

DORSANEO  
& SOULES'  
TEXAS CODES  
AND RULES

CIVIL LITIGATION

Part of the LexisNexis Texas Research System

2003-2004 Edition



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**DORSANEO & SOUTHERN**  
**TEXAS CODES AND RULES—**  
**CIVIL LITIGATION**  
**2003–2004 EDITION**

**Part of the LexisNexis Texas Research System**

**With statutory amendments through the  
78th Legislative Regular Session, 2003.**

**With rules amendments through June 30, 2003.  
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**With Annotations to Supreme Court of Texas cases  
current through 46 Tex. Sup. Ct. J. 598,  
published on April 19, 2003**

**and**

**Annotations to selected Texas courts of appeals cases  
current through 89 S.W.3d 601,  
published on December 31, 2002.**

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# Preface

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This book is designed as a ready reference for trial and appellate lawyers engaged in general civil litigation. It is organized as a portable volume that can be used in the office, in the courtroom, or at home. The book begins with a Master Trial Guide that describes each step in the litigation process by reference to the procedural rules and statutes and to important appellate decisions. It continues with complete Trial and Appellate Timetables, and includes discussions of Tort Law Comparative Apportionment Schemes and Responding to Written Discovery. The book also includes the complete text of the Texas Rules of Civil Procedure, the Texas Rules of Appellate Procedure, the Texas Rules of Judicial Administration, and the Texas Rules of Evidence, together with source notes and official commentary. Also included are the Texas State Bar Disciplinary Rules of Professional Conduct, as well as the Standards for Appellate Conduct. The rules incorporate all amendments issued through June 30, 2003.

The Master Trial Guide, Trial and Appellate Timetables, and Responding to Written Discovery discussions and the Texas Rules of Civil Procedure, Evidence, Appellate Procedure, and Judicial Administration have been annotated with Texas Supreme Court and selected courts of appeals opinions, as well as 2003 legislation, to enhance the ready reference features of this volume. Annotations to Supreme Court of Texas decisions are current through 46 Tex. Sup. Ct. J. 598, published on April 19, 2003. Annotations to selected leading authoritative courts of appeals cases are current through 89 S.W.3d 601, published on December 31, 2002.

This book also includes the complete text of the Civil Practice and Remedies Code, selected provisions of the Texas Constitution, and selected sections of the Business and Commerce Code, Business Corporation Act, Family Code, Finance Code, Government Code, Insurance Code, Labor Code, Local Government Code, Occupations Code, Probate Code, Property Code, and other codes pertinent to civil litigation without regard to the subject matter in dispute. Additional statutory and regulatory provisions of relevance for civil practitioners, including the Deceptive Trade Practices Act, have been included.

For the complete Texas Constitution, and the complete Texas statutes with case annotations, see the Texas Codes and Rules Annotated by LexisNexis at [www.lexis.com](http://www.lexis.com). Or go to the Texas Legislature site at [www.capitol.state.tx.us/](http://www.capitol.state.tx.us/)

References to other Matthew Bender Texas publications, such as Dorsaneo, TEXAS LITIGATION GUIDE, TEXAS CIVIL TRIAL GUIDE, and TEXAS TORTS AND REMEDIES, appear throughout the book, guiding readers to more detailed discussion and relevant forms on each topic. (See “How to Use This Publication” on the following page for a key to the reference abbreviations.)

The authors acknowledge the editorial assistance of Susan Shank Patterson and Robinson C. Ramsey.

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# *How to Use This Publication*

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## Case Law Annotations

The authors' objective in including case law annotations in DORSANEO & SOULES' TEXAS CODES AND RULES—CIVIL LITIGATION is twofold: First, to provide Texas Supreme Court authorities interpreting and applying the rules; second, to apprise the reader of current trends and developments in civil procedure and evidence. To that end, and in keeping with the single-volume format of this manual, the annotations are limited to leading Texas Supreme Court cases for all years through through 46 Tex. Sup. Ct. J. 598, published on April 19, 2003, and selected leading authoritative court of appeals cases through 89 S.W.3d 601, published on December 31, 2002. Due to publication deadlines, subsequent annotations will appear in later editions of this annually published resource. In the interest of brevity, historical cases discussing the forerunners of current rules are largely omitted; to the extent they remain good law, they are frequently cited within the more current decisions.

Our rules of court annotations are designed to interact with one another from the start of litigation to the conclusion of an appeal, and liberal use of cross-referencing between the rules can enlarge the scope of applicable case law on a particular issue (as opposed to a particular rule). For example, cases addressing claims of privilege can be found under T.R.C.P. 193.3 (Asserting a Privilege) and T.R.E. 501–513 (Privileges). Similarly, case annotations involving the admission of evidence at trial can be found under T.R.E. 103 (Rulings on Evidence), T.R.A.P. 33.1 (Preservation of Appellate Complaints), and T.R.A.P. 44.1 (Reversal). It is hoped that this single volume format will prove to be a broader, yet more expedient source of authorities for both the bench and bar.

## Statute Updates

This 2003–2004 Edition incorporates all legislative changes through the 78th Legislative Regular Session.

All sections affected in the 78th Legislative Regular Session are given legislative histories, and amendments are highlighted with a stressed amendment feature. All amended sections have added material appearing in boldface type and all deleted material is replaced with a figure within brackets, such as [1]. The deleted material is then shown by footnotes keyed to the corresponding figures. Where changes are extensive, the former section may be reprinted in full.

The following reproduction of Section 25.0007 of the Government Code illustrates the stressed amendment feature:

25.0007. Juries; Practice and Procedure. The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, [1] and all other matters pertaining to the conduct of trials and hearings in the statutory county courts [2], **other than the number of jurors, that involve** those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. **This section does not affect local rules of administration adopted under Section 74.093. Leg.H. 1991 ch. 746, effective October 1, 1991.**

25.0007. 1991 Deletes. [1] juries [2] involving

To read Section 25.0007 as amended, you read the section as printed, omitting the bracketed figures “[1]” and “[2]”:

The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, **other than the number of jurors, that involve** those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. **This section does not affect local rules of administration adopted under Section 74.093.**

To reconstruct the section as it read before being amended, you read the section as printed, omitting the words in boldface type and inserting the words appearing in the footnote under Section 25.0007 and referred to by the [1] and [2] in the section:

The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, juries and all other matters pertaining to the conduct of trials and hearings in the statutory county courts involving those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts.

Constitution Updates

This 2003–2004 Edition incorporates all amendments to the Constitution passed during the 78th Legislative Regular Session.

All Constitutional section proposed to be amended are shown in two versions: the version currently effective, and the version proposed to be effective, contingent on voter approval. These sections are given legislative histories indicating the joint resolutions and propositions containing these amendments.

These proposed amendments will be voted on by the electorate at the September 13, 2003 Constitutional Election. Subscribers may call Editorial Assistance at (800) 424-0651 ext. 3444 after September 13 for election results.

Rule Updates

The 2003–2004 Edition incorporates all rule revisions made through June 30, 2003. Subscribers may call Editorial Assistance at (800) 424-0651 ext. 3444 to check on the status of pending rule revisions before the Texas Supreme Court, which are expected to be promulgated during 2003 and 2004.

Cross-Reference Abbreviations

Throughout this publication, the following abbreviations stand for the following Matthew Bender publications:

- TCTG . . . . . Dorsaneo & Johnson, TEXAS CIVIL TRIAL GUIDE
- TLG . . . . . Dorsaneo, TEXAS LITIGATION GUIDE
- TTR . . . . . Sales & Edgar, TEXAS TORTS AND REMEDIES

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# MASTER TRIAL GUIDE

By William V. Dorsaneo III\*

## SCOPE

This chapter is a master trial guide that takes the trial lawyer through each procedure in the civil litigation process, from initial contact with the client to the commencement and prosecution of an appeal to the Supreme Court of Texas. These procedures are introduced in the order in which they ordinarily occur. In addition to a brief description of each procedure and its governing rule, the guide contains references to chapters in Dorsaneo, TEXAS LITIGATION GUIDE, that discuss the procedure in greater detail, and that provide forms for that procedure.

### *Synopsis*

- § 1.01 **Preliminary Determinations**
  - [1] **Client Interview**
  - [2] **Initial Considerations and Investigation**
    - [a] **Fact Finding**
    - [b] **Determination of Theory of Action**
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## § 1.01 Preliminary Determinations

**NOTE:** This guide is illustrative only of procedures commonly utilized in a civil action. Particular cases may require procedures not set forth here. For example, adoption proceedings, divorce cases, and probate matters will involve steps other than those listed below. A special trial guide accompanies each chapter of Dorsaneo, TEXAS LITIGATION GUIDE, which should be consulted for more detailed information on each of these types of litigation. Unless otherwise indicated, each step in this guide is applicable to a litigant whether he or she is aligned as a plaintiff or a defendant.

### [1]—Client Interview

- (1) Get facts pertaining to client's identity, e.g.:
  - (a) Name.
  - (b) Addresses.
  - (c) Telephone numbers.
  - (d) If client is other than individual, include details of business organization.
- (2) Have client relate facts about dispute, then question client as necessary to clarify or expand description.
- (3) Describe generally future steps involved so that client knows what to expect, e.g.:
  - (a) Follow-up interview may be necessary.
  - (b) Attorney may want to investigate law and facts before deciding to accept case.
  - (c) Documents may require time for preparation, whether pleadings or remedial work, such as reinstating right of a corporation to do business when it has defaulted in payment of franchise taxes.
- (4) If representation is acceptable, discuss attorney's fees and method of payment.
- (5) Obtain execution of documents as needed, e.g.:
  - (a) Attorney's fee contract.
  - (b) Authorization to release information from:
    - (i) Doctors and hospitals.
    - (ii) Internal Revenue Service.
    - (iii) Department of Veterans Affairs.
  - (c) Power of attorney.
- (6) At conclusion of interview, begin office processing of client's file.