

A Practical Guide To Texas Civil Evidence by Gerald R. Powell, Anthony J. Bocchino, David A. Sonenshein
315 pages

Texas Rules Of Civil Evidence With Objections by Gerald R. Powell, Anthony J. Bocchino, David A. Sonenshein
National Institute For Trial Advocacy, 273 pages (softback 4"x6")

Gerald R. Powell, Abner V. McCall Professor of Evidence Law at Baylor Law School, A.J. Bocchino, professor at Temple University School of Law, and David A. Sonenshein, I. Herman Stern Professor at Temple University School of Law, have collaborated to produce a “matched set” of evidence books that are profoundly useful for Texas practitioners who seek to admit or to oppose the admission of evidence in civil courts. *A Practical Guide To Texas Civil Evidence* is designed to be a review of the rules of civil evidence, and, in so doing, to afford an evidence tune-up with the advent of trial. *Texas Rules Of Civil Evidence With Objections* is a related text that is configured to be pocket-size and is designed to be a convenient reference for raising objections to the proffer of evidence at trial and for responding appropriately to objections. Both books deliver on their promises.

Organizationally, both books enable answers to be obtained virtually immediately. In the pocket-size handbook, evidence is arranged alphabetically by issue. For example, “ambiguous questions” and “argumentative questions” are covered first, while “voluntary disclosure” and “writings generally (exhibits)” are covered last. Tabs are provided — subdivided as ABC, DEF, GH, IJK, LMN, OPQ, RS, and TVW — to expedite locating the sought-after page immediately. Thus, as soon as an evidence issue arises or is anticipated to be raised, the issue may be quickly located in the handbook: it is clearly a vital tool for the battlefield of trial.

Once an issue is located, the presentation consists of proper objection, suitable response to the objection, a cross-reference to the Texas Rule of Evidence, and a practice-oriented explanation. Consider the proper courtroom protocol related to opposing counsel haranguing a witness by repeatedly asking minor variations of the same question. Using the alphabetical Table of Contents, “Repetitious” is located and its presence on page 184 is noted. Then, using the RS-tab, the practitioner quickly turns to page 184. The objection is stated as “Objection. The question is repetitious.” The responses are stated as either “The witness has not yet answered this particular question.” or “The questions has not been answered during my examination.” or “The question is just a preface to a new line of questions.” The cross-reference is to Rule 611(a) which pertains to the mode and order of interrogation and presentation. The explanation focuses on the point that for a court to sustain the objection the answer must have already been given by a witness in response to a question by examining counsel. The Texas Rules of Civil Evidence are included as an appendix.

The Practical Guide, not so much intended to be a quick reference but a review of specific evidentiary topics, is organized into sections according to General Considerations; Privileges; Form of the Question; Relevance; Exhibits, Authentication, and Original Documents; Opinions; Cross Examination and Impeachment; Character Evidence; and Hearsay. Each section first provides a concise statement of the evidentiary issue, and then, the proper forms of the objection and response. The authors follow this with the applicable rule of evidence and a superb practice commentary that focuses upon the issues that

routinely arise when this type of evidence is being offered. Drawing upon the authors' impressive collective experience and scholarship, the commentary frequently recites the evidentiary predicates prerequisite for admissibility.

As an illustration of the practical value of this book — particularly in preparation for preventing the admission of evidence while “under fire” — consider the situation in which opposing counsel is anticipated to make extensive use of exhibits including models and computer simulations. Chapter 47 addresses exhibits and demonstrative evidence. The text first provides a summary that elucidates the purpose of demonstrative exhibits to assist a witness testify by using charts, diagrams, and graphs to clarifying and help communicate with the jury and judge. Next, typical predicates of accuracy are enumerated for tendering exhibits. Corresponding forms of objections and responses thereto are then enumerated. The applicable Texas rule is next stated; but, since no rule specifically pertains to demonstrative evidence, Rule 901(a) is included to state the requirement of authentication or identification.

Besides providing a guiding hand regarding the threshold for laying an evidentiary predicate, and for lodging objections and suitable responses, the book's sharply focused and insightful commentary effectively prepares the trial attorney for entertaining evidentiary issues. In the instance in which demonstrative exhibits are being considered, the commentary explains that use of demonstrative exhibits is a vital tool of the trial attorney and generally discusses the logistics associated with preparing and using such exhibits. Separate paragraphs are dedicated each to the use of models and computer simulations, emphasizing that the predicate for admissibility is usually achieved by using an expert to show that fair and accurate representations are being made.

NITA's matched pair of Texas Civil Evidence books are a natural for effective courtroom preparation and combat. While the *Practical Guide* or the handbook may be used and appreciated alone, their synergy is an invaluable tool for controlling the presentation of evidence during trial.