Litigate with confidence

The Wagstaffe Group Practice Guide: Federal Civil Procedure Before Trial

James M. Wagstaffe

This is the one resource no civil litigator should be without. Cutting-edge litigator and expert author, James M. Wagstaffe, breaks down complex procedural issues with spot-on insights and analysis and timesaving features.

- Rely on step-by-step navigation of the complexities of pretrial federal civil procedure.
- Save time and reduce research costs with easy-to-find guidance to key issues.
- Take and defend positions on issues with confidence, knowing you are backed by expert litigator and author James M. Wagstaffe.

FOR MORE INFORMATION
CONTACT your LexisNexis® account representative
CALL 800.223.1940
VISIT lexisnexis.com/FEDERALGUIDE
Navigate the complexities of federal civil procedure as well as state procedure for the 22 states and the District of Columbia that follow the rules of federal civil procedure.

This across-the-board guide will identify the questions that lawyers and judges will ask. Along the way, it will help you understand court splits and provide you with plenty of advisory practice tips, allowing you to litigate with confidence.

This publication includes numerous features, and distills complex procedural issues down to easy-to-digest pieces.

- Chapters are organized into Scope, Objective or Overview, Core Rules and Statutes, Checklists, and Examples.
- Contains dozens of detailed checklists that provide users with true practical guidance on how to complete pretrial federal practice tasks.
- Numerous examples and case studies highlight both common and nuanced procedural issues.
- Over 1,000 practice tips such as “Warning” or “Local Practice” alert the user to important nuggets of practical advice including exceptions, court splits and warnings about potential traps.
- Over 1,000 cross references are made throughout to other areas within the chapter, other chapters in this title and other titles, such as *Moore’s Federal Practice*® and *Bender’s Federal Practice Forms*®.
- A current-awareness pamphlet, published annually, features expert commentary and practical insights on legal current events like hot new cases and amendments to laws.
- The Table of Cases lists all of the cases cited in this set and is arranged alphabetically by case name.
- The Table of Statutes lists all the statutes cited to alphabetically.
- The Index references all topics discussed in the text and footnotes.
UNIT 1 FEDERAL LITIGATION SYSTEM AND MILESTONES

Ch. 1 Federal Court System (Courts, Magistrate Judges, and Personnel)
   § 1-I. Scope
   § 1-II. Article III Courts
   § 1-III. Article I Courts
   § 1-IV. Article IV Territorial Courts

Ch. 2 State Versus Federal Procedures
   § 2-I. Strategy
   § 2-II. Evaluating Plaintiffs’ Choice of Forum: State versus Federal Court
   § 2-III. Litigating the Case: State versus Federal Court Procedures

Ch. 3 State Law in Federal Court
   § 3-I. Scope
   § 3-II. Understanding the Sources of Jurisdiction Generally
   § 3-III. Determining When to Apply State Law in Federal Court
   § 3-IV. Applying State Law: Substantive Issues Governed by State Law in Federal Court
   § 3-V. Recognizing the Limitations over Claims in Particular Subject Areas
   § 3-VI. Thinking Beyond Substantive Issues Governed by Other Instances of Federal Courts

UNIT 2 GETTING STARTED

Ch. 4 Litigation Milestone Checklists
   § 4-I. Scope
   § 4-II. First Steps in Filing or Responding to Lawsuit
   § 4-III. Pretrial Steps

UNIT 3 FRAMING THE CASE: PARTIES AND PLEADINGS

Ch. 5 Analyzing Subject Matter Jurisdiction Generally
   § 5-I. Strategy
   § 5-II. Understanding the Nature and Sources of Federal Jurisdiction
   § 5-III. Analyzing the Limitations of Federal Jurisdiction
   § 5-IV. Identifying Jurisdictional (and Distinguishing Non-Jurisdictional) Issues
   § 5-V. Recognizing the Obligations and Risks when Jurisdiction is Absent

Ch. 6 Analyzing Federal Question Jurisdiction
   § 6-I. Scope
   § 6-II. Understanding the Sources of Federal Question Jurisdiction
   § 6-III. Statutes Creating Jurisdiction over Suits between Particular Parties
   § 6-IV. Statutes Creating Jurisdiction over Claims in Particular Subject Areas
   § 6-V. Procedure for Analyzing whether Federal Question Jurisdiction Exists

Ch. 7 Analyzing Diversity Jurisdiction
   § 7-I. Strategy
   § 7-II. Understanding Sources of Diversity Jurisdiction
   § 7-III. Identifying Parties’ Citizenship for Diversity Purposes
   § 7-IV. Analyzing whether Parties are Diverse
   § 7-V. Satisfying the Amount in Controversy Requirement
   § 7-VI. Recognizing Other Limitations on Diversity Jurisdiction
   § 7-VII. Pleading and Challenging Diversity Jurisdiction

Ch. 8 Analyzing Removal Jurisdiction
   § 8-I. Strategy
   § 8-II. Checklists—Analyzing Case for Removal
   § 8-III. Removal Jurisdiction—Overview
   § 8-IV. Removal Allowed from “State Courts”
   § 8-V. Removal Based on Federal Question Jurisdiction
   § 8-VI. Removal Based on Diversity Jurisdiction
   § 8-VII. Other Statutory Rights to Remove
   § 8-VIII. Waiver of the Right to Remove
   § 8-IX. Actions that are Not Removable to Federal Court
   § 8-X. Procedure for Removing Actions to Federal Court
   § 8-XI. Moving for Remand to State Court after Removal
   § 8-XII. Effect of Remand on State Court Proceedings
   § 8-XIII. Appellate Review of Removal and Remand

Ch. 9 Analyzing Supplemental Jurisdiction
   § 9-I. Strategy
   § 9-II. Statutory Authority for Supplemental Jurisdiction
   § 9-III. Federal Claim Must be Substantial
   § 9-IV. State and Federal Causes of Action Must be Part of Same Case or Controversy
   § 9-V. Supplemental Jurisdiction Extends to Additional Parties
   § 9-VI. Supplemental Jurisdiction is often Discretionary
   § 9-VII. Supplemental Jurisdiction can be Prohibited

Ch. 10 Analyzing Personal Jurisdiction
   § 10-I. Strategy
   § 10-II. Personal Jurisdiction—Overview
   § 10-III. Governing Long Arm Statutes
   § 10-IV. Personal Jurisdiction Based on Traditional Bases
   § 10-V. General Jurisdiction
   § 10-VI. Specific Jurisdiction—Overview—Minimum Contacts
   § 10-VII. Purposeful Activity Element for Minimum Contacts
   § 10-VIII. ‘Arising out of’ or ‘Relating to’ Element for Minimum Contacts
   § 10-IX. Reasonableness Element for Minimum Contacts
   § 10-X. Nationwide Contacts as to Certain Federal Claims
   § 10-XI. Jurisdiction over Property
   § 10-XII. Procedural Governing Dismissals for Lack of Personal Jurisdiction

Ch. 11 Analyzing Service of Process
   § 11-I. Strategy
   § 11-II. Service of Process—Overview
   § 11-III. Identifying Parties’ Citizenship for Service of Process
   § 11-IV. Analyzing whether Parties are Diverse
   § 11-V. Identifying Where Service Must be Made
   § 11-VI. Governing Long Arm Statutes
   § 11-VII. Purposeful Activity for Service of Process
   § 11-VIII. Minimum Contacts for Service of Process
   § 11-IX. Service of Process
   § 11-X. Service of Process—Minimum Contacts
   § 11-XI. Jurisdiction over Property
   § 11-XII. Procedural Governing Dismissals for Lack of Personal Jurisdiction

Ch. 12 Analyzing Venue
   § 12-I. Strategy
   § 12-II. Venue Generally
   § 12-III. Initial Considerations
   § 12-IV. Determining Where Venue is Proper
   § 12-V. Change of Venue—Initial Considerations
   § 12-VI. Choosing Between Section 1404(a) and Section 1404(b)
   § 12-VII. Transferring Venue for Convenience
   § 12-VIII. Dismissal under Doctrine of Forum Non Conveniens
   § 12-IX. Multidistrict Litigation

Ch. 13 Determining Parties to the Action
   § 13-I. Scope
   § 13-II. Selecting Initial Parties to the Action—Overview
   § 13-IV. Determining Real Party in Interest Status
   § 13-V. Determining Capacity to Sue and be Sued in Federal Court—Rule 17(b)

Ch. 14 Recusal
   § 14-I. Scope
   § 14-II. Overview of Basis for Judicial Disqualification
   § 14-III. Judge’s Duties and Obligations
   § 14-IV. Choosing between Section 455(a) and Section 455(a)
   § 14-V. Procedure for Disqualification under Section 455(a)
   § 14-VI. Procedure for Disqualification under Section 455(b)
   § 14-VII. Grounds for Recusal under Sections 455(a) and 455(b)
   § 14-VIII. Waiver and Divestiture: Avoiding Recusal
   § 14-IX. Procedure Following Order of Recusal
   § 14-X. Appellate Review of Denial of Recusal

UNIT 4 SEEKING AND DEFENDING AGAINST CONTRACTUAL ARBITRATION

Ch. 15 Determining Parties to the Action
   § 15-I. Scope
   § 15-II. Selecting Initial Parties to the Action—Overview
   § 15-III. Applying Permissive Party Joinder Rule—Rule 20
   § 15-IV. Determining Real Party in Interest Status
   § 15-V. Determining Capacity to Sue and be Sued in Federal Court—Rule 17(b)
James M. Wagstaffe is the premier industry expert and authority with respect to pretrial federal civil procedure. Mr. Wagstaffe possesses an inimitable wealth of knowledge, experience and practice as a federal litigator, educator and lecturer and as an accomplished author. He is also the author of *California Pretrial Civil Procedure Practice Guide: The Wagstaffe Group*. 

Mr. Wagstaffe is partner and co-founder of Wagstaffe, von Loewenfeldt, Busch & Radwick, and handles a diverse range of litigation matters. He currently serves as a Chair of the Federal Judicial Center Foundation Board, appointed by the Chief Justice of the United States Supreme Court.

### Contributing Authors
- Steven J. Adamski *(Senior Lead Editor)*
- Hon. Jacqueline Scott Corley *(Lead Judicial Editor)*
- Frank Busch
- Kelly Corcoran
- Keith Fong
- Suzanne Klotz
- Cherokee Melton
- Maria Radwick
- Brooke Veris Rusenko

### FOR MORE INFORMATION
**CONTACT** your LexisNexis® account representative  
**CALL** 800.223.1940  
**VISIT** the LexisNexis® Store at lexisnexis.com/FEDERALGUIDE

Federal government customers, please call 800.544.6558

### AVAILABLE IN CONVENIENT FORMATS
Choose the format that best fits the way you work:

- **PRINT**  
  3-VOLUME PRINT EDITION

- **EBOOKS OR DIGITAL LIBRARY**  
  ACCESS ANYTIME AND FROM ANYWHERE

- **AVAILABLE ON LEXIS® SERVICE**  
  ACCESS THROUGH THE FEDERAL CIVIL LITIGATION PRACTICE CENTER