests, 24:48, 27:09
- Self-incrimination, privilege against, 25:317, 25:340

Service

- Certificate of service, 27:39, 27:79, 27:232
- Citation and petition, request served with, 10:22
- Compel production, motion to, 27:272
- Deadline for requests in Level 1-Level 3 discovery plans, 27:77
- Earliest time to serve, 27:76
- Nonparty deposition subpoena and objection to, 27:306–307, 27:317
- Requirements, 27:78
- Response, 27:100–104, 27:230–232

Settlement. See **Settlement**

Software to assist in document control. See **Computers and PCs**

Special appearance, 8:396

Specifying individual items or category, 27:47

Stipulations. See **Stipulations**

Subpoenas and subpoenas duces tecum

- Deposition subpoenas (see Nonparty deposition subpoenas, above)

- Medical records, 27:326

- Using subpoena duces tecum instead of request for production, 27:03, 27:07

Supplementation and amendment of responses and production

- Continuance or resetting trial, 27:247, 27:249

- Deadline, objection, 27:247

- Failure to supplement, establishing good cause or lack of prejudice, 27:249

- Format, effect of defect in, 27:248

- Requirement, 27:246

Time to respond (see Deadlines, above)

Trade secrets, 27:71

Traveling out-of-state to inspect documents, hearing on objection to, 27:256

Undue burden, 27:57, 27:210–214, 27:258, 27:271

Witness statements, 27:70

Written requests, 27:26–27

Requests for Admissions

Amending admitted RFA (see Relief from RFA response, motion for, below)

Amending response (see Supplementation of response, below)

Authority, 31:01

Binding nature of, 31:05

Cheap and effective discovery tool, 31:02

Compelling discovery, motion to deem matter admitted, 32:25

Credibility, 31:107, 31:226

Deadline for response

- Generally, 24:160–161, 31:84

- Motion for protective order, effect on deadline, 31:104, 31:181

- Motion to extend, 31:86

- Objection to RFAs, 31:119

- Stipulation to extend, 31:85–86

Deemed admission, 31:06, 31:69, 31:76–77, 31:97, 31:106, 31:108

Documents

- Authenticating, 31:34–35, 31:44, 31:61

- Business record, qualifying document as, 31:37

- Confidential documents submitted under seal for in camera inspection, 31:180

- Foundation, establishing, 31:34

- Hearsay exception, establishing, 31:36

Drafting format of response

- Caption, 31:93

- Certificate of service, 31:98

- Introductory paragraph, 31:95
- Pleading format, 31:92
- Repeating requests no required, 31:96
- Signature required, unsigned responses deemed admitted or stricken, 31:97
- Title, 31:94
- Drafting format and techniques for request
 - Attaching referenced documents, 31:61
 - Boilerplate, avoiding, 31:54
 - Caption, 31:51
 - Certificate of service, 31:60
 - Clear and simple requests, 31:56
 - Definitions section, 31:54
 - Introductory paragraph, 31:53
 - Language, avoiding “admit or deny,” 31:55
 - Number of RFAs or sets not limited, 31:59
 - Numbering requests and multiple sets sequentially, 31:58
 - One request for each matter, avoiding compound requests, 31:55
 - Pleading form, 31:50
 - Signature block, 31:60
 - Subparts, avoiding, 31:57
 - Title and names of parties, 31:52
- Evasive or incomplete answer, 31:111
- Factors in determining whether to use, 24:137
- Filing, 31:70, 31:79
- Impeachment. See **Impeachment**
- Motions
 - Attempt resolution by agreement, 31:138
 - Certificate of conference required, 31:86, 31:139
 - Challenging answer or objection, motion, 31:146–151
 - Compelling discovery, motion to deem matter admitted, 32:25
 - Deemed admission, motion to confirm, 31:156–158
 - Extend time for response, motion to, 31:86, 31:174–178
 - Protective order (see Protective orders, below)
 - Relief from RFA response (see Relief from RFA response, motion for, below)
 - Supporting papers and proof of service, 31:140
- Multiple party cases, 31:52, 31:58
- Nonsuit, avoiding deemed admissions, 31:77, 32:224
- Objections
 - Generally, 31:118
 - Ambiguous, confusing, or vague responses, 31:56
 - Answer coupled with objection, 31:121
 - Application for expenses under cost-of-proof sanction, 31:168
 - Boilerplate definitions in RFA, 31:54
 - Burdensome number of requests, 31:59
 - Common objections, 31:128
 - Compound requests, 31:55
 - Deadline for, 31:119
 - Document referred to in RFA, objection for failure to attach copy, 31:61
 - Evidentiary objections raised at trial, 31:130
 - Failure to object, deemed admissions, 31:06
 - Failure to respond as waiver of objections, 31:77
 - Grounds for, 31:123
 - Hearsay, 31:132
 - Improper objections, 31:129

- Late objection, 31:119
- Mixed question of law and fact not objectionable, 31:16
- Outside scope of discovery, 31:130
- Preserving objection in stipulation to extend response deadline, 31:85
- Privilege, 31:134
- Protective order compared to objection, 31:122, 31:180
- Reasons supporting objections, 31:120
- Requesting party's options after objection, 31:123
- State of Texas, Attorney General objecting to RFA prejudicing state's rights, 31:04
- Subparts, 31:57
- Timeliness, 31:84
- Ultimate fact or genuine issue for trial not ground for objection, 31:133
- Undue burden, 31:120, 31:122, 31:131, 31:174
- Other discovery tools, use of RFA with
 - Depositions and interrogatories, 31:43
 - Document requests, 31:44
 - Prior discovery, producing admissions from, 31:42
 - Serve with interrogatories, 31:45
- Parties propounding request, 31:03
- Prior statements, 31:19, 31:42
- Protective orders
 - Burden of proof, 31:180
 - Deadline for response not tolled by motion for, 31:104
 - Extension of time motion combined with motion for protective order, 31:174
 - Motion for, 31:104, 31:180–183
 - Number of requests burdensome, 31:59
 - Objection compared to protective order, 31:122, 31:180
 - Timing service, effect of respondent's motion for protective order, 31:68
- Relief from RFA response, motion for
 - Generally, 31:112, 32:48
 - Affidavits, attaching, 31:206
 - Appellate review, 31:209
 - Authority, 31:188
 - Good cause, 31:196
 - Grounds, 31:190
 - Hearing, 31:208
 - Merits of case, presentation aided by relief, 31:198
 - No undue prejudice showing, 31:157, 31:190, 31:197
 - Proposed answer attaching, 31:207
 - Purpose, 31:189
 - Summary judgment proceeding, leave of court to amend RFA admission, 36:306
 - Timing, 31:204
 - Verification, 31:206
 - Written motion, 31:205
- Responding to requests
 - Client, consulting with, 31:78
 - Deadline for response (see Deadline for response, above)
 - Deemed admissions, 31:06, 31:69, 31:76–77, 31:97, 31:106, 31:108, 31:111
 - Express total-admission, 31:106
 - Format (see Drafting format of response, above)
 - Multi-part response, 31:108
 - Objections (see Objections, above)

- Partial denial or qualification or express partial admission, 31:106
- Qualified response, good faith requirement, 31:109
- Reasonable inquiry requirement, 31:78, 31:110
- Response choices, summary of types of, 31:104
- Service and filing, 31:79
- Supplementation (see Supplementation of response, below)
- Total admission, 31:105
- Total denial, 31:107
- Unable to admit or deny as response, reasonable inquiry requirement, 31:110
- Sanctions for failure to admit (post-trial cost-of-proof)
 - Generally, 31:106
 - Admissions from prior discovery, denying, 31:42
 - Attorneys' fees, costs, and expenses, 31:165–168
 - Baseless claims, failure to admit, 31:26
 - Motion, 31:164–168
 - Restatements of admissions from interrogatories or depositions, failure to admit to, 31:43
- Sanctions generally, frivolous, oppressive, or harassing RFAs, 31:59
- Scope of RFAs
 - Applying law to fact, 31:16–17
 - Broad scope, information leading to discovery of admissible evidence, 31:12
 - Cannot ask party to admit defeat, 31:14
 - Genuine issue for trial, 31:12, 31:26, 31:36
 - Not for pure legal issues, 31:17, 31:36–37
 - Opinions of fact, 31:18
 - Prior statements, establishing, 31:19
 - Ultimate-fact requests, 31:15, 31:26, 31:28, 31:133
- Service
 - Generally, 31:69
 - Certificate of service for responses, 31:98
 - Certificate of service of RFAs, 31:60
 - Citation and petition, requests served with, 10:22
 - Earliest date to serve, serving with citation, 31:66
 - Last date to serve, 31:67
 - Motions, proof of service, 31:140
 - Responses to requests, 31:79
 - Stipulation to extend time for response, 31:85
 - Supplemental responses, time for service, 31:112
 - Timing strategies for first and final RFAs, 31:68
- State of mind, 31:25
- Strategies
 - Baseless contentions, eliminating, 31:26
 - Matters hard to prove, 31:25
 - Prima facie evidence, marshalling proof of each element, 31:27
 - Summary judgment, basis for, 31:28
 - Uncontested facts, using RFAs as proof checklist, 31:24
- Striking. See **Striking**
- Summary judgment. See **Summary Judgment**
- Supplementation of response, 31:68, 31:94
 - Title of document, 31:94
- Techniques (see Drafting format and techniques for request, above)
- Trial, use of responses at. See **Jury Trial**
- Waiver. See **Waiver**
- Withdraw admissions (see Relief from RFA response, motion for, above)

Requests for Disclosure

- Generally, 26:01
- Category of discovery, 32:22
- Claims, defenses, and legal contentions, 24:50
- Deadline for response
 - Generally, 24:160–162
 - Calculating response date, 26:31
 - Exception, testifying experts information, 26:39
 - Extensions of time, 26:41
 - General deadline, 26:38
- Drafting response
 - Failure to respond, 26:48
 - Format, 26:46
 - Objections, protective orders, and privileges, 26:47
 - Production of documents, 26:49
- Factors in determining whether to use, 24:132
- Filing, 26:28
- Format
 - Certificate of service, 26:09
 - General form of, 26:08
 - Key language required, 26:10
 - Selecting information category, narrowing request, 26:11
- Inquiry areas
 - Economic damages, calculation of, 26:18
 - Indemnity, insuring agreements, and settlement agreements, 26:21
 - Legal theories and factual bases of claims or defenses, 26:17
 - Medical records and bills, 26:22
 - Parties and potential parties, 26:16
 - Testifying experts, 26:20
 - Witnesses and witness statement, 26:19
- Interrogatories, using requests for disclosure first, 30:07
- Parties serving request, 26:02
- Sanctions, failure to respond, 26:48, 26:55–56, 26:62
- Service
 - Generally, 26:29
 - Amended or supplemental responses, 26:62
 - Citation and petition, requests served with, 10:22
 - Completion of service, 26:31
 - Methods of service, 26:30
 - Proof of service, 26:32
- Stipulations. See **Stipulations**
- Supplementation of responses
 - Deadline for service in Level 1 and Level 2 cases, 26:62
 - Failure to supplement, exclusion of evidence, 26:5
 - Format, 26:63
 - Impeachment and rebuttal witnesses, exclusion for failure to identify, 26:56
 - Requirement, 26:54
- Testifying experts, 24:62–64
- Time for making request, effect of case tracking on duration of discovery period, 26:03

Res Judicata

- Affirmative defense, 14:334
- Dismissal with prejudice, 37:400
- Joinder of contributing parties, 6:320

- Nonsuit, 37:303–307
- Plea in abatement, 15:133
- Pleading of res judicata sustained in absence of special exception, 14:313
- Same transaction, 14:421
- Settlement, effect on pending counterclaim, 38:124
- Severed actions, no res judicata, 6:424
- Summary judgment motion, judgment from other cases to support, 36:318

Rescission

- Distinction between republication and rescission, 14:363
- Statute of limitations, 3:138

Resetting Trial

- See also **Setting Case for Trial**
- Request for production and inspection, supplementation and amendment of responses and production, 27:247, 27:249

Residence and Domicile

- Diversity jurisdiction, 9:434, 9:494
- Forum non conveniens. See **Forum Non Conveniens**
- Nonresidents
 - Aliens. See **Aliens**
 - Jurisdiction. See **Jurisdiction**
 - Motor vehicle accidents, service and jurisdiction, 8:287, 10:12, 10:200–204
 - Nonparty nonresident document inspection, deposition subpoena, 27:299
 - Service. See **Service of Process and Papers**
 - Tolling provisions, applicability to nonresident defendants, 3:453
 - Venue, 9:78
- Transients
 - Publication, affidavit's residence unknown or defendant transient, 10:248
 - Venue, 9:77
- Venue issues, 9:72–78

Respondent Superior

- Physical and mental examinations of agents and employees, 29:21

Restraint of Trade

- Statute of limitations, 3:139

Retainers

- Generally, 1:146–150, 1:169, 1:216–218, 1:272

Retirement Benefits

- Statute of limitations for enforcement of divorce property decree, 3:320

Return of Service. See **Service of Process and Papers**

Reversal

- No notice of dismissal as reversible error, 37:407
- Non-joinder of indispensable party as reversible error, 14:383
- Nonresident's presumed general appearance on reversal of default and remand for trial, 8:447
- Proper service on nonresident not presumed, reversal of default judgment, 37:231
- Reinstatement hearing after dismissal, 37:435
- Restricted appeal of default judgment, error in service and citation resulting in reversal, 37:268
- Special exception, effect of failure to file, 15:76
- Summary judgment
 - Appellate standard favoring reversal, 36:25, 36:533
 - Cross-motion for summary judgment, effect of appellate reversal, 36:489
 - Failure to respond, 36:535
 - Partial summary judgment, 36:54, 36:524
- Venue improper, 9:294

Rule 204 Examination. See **Physical and Mental Examinations**

— S —

Sanctions

- Amended or supplemental pleadings surprise opponent, taxing party with costs of continuance, 14:506
- Contempt. See **Contempt**
- Default judgment as discovery sanction, 37:118–122
- Depositions, 28:222–225, 28:299
- Discovery disputes. See **Discovery Disputes**
- Dismissal with prejudice as sanction, 37:400
- Dismissal without prejudice as sanction, 37:392
- Engagement contract, addressing responsibility for sanctions, 1:199
- Ex parte communications with treating physician, 25:498
- Frivolous or delaying actions. See **Frivolous or Delaying Actions**
- Interrogatories, motion for sanctions for missing, evasive, or incomplete answers, 30:267
- Mandamus, 18:84
- Nonsuit, 37:316, 37:330–332
- Physical and mental examinations, failure to comply with court order, 29:158, 29:167
- Recusal motion, 16:245
- Removal notice subject to Rule 11 sanctions, 9:611
- Repleader, failure to comply with order, 14:462, 14:478
- Request for production and inspection, 27:03, 27:59, 27:86, 27:112, 27:158, 27:273
- Requests for admissions. See **Requests for Admissions**
- Requests for disclosure, failure to timely respond or to supplement responses, 26:48, 26:55–56, 26:62
- Self-incrimination, privilege against. See **Self-Incrimination, Privilege Against**
- Special appearance, 8:383, 8:440
- Striking. See **Striking**
- Summary judgment motion, 36:514–516
- Venue improper, sanctions for knowingly filing in, 9:185
- Wrongful injunction preventing collection of judgment, penalty for, 17:390

Saturdays, Sundays, and Holidays

- Discovery, calculating response deadline, 24:161
- Request for production and inspection, time to respond, 27:107
- Service on Sunday, limitations on, 10:29
- Statute of limitations, filing, 3:64

School Districts

- Capacity to sue or be sued, 6:168
- Service, 10:87

Scire Facias, Writ of

- Death of party, 6:256–260
- Service of writ on decedent’s executors, administrators or heirs, 10:67

Sealing Records

- Discovery, protective order sealing information, 24:12, 32:51
- Intervention, 6:544
- Requests for admissions, confidential documents submitted under seal for in camera inspection, 31:180
- Trade secrets, sealing court files, 25:440–444
- TRO or temporary injunction, order referencing sealed document, 17:235

Seamen

Non-maritime claims, statute of limitations, 3:219

Secretary of State. See Service of Process and Papers**Section 142 Trust. See Trusts and Trustees****Securities**

See also **Shareholder Derivative Actions**

Statute of limitations for fraud, 3:212, 3:436

Security for Costs. See Costs**Self-Critical Analysis Privilege**

Information generated by internal investigations, 25:294–295

Self-Incrimination, Privilege Against

Asserting privilege, 25:330–332

Burdens of proof, 25:338

Civil litigation, use in, 25:308–310

Comparison to criminal defendant's privilege not to testify, 25:302

Compelling discovery, 25:340

Constitutional provisions, 25:29, 25:300–302

Corporate entity's and employee's interests in conflict, notifying employee with "corporate Miranda warning," 25:326

Depositions and interrogatories, 25:309, 25:316

Immunity, 25:332, 25:358

Informing jury of assertion of privilege, 25:364–365

Insurance coverage, effect of insured invoking privilege, 25:350

Parallel civil and criminal proceedings, 25:310, 25:357

Physical and mental examinations, 25:318

Production of documents, 25:317

Protective order, 25:359

Sanctions

Generally, 25:346–350

Avoiding sanctions, 25:356–359

Standing to assert privilege, 25:324–326

Summary of rules, 25:300–302

Waiver, 25:338–339

Separate Property

Standing, 6:222

Sequestration

Final judgment, 19:480-482

Grounds, 19:400-403

Issuance of writ, 19:410-418

Motion to dissolve or modify, 19:430-431

Nature of remedy, 19:390

Replevy, 19:440-443

Third party claims, 19:450-19:457

Wrongful sequestration, 19:470-474

Service of Process and Papers

Amending citation and return of service

Grounds, 10:480–486

Procedures, 10:492–497

Appeal

Bill of review, 10:590, 10:596–600, 10:606–616, 37:238

Direct appeal, 10:547–579

Preserving issues for appeal, 10:562–578

Restricted appeal, 10:584–590

Case examples, 10:611

Certificate of service

- Generally, 10:458–460
- Interrogatories, 30:36, 30:89
- Motions, 16:124–126
- Request for production and inspection, 27:39, 27:79, 27:232
- Requests for admissions, 31:60
- Requests for disclosure, 26:09, 26:32
- Response to requests for admissions, 31:98
- Summary judgment motions, 36:369

Challenging citation and service

- Generally, 10:524–531
- Burden of proof. See **Burden of Proof**
- Direct appeal, 10:547–579
- Motion to quash, 10:536–538
- New trial (see New trial, motion for, below)

Citation

- Amending (see Amending citation and return of service, above)
- Challenging citation (see Challenging citation and service, above)
- Defective citation, 8:447, 10:330, 10:332, 10:335, 10:337–344, 37:174, 37:176
- Fees for issuance, 10:324
- Joinder of parties, new party served with citation, 6:373
- Misnamed or misidentified defendant, 6:179
- Preparation of, 10:322–324
- Publication, citation by, 10:266
- Requirements for, 10:330–344

Common interest (joint defense) privilege, service of affidavits before hearing, 25:284

Construction of cases and statutes. See **Construction and Interpretation**

Counterclaims, 14:402

Cross claims, 14:447

Default

- Amended petition, effect of failure to serve on default, 37:173
- Appeal (see Appeal, above)
- Capacity, 10:293
- Case examples, 10:385–386
- Certificate of last known address required by Rule 239(a), 10:305
- Citation, defects in, 8:447, 10:330, 10:332, 10:335, 10:337–344, 37:174, 37:176
- Hearing and judgment, 10:273
- Insurance Commissioner served, record reflecting basis for substituted service, 10:211
- New trial motion, 37:173–177
- No presumption of valid issuance, service, and return of citation for default judgments, 37:177
- Notice issues, 10:02
- Pleading service facts, 10:281–282
- Publication, service by, 10:251, 10:270, 10:273, 37:216–219
- Record supporting, 10:140, 10:162–163
- Return of service, defects in, 10:357
- Secretary of State forwarding process to incorrect address, 10:194
- Strict compliance with service rules required to support default judgment, 10:05, 10:524–530
- Substituted service on employee or agent in defendant's office, 10:236
- Time, 10:195

- Delay, 3:65, 10:31, 10:192
- Deposition
 - Notice, 28:79
 - Response to notice and subpoena, 28:231
 - Subpoena, 28:88
- Diligence
 - Generally, 10:186, 10:351
 - Bill of review, 10:610
 - Business Corporation Act, 10:148, 10:163
 - Corporation's agent cannot be found, showing diligence in affidavit or return of service, 10:162
 - Exception for plaintiff showing diligence for service after limitations period expired, 10:32
 - Filing in court without jurisdiction, diligence in serving defendant for second case, 3:490
 - Publication if defendant cannot be found, 10:248, 10:256–258, 10:269, 10:272
 - Substituted service, 10:110, 10:165
 - Unsuccessful service, 10:424
 - Written waiver of service or extension of limitations period, 10:32
- Discovery disputes, service of motion, 32:13
- Documents included in service, 10:18–22
- Federal statute authorizing nationwide service of process, 9:448
- Interrogatories and responses to, 30:36, 30:85–91, 30:117, 30:223–224
- Joinder of parties, new party served with citation, 6:373
- Mail, certified or registered
 - Generally, 10:100–104
 - Minors, validity of service by mail, 10:41
- Methods of service, 10:10–12
- Motions, service requirements
 - Generally, 10:21, 16:48, 16:108–110
 - Certificate of, 16:124–126
 - Methods of, 16:116–119
 - Opposition papers, 16:143
 - Recusal motion, 16:241
- Necessary and indispensable parties, 6:337
- New trial, motion for
 - Appeal, preserving issue for, 10:562–568
 - Bill of review (see Appeal, above)
 - Defendant's burden and evidence, 10:552–556
 - Time limits, 10:544–546
- Nonresidents
 - Business agents of (see Substituted service on nonresident's business agents, below)
 - Long-arm statutes, 2:128, 10:12, 10:148–153
 - "Minimum contacts," 10:93, 10:148, 10:202, 10:221
 - Nonresident in Texas when served, 8:114–116
 - Persons serving citation on nonresidents, 10:314
 - Secretary of State, substituted service on (see Secretary of State, substituted service on, below)
- Overview
 - Actual notice neither required nor sufficient, 10:02
 - Default judgments, 10:05
 - Jurisdiction requiring service, appearance, or waiver, 10:03
 - Personal jurisdiction, 10:04

- Purpose, 10:01
- Personal delivery, 10:92–94
- Persons serving process
 - Generally, 10:310–316
 - Confirming process actually served, 10:32
- Petition, 14:100
- Physical and mental examinations, 29:134, 29:142–145
- Pleading service facts. See **Petitions**
- Presuit considerations, 2:126
- Probate proceedings, 10:66
- Process servers (see Persons serving process, above)
- Proof of service (see Certificate of service, above)
- Publication. See **Publication**
- Relation-back rule, delay in service, 3:65
- Removal, 9:515–517
- Request for production and inspection. See **Request for Production and Inspection of Documents or Things**
- Requests for admissions. See **Requests for Admissions**
- Requests for disclosure. See **Requests for Disclosure**
- Restricted appeal, 10:584–590
- Return of service
 - Generally, 10:350–357
 - Certified mail, return of service by, 10:434–438
 - Defective return, 37:175–176
 - Publication, return of service, 10:474
 - Statutory agents (see Statutory agents, return of service, below)
 - Substituted service (Rule 106(b)), 10:444–447
 - Successful service (see Successful service, return of, below)
 - Unsuccessful service, 10:354, 10:424–428
- Secretary of State, substituted service on
 - Generally, 10:11
 - Corporations under Business Corporations Act, 10:158–165
 - Insurance business, 10:210
 - Limited liability companies, 10:176
 - Limited partnerships under RLPA, 10:170–171
 - Nonresidents under long-arm statutes, 10:12, 10:148–153
 - Unauthorized or surplus lines insurance companies, 10:180–181
- Special appearance, service of affidavits, 8:424, 8:426
- Statutes of limitation and relation-back rule, 3:65, 3:110–112
- Statutory agents, return of service
 - Generally, 10:452
 - Certificate of service from statutory agent, 10:458–460
 - Return receipt to statutory agent, 10:466–469
- Substituted service on nonresident’s business agents
 - Generally, 10:11
 - Employee or agent, 10:230–237
 - Person in charge of business, 10:218–225, 10:295
 - Tolling provisions, 3:456
 - Unauthorized insurer, service on agent of, 10:242
- Substituted service, Rule 106(b) motion and order
 - Generally, 10:11
 - Permissible means, 10:118–123
 - Prerequisites, 10:110–113
 - Procedures, 10:128–135

- Substituted service on statutory agents
 - Generally, 10:11, 10:140–143
 - Commissioner of Insurance, 10:60, 10:210–212
 - Procedures, 10:186–195
 - Return of service (see Statutory agents, return of service, above)
 - Secretary of State (see Secretary of State, substituted service on, above)
 - Transportation Commission Chair, 8:287, 10:200–204
- Successful service, return of
 - Generally, 10:353, 10:362–364
 - Capacity of person served, 10:392–395
 - How process was served, 10:400–402
 - Server's signature, authority, and verification, 10:414–419
 - Timing, 10:370–371
 - What was served, 10:408–409
 - Where service occurred, 10:376–378
 - Who was served, 10:384–388
- Time for, 3:65, 10:28–33, 10:192, 10:269
- TRO and temporary injunction, 10:29, 17:260–261
- Void service. See **Void or Voidable Actions**
- Waiver of service
 - General appearance, waiver by, 10:514–518
 - Written waiver, 10:32, 10:502–508
- Whom to serve
 - Corporations, 10:48–53
 - Estate, 10:66–67
 - General partnerships, 10:74
 - Governmental entities, 10:84–97
 - Individuals, 10:38–42
 - Insurance companies, 10:58–61
 - Limited liability companies, 10:76
 - Limited partnerships, 10:75
 - Real estate investment trusts, 10:77
 - Residential landlords, 10:79
 - Trust, 10:68
 - Unincorporated nonprofit associations, 10:78

Setoff. See **Offset**

Setting Aside. See **Vacating and Setting Aside**

Setting Case for Trial

- Case maintained on docket, order assigning trial date, 37:428
- Continuance. See **Continuance**
- Dismissal, request for trial setting, 37:421
- Federal and state court trial calendars, comparison, 9:474
- Intervenor not ready for trial, severance to prevent delay, 6:601
- Mass torts, joinder for trial setting, 6:361
- Resetting for trial, 27:247, 27:249
- Settlement, reporting to court, 38:81
- Temporary injunction or TRO, 17:242, 17:293, 17:326
- Venue, trial scheduling and backlog, 9:17

Settlement

- Answering petition, settlement as alternative to, 14:236
- Authority to settle, 38:34, 38:45
- Case conference, informing client about settlement process, 1:267
- Class actions, 6:622, 6:681, 6:748–759
- Consent, 38:12

Construction of cases and statutes. See **Construction and Interpretation**

Court's role

- Court approval, 38:86–91
- Pretrial conferences, 38:80
- Reporting settlement, 38:81

Depositions, leverage for settlement, 28:23

Disclosure of settlement agreements, requests for, 26:21

Discovery of settlement agreements, 24:80–81

Documents required, 38:97, 38:122–127

Election of method of reduction, 38:145

Enforceability

- Contracts, settlements as, 38:156–160
- Judgments, settlements as, 38:166–168

Ethical responsibilities, 38:34–38

Guardian ad litem, 6:27, 6:43–44, 6:64

Injunctions, effect on settlement offers, 17:07

Interrogatories on settlement agreements, 30:69

Intervention, effect of settlement on, 6:600

Mediation, effect on settlements, 38:186, 38:258

Medical history of plaintiff offered to improve chances of settlement, 29:31

Minors and incompetent persons, distribution of proceeds. See **Minors and Incompetent Persons**

Moderated settlement conference, 38:188

Multiple party tort actions

- Generally, 38:132–133
- Intentional torts, 38:138–139
- Negligence, strict liability, and breach of warranty, 38:144–145
- Trial, 38:150–151

Negotiation

- Generally, 38:44–47
- Extend limitations period, agreement to, 3:378, 3:502–505
- Fraudulent concealment and presuit settlement negotiations, 3:378
- Insurer's perspectives, 38:72–74
- Insurers, plaintiff's negotiations with, 38:62–66
- Jurisdiction, effect of nonresident engaging in settlement negotiations, 8:192
- Knowing the case, 38:11
- No privilege, 25:602–603
- Nonsuited controversial claim as good-faith settlement gesture, 37:342
- Notice of claims provisions, time to negotiate settlement, 3:22
- Plaintiff's settlement letters or brochures, 38:52–57

Offers to settle, 38:152–155

Presuit activities, negotiating resolution, 2:70–73

Privilege, 25:602–603

Reasons to try settling, 38:01–04

Removal to federal court, effect of settlement, 9:526

Request for production and inspection

- Discovery of settlement agreements, 27:69
- Nuisance advantage of laborious production requests to spur settlement, 27:57

Requirements, 38:94–97

“Settlement weeks”, courts' facilitating voluntary settlement, 38:176

Shareholder derivative actions, 6:793

Standstill agreement, 14:236

Structured settlements, 38:103, 38:112–116

Summary judgment motion, effect on settlement, 36:11

Tax consequences, 38:18–22, 38:115
Timing issues, 38:10–12
Types of settlements, 38:102–106
Void agreements. See **Void or Voidable Actions**
Wrongful injunction, surety settling without notice, 17:374

Severance

Discretion of court. See **Discretion of Court**
Forum non conveniens, severance and partial dismissal in multiple party cases, 9:341
Intervention, 6:568, 6:592, 6:601
Motion to sever
 Generally, 6:422
 Appeals, 6:454–457
 Counterclaim improperly joined, 14:429
 Grounds, 6:428–433
 New case numbers, 6:425
 No res judicata, 6:424
 Objections to severance, 6:436–440
 Procedures, 6:444–450
 Purpose of severance, 6:423
Nonremovable action joined with removable actions, severing and remanding, 9:503
Partial summary judgment, severing adjudicated claims or defenses, 36:62
Requests for admissions, use of RFA admissions, 31:225
Special appearance motion and orders, 8:381, 8:446
Venue, 9:139, 9:273

Sexual Abuse or Assault

Statutes of limitations, 3:164, 3:435

Sexual Exploitation

Mental health care provider, statute of limitations, 3:228

Shareholder Derivative Actions

Business judgment rule, 6:770
Capacity to sue or be sued, 6:126, 6:216, 15:191
Class actions, comparisons and distinctions, 6:768
Closely-held corporations, exception for, 6:771
Compliance by plaintiff with TRCP 42(a) and art. 5.14, 6:769
Pleading requirements, 6:774–778
Procedures, 6:788–794
Requirements, 6:783–784
Special exceptions, shareholder's lack of standing, 15:67
Venue, 9:85

Shareholders (Generally)

Capacity to sue or be sued, 6:125, 6:216, 6:268–269
Closely-held corporation shareholders, direct action by, 6:771
Plea in abatement, 15:191
Service by publication for unknown stockholders, 10:249
Standing, 6:211, 6:216

Sheriffs or Constables

Service of process, 10:310

Shortening Time. See Extending or Shortening Time

Signatures

Citation, clerk's signature and seal, 10:341
Denial of signature, specially pleading and verifying, 14:280, 14:296
Deposition transcript, 28:111, 28:164, 28:319–321

- Interrogatories and responses, 30:35, 30:135, 30:140–145
- Minor's signature, 10:41
- Motions, 16:39
- Pleadings, 14:32, 14:89
- Presuit investigation, witness's signed statement, 2:19, 2:61
- Request for production and inspection, 27:38, 27:177
- Requests for admissions
 - Document signed or sent by party as nonhearsay, 31:36
 - Responses to RFA, unsigned responses deemed admitted or stricken, 31:97
 - Stipulation to extend response deadline, 31:85
- Requests for disclosure, 26:08
- Return of service, 10:414–419, 10:428, 10:435
- Settlement authority, signature of client, 38:34
- Special exceptions order, signature on, 15:111
- Transfer of proceedings, signature on order granting or denying motion, 9:265
- Verifying affidavit, 14:49–50

Site Inspection

- Presuit investigation, 2:55

Slander. See **Defamation**

Social Security Benefits

- Settlement, impact on, 38:28

Software. See **Computers and PCs**

Sole Proprietorship

- Assumed name, substitution of proper name not required to obtain judgment, 6:240

- Self-incrimination, privilege against, 25:325

Sovereignty

- Injunctive relief, parallel proceedings in foreign suits, 17:102

Special Denials. See **Answer**

Special Exceptions

- Generally, 14:372–374

- Advantages, 15:40–47

- Affirmative defenses, special exceptions to raise, 14:374, 15:02, 15:70

- Allegation of facts in special exceptions not permitted, 15:07

- Answer generally, 15:06, 15:95

- Comparison to motions and pleadings, 16:06

- Defined, 15:01

- Demurrer, comparison with, 15:14–18

- Disadvantages, 15:52–54

- Dismissal of action, defect cannot be cured, 15:09

- Dismissal motion compared with special exception, 15:24

- Failure to challenge pleading defects, effect of

- TRCP 90 & 91, 15:76–80

- Waivers concerning trial objections, 15:86–88

- Jurisdiction, pleading defects, 8:370

- Justiciable interest, lack of distinguished from failure to state cause of action, 15:68

- Leave to amend after exception sustained, 15:08

- No-evidence summary judgment motion, movant's reply to non-movant's response, 36:102

- Plea to jurisdiction compared to, 15:134

- Procedures

- Defensive pleadings, 15:94–97

- Hearing, 15:102–104

- Review of ruling, 15:120–121

- Ruling, 15:110–115

- Purpose of, 15:01, 15:03
- Strike motion, comparison with, 15:25
- Summary judgment motion, 15:09, 15:15, 15:26, 15:42, 36:30–31, 36:417, 36:450–453
- Tactical considerations, 15:32–34, 15:46
- Temporary injunction, 17:178
- Timing, 15:05–06
- Types of pleading defects subject to special exceptions, 15:60–70
- Types of special exceptions, 15:02
- Waiver
 - Attorneys' fees, failure to plead statutory bar to as waiver of right to raise at trial, 15:66
 - Failure to take special exception waives defect, 15:04
 - Introduction of evidence to prove missing element of cause of action, effect of failure to object, 15:45
 - Preserving objections for trial, 15:43
 - TRCP 90 & 91, 15:76–80
 - Trial objections, waivers concerning, 15:86–88
 - Written order required or exceptions waived, 15:111

Specific Performance

- Statute of limitations for real estate contract, 3:146

Splitting Causes of Action

- See also **Severance**

- Failure to plead claims, 14:171

Spousal Communication Privilege

- Comparison to spousal testimony privilege, 25:562
- Divorce, separation, and death, effect on privilege, 25:561
- Elements of privileged communication, 25:576–578
- Holder and claimants, 25:596
- Standing, 25:578
- Summary of privilege, 25:560
- Waiver, 25:597

Spouses

- Affirmative defense, separate debt of spouse, 14:364
- Child custody. See **Child Custody**
- Child support. See **Child Support**
- Divorce. See **Dissolution of Marriage**
- Injunctions between spouses, 17:08
- Spousal communication privilege. See **Spousal Communication Privilege**
- Spousal testimony privilege, 25:562
- Standing, 6:222
- Wrongful death. See **Wrongful Death**

Standing

- Assignees, 6:214
- Associations, 6:221
- Attorney-client privilege, 25:200–203
- Bankruptcy, 6:219
- Capacity to sue compared with standing, 6:203–205
- Challenging standing
 - Amend, opportunity to, 6:230
 - Appellate review, de novo standard, 6:232
 - Burden of proof, 6:231
 - Motion, form of, 6:227
 - Objection, 6:226–228, 6:233

- Substitution, curing lack of standing, 6:233
- Testing standing at time of filing, 6:229
- Time for objection, 6:226
- Class actions, 6:674, 6:680
- Corporate claims, capacity and standing, 6:205–206
- Decedent's estate, interested persons, 6:217
- Definition of standing, 6:06
- Dismissal of actions, no standing, 37:391
- Government agencies, claims against, 6:210
- Guardian ad litem's standing to appeal, 6:42
- Injunctions, 17:144
- Injury to property, §6:224
- Interpleader, 6:490
- Intervention, justiciable interest, 6:537
- Joinder effect on standing, 6:313
- Justiciable interest distinguished from standing, 6:537, 15:68
- Lack of standing defect cannot be waived, 6:201
- Meritorious claim not required, 6:201
- Nonsignatory to contract, 6:213
- Personal representatives, 6:215
- Physical and mental examinations, standing to move for order for Rule 204 exam, 29:131
- Physician-patient privilege, 25:509
- Plea to jurisdiction, 15:151
- Requirement, 6:200
- Self-incrimination, privilege against, 25:324–326
- Shareholders, 6:216, 15:191
- Special exceptions, lack of standing, 15:67
- Spousal communication privilege, 25:578
- Spouse, 6:222
- Statutory standing, scope of protection, 6:211
- Trusts, interested persons, 6:218
- Unincorporated association, member of, 6:220
- Verified pleading, determining if required, 6:206
- Wrongful death, 6:223
- Zoning challenge by non-owner, 6:212

State Bar

- Fee disputes committees, 1:204–205
- Rules of Professional Conduct. See **Ethics**
- SBOT, use of, 16:38

State or Federal Court. See **Federal or State Court, Choosing Between**

State of Mind

- Attorney-client privilege, 25:117
- Requests for admissions, 31:25

Statement of Facts (Reporter's Record). See **Court Reporter**

Statute of Frauds

- Affirmative defense, 14:335
- Settlement agreements, 38:156

Statutes of Limitations

See also **Statutes of Repose; Time**

- Accrual of limitations period
 - Generally, 3:34–38
 - Continuing torts, 3:44–47, 3:162, 3:171
 - Written acknowledgment of debt begins new limitations period, 3:52–55

- Adverse possession, 3:303–312
- Affirmative defense, 3:06, 3:65, 14:336
- Amended and supplemental pleadings
 - Generally, 14:514
 - Leave of court required, 14:494–495
 - Omitting defendant, 14:470
 - Relation-back rule (see Relation-back rule, below)
 - Without leave of court, 14:484
- Answer, 14:245, 15:06, 15:95
- Arbitration award, actions to affirm or vacate, 3:350
- Assumed name, substitution of parties, 6:239, 6:241, 14:201
- Bill of review, 3:351, 10:596, 37:237
- Borrowing statute, foreign limitations law, 3:15, 3:579
- Business claims, 3:192–197
- Civil rights claims, 3:335
- Class actions, 3:511, 6:614, 6:726
- Commercial claims, 3:192–197
- Common interest (joint defense) objection, timely service of affidavits, 25:284
- Common law forum non conveniens, motion to dismiss, 9:398
- Constitutional issues, 3:338, 3:578-583, 3:588-592
- Contract actions, 3:114–117, 3:122–141
- Contribution, 3:354
- Corporation in default on franchise taxes, effect on claims or defenses during period of incapacity, 6:127
- Counterclaims, 14:401, 14:415
- Cross claims, 14:439
- Deceptive Trade Practices Act (DTPA), 3:130, 3:196, 3:427
- Deeds, 3:147, 3:151
- Defamation, 3:202, 3:428
- Derivative tort claims, 3:342–345
- Discovery rule
 - Application and effect of, 3:392–395
 - Application to specific causes of action, 3:418–438
 - End of suspension of limitations, 3:410–413
 - Fraudulent concealment distinguished from, 3:375
 - Pleading, 3:395
 - Qualifying injuries, 3:400–405
- Dismissal of actions, 7:20, 37:399, 37:427
- Dissolved corporation
 - Claims against, 3:352
 - Duration of capacity to sue or be sued after dissolution, 6:132–135, 6:269
- Family Code actions, 3:316–324
- Federal limitations, 3:218–220
- Fiduciary duty, breach of, 3:209
- Filing, expiration of limitations period
 - Generally, 3:60–67
 - Errors in parties, effect of, 3:72–76, 6:173–180
 - Relation-back rule (see Relation-back rule, below)
- Forfeiture actions, §3:337
- Forum non conveniens motion, 9:369
- Fraud and fraudulent concealment
 - Application and effect of, 3:364–368
 - Duty to disclose, 3:384–386
 - What constitutes fraudulent concealment, 3:374–379

Fraud and negligent misrepresentation, 3:208, 3:210
Fraudulent transfers, 3:357
Incompetent persons. See **Minors and Incompetent Persons**
Indemnity, 3:353
Initial client contact, checking statute to avoid malpractice action, 1:27
Intentional torts
 Persons, injury to, 3:158–166
 Property, injury to, 3:170–173
Interrogatories, deadlines for responding to, 30:106–110, 30:224
Intervention, interlocutory appeal, 6:570
Joinder of parties, 6:386–389
Judgments, 3:355–356
Laches. See **Laches**
Maritime and Jones Act Claims, 3:219
Medical malpractice. See **Medical Malpractice**
Minors. See **Minors and Incompetent Persons**
Misnomer or misidentification of parties, 6:172–180, 14:202
Motions, 16:49, 16:110, 16:135, 16:144
Negligence, 3:178–180
Negotiable instruments, 3:170, 3:292–297
New trial motion, 10:273, 37:164, 37:218
No-evidence motion for summary judgment, deadline for movant’s reply to non-movant’s response, 36:100
Nonsuit, 3:67, 37:313, 37:348, 37:356–357
Notice of claim requirements, 3:20–22
Overview
 Limitations period defined, 3:01
 Purposes, 3:02
 Timeliness, 3:03
 Tolls and extensions, 3:04
Pleadings toll, 14:03, 14:100
Post-trial motion deadlines, effect of failure to notify of dismissal, 37:427
Premises liability, 3:186
Products liability, 3:187
Professional negligence. See **Professional Negligence**
Public entities, claims by or against, 3:330–336
Real estate contracts, 3:146–152
Recusal motion, timely filing, 16:238–239
Reinstatement after dismissal, motion for, 37:442–444
Relation-back rule
 Added, omitted and substituted parties, 3:105-108
 Amended pleadings, 3:96–103, 14:460
 Counterclaims and cross-claim, 3:82–90
 Delay in service, diligence, 3:65, 3:110-112
Remand to state court, 9:574–576
Removal to federal court, 9:514–517, 9:522–526
Repleading, 15:113
Residual limitations period, 3:359
Restricted appeal, 37:265
Retroactive application of legislative amendments, 3:588–592
Securities fraud, 3:212
Self-incrimination, privilege against inapplicable if statute of limitation for crime expired, 25:332
Service, time for, 10:28–33, 10:42

- Severance, 6:444
- Shareholder derivative actions, 6:776
- Sources of law, 3:12–15
- Special appearance, 8:426–427, 8:444
- Special exception to defect in pleadings, 15:05–06, 15:79, 15:95, 36:410, 36:451
- Summary judgment motion
 - Generally, 36:345–349, 36:350
 - Amending pleadings, 36:469–470
 - Appeals, 36:530
 - Hearing, untimely notice, 36:418
 - Motion to strike, opposition's use of, 36:410
 - Movant's reply to opposition, timely filing and service, 36:477
 - New trial motion after, 36:523
 - Objections, 36:408, 36:410
 - Rebuttal evidence, timely filing of, 36:479
 - Response in opposition, 36:396–399
 - Special exception to, 36:451
 - Special exceptions, 36:410
- Temporary injunction, timely filing of interlocutory appeal, 17:342–343
- Tolling and extension rules
 - Generally, 3:444–446
 - Absence of defendant from state, 3:452–458
 - Bankruptcy, 3:518
 - Death, 3:484–485
 - Extension by agreement, 3:502–505
 - Filing in court without jurisdiction, 3:490–497
 - Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) and FDIC, 3:520
 - Military service, 3:519
 - Minority and unsoundness of mind, 3:464–467, 3:472–473, 3:478–479
 - Other tolling provisions, 3:510–520
- Transfer from proper venue for purposes of impartial trial, motion for, 9:326
- Unjust enrichment, 3:211
- Venue improper, motion to transfer, 9:224, 9:237, 9:244, 9:250, 9:276, 9:285
- Whistleblower claims, 3:336
- Wills, 3:358
- Workers compensation, §3:142

Statutes of Repose

- Accrual of, 3:530
- Architects, engineers, and designers, 3:534–540
- Builders and repairers, 3:546–554
- Compared to statutes of limitations, 3:527
- Constitutionality, 3:526
- Defined, 3:05
- Discovery rule, 3:528
- Engineers, 3:286
- Fraudulent concealment, 3:529, 3:554, 3:561, 3:570
- Judicial interpretations, 3:583
- Manufacturers and sellers, 3:568–572
- Person protected, 3:524
- Purpose and operation of, 3:525
- Retroactive application, 3:592
- Summary judgment on the pleadings, 36:32
- Surveyors, 3:560–562

Statutory Construction. See **Construction and Interpretation**

Statutory County Courts

Subject matter jurisdiction, 7:60–66

Stay of Proceedings

Class certification order, interlocutory appeal, 6:725

Injunctions, 17:139, 17:344–345

Self-incrimination, privilege against, stay of civil suit pending criminal prosecution, 25:357

Shareholder derivative action stayed by corporation's internal investigation, 6:791

Special appearance interlocutory appeal staying trial, 8:444

Venue of injunctive action to stay court proceedings, 9:53

Stipulations

Breach of contracts, stipulating damages not adequate remedy, 17:51

Depositions, 24:169–170, 28:78

Discovery, 24:111, 24:162, 24:168–171

Partial summary judgment, abandonment of action by stipulation, 36:62

Physical and mental examinations. See **Physical and Mental Examinations**

Removal, effect of stipulations on, 9:508

Request for production and inspection

Confidential information, stipulated protective order, 27:223

Deadline for response, stipulation to change, 27:106

Extension or shortening time for response, 27:86

Informal request and response, 27:27

Requests for admissions, stipulation to extend response or objection deadline, 31:85–86, 31:119

Settlement offers or settlement negotiations, 38:47

Subject matter jurisdiction, no stipulation, 7:19

Summary judgment motion

Late filed response, 36:397–398

Stipulation as evidence, 36:320

Trade secrets, consent to protective order, 25:416–419

Venue improper, stipulation to facts, 9:257

Stockholders. See **Shareholders**

Stream of Commerce Doctrine

Nonresidents, long-arm jurisdiction over, 8:308–314

Strict Liability

See also **Products Liability**

Settlement and contribution, 38:144–145

Striking

Generally, 15:25

Amended pleadings, 14:485, 14:494–495, 14:502, 14:504

Defects in pleadings cannot be cured, 15:03

Frivolous pleadings, 14:80

Intervention. See **Intervention**

Joinder of parties, 6:410, 6:414–418

Post-answer default, 37:105

Request for production and inspection, failure to timely respond, 27:112

Requests for admissions

RFA service untimely, striking deemed admissions, 31:69

Stipulation to extend response deadline, preserving objection to prevent striking, 31:85

Unduly burdensome RFAs, 31:174

Unsigned responses stricken, 31:97

Requests for disclosure, striking unsigned requests, 26:08

Special exceptions compared to motion to strike, 15:25
Summary judgment, Movant's reply to opposition, motion to strike late response, 36:480

Summary judgment motion
Late-filed response, 36:397
Opposition's use of motion to strike, 36:410

Written motion to strike pleadings, 15:94

Subpoenas and Subpoenas Duces Tecum

Depositions

Marking subpoena as exhibit, 28:162
Nonparties invoking privilege against self-incrimination, 25:324
Nonparty deponent, subpoena requirements, 28:45, 28:86–92

Discovery, geographical limits on subpoena, 24:35

Filing, 31:70

Physical and mental examinations

Designated examiner, subpoenaing information regarding, 29:52
Medical history of examinee, subpoenaing, 29:30

Privilege, 24:88

Recusal motion, 16:244

Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Requests for disclosure for medical records versus subpoena, 26:22

Special appearance, 8:396

Subsidiaries

Capacity to sue or be sued, 6:119

Jurisdiction, 8:334–335

Substitution of Parties

Agent or representative on behalf of principal, 6:266

Assignees or transferees of interest, 6:264

Assumed names

Capacity of proper party, 6:244
Judgment, substitution of name or defendant to obtain, 6:240–241
Limitations period, 6:239
Motion or sua sponte substitution of proper name, 6:238
Parties suing or being sued in assumed names, 6:236
Petition, 14:201
Registration of assumed name, finding party through, 6:237
Verified denial filed by defendant, 6:242

Capacity, substitution of party with, 6:197

Corporate charter forfeited, substitution of stockholders, 6:124–125

Corporation in default on franchise taxes, substitution for, 6:268

Death

Agent or representative on behalf of principal, 6:266
Dismissal of nonsurviving claim, 6:252
Scire facias, writ of, 6:256–260
Severance to avoid delay if one defendant dies, 6:259
Suggestion of death, filing, 6:255–256, 6:266
Survival of claims, 6:248–252
Verdict, substitution not required if death occurs after, 6:254
Verdict, substitution required if death occurs before, 6:253

Dissolution of corporate party, 6:269

Misnamed party, amended pleading substituting correct name., 6:267

Personal representative, 6:160

Real party in interest, 6:265

Remand and removal, effect of substitution of parity, 9:568
Representative of estate, voluntary appearance by filing suggestion of death, 6:255
Standing, substitution curing lack of, 6:233

Successor-in-Interest

Adverse possession, 3:305
Jurisdiction, 8:336

Suicide

Assumption of risk, 14:354

Summary Judgment

Admissibility of evidence in affidavits and supporting documents, 16:65

Affidavits

Generally, 36:228–236
Drafting, 36:252–256
Exhibits and authentication, 36:270–272, 36:434
Extension of time for filing motion, 36:352
Objections to, 36:424, 36:435–436, 36:442
Opposing summary judgment, 36:406
Preparation, 36:262–264
Sanctions, bad faith affidavit, 36:514
Statute of limitations, affidavit insufficient to toll, 3:445
Strategies, 36:242–246

Amending pleadings (see Pleadings, below)

Appeals. See **Appeals**

Bad faith, 36:234, 36:514–516

Bill of review, 10:599–600

Burdens of proof

Both parties movants, 36:163–164
Defendant movant, 36:156–158
Movant's initial burden, 36:132–135
No-evidence motion (see No-evidence summary judgment, below)
Non-movant's "response burden," 36:140–142
Plaintiff movant, 36:148–151

Class actions, 6:608, 6:762

Construction of cases and statutes. See **Construction and Interpretation**

Contention interrogatories, using before preparing summary judgment motion, 30:21

Continuance, 36:80, 36:94, 36:398–399, 36:458–463

Cross-motion for summary judgment, 36:486–489

Determining whether to move for summary judgment

Generally, 36:334–338
Advantages and disadvantages, checklists, 36:326–327

Evidence

Generally, 36:178–182
Affidavits (see Affidavits, above)
Depositions, 36:278–281, 36:286–289, 36:426
Discovery products, use of, 36:204–208
Expert witness, 36:220–223
Improper or incompetent evidence, examples of, 36:186–190
Interested witnesses, 36:214–216
Interrogatory answers, 30:160, 30:276, 36:294–296
Judicial notice, 36:318
Late filed evidence, leave of court, 36:196–198
Movant's reply to opposition, rebuttal evidence, 36:479
Objection to, 36:181

- Pleadings, 36:310–311
- Public records, 36:318
- Requests-for-admission responses, 36:302–306
- Statement of facts, 36:319
- Stipulations, 36:320
- Federal and state courts compared, 9:472
- Filing, 36:353, 36:391
- Hearing, 36:347–349, 36:351, 36:496–499
- Initiating motion
 - How and when to move, 36:344–353
 - Preparing motion, 36:358–361
 - Preparing supporting papers, 36:366–370
- Interlocutory appeal, 18:23, 18:24
- Interrogatories, 30:160, 30:276
- Judgment and order
 - Generally, 36:504–508
 - Comparison of judgment and order, 36:504
 - Finality of partial summary judgment, 36:60–62, 36:505–506, 36:524
 - “Liability judgments”, interlocutory summary judgment, 36:58
 - “Mother Hubbard” clause, 36:506
 - Objection to summary judgment motion, order regarding, 36:409
 - Proposed order, 36:370
 - Sanctions, 36:514–516
- Late motion, failure to object as waiver, 36:347
- New trial motion, preserving issue for appeal, 36:523
- No-evidence summary judgment
 - Basic points, 36:76–85
 - Burdens of proof, 36:77–78, 36:82, 36:91, 36:170–173
 - Combining ordinary and no-evidence motion for summary judgment, 36:82
 - Defective pleadings and special exceptions, 15:09
 - Failure to plead cause of action, special exception to petition, 15:15
 - Movant’s reply to non-movant’s response, 36:100–102
 - Plea to jurisdiction compared to no evidence summary judgment motion, 15:135
 - Pleading facts that negate cause of action, 15:09
 - Responding to no-evidence motion for summary judgment, 36:88–94
 - State and federal appellate courts, 9:472
- Nonsuit, 37:305–306
- Notice, 36:347–349, 36:351, 36:418, 36:478
- Objections
 - Best-evidence objection, 36:433
 - Defects in form of evidence, 36:432–436
 - Defects in substance of evidence, 36:442–445
 - Evidence generally, 36:424–426
 - Improper motion, 36:416–418
 - Late amendment to pleadings, surprise, 36:469
 - Motion to strike compared, 36:410
 - Order, 36:409
 - Preservation of objections on appeal, 36:409
 - Time, 36:408
- Opposing
 - Generally, 36:376–378
 - Movant’s reply to opposition, 36:476–481
 - Objections (see Objections, above)

- Response (see Response in opposition to motion, below)
- Special exceptions to motion for summary judgment, 36:450–453
- Order (see Judgment and order, above)
- Overview
 - Generally, 36:01–03
 - Advantages, 36:08–14
 - Disadvantages, 36:20–25
 - Evidence, 36:40–41
 - Motion for summary judgment on the pleadings, 36:30–34
 - Strategies, 36:46–49
- Partial summary judgment
 - Generally, 36:54–62
 - Designating undisputed facts, 36:68–70
 - Finality of, 36:60–62, 36:505–506, 36:524
 - Motion for reconsideration, 36:524
- Plea to jurisdiction, 15:135
- Pleadings
 - Amending, 14:487, 36:30–34, 36:468–471, 36:481
 - Live pleadings, admissions in, 36:311
 - Objection, pleadings do not support motion, 36:416
 - Pleadings not evidence, 36:310
 - Special exceptions, 15:09, 15:15, 15:26, 15:42, 36:30–31, 36:417, 36:450–453
- Post-judgment motions, 36:522–524
- Presuit considerations, asserting cause of action most likely to result in summary judgment, 2:105
- Requests for admissions
 - Generally, 31:02, 31:157, 36:302–306
 - Deemed admission supporting summary judgment, effect of controverting affidavit, 31:220
 - Filing, 31:70
 - Motion for relief from RFA response, presentation of case’s merits, 31:198
 - Partial summary judgment, supporting proof for motion for, 31:28
 - Ultimate fact requests, 31:28
- Requirements
 - “Material fact,” 36:108–110
 - “No genuine issue,” 36:116–121
 - Party entitled to judgement as matter of law, 36:126–127
- Response in opposition to motion
 - Generally, 16:140–142, 16:144–145
 - Checklist for response, 36:376
 - Deadline, 36:396–400
 - Issues versus grounds, 36:404–407
 - Requirements, 36:384–391
- Reversal. See **Reversal**
- Sanctions, 36:514–516
- Service, 36:353, 36:391
- Special exceptions, 15:09, 15:15, 15:26, 15:42, 36:30–31, 36:450–453
- Statutes of limitations. See **Statutes of Limitations**
- Waiver. See **Waiver**
- Sundays.** See **Saturdays, Sundays, and Holidays**
- Supplemental Pleadings.** See **Amended and Supplemental Pleadings**
- Supplementary Responses**
 - Discovery. See **Discovery**
 - Interrogatories. See **Interrogatories**

Privileges, amending discovery response to assert, 25:38
Request for production and inspection. See **Request for Production and Inspection of Documents or Things**

Requests for admissions. See **Requests for Admissions**

Requests for disclosure. See **Requests for Disclosure**

Supreme Court of Texas

Altai test and discovery rule, 3:418

Class certification order, 6:728-729

Defective service, preserving issue for appeal, 10:563

Tarasoff-type duty to warn potential victims, 25:492, 25:546

Temporary injunction based, 17:337, 17:357

Venue in multiple plaintiff cases, orders granting or denying transfer based on implied finding of improper joinder or intervention, 9:291

Surprise. See **Mistake, Inadvertence, Surprise, or Neglect**

Surveyors

Statutes of repose, 3:560–562

Survival of Actions

Generally, 6:248–252

Plea to jurisdiction, death of party, 15:157

Tolling provision for survival actions, 3:485

— T —

Taking Case

Case assessment. See **Case Assessment and Valuation**

Case conference. See **Case Conference**

Cost arrangements. See **Costs**

Engagement contract. See **Attorney-Client Relationship**

Fee arrangements. See **Attorneys' Fees**

Formalizing attorney-client relationship. See **Attorney-Client Relationship**

Initial client contact. See **Initial Client Contact**

Presuit activities. See **Presuit Activities**

Prior counsel, taking over case from, 1:282–285

Taxes

Ad valorem taxes

Injunctions against collection, 17:127

Service in ad valorem tax suits, 10:248, 10:275

Adverse possession, 3:307

Corporation in default on franchise taxes, 6:124–128, 6:135, 6:268

Presuit investigation of tax records, 2:29–30, 2:47

Settlement, tax consequences, 38:18–22, 38:115

Statutes of limitations for on-going litigation, 3:512

Taxing Costs. See **Costs**

Telephones

Depositions by telephone, 28:99

Doing business in state, effect of Texas telephone directory listings on jurisdiction, 8:217

Initial client contact, handling first telephone call, 1:03

Jurisdiction, telephone fraud, 8:367–368

Motions, telephonic document transfer (Fax), 16:118

Motions, telephonic hearings, 16:155

Numbers. See **Addresses, Telephone Numbers, and Web Addresses**

Temporary Restraining Order (TRO). See **Injunctions**

Termination of Parental Rights. See **Parent-Child Relationship**
Texas Supreme Court. See **Supreme Court of Texas**

Third Parties

Compulsory counterclaims, 14:414
Impleader. See **Impleader**
Physician-patient privilege, 25:473
Requests for admissions, use at trial against third parties not permitted, 31:222
Statute of limitations for third party claims, 3:88
Tarasoff-duty to warn potential victims in mental health context, 25:492, 25:546

Time

See also **Laches; Statutes of Limitations**
Depositions, duration of examination, breaks, 28:03, 28:66
Depositions of testifying experts, timely scheduling of, 24:65
Discovering party, earliest and latest date allowed under Discovery Control Plan Levels, 24:154–155
Discovery, deadlines for responding party, 24:160–162
Discovery limitations, effect of Discovery Control Plan Levels, 24:33
Extending time. See **Extending or Shortening Time**
Interpleader, 6:474, 6:494
Interrogatories, 30:45, 30:90–91
Intervention, 6:549–550, 6:578, 6:592
Physical and mental examinations, 29:28, 29:68–69, 29:142–144, 29:186
Plea in abatement, 15:166
Repleading after special exception sustained, 15:113
Requests for admissions, 31:84, 31:112
Requests for disclosure. See **Requests for Disclosure**
Sealing court records, timely hearing on motion, 32:51
Settlement demand, 38:57
Severance, 6:444
Shortening time. See **Extending or Shortening Time**
Testifying experts, designation of, 24:64
Trade secrets, protective order, 25:426

Title

Adverse possession, statute of limitations for suing to recover property held by another under title or color of title, 3:306
In rem or quasi in rem jurisdiction, 8:356–361
Necessary and indispensable parties, 6:321
Specially pleaded matters, trespass claim in title to realty suit, 14:295
Statutes of limitations, comparison of specific performance and removal of clouds on title, 3:146
Venue, 9:34

Tortious Interference Claim

Justification as affirmative defense, 14:353

Torts

See also **Personal Injury**
Counterclaims, 14:426
Defamation. See **Defamation**
Dissolved corporation, duration of capacity to sue or be sued after dissolution, 6:133
Impleader of insurer not permitted, 6:356
Jurisdiction, 8:276–279, 8:285–293
Mass torts. See **Complex Litigation**
Presuit notice requirements for governmental entities, 2:191–192
Settlement of multiple party tort actions. See **Settlement**

- Similar incidents, discovery of, 24:52
- Statutes of limitations
 - Accrual, 3:38, 3:44–47
 - Continuing torts, 3:44–47, 3:162, 3:171
 - Derivative tort claims, 3:342–345
- Venue, suits under Tort Claims Act, 9:45

Toxic Substances

- Statute of limitations, 3:187, 3:503

Trade Organizations

- Jurisdiction in conspiracy cases, 8:293
- Lobbying activities, effect on jurisdiction, 8:417
- Presuit investigation, 2:48–49

Trade Secrets

- Covenant not to compete, injunctive relief, 17:88–91
- Misappropriation, statute of limitations, 3:194, 3:437
- Privilege
 - Elements of, 25:376–382
 - Pleading tips, 25:391
 - Preliminary concerns, 25:388–392
 - Protective orders (see Protective orders, below)
 - Summary of rule, 25:370–371
 - Waiver of, 25:70, 25:388, 25:392
- Protective orders
 - Generally, 25:389–399
 - In camera review, 25:435
 - Motion, 24:405, 25:424, 25:427
 - Requesting order by consent, 25:416–419
 - Requesting order by contested motion, procedures, 25:424–429
 - Requirements, 25:404–405
 - Standard for weighing, 25:434
 - Terms of protective orders, 25:411
 - Types of orders, 25:410
- Request for production and inspection, 27:71, 27:154, 27:367
- Sealing court files, 25:440–444

Transcripts

- See also **Court Reporter; Record of Proceedings**

Depositions

- Authentication, 36:272
- Corrections, 28:318
- Delivery, 28:323
- Exhibits, 28:324
- Fees, 28:109–110
- Signatures, 28:111, 28:164, 28:319–321
- Summary judgment motion, filing part of transcript, 32:286
- Motion to suppress deposition, 28:321

Transfer of Proceedings

- See also **Venue**

- Contempt, violation of injunction, 17:308
- Express agreement of parties, 9:172
- Federal and state court, choosing between, 9:450
- Improper venue, 9:222–229, 14:234
- Nonsuit, effect on motion to transfer venue, 37:314
- Plea to jurisdiction, court lacks power to transfer case, 15:127
- Probate jurisdiction, 7:88

Proper venue, transfer from
Generally, 9:302–304
Coordinated pretrial proceeding, 9:334.1
Convenience and interests of justice, motion for, 9:310–315
Impartial trial, procedures for motion for transfer for, 9:320–333
Special appearance, 8:434, 8:439

Transients. See **Residence and Domicile**

Travel and Travel Expenses

Depositions, 28:91
Physical and mental examinations, 29:63, 29:89
Request for production and inspection, 27:256, 27:298–299, 27:308
Requests for admissions, 31:166
Special appearance, 8:426
Venue issues, 9:13

Trespass

Specially pleaded matters, trespass claim in title to realty suit, 14:295
Statute of limitations, 3:47, 3:172

Trial. See **Jury Trial**

Trial Setting. See **Setting Case for Trial**

TRO. See **Injunctions**

Trusts and Trustees

Capacity to sue or be sued, joining trustee and beneficiaries, 6:163, 10:68
Charitable trust litigation
Intervention, 6:543–544
Joinder of necessary parties, 6:325
Inmate's certified of copy of trust account balance for in forma pauperis proceeding, 6:107
Joinder of parties in trust litigation, 6:330
Section 142 trust for award to minors and incompetent persons, 6:80, 6:85
Service, 10:69
Settlement in trust, effect on Medicaid benefits, 38:29
Standing of interested person to bring action, 6:218, 6:222
Statute of limitations for breach of trust agreement, 3:125
Subject matter jurisdiction, 7:39
Supplemental needs trust, Minors and incompetent persons, 6:86

— U —

Unclean Hands

Injunctions, 17:70–72

Underinsured Motorist

Statutes of limitations, 3:140, 3:179

Undertakings. See **Bonds and Undertakings**

Undue Hardship. See **Hardship**

Undue Influence

Special exceptions, no justiciable interest, 15:68

Unemployment Compensation

Joinder of parties, 6:326

Unincorporated Associations

See also **Associations**

Assumed names. See **Substitution of Parties**

Capacity to sue or be sued, 6:166

Diversity jurisdiction, 9:434
Service, 10:78
Standing, 6:220

Uninsured Motorist

Special denial requiring verification, 14:288
Statutes of limitations, 3:140, 3:179

Unjust Enrichment, 3:211

U.S. Government. See **Public Entities and Employees**

Usury

See also **Interest on Money**
Plea to jurisdiction, usury action not surviving party's death, 15:157
Special denial requiring verification, 14:284
Statute of limitations, 3:141

— V —

Vacating and Setting Aside

Arbitration award, statute of limitations for vacating, 3:350
Class action settlement, error to set aside judgment, 6:759
Court's plenary power to grant new trial and vacate default judgment, 37:156
Hearing on motion for new trial to set aside default obtained before hearing on
special appearance, 8:380
Intervention, 6:551, 6:585
Partial summary judgment, 36:61
Service
Bill of review granted setting aside default, 10:600
Citation, setting aside default for defects in, 8:447, 10:357
Default judgments, service by publication, 10:251
Summary judgment, 36:61, 36:522, 36:524

Valuation of Case. See **Case Assessment and Valuation**

Venue

See also **Transfer of Proceedings**
Basic strategy, 9:10
Bill of review, 9:54
Change of venue. See **Transfer of Proceedings**
Class actions, 6:605
Construction of cases and statutes. See **Construction and Interpretation**
Federal and state court, choosing between, 9:449–450
Forum non conveniens. See **Forum Non Conveniens**
Improper venue, challenging
Generally, 9:196–199
Appeal, 9:251, 9:290–296
Determining whether to challenge, 9:214–216
Further proceedings, 9:282–285
Hearing and evidence, 9:250–257
Motion granted, 9:272–276
Opposing challenge, 9:234–237
Partial transfer, 9:273
Persons who can challenge, 9:204–208
Procedures, motion to transfer, 9:222–229
Reply to opposition, 9:242–244
Ruling on merits, 9:262–266
Injunctions, 9:52–53, 17:137–139

Intervention. See **Intervention**

Joinder of parties, 6:392–394, 6:433

Mandatory venue

Generally, 9:22–23

Family law cases, 9:59

Forum selection clauses, 9:64–66

Guardianship cases, 9:61

Governmental entities, 9:24–46

Injunctions, 9:52–53

Land, 9:34–37

List of special mandatory venue statutes, 9:58

Multiple claims or parties, 9:28

Probate cases, 9:60

Multiple claims

Generally, 9:158

Counterclaims and crossclaims, 9:159

Spurious claims, 9:160

Multiple party cases

Generally, 9:136–139

Dismissed and added parties and claims, 9:166–167

Multiple defendants, one-for-all rule, 9:150–153

Multiple plaintiffs, 9:144–145, 9:257, 9:291

Overview

Appellate district, favorable precedent, 9:14

Basic strategy, 9:10

Client convenience, 9:12

Demographics, 9:15

Home-turf advantage, 9:11

Not jurisdictional, 9:02

Notoriety, 9:16

Personal jurisdiction distinguished, 9:03

Purpose, 9:01

Subject matter jurisdiction distinguished, 9:04

Trial scheduling and backlog, 9:17

Witness availability, 9:13

Permissive venue

Generally, 9:22, 9:24–25

Consumer contracts, 9:130

Contract naming county of performance, 9:129

Entity defendant's principal office, 9:84–86

Individual defendant's residence, 9:72–78

Lists of special permissive venue statutes, 9:132

Personal representatives, 9:128

Place where events or omissions occurred, examples of specific claims under pre-1995 law, 9:92–93, 9:104–114

Plaintiff's residence, 9:120–123

Pre-suit depositions, 9:131

Petitions

Allegations, 14:217

Alternative to answering petition, challenge venue, 14:234

Pleading techniques, 9:190–191

Receivership, §19:340

Relevant time for determining venue, occurrence, not filing, 9:26

Selecting venue, factors and good faith requirement, 9:184–185

Subject matter jurisdiction compared to venue, 7:11

Waiver

Establishing venue by, 9:27, 9:172–180

Improper venue, failure to object, 9:223, 9:225

Verdicts

Class actions, uniformity of result, 6:620, 6:627, 6:651

Death, substitution of parties, 6:253–254

Verification

Capacity, objection by verified pleading, 6:07, 6:186, 6:191-192

Contempt, motion for nonparty's failure to comply with deposition subpoena, 27:319

Corporations's capacity to sue or be sued, defects of parties objection raised by verified pleading, 6:139

Disqualification of judge, motion for, 16:240

Interrogatories, verification of responses, 30:140–145

Misidentification of party, objection by verified pleading, 6:181

Plea in abatement, 15:212

Plea to jurisdiction, 15:141

Pleadings generally, 14:44–51

Recusal of judge, motion for, 16:240

Reinstatement after dismissal, effect of unverified motion on court's plenary power and appellate deadlines, 37:411, 37:434

Reinstatement after dismissal, motion for, 37:434

Relief from RFA response, motion for, 31:206

Service

Return of service, 10:419

Substituted service under Rule 106(b), verification of motion, 10:129

Special appearance motion, 8:382

Special denials, matters requiring verification, 14:264–270, 14:276–288

Special exceptions, lack of or improper verification, 15:63

Standing, verified pleading. See **Standing**

TRO or temporary injunction, 17:177–178

Vexatious Litigants

Anti-suit injunctions, 17:104

Dismissal of actions, 37:393, 37:400

Video- and Audiotaping

Depositions, 28:100

Physical and mental examinations, 29:82

Presuit investigation

Evidence, obtaining videotapes, 2:53

Witness interviews, taping, 2:20

Visitation

Jurisdiction, 8:350

Void or Voidable Actions

Contempt order void, 17:318

Covenant not to compete void, wrongful injunction, 17:82

Default judgment conflicting with bankruptcy stay void, 37:275

Default judgment void for lack of strict compliance with service requirements, 37:177

Disqualified judge, decisions or orders void, 16:172, 16:236

Plea to jurisdiction, lack of subject matter jurisdiction makes judgment void, 15:142

Plenary power of court to grant new trial and vacate default judgment expired, 37:156

Recusal motion, rulings made after void, 16:243

Reinstatement motion premature, 37:444

Reinstatement, untimely and erroneous grant after court's plenary power expired as void, 37:469

Service

- Board member, service on void, 10:48
- Default judgment hearing, failure to file statement of evidence voids default judgment, 10:272
- Failure to appoint attorney ad litem, default voidable, 10:271
- Generally applicable statute, service under voided for more specific service statute, 10:12
- Minors, judgement voidable, 10:41
- Removal to federal court, service not voided, 10:28
- Return of service not filed with court, default void, 10:350
- Strict compliance with service rules or default judgment void, 10:05

Settlement

- Collusive settlement agreements void, 38:106
- "Mary Carter" settlement agreements void, 38:105
- Requirements for voiding agreement, 38:159

TRO or temporary injunctions, 17:197, 17:217, 17:222–223, 17:249, 17:313

— W —

Waiver

Affirmative defenses, 14:305–306, 14:337

Amend pleadings, failure to assert right as waiver, 36:32

Arbitration, presumption of waiver of contractual rights, 38:224

Assumed name entity, failure to file verified denial as waiver of objection to judgment against, 6:242

Capacity to sue or be sued, Waiver of objection, 6:187, 6:190

Clergy communication privilege, 25:597

Common interest (joint defense) privilege, 25:289

Counterclaim, waiver of unraised claim, 14:177

Cross claim, 14:435

Deposition, agreement to waive signature, 28:164, 28:320

Discovery abuse, failure to file motion as waiver of, 32:10

Disqualification of judges, 16:172

Evidentiary rulings, objecting to preserve error, 8:423

Forum selection clause, 8:146

Guardian ad litem fee award, failure to object, 6:67–68

Jurisdiction, waiver of objections to by appearance. See **Jurisdiction**

Jury charge based on defect in pleadings, waiver of objection to, 15:87

Jury trial waived for referral order for trial by special judge to, 38:174

Mental health provider-patient privilege, 25:542, 25:553

Payment defense waived if not specifically pleaded, 14:332

Physical and mental examinations, waiver of privilege, 29:37, 29:94, 29:158, 29:175, 29:182

Plea in abatement, 15:164, 15:166

Plea to jurisdiction, failure to object to omission of verification as waiver, 15:141

Protective order, effect of objection to written discovery or assertion of privilege, 32:49

Recusal, waiver of grounds for, 16:200, 16:240, 26:237

Reinstatement hearing affirmatively waived, doctrine of invited error, 37:435

Removal to federal court, waiver of consent, 9:550

Request for production and inspection

- Generally, 27:113, 27:184, 27:224
- Privileged matter partially disclosed, waiver of privilege, 27:156
- Requests for admissions
 - Extension of time to respond, failure to preserve objection as waiver, 31:85
 - Failure to object to evidence contradicting admission, 31:221
 - Failure to respond as waiver of objections, 31:77
 - Untimely objection waiver, 31:119
- Self-incrimination, privilege against, 25:338–339
- Service. See **Service of Process and Papers**
- Special exceptions. See **Special Exceptions**
- Spousal communication privilege, 25:597
- Standing defect, no waiver of, 6:202
- Summary judgment motion
 - Affidavit of competence of affiant, waiver of objection, 36:436
 - Ambiguity in response, waiver of, 34:407
 - Best-evidence objection, 36:433
 - Defects in affidavit, waiver of, 36:231
 - Defects in form or substance, waiver of objection, 36:426
 - Documents, failure to attach as waiver of objection, 36:442
 - Exhibits, failure to attach as waiver, 36:434
 - Hearing notice insufficient, failure to object as waiver of defect, 36:478
 - Notice of hearing insufficient, waiver on appeal, 36:418
- Trade secret privilege, 25:70, 25:388, 25:392
- TRO or temporary injunction, 17:178, 17:184, 17:250, 17:312, 17:347
- Unjoined claims waived, 14:171
- Venue. See **Venue**
- Work product privilege, 25:274–275

Warranties

- Settlement and contribution, 38:133, 38:144–145
- Statutes of limitations for breach of, 3:126–127, 3:297
- Venue in breach of warranty claim, 9:123

Waste

- Intervention, 6:543

Water District

- Service, 10:87

Web Addresses. See **Addresses, Telephone Numbers, and Web Addresses**

Whistleblower Claims

- Statutes of limitations, 3:336

Wills

- Statutes of limitations, 3:358

Witnesses

- See also **Experts and Expert Witnesses**
- Credibility. See **Credibility**
- Cross-examination. See **Cross-Examination**
- Depositions. See **Depositions**
- Discovery. See **Discovery**
- Impeachment. See **Impeachment**
- Informal investigation, identifying opposition's witnesses, 24:145
- Inmates as, 6:106, 6:108
- Interrogatories, identifying witnesses in responses, 30:160–166
- Minors and incompetent persons, testimony by, 6:94–95
- Neutral witnesses, 28:03
- Perpetuating testimony, 2:62, 28:12, 28:63
- Physician-patient privilege. See **Physician-Patient Privilege**

- Presuit investigation, 2:18–21, 2:62
- Request for production and inspection of witness statements, 27:70
- Requests for disclosure, 26:19, 26:56
- Self-incrimination, privilege against. See **Self-Incrimination, Privilege Against**
- Special appearance hearing, 8:422, 8:424, 8:426
- Summary judgment motion, testimony of interested witnesses, 36:214–216
- Travel and expenses. See **Travel and Travel Expenses**
- Venue issues, 9:13

Work Product Privilege

- Comparison to attorney-client privilege, 25:229
- Core and non-core work product, 24:94–95, 25:226–227
- Definition, 25:224
- Discovery, core and non-core work product, 24:94–95
- Elements of privilege
 - Generally, 25:234–237, 25:242–243, 25:248–250
 - Examples, 25:256–260
- Invoking privilege, 25:266–268
- Joint defense privilege. See **Common Interest (Joint Defense) Privilege**
- Purposes, 25:228
- Request for production and inspection, 27:36, 27:273
- Requests for admissions, failure to respond as waiver, 31:77
- Requests for disclosure, 26:47
- Scope of privilege, 25:225
- Survival of privilege, 25:268
- Waiver, 25:274–275

Workers' Compensation

- Immunity as affirmative defense, 14:352
- Intervention, 6:544
- Nonremovable actions, 9:503
- Physical and mental exam, persons accompanying examinee, 29:81
- Requests for admissions, , withdrawal of deemed admission, 31:198
- Settlement, tax consequences, 38:18–19
- Special denial requiring verification, workers' compensation defenses, 14:286

Writs

- Attachment. See **Attachment**
- Capias, 17:313, 17:318
- Constitutional county courts, issuance of writs, 7:52
- District courts, jurisdiction for issuance of writs, 7:40
- Habeas corpus. See **Habeas Corpus**
- Justice courts, issuance of writs, 7:75
- Mandamus. See **Mandamus**
- Restricted appeal (formerly writ of error), 10:584, 37:264
- Scire facias, writ of, 6:256–260
- Statutory county courts, issuance of writs, 7:63

Wrongful Death

- Derivative tort claims, statute of limitations, 3:345
- Forum non conveniens. See **Forum Non Conveniens**
- Joinder of parties, 6:332
- Standing, 6:223
- Statutes of limitations, 3:227, 3:438, 3:485
- Tolling rules, 3:464

Wrongful Termination

- Statute of limitations, 3:165

Zoning

Joinder of parties in zoning appeals, 6:333
Standing to challenge, 6:212