

Texas Discovery by Justice David E. Keltner
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Justice Keltner, a frequent speaker on the State Bar's seminar circuit, has written an authoritative and comprehensive work pertaining to one of his favorite subjects: discovery Texas style. Typical of any Keltner work, the discovery material is presented in logical, easy-to-understand fashion with a plethora of case and statutory citations and concomitant forms.

Texas Discovery first carefully establishes the right to discovery and then discusses its scope. Justice Keltner elucidates the scope of discovery thoroughly per Rule 166b(2) and includes many "practice pointers" that are intended to help the practitioner avoid the many land mines that populate discovery-territory. Once the basis of discovery is thus established, the advantages of having a discovery plan are described. Focus is on developing specific discovery goals and how to accomplish these goals.

The heart of the text predictably delves into discovery tools: depositions, interrogatories, requests for admission, and requests for production. Deposition logistics are described from head to foot; every reasonable detail is included for the practitioner's edification. For example, the deposition chapter explains that a subpoena is unnecessary for a party or party-affiliated witness, but is necessary for nonparty witnesses. This chapter includes a discussion of how to conduct proceedings, how to deal with transcripts, and how to use depositions at trial. It is obvious that Justice Keltner believes in thorough preparation.

Similarly, the interrogatories chapter describes interrogatory logistics from head to foot. Thus, after describing when to serve interrogatories and to whom interrogatories may be sent, the text walks through the procedure for propounding interrogatories. In logical fashion, Justice Keltner next explores how to properly respond to interrogatories including how to object and obtain protective orders. As an example, in a practice pointer, it is cautioned that informal responses are not sufficient, citing a case in which an expert witness was identified by a letter to opposing counsel instead of by proper response to an interrogatory. For situations in which responses appear to be incomplete or otherwise unsatisfactory, the text explains how to compel answers and how to seek sanctions.

Similar protocols are followed in the respective chapters pertaining to requests for admission and requests for production. Of course, in the admissions chapter, the section discussing automatic deemed admissions is required reading for any serious litigator. The discussion of effect and use of admissions are likewise critical issues. A useful practice pointer for obtaining an answer theoretically not likely to change is that "due to the conclusive nature of requests for admissions, attorneys may sometimes want to use admissions as opposed to some other form of discovery." The illustration provided is counsel seeking the correct name of a party under circumstances in which the statute of limitations will imminently run.

The remainder of the text deals with physical and mental examinations, expert witnesses, protective orders, sanctions and motions to compel, and mandamus. With excellent forms and practice pointers at the practitioner's disposal, Texas Discovery provides a vital tool for engaging in professional, fail-safe discovery.