

PUBLICATION UPDATE

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Dorsaneo, Texas Litigation Guide

Publication 719 Release 102 August 2011

HIGHLIGHTS

Release 102

- **NEW Chapter on Sanctions for Improper Pleading Added.** New Ch. 14 discusses grounds and procedures and provides forms for imposition of sanctions for frivolous pleadings under Tex. R. Civ. P. 13 and Tex. Civ. Prac. & Rem. Code ch. 10 and other statutes.
- **NEW Chapter on Effects of Prior Adjudication Added.** New Ch. 135 provides expanded coverage of res judicata, collateral estoppel, and other doctrines that preclude relitigation of previously adjudicated issues.
- **Complete Revision of Conservatorship Chapter.** Ch. 371 has been thoroughly revised, updated and reorganized to provide expanded coverage of frequently litigated issues such as the parental presumption and grandparent access rights.
- **Residential Construction Defect Chapter Completely Revised.** Ch. 270A has been completely revised to reflect the 2010 “sunset-

ting” of the Residential Construction Commission, and the impact on current litigation involving residential construction defects.

- **Electronic Filing in Courts of Appeals.** Special Alert in Ch. 150 addresses recent Texas Supreme Court rules on electronic filing and electronic copies of documents in appellate proceedings.

DORSANEO, TEXAS LITIGATION GUIDE (USPS 018-383) is published quarterly for \$3,256 by Matthew Bender & Co., Inc. 1275 Broadway, Albany, N.Y. 12204-2694. Periodical postage is paid at Albany, N.Y. and at additional mailing offices. POSTMASTER: Send address changes to DORSANEO, TEXAS LITIGATION GUIDE, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

New Chapter on Sanctions for Improper Pleading Added. This release of *Texas Litigation Guide* includes a new Ch. 14, *Sanctions for Improper Pleading*. This chapter provides updated and expanded discussion of the power of Texas trial courts to impose sanctions on parties for

frivolous pleadings and other improper pleading practices under various rules and statutes, as well as the court's inherent power to control its proceedings. The discussion focuses on the court's authority to impose sanctions under Texas Rule of Civil Procedure 13 and Chapter 10 of the Texas Civil Practice and Remedies Code. The chapter's legal background explains both the grounds and procedures for imposition of such sanctions. The chapter also includes a procedural guide and forms of motions, responses, and orders pertaining to the imposition of sanctions for improper pleadings. (The expanded coverage in this chapter replaces coverage formerly found in Ch. 3, *Professional Responsibility*.)

New Chapter on Effects of Prior Adjudication Added. This release also contains new Ch. 135, *Effects of Prior Adjudication*. This chapter discusses the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion), which prevent parties from relitigating legal and factual issues that have been decided in previous cases involving those parties or parties in privity with those parties. The chapter also covers related doctrines that preclude or limit the relitigation of legal issues, including the law of the case and stare decisis. The chapter includes a procedural guide, as well as forms relating to motions for summary judgment or partial summary judgment based res judicata and collateral estoppel. (The expanded and updated coverage in this chapter replaces coverage formerly found in Ch. 131, *Judgment*.)

Complete Revision of Conservatorship Chapter. Ch. 371, *Conservatorship*, has been revised and expanded to provide more detailed coverage of the often-litigated statutory parental presumption that comes into play when a parent and a nonparent are vying for appointment as a child's conser-

vator. Another frequently litigated issue, grandparents' rights to conservatorship, possession, and access, is also covered in greater depth. The characteristics of joint managing conservatorship, sole managing conservatorship, and possessory conservatorship are described, and the standard possession order is thoroughly covered. In addition, the newly revised Ch. 371 incorporates discussion of parenting plans, parenting coordinators, and parenting facilitators, formerly found in Ch. 370A, *Parenting Plans*, in order to provide one-stop coverage of all child custody issues. (Ch. 370A is deleted in this release.) The chapter also includes coverage of temporary orders for conservators on military duty, and the new authorization agreement for possession by nonparent relatives.

Residential Construction Defect Chapter Completely Revised. Ch. 270A, *Residential Construction Defect Disputes*, has been completely revised and rewritten in light of the "sunsetting" of the former Residential Construction Commission and the expiration of its enabling legislation, the Residential Construction Commission Act (RCCA), in 2009. As the revised chapter notes, the abolition of the agency eliminates the former requirement that a residential construction defect dispute be first pursued as an administrative claim; however, such a dispute remains subject to the procedural and remedial limitations of the Residential Construction Liability Act (RCLA). The revised chapter therefore focuses on these statutory restrictions of the RCLA. In addition, the revised chapter discusses the statutory warranties applicable under the former RCCA, including the time frame in which those warranties were effective, and the extent to which they might continue to be applicable in future litigation over residential construction defect disputes. (This release also includes

related revisions to Ch. 270, *Improvement Contracts*.)

Texas Supreme Court Adopts Rules Governing Electronic Copies and Electronic Filings in the Courts of Appeals.

On February 28, 2011, the Texas Supreme Court approved amendments to the Texas Rules of Appellate Procedure pertaining to the filing of electronic copies of documents in proceedings before the Supreme Court and the Courts of Appeals, subject to possible modifications as a result of public comment. The Court also adopted templates to be used by the courts of appeals in establishing their own local rules for electronic filing [*see* Tex. Supreme Court, Misc. Doc No. 11-9032 (Feb. 28, 2011)]. The amendments took effect on June 30, 2011. Local rules in the courts of appeals will take effect after they are submitted to

and approved by the Texas Supreme Court. These developments are summarized in a Special Alert included in this release preceding Ch. 150, *Appellate Proceedings in the Court of Appeals*, and will be incorporated into the text of that chapter in an upcoming release.

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Publication 719, Release 102, August 2011

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Publication 719 Release 102

August 2011

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Publication 719, Release 102, August 2011

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