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## PREFACE

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New lawyers quickly encounter an uncomfortable reality: A civil procedure course in law school only begins to prepare them for the twists and turns of civil litigation. For civil litigators, rules of procedure are not abstract subjects for academic study, but functional tools that regulate the pretrial stage of the litigation process. New litigators routinely worry that they might misunderstand or botch steps in pretrial litigation and thereby hurt their cases. This book aims to ensure that new lawyers avoid these mistakes and litigate successfully.

Whether a third-year law student in a clinical program or a litigator in the first years of practice, a new lawyer must approach every lawsuit systematically to make sure that he or she thinks through all important considerations and takes all timely steps during the investigation, pleading, discovery, and motion practice stages of the pretrial process. Only by doing so can a lawyer adequately prepare for settlement or trial. This text approaches pretrial litigation in just this systematic way. It reviews the procedural rules and thought processes a litigator should utilize before and during each stage of a civil case. In addition, this text discusses and gives examples of how an understanding of the various stages of civil litigation translates into pleadings, discovery, and motions.

There is no one right way to litigate. Consequently, while this book presents standard approaches to pleadings, motions, and discovery, lawyers litigate effectively in a myriad of ways. The examples presented here offer only one approach and simply illustrate how a lawyer can successfully proceed step-by-step through the litigation process.

This text is of necessity an overview of the basic steps in the civil litigation process. Because any single-volume work must limit the space it can devote to any specific topic, compromises and hard choices were inevitable. In making them, we have followed a basic rule: Provide an overview that gives inexperienced litigators the basic information they need to handle routine civil cases. To determine what we believe new litigators *need* to know, we reflected on our beginning years as litigators, and we discussed the book's scope with a number of inexperienced lawyers. Sometimes their suggestions were surprising. For example, almost all recommended an overview of joinder, jurisdiction, and venue, since these are complex, technical areas. These new lawyers did not mean to suggest that some topics were more important than others; rather, they felt they were weak in some areas and stronger in others. In many ways their suggestions corresponded with our experiences and account in large measure for the text's coverage.

The text focuses on federal district court practice and the Federal Rules of Civil Procedure. Many states have adopted the Federal Rules, and most of the states that have not have modern code pleading rules that

resemble federal practice. Also, legal details do not matter for much of the book's contents. Solid planning, investigation, and drafting are essential skills regardless of the particular jurisdiction involved, and the text's emphasis is on those skills. Hence, we have designed the book to be a basic resource regardless of the jurisdiction where a case will be litigated.

This book is not intended as a reference manual for nuanced legal research. We cite lightly, certainly as compared to standard treatises, since our goals do not include a detailed, technical discussion of doctrine. We have provided basic citations for most topics, with an emphasis on treatises that litigators commonly use. A list of these commonly used treatises appears after this preface. Most legal topics discussed in this text begin with a footnote that provides citations to the relevant portions of these treatises.

This edition comes with an authorization to download *Materials in Pretrial Litigation*, which include six tort and contract case files that can be used in a course on pretrial litigation. These materials contain the plaintiff's and the defendant's initial case files. The Teacher's Manual includes the witness materials for these case files. Course instructors may obtain this manual from Aspen Publishing.

*Thomas A. Mauet and David Marcus*

### **What's New in the Eleventh Edition**

I was excited and humbled to join Tom Mauet as co-author of *Pretrial's* ninth edition. Tom remains the country's leading figure in litigation pedagogy, a distinction that has been his since before he published the first edition of *Pretrial* in 1987. *Pretrial* teaches essential lawyering skills in an intellectually sophisticated, yet relentlessly grounded way, and it inculcates professionalism and ethics at every turn. It is little surprise that *Pretrial* has won a coveted spot on many litigators' bookshelves. Generations of law students have learned essential lawyering skills from previous editions.

Tom continues to provide ideas, suggest edits, offer advice, and contribute research, but he has turned primary responsibility for revisions over to me. As I did with the ninth and tenth editions, I have taken a "do no harm" approach to this one. Thousands of lawyers around the United States would agree that no one teaches how to litigate as well as Tom. I have left the book's organization, its overall themes, its flow, and its style mostly untouched. Tom is also a masterful strategist. For the most part, I have only lightly edited those sections that focus on litigation strategy.

Many of the changes for this edition involve changes to litigation practice brought about by forces quite familiar to all of us. These include the continuing evolution of litigation-related technology and the impact of COVID-19 on various aspects of lawsuits. This edition includes new text on remote hearings and remote depositions, and it expands and updates discussion of "litigation tech," particularly its impact on discovery. This edition also includes an introduction to federal multidistrict litigation, a form of complex litigation that has particular implications for lawyers who handle

personal injury claims. This edition also reflects the continued evolution of personal jurisdiction and arbitration law in the U.S. Supreme Court, and it expands upon and updates the previous edition's discussion of a package of amendments to the Federal Rules of Civil Procedure promulgated in 2018. Finally, this edition makes innumerable small but important changes—to the law governing clawback agreements, for instance, and the law that governs Rule 30(b)(6) depositions—that affect the ever-evolving world of civil litigation in the United States.

I welcome any suggestions for how we might improve *Pretrial* in the future. Comments from practitioners who have used *Pretrial* and instructors who teach pretrial courses are particularly welcome. Please do not hesitate to contact me by e-mail if you have any suggestions for future editions. You can find updated contact information for me at my UCLA School of Law faculty webpage.

*David Marcus*

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