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Civil Procedure

■ A Contemporary Approach ■

THIRD EDITION

A. Benjamin Spencer



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CIVIL PROCEDURE

A Contemporary Approach

THIRD EDITION

By

A. Benjamin Spencer

PROFESSOR OF LAW
WASHINGTON & LEE UNIVERSITY SCHOOL OF LAW

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610 Opperman Drive

St. Paul, MN 55123

1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-90864-3

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For Marlette, Isabella, Mya, James, Mary Alice, Emma, and the little one

PREFACE TO THE THIRD EDITION

THIS THIRD EDITION OF *Civil Procedure: A Contemporary Approach* has been prepared in response to several developments in the world of civil procedure.” In 2009, the Federal Rules of Civil Procedure were amended in a comprehensive way to revise the method used for time computation and the periods of time for several of the deadlines within the Rules. Rules 8, 26, and 56 were amended in various ways in 2010. In addition to these amendments, Federal Rule of Evidence 502—which addresses inadvertent disclosures of protected material during discovery—was approved by Congress. All of these changes are reflected in this edition of the casebook.

There also have been several developments in case law, most notably decisions from the Supreme Court addressing diversity jurisdiction (*Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010)), the *Erie* doctrine (*Shady Grove Orthopedic Assocs., PA. v. Allstate Ins. Co.*, 130 S. Ct. 1431 (2010)), pleading standards (*Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009)), compulsory party joinder (*Republic of Philippines v. Pimentel*, 553 U.S. 851 (2008)), the relation back of amendments (*Krupski v. Costa Crociere, S.p.A.*, 130 S. Ct. 2485 (2010)), and preclusion doctrine (*Taylor v. Sturgell*, 553 U.S. 880 (2008)). Important lower court decisions have been issued as well, with a couple of prominent decisions addressing pre-litigation preservation obligations being included in this text (*Pension Committee v. Banc of America Securities*, 685 F. Supp. 2d 456 (S.D.N.Y. 2010); *Rimkus Consulting Group, Inc. v. Cammarata*, 688 F. Supp. 2d 598 (S.D. Tex. 2010)).

I am very grateful to all of you who use this casebook, and to those of you who have provided much needed feedback. My hope is that the book continues to serve the needs of students by presenting federal civil procedure in a clear, straightforward,

and engaging manner. I am also thankful to each of my research assistants who put in countless hours making this book the best it can be: Erica Haggard, John Thomas, Katherine Brockmeyer, and Andrew Gerrish. I also would not have been able to produce this edition without the Faculty Services team at Washington & Lee University School of Law, so thanks is due to them as well. Finally, my wonderful wife, Marlette, helps to make it all happen with her love and support. I thank her for everything that she does to enable me to do what I do.

A.B.S., February 2011

PREFACE TO THE FIRST EDITION

THIS CASEBOOK HAD ITS ORIGINS in my desire to provide students with a learning resource more in tune with the ways that law students think and learn today. The current generation of law students has come of age in a highly technologically-sophisticated environment, with the heavy use of laptop computers and the Internet dominating the educational experience. Today it is commonplace to see 100% of the students in a classroom typing away at their computers as professors give their lectures (although many are using their computers for other distractions). The vast majority of legal research resources are now online, meaning students are much more accustomed to using electronic materials downloaded into their computers than they are with fumbling through clunky physical texts. Thus, although it is necessary for law schools to continue to inculcate in students the ability to consult hard copy materials when appropriate, it is also necessary to update the manner in which reading material is transmitted to students within law school courses.

This book was designed with the contemporary law student in mind. That focus is reflected in the content and style of the book as well as in its features. The primary purpose of a casebook is to serve as an effective learning tool for students, not as a hornbook for budding practitioners or a comprehensive treatise on the subject. Thus, here you will find a focused presentation of the core concepts central to a basic first-year education in federal civil procedure. The information is presented in a manner that is clear and easy to understand. Rather than masses of undifferentiated text, you will find the material identified and separated by headings and various text boxes that help bring the material off the page. The online version of the book should be particularly useful in enabling you to engage the material. It is extensively hyperlinked to a vast range of online resources that

will enhance your learning experience such as Westlaw® legal materials, special documents, and informational Web sites. I hope that you find this book to be extremely user-friendly and facilitative of developing a full understanding and appreciation of this subject matter. If you come up with suggestions for how this book can be even more useful for students or more effective in fulfilling its mission, please do not hesitate to contact me with your thoughts.

I must thank my wife, Marlette, for tirelessly taking care of our household while I was compelled to spend increasing amounts of time away working on the completion of this book. I also must thank my mother and father for their moral support for this project. More directly, this book would not have been possible without the able research assistance of David Killion, Lesley McCall, Capri Miller, and Briton Nelson. My wonderful assistant, Elizabeth Garrett, was also amazing in providing me with editorial and administrative assistance every step of the way. Special thanks to my Dean, Rod Smolla, for giving me the encouragement and resources I needed to produce this casebook. Finally, I am indebted to all of my colleagues at Richmond and elsewhere who took the time to review these materials or simply to support me through this process; I hope that one day I am able to repay the favor.

A.B.S., March 2007

EDITOR'S NOTE

The cases presented in this book have been edited. A set of asterisks (* * *) appear where I have removed material from the text of an opinion. Footnotes have been largely removed from the opinions. However, where footnotes appear their original numbering is retained. Footnotes of my own creation are indicated by a raised asterisk (*) and followed with a bracketed notation of authorship ([Ed.]). Where the author of an opinion uses a raised asterisk to refer to a footnote, the asterisk will be retained and bracketed information regarding authorship of the footnote will follow to distinguish these notes from the notes that I insert.

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