

**PUBLICATION UPDATE**

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# Dorsaneo, Texas Litigation Guide

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Publication 719    Release 112    March 2014

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**HIGHLIGHTS**

- **Probate Volume Completely Revised to Reflect New Texas Estates Code.** All probate and guardianship chapters in Volume 24 revised and updated to reflect new code, plus other 2013 legislation and recent case law.
- **Updates and Revisions to Chapters on Discovery, Jury Selection, and Medical Malpractice.** Significant updates and revisions to Chs. 90 (Discovery: Scope and Limitations), 120 (Jury Selection), and 321 (Medical Malpractice) are also included in this release.

includes a complete revision of the probate and guardianship chapters (Chs. 390–411), as well as significant updates and revisions to chapters on discovery, jury selection, and medical malpractice. The release also contains a completely revised subject matter index.

**Probate Volume Revised and Updated to Reflect New Estates Code.** This release features a complete revision of the probate and guardianship chapters in Volume 24 (Chapters 390–411) to reflect the new Texas Estates Code, which became effective on January 1, 2014. These chapters have been fully revised with the new code, including all amendments to the code made in the 2011 and 2013 legislative sessions, plus recent Texas case law relating to probate and guardianship proceedings.

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The new code extensively revises and reorganizes the statutory provisions relating to decedents' estates and guardianships formerly governed by the Probate Code, which was repealed, effective the same date. The original legislation enacting the Estates Code provides expressly that it is

Release 112 of *Texas Litigation Guide*

intended as a recodification only and that no substantive change in the law is intended [Acts 2009, 81st Leg., ch. 680, § 11; *see* Tex. Estates Code § 21.001(a)]. Nevertheless, the new Code radically alters the structure of the existing statutory framework for Texas probate law, and in a number of instances the statutory language has been altered. Consistent with the objectives of the statutory revision program, the purpose of the Estates Code is to make the law encompassed by the code more accessible and understandable by [Tex. Estates Code § 21.001(b)]:

- Rearranging the statutes into a more logical order;
- Employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- Eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- Restating the law in modern American English to the greatest extent possible.

Although the initial Estates Code project was intended to only a recodification of existing law, the Legislature made a number of substantive and procedural changes to both its probate and guardianship provisions in the 2011 and 2013 legislative sessions, which are fully reflected in the revised chapters.

**Expanded Discussion of Voir Dire.** Chapter 120, *Jury Selection*, has been revised to include an expanded and updated discussion of the permissible scope of voir dire questioning of potential jurors by counsel. The discussion includes updated explanation and analysis of key Texas Supreme Court decisions exploring the subtle

distinction between permissible questions intended to expose potential juror bias and impermissible questions attempting to commit jurors to a particular result.

**Scope of Discovery Chapter Includes Expanded and Updated Coverage of Waiver of Privilege.** Chapter 90, *Discovery: Scope and Limitations*, now includes a revised and expanded discussion of the critical issue of waiver of privileges and work product protection during the discovery process.

**Expert Reports in Health Care Liability Actions.** Chapter 321, *Medical Malpractice*, has been revised to include discussion of the Texas Supreme Court's recent decision in *Zanchi v. Lane* [56 Tex. Sup. Ct. J. 1152, 408 S.W.3d 373 (Tex. 2013)], in which the Court overruled prior court of appeals decisions and held that the term "party" as used in Civil Practice and Remedies Code Section 74.351 means merely one named in a lawsuit, regardless of when citation is served. Thus, for purposes of the pre-September 1, 2013, version of Section 74.351, which required the plaintiff to serve an expert report on the defendant in a health care liability claim within 120 days after a health care liability claim is filed, the plaintiff may serve the expert report on a defendant at any time after the petition naming that particular defendant is filed, even if the reports are served prior to service of citation on that defendant [*Zanchi v. Lane*, 56 Tex. Sup. Ct. J. 1152, 1153–1155, 408 S.W.3d 373 (Tex. 2013)]. In that event, however, the defendant's obligation to respond to the suit in any manner, including any objection to the adequacy of the expert report, is deferred until after the defendant is served with citation [*Zanchi v. Lane*, 56 Tex. Sup. Ct. J. 1152, 1155–1156, 408 S.W.3d 373 (Tex. 2013)]. *See* § 321.15[1][c][ii]. (Note that the statute involved was amended effective

for cases filed on or after September 1, 2013 to postpone the obligation to serve an expert report until after the defendant's answer is filed.)

**Completely Revised Index.** This release also contains a complete revision of the subject matter index to reflect the revisions to *Texas Litigation Guide* made in this release and in Release 111.

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Publication 719 Release 112

March 2014

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