TEXAS DISCOVERY

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A Practitioner's Guide to Taking and Resisting Discovery Under the Texas Rules of Civil Procedure

> Robert K. Wise Kennon L. Wooten Francesca A. Di Troia 2022



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Dedication

To Mr. Wise's parents, Rudy and Josephine Wise—gone, but never forgotten.

To Mr. Wise's daughters, Reagan and Riley. Without your support, I could not have written this book.

To Ms. Wooten's husband, Louie. Our partnership has enabled me to do many things I could not do alone. And to our daughter, Linden, whose love and laughter gave me the energy I needed to power through the long hours it took to complete this book.

To Ms. Di Troia's husband, Ethan, for endlessly supporting me in many new endeavors, including this book, and to our daughter, Elise, for occasionally allowing me to work on this book between playtimes.

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About the Authors

Mr. Wise is a founding member of Lillard Wise Szygenda PLLC. Since completing his clerkship for the Hon. Paul C. Weick of the U.S. Court of Appeals for the Sixth Circuit, he has practiced law in Dallas, Texas, for more than forty years. A former equity partner in the international law firm of Hunton & Williams LLP, Mr. Wise left Hunton to form LWS, a boutique litigation firm focused on providing its clients with elite representation at reasonable rates. Mr. Wise's practice centers on trial and appellate litigation. He has tried many lawsuits and arbitrations and has argued many appeals primarily in both Texas federal appellate courts, including ones in the Texas and Oklahoma Supreme Courts. His practice areas include complex commercial litigation involving contract, misrepresentation, and breach of fiduciary duty claims, primarily in the energy, construction, and real estate industries; construction-defects litigation; accounting-malpractice defense; and complex personal-injury litigation.

Mr. Wise is an accomplished writer, having taught legal writing at the Dedman School of Law of Southern Methodist University and having published another book, A Practitioner's Guide to Drafting and Responding to Written Discovery Under the Texas Rules of Civil Procedure (published in 2014 by Texas Lawyer Books, an ALM publication) and many law review articles on different topics. He has given many presentations about discovery, including ones for the Dallas, Fort Worth, and Austin bar associations and a CLE on discovery for the University of Texas.

Mr. Wise consistently has been recognized as a "Super Lawyer" by the publishers of *Texas Super Lawyers* (Thompson Reuters Business), was named "Litigator of the Week" in the March 25, 2012 edition of the *Texas Lawyer* for beating the Federal Trade Commission in *FTC v. Financial Freedom Processing, Inc., et al.*, No. 3:10-CV-2446-N (N.D. Tex. Mar. 12, 2012), *aff'd*, No. 12-10520, 2013 U.S. App. LEXIS 16766 (5th Cir. Aug. 12, 2013), and "Appellate Lawyer of the Week" in the November 24, 2014 edition of the *Texas Lawyer* for preserving a summary-judgment in a multi-million dollar fire case, and received the Texas Bar Foundation's 2015 "Outstanding Law Review Article Award" for his 2014 St. Mary Law Journal article, *A Guide to Properly Using and Responding to Requests for Admission Under the Texas Discovery Rules*.

Ms. Wooten is a partner at Scott Douglass & McConnico LLP in Austin, Texas. Before joining the firm, she clerked for former Chief Justice Wallace B. Jefferson of the Supreme Court of Texas, worked at Baker Botts LLP, and served as the Rules Attorney for the Supreme Court of Texas. Ms. Wooten has represented a wide range of clients on both sides of the docket. Her practice focuses on general civil litigation and appeals.

Ms. Wooten's experience as Rules Attorney gave her a specialized understanding of local and statewide rules in Texas. In that position, she responded to public inquiries about rules, assisted with promulgating rules, and worked with the State Bar of Texas, committees, and task forces to address issues confronting Texas litigants. She has continued to focus on rule-related matters in private practice. She serves on the Texas Supreme Court Advisory Committee and the Texas Remote Proceedings Task Force, and she served on the Supreme Court of Texas Task Force for Rules in

Expedited Actions in 2011–2012 and, for over a decade, on the State Bar's Court Rules Committee.

Ms. Wooten's dedication to serving the community extends beyond rule-related work. For example, she is a member of the American Law Institute, the State Bar's Board of Directors, the Texas Access to Justice Commission, the State Bar's Pro Bono College, and the Editorial Board of *The Advocate* (a publication of the State Bar's Litigation Section). Previously, she served as the president of the Austin Bar Association, as the president of the Austin Young Lawyers Association, as a board member and secretary for the Texas Legal Services Center, as a member of the Texas Commission to Expand Civil Legal Services, and as Editor-in-Chief for *Austin Lawyer* (an Austin Bar publication).

Ms. Wooten is a frequent speaker at Continuing Legal Education events in Texas. She is a Chambers USA Band 1 recognized practitioner in general commercial litigation, and she has been named by *Austin Monthly* as one of Austin's Top Attorneys in Civil Litigation (in 2020–2021) and by Thomson Reuters as a "Texas Rising Star" (in 2008–2009 and 2013–2017) and a "Texas Super Lawyer" (in 2019–2021). She has received several awards, including a Litigation/Appellate Attorney Award from the Travis County Women Lawyers Association, a State Bar "Standing Ovation" Volunteer Award, and a Special Commendation of the Supreme Court of Texas and State Bar for work on rules.

Ms. Di Troia is "Of Counsel" at Savrick, Schumann, Johnson, McGarr, Kaminski, & Shirley, LLP in Austin, Texas, where she represents both plaintiffs and defendants in a wide variety of cases in both state and federal courts. She has authored briefs filed in the Texas Supreme Court and the United States Court of Appeals for the Fifth Circuit. Ms. Di Troia previously was an Assistant Attorney General in the Office of the Texas Attorney General. She an adjunct professor in the University of Texas Law School's Advocacy department and coaches mock trial as well.

Ms. Di Troia has spoken at many Continuing Legal Education events on a wide variety of topics, including sovereign immunity, discovery practices, and civility in dealings with opposing counsel. She is a member of the Barbara Jordan Inn of Court and has served on its board of directors in varying capacities since its inception. She also serves on the Board of Directors for the YMCA's Youth & Government Program and is active in Youth Justice Alliance, a non-profit dedicated to involving high-school students in pro bono litigation work.