



Texas Family Law

PRACTICE MANUAL

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International Standard Book Number: 978-1-892542-60-1
International Standard Book Number: 978-1-892542-89-2 (2012 Supplement)
International Standard Book Number: 978-1-938873-15-7 (2014 Supplement)
Library of Congress Control Number: 2009938478

© 1973, 1974, 1980, 1982, 1984, 1986–1996, 1998–2002, 2004, 2006, 2008, 2010, 2012, 2014

State Bar of Texas

Austin, Texas 78711

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Austin, Texas 78711

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Printed in the United States of America

Third Edition, 2010

Second Printing, 2014

TEXAS FAMILY LAW PRACTICE MANUAL

Third Edition

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CONTRIBUTORS TO EARLIER EDITIONS, UPDATES, AND TITLES

Texas Family Law Practice Manual, 2nd ed. (1996)

MICHAEL P. GEARY, *Co-Chair* JAMES M. LOVELESS, *Co-Chair*

Texas Family Law Practice Manual (1984)

HARRY L. TINDALL, *Chair*

Texas Family Practice Manual (1976)

REBA G. RASOR, *Coeditor* DONALD R. SMITH, *Coeditor*

Texas Family Code—Forms and Practice Guide (1973-74)

REBA G. RASOR, *Coordinator* JACK JOHANNES, *Chair*

Forms for Divorce and Annulment under the Family Code (1970)

JACK JOHANNES, *Author*

MIRIAM L. ACKELS

FRANK M. ADAMS

JOHN E. ALEXANDER

BRUCE BAIN

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SPROESSER WYNN

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STATE BAR OF TEXAS

ROLAND JOHNSON
PRESIDENT



Direct Correspondence to:
777 MAIN ST., STE. 3600
FORT WORTH, TX 76102
TEL: (817) 870-8700
FAX: (817) 332-6121
rolandjohnson@hfbllaw.com

For nearly 40 years, the *Texas Family Law Practice Manual* has been an exceptional resource for Texas judges and lawyers. The State Bar of Texas and the Family Law Section are pleased to announce the publication of the 3rd edition of the manual, which provides valuable forms and practice notes.

This manual would not be a reality without countless hours of dedicated work from committee members and attorney volunteers. Special thanks are due to Norma Trusch, who has served as chair of the committee for the past decade. Because of the dedication of fine judges and lawyers and their willingness to share their expertise with members of the family law community, the State Bar can provide members throughout the state with this outstanding publication.

Roland K. Johnson
President, State Bar of Texas

P.O. Box 12487, Capitol Station, Austin, Texas 78711-2487, (512) 427-1463

Preface

The *Texas Family Law Practice Manual* has dramatically grown and developed over the years. Since the 1976 publication of the one-volume *Texas Family Practice Manual* (the old brown book, which contained 19 chapters and 142 forms), the manual has remained always a vital part of the arsenal of any diligent Texas family attorney. Retitled *Texas Family Law Practice Manual*, the 1984 version was published with 32 chapters and 425 forms. The second edition was published in 1996 with 39 chapters and 556 forms. This third edition begins its existence with 45 chapters and 730 forms (adding two chapters and forty forms to the 2008 update), and it will almost certainly continue to expand its coverage as the requirements of Texas family law grow ever more complex. The manual now includes six loose-leaf volumes of forms and a separate bound publication of the practice notes, plus a handy downloadable digital version for subscribers moving to a paperless office.

As part of a continuing effort to increase the utility of the manual for subscribers, this edition's digital version has been converted to a new publishing software that will allow enhanced functionality of the word-processing forms that accompany the PDF file of the manual. Custom toolbars for both Word and WordPerfect allow users to show, hide, print, and delete all instructional material in the forms. The instructional material is hidden text which, when showing, looks essentially like the boxes, marginal notes, and other instructions in the printed and PDF versions of the forms. The hidden text can be completely deleted from the finished form, of course, and it can be printed out for a draft version for those who like to work on paper. Other new features include prompts to facilitate completing the forms.

Special thanks, as always, go to the State Bar liaison, Sue Mills, and the TexasBarBooks staff for their creative and tireless work on this project. Thanks to their efforts, the manual has continually broken ground and set the standard to which others can only aspire.

It seems appropriate at this juncture to give thanks to the almost one hundred members of the family bar who have given thousands of hours of their volun-

PREFACE

teer time over the years to maintain the manual as the most up-to-date, comprehensive, and user-friendly publication of its kind available anywhere.

Norma Levine Trusch, *Chair*
Family Law Practice Manual Revision Committee

Summary of Contents

A detailed chapter table of contents immediately precedes the text of each chapter.

Introduction

1 **Ethics and Malpractice Considerations**

Discussion of the regulation of lawyers and law practice, accountability for professional responsibility, liability for professional malpractice, and ineffective assistance of counsel in Texas, with emphasis on family law practice

2 **Attorney-Client Relationship and Communications**

Practice notes and forms for employment agreements and related correspondence with client about case; basic data-collection forms for family law cases

3 **Divorce Pleadings**

Practice notes and forms on petitioner's divorce pleadings, including petition, temporary restraining orders, and motion for nonsuit; respondent's pleadings, including special appearance, plea in abatement, original answer, and waiver; additional causes of action; and intervenor's pleadings for conservatorship and for attorney's fees

4 **Divorce—Temporary Orders**

Practice notes and forms for temporary orders, including modification and extension of temporary orders, motions for counseling, and request for de novo hearing

5 **Discovery**

Practice notes and forms for formal discovery, including requests for disclosure, pattern interrogatories, requests for admissions, requests for production of documents, and pattern language for subpoenas

6 Information Gathering and Third-Party Notices

Practice notes, including information on electronic search capabilities, and forms for informal discovery, including various form letters about assets, records authorizations, and forms for lis pendens

7 Inventory and Appraisement

Practice notes and inventory and appraisement forms

8 Ancillary Motions and Proceedings

Practice notes and forms concerning attorneys and judges, service of citation, foreign law, joinder of causes, venue, ancillary relief, and maintaining suit

9 Child Support

Practice notes and forms relating to child support, including medical support notice, withholding from earnings, and support of a disabled child

[chapters 10 through 12 reserved]

13 Court-Ordered Representatives

Practice notes and forms relating to attorneys ad litem, guardians ad litem, and amicus attorneys, including appointment, pleadings, expenses, and withdrawal

14 Judicial Bypass

Practice notes and forms for abortion without parental notification

15 Collaborative Law

Practice notes and forms for collaborative law proceedings, including retainer letter, participation agreements, required status reports and notices, and settlement agreements

16 Parenting Plans, Parenting Coordinators, and Parenting Facilitators

Practice notes and forms related to parenting plans and parenting coordinators and facilitators, including a basic plan, other possible provisions, and appointment and removal of coordinator and facilitator

17 Protective Orders

Practice notes and forms regarding protection against family violence under title 4

18 Alternative Dispute Resolution and Informal Settlement

Practice notes and forms regarding alternative dispute resolution and informal settlement, with mediation and arbitration forms including motions, checklists, rules, mediated settlement agreements, arbitration decision and award, and reports to the court

19 Trial Proceedings

Practice notes and forms for pretrial conference, preferential setting, continuance, stay, division of property, conference with child, and various aspects of jury trial, including judgment non obstante veredicto and directed verdict

[chapters 20 through 22 reserved]

23 Divorce—Decrees and Agreements Incident to Divorce

Practice notes, including tax considerations; forms for final decree of divorce, including provisions for conservatorship of children, division of property, tax language, and injunctions; additional provisions for sale of real estate; statement of evidence; complex agreement incident to divorce; and prove-up questions

24 Closing Documents

Practice notes and forms for transfer of automobile, land, utility deposits, insurance benefits, miscellaneous property, and stock certificates; correspondence regarding insurance; and correspondence with client

25 Employment and Retirement Benefits

Practice notes and forms relating to stock options and the division and direct payment of various types of retirement benefits, including qualified domestic relations orders for private and state plans, provisions for military retirement, orders dividing federal civil service and federal employees' retirement benefits and railroad retirement benefits, assignment of interest in individual retirement account, and petition for postdivorce domestic relations order

26 Posttrial Proceedings and Appeals

Practice notes and forms relating to proceedings after trial, including new trial, setting aside default judgment, temporary orders pending appeal, findings of fact and conclusions of law, judgment nunc pro tunc, notice of appeal, docketing statement, withdrawing exhibits, and sealing court records

27 Mandamus

Practice notes and forms regarding mandamus for return of child and for transfer of cause

[chapters 28 through 30 reserved]

31 Enforcement—Property

Practice notes and forms for proceedings, including contempt, for the enforcement of orders dividing marital property

32 Enforcement—Spousal Maintenance and Alimony

Practice notes regarding spousal maintenance and alimony and forms regarding the enforcement of an award of spousal maintenance under the Family Code, including income withholding

33 Enforcement—Child Support

Practice notes and forms for proceedings for the enforcement of orders for the payment of child support, including contempt, withholding from earnings, money judgments, security, child support lien, and suspension and denial of renewal of license

34 Enforcement—Possession and Access

Practice notes and forms for proceedings for the enforcement of orders for possession of and access to a child, including clarification, contempt, security, and suspension of license

35 Habeas Corpus to Release Adult

Practice notes and forms for habeas corpus actions to release an adult

36 Physical Possession of Child

Practice notes and forms for proceedings to order delivery of children before the court through attachment, habeas corpus actions to return children, and expedited enforcement of child custody determinations under the Uniform Child Custody Jurisdiction and Enforcement Act

[chapters 37 through 39 reserved]

40 Original Suit Affecting Parent-Child Relationship

Practice notes and forms for original suits to establish conservatorship or support of a child if no divorce is sought

41 Modification of Texas Orders

Practice notes and forms for proceedings to modify orders of Texas courts concerning the conservatorship, possession and access, or support of children; practice notes related to modification of spousal maintenance

42 Transfer

Practice notes and forms for proceedings to transfer suits affecting the parent-child relationship

43 Interstate Proceedings

Practice notes and forms concerning the Uniform Child Custody Jurisdiction and Enforcement Act, the Parental Kidnapping Prevention Act, the Uniform Interstate Family Support Act, and the Full Faith and Credit for Child Support Orders Act

44 Grandparents and Other Nonparents

Practice notes and forms concerning proceedings in which a grandparent seeks possession of or access to a child, for proceedings in which a grandparent or other nonparent seeks to intervene in a suit affecting the parent-child relationship, and for proceedings in which a sibling seeks access to a child

45 Military Duty of Conservator

Practice notes and forms concerning temporary orders with regard to rights, duties, possession, access, and support to be effective during the military deployment, military mobilization, or temporary military duty of a conservator

46 Authorization Agreements for Nonparent Relatives

Practice notes and forms concerning agreements authorizing nonparent relatives to perform statutorily permitted acts in regard to children

[chapters 47 through 49 reserved]

50 Termination

General information on termination and adoption; practice notes and forms for actions to terminate the parent-child relationship without providing for the adoption of the child

51 Adoption of Child

General information on termination and adoption and on birth records; forms for actions to adopt a child in which no termination of the parent-child relationship is required

52 Combined Termination and Adoption of Stepchild

Practice notes and forms for actions to terminate the parental rights of one natural parent (including an alleged father) and to adopt the child by the other parent's spouse

53 Ancillary Forms for Termination and Adoption

Forms, other than petitions and decrees, for termination and adoption actions and for other suits affecting the parent-child relationship

54 Parentage

Practice notes and forms for all judicial proceedings relating to parentage, including parentage based on a validated gestational agreement and suits seeking to set aside acknowledgments of paternity

55 International SAPCR Issues

Practice notes on the Prevention of International Parental Child Abduction Act, recognition of foreign adoptions, and the Hague Convention and International Child Abduction Remedies Act and forms for prevention of international parental child abduction and registration of foreign adoption order

56 Miscellaneous SAPCR and Other Child-Related Forms

Variety of forms used in many child-related proceedings, including UCCJEA affidavit; health insurance statement; motions and orders regarding social study, parent education course, drug screening, and passports and travel; and split possession order

[chapters 57 through 59 reserved]

60 Adoption of Adult

Practice notes and forms for proceedings to adopt an adult

61 Miscellaneous Litigation

Practice notes and forms for bill of review, for breach of contract, for change of name of adult and of child, for obtaining a hardship driver's license, for postdivorce property division, for removal of disabilities of minority, for enjoining harassing behavior, for interference with possessory interest in a child, and for declaratory judgment

62 Annulment and Suit to Declare Marriage Void

Practice notes and forms for actions to annul voidable marriages and actions to declare marriages void

63 Property Agreements

Practice notes and forms for nonmarital cohabitation agreements, premarital agreements, partition or exchange agreements, separation agreements, waivers of disclosure of financial information, property agreements between spouses, and agreements to convert separate property to community property

Introduction

The practice notes in this manual were written by a committee of the Council of the Family Law Section of the State Bar of Texas, and great care has gone into their preparation. This manual is a practice guide for lawyers in Texas practicing under the Family Code; insofar as possible, it is organized by cause of action. Each chapter in this volume has a detailed table of contents. The forms for this manual are located in the six loose-leaf companion binders.

§ 1 Practice Notes

The practice notes are short synopses of the law, designed to serve as a primer to the very basic matters involved in a particular chapter. These notes are, at most, black-letter law and do not try to resolve questions in controversial areas. They bring together the Family Code sections, Rules of Civil Procedure, and other basic law relating to the topic treated by the chapter. For the lawyer experienced with the Family Code, these notes should serve as a reminder of some of the basics; for the lawyer not so experienced with the Code, they should provide an orientation to the major matters with which the lawyer needs to be concerned when contemplating a particular cause of action.

Although the notes are not intended as a treatise on the subject, they contain much important information that must be understood before the forms may be used responsibly.

§ 2 Digital Product

The downloadable digital product version of the *Texas Family Law Practice Manual* contains the entire text of the manual as two Adobe Acrobat PDF files (practice notes and forms) that are searchable and hyperlinked to allow for easy, rapid navigation to topics of interest.

Applicable Texas and federal case and statute citations in the practice notes are linked to case reports and main code sections cited via Casemaker online.

For more information about the digital product including usage notes, see the material following the “Digital Product Documentation” tab in volume 1 of the forms portion of this manual.

§ 3 Corrections and Updates

In drafting the manual, the members of the committee devoted a great deal of effort to making it error free, but it undoubtedly contains some errors. We would appreciate

INTRODUCTION

your pointing out to us any errors you find in the manual, as well as any revisions you believe are advisable. Please mail any corrections or suggestions to the following address:

Director, TexasBarBooks
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
books@texasbar.com

Periodic updating of the manual is planned to reflect changes in the law. It is also expected that, over time, additional topics will be covered and the scope of coverage of existing topics will be expanded. We welcome your suggestions about new topics that you would find helpful. Please send your suggestions to the address shown above.