

# Table of Contents

## Volume 2

### CHAPTER 1. THE MISSOURI COURT SYSTEM

- § 1.1 In general
- § 1.2 Circuit courts—In general
- § 1.3 Circuit courts—Jurisdiction
- § 1.4 Circuit court judges—In general
- § 1.5 Circuit court judges—Qualifications
- § 1.6 Circuit court judges—Selection and terms
- § 1.7 Circuit court judges—Compensation and allowances
- § 1.8 Circuit court judges—Disqualification
- § 1.9 Circuit court judges—Retirement
- § 1.10 Circuit court judges—Discipline
- § 1.11 Circuit courts—Appeal
- § 1.12 Associate circuit judges—In general
- § 1.13 Associate circuit judges—Authorized number
- § 1.14 Associate circuit judges—Jurisdiction
- § 1.15 Associate circuit judges—Qualifications
- § 1.16 Associate circuit judges—Selection and terms
- § 1.17 Associate circuit judges—Compensation and allowances
- § 1.18 Associate circuit judges—Disqualification
- § 1.19 Associate circuit judges—Retirement
- § 1.20 Associate circuit judges—Discipline
- § 1.21 Associate circuit judges—Appeal
- § 1.22 Municipal courts—In general
- § 1.23 Municipal court judges—In general
- § 1.24 Municipal division—Jurisdiction
- § 1.25 Municipal court judges—Qualifications
- § 1.26 Municipal court judges—Selection and terms
- § 1.27 Municipal court judges—Compensation/allowances
- § 1.28 Municipal court judges—Disqualification

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 1.29 Municipal court judges—Retirement
- § 1.30 Municipal court judges—Discipline
- § 1.31 Municipal division—Appeal
- § 1.32 Probate division—In general
- § 1.33 Probate division—Jurisdiction
- § 1.34 Probate judges and commissioners—  
Qualifications
- § 1.35 Probate judges and commissioners—Selection and  
terms
- § 1.36 Probate judges and commissioners—  
Compensation and allowances
- § 1.37 Probate judges and commissioners—  
Disqualification
- § 1.38 Probate judges—Retirement
- § 1.39 Probate judges and commissioners—Discipline
- § 1.40 Probate division—Appeal
- § 1.41 Small claims court—In general
- § 1.42 Small claims court—Jurisdiction
- § 1.43 Small claims court—Appeal
- § 1.44 Juvenile division—In general
- § 1.45 Juvenile division—Judges/commissioners—In  
general
- § 1.46 Juvenile court—Jurisdiction
- § 1.47 Juvenile court—Judges/commissioners—Selection  
and terms
- § 1.48 Juvenile courts—Judges/commissioners—  
Compensation and allowances
- § 1.49 Juvenile court—Juvenile officer
- § 1.50 Juvenile court—Appeal
- § 1.51 Court of appeals—In general
- § 1.52 Court of appeals—Jurisdiction
- § 1.53 Court of appeals—Judges—Qualifications
- § 1.54 Court of appeals—Judges—Selection and terms
- § 1.55 Court of appeals—Judges—Compensation and  
allowances
- § 1.56 Court of appeals—Judges—Disqualification
- § 1.57 Court of appeals—Judges—Retirement
- § 1.58 Court of appeals—Judges—Discipline
- § 1.59 Court of appeals—Transfer to supreme court
- § 1.60 Missouri supreme court—In general
- § 1.61 Missouri supreme court—Jurisdiction
- § 1.62 Missouri supreme court—Judges—Qualifications
- § 1.63 Missouri supreme court—Judges—Selection and

## TABLE OF CONTENTS

- terms
- § 1.64 Missouri supreme court—Judges—Compensation and allowances
- § 1.65 Missouri supreme court—Rule-making
- § 1.66 Missouri supreme court—Appeal

## CHAPTER 2. ATTORNEY-CLIENT RELATIONSHIP

- § 2.1 In general
- § 2.2 Screening the case—Initial client interview
- § 2.3 Conflicts of interest—Prohibition against representing clients with adverse interests
- § 2.4 Conflicts of interest—Former clients
- § 2.5 Conflicts of interest—Created by firm association
- § 2.6 Prohibited transactions—Between attorney and client
- § 2.7 Areas of law—Representations of expertise
- § 2.8 Objectives of representation
- § 2.9 Confidentiality
- § 2.10 Organization clients
- § 2.11 Fees—In general
- § 2.12 Contingent fees
- § 2.13 Trust accounts
- § 2.14 Professional independence
- § 2.15 Liens
- § 2.16 Declining or terminating representation
- § 2.17 Withdrawal
- § 2.18 Discharge
- § 2.19 Collection of fees
- § 2.20 Good faith—Sanctions for frivolous actions
- § 2.21 Delay—Diligent efforts
- § 2.22 Candor towards the tribunal
- § 2.23 Discovery—Good faith
- § 2.24 Lawyer as witness
- § 2.25 Contact with parties and others
- § 2.26 Contact with tribunal
- § 2.27 Trial publicity
- § 2.28 Non-lawyer assistants
- § 2.29 Advertising—Solicitation
- § 2.30 Referrals
- § 2.31 Disciplinary matters—Duty to report
- § 2.32 Disciplinary proceedings

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 2.33 Authority of attorneys—Conduct of litigation
- § 2.34 Client controls settlement
- § 2.35 Unauthorized action by attorney
- § 2.36 Standard of care
- § 2.37 Client files
- § 2.38 Judicial proceeding privilege
- § 2.39 Leaving a law firm
- § 2.40 Agreements with clients
- § 2.41 Unauthorized practice of law

## **CHAPTER 3. JURISDICTION AND VENUE—WHERE TO FILE**

- § 3.1 Jurisdiction
- § 3.2 Jurisdiction distinguished from venue
- § 3.3 Subject matter jurisdiction
- § 3.4 Exercise of subject matter jurisdiction
- § 3.5 In personam and in rem jurisdiction
- § 3.6 Acquiring in personam jurisdiction
- § 3.7 Jurisdiction over persons or corporations within the state
- § 3.8 Jurisdiction over non-residents
- § 3.9 Missouri long-arm statute
- § 3.10 Other statutes conveying in personam jurisdiction over non-residents
- § 3.11 Pleading in personam jurisdiction
- § 3.12 Jurisdiction to render a particular judgment
- § 3.13 Venue generally
- § 3.14 Venue for third-party practice and for counterclaims
- § 3.15 Waiver of venue
- § 3.16 Stipulated or contractual venue
- § 3.17 Venue based on nature of the defendant or defendants
- § 3.18 Special venue statutes
- § 3.19 Change of venue
- § 3.20 Forum non-conveniens
- § 3.21 Pretensive joinder

## **CHAPTER 4. COMMENCEMENT OF AN ACTION—SERVICE OF PROCESS**

- § 4.1 Commencement
- § 4.2 Service of process

## TABLE OF CONTENTS

§ 4.3	The summons
§ 4.4	Who may serve process—Return of service
§ 4.5	Personal service within Missouri
§ 4.6	Personal service—Individuals
§ 4.7	Personal service—Corporations, partnerships, or other unincorporated associations
§ 4.8	Personal service—Minors
§ 4.9	Service outside Missouri—Long arm jurisdiction
§ 4.10	Mail Service
§ 4.11	Notice and acknowledgment of receipt of summons and petition notice—Form
§ 4.12	Publication service
§ 4.13	Special service statutes
§ 4.14	Defects in service
§ 4.15	Challenging service
§ 4.16	Immunity from service
§ 4.17	Interference or assistance with service
§ 4.18	International service

## CHAPTER 5. STATUTES OF LIMITATIONS

§ 5.1	In general—Historical background
§ 5.2	Nature and purpose—Limitations vs. Repose
§ 5.3	Construction
§ 5.4	Accrual—In general
§ 5.5	Effect as a bar
§ 5.6	Actions and agreements affecting limitations— Waiver and estoppel
§ 5.7	Revival of contractual debt by a writing
§ 5.8	Pleading the defense of the statute of limitations
§ 5.9	Tolling of statutes of limitations
§ 5.10	Minority
§ 5.11	Insanity
§ 5.12	Imprisonment
§ 5.13	Absences in specific circumstances
§ 5.14	Fraudulent concealment
§ 5.15	Actions stayed by injunctions
§ 5.16	Death of a party
§ 5.17	Savings statute (refiling after non-suit)
§ 5.18	General conflict of law issues
§ 5.19	Missouri's borrowing statute—V.A.M.S. § 516.190
§ 5.20	General statutes of limitation

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 5.21 Real property—General limitations
- § 5.22 Tolling of real actions
- § 5.23 Tort actions—“Injury to the person or rights of another, not arising out of contract”
- § 5.24 Fraud actions
- § 5.25 Actions for libel, slander, assault, battery, false imprisonment and malicious prosecution
- § 5.26 Actions against health care providers
- § 5.27 Actions against design professionals
- § 5.28 Wrongful death actions
- § 5.29 Contract actions—In general
- § 5.30 Contracts for the sale of goods
- § 5.31 John doe defendants
- § 5.32 Claims against deceased persons
- § 5.33 Counterclaims
- § 5.34 Dissolved corporations
- § 5.35 Calculation of time

## CHAPTER 6. PLEADINGS

- § 6.1 In general
- § 6.2 The petition
- § 6.3 The petition—Caption—Rule 55.02
- § 6.4 The petition—Caption—The name of the court
- § 6.5 The petition—Caption—The title
- § 6.6 The petition—Caption—The file number
- § 6.7 The petition—Caption—The designation
- § 6.8 The petition—Jurisdictional and venue allegations
- § 6.9 The petition—Joinder of claims—Rule 55.06
- § 6.10 The petition—Alternative claims—Rule 55.10
- § 6.11 The petition—Inconsistency v. Repugnancy
- § 6.12 The petition—Stating a cause of action—Pleading the essential facts
- § 6.13 The petition—Stating a cause of action—Matters unknown to the pleader
- § 6.14 The petition—Stating a cause of action—Adopting allegations—Rule 55.12
- § 6.15 The petition—Stating a cause of action—Stating separate causes of action
- § 6.16 The petition—“Splitting” a cause of action
- § 6.17 The petition—Pleading particular averments
- § 6.18 The petition—Pleading particular averments—Fraud or mistake—Rule 55.15

## TABLE OF CONTENTS

§ 6.19	The petition—Pleading particular averments— Conditions precedent—Rule 55.16
§ 6.20	The petition—Pleading particular averments— Pleading a written instrument—Rule 55.22
§ 6.21	The petition—Pleading particular averments— Pleading official documents or acts—Rule 55.17
§ 6.22	The petition—Pleading particular averments— Pleading judgments and decisions—Rule 55.18
§ 6.23	The petition—Pleading particular averments— Pleading general damages
§ 6.24	The petition—Pleading particular averments— Pleading special damages—Rule 55.19
§ 6.25	The petition—Pleading particular averments— Pleading punitive damages—Rule 55.19
§ 6.26	The petition—Pleading particular averments— Pleading libel and slander—Rule 55.20
§ 6.27	The petition—Pleading particular averments— Pleading a private statute (or right derived therefrom) and laws of other states—Rule 55.21
§ 6.28	The petition—Prayer for relief—Rule 55.05
§ 6.29	The petition—Signature—Sanctions for frivolous pleadings—Rule 55.03
§ 6.30	The petition—Verification/affidavit
§ 6.31	The petition—Prejudgment interest demand
§ 6.32	Answer
§ 6.33	Answer—Defenses and forms of denials—Rule 55.07
§ 6.34	Answer—Defenses and forms of denials—General denial
§ 6.35	Answer—Defenses and forms of denials—Denial for lack of knowledge—Rule 55.07
§ 6.36	Answer—Defenses and forms of denials—Failure to deny—Rule 55.09
§ 6.37	Answer—Defenses and forms of denials— Negative pregnant and ambiguous denials
§ 6.38	Answer—Defenses and forms of denials—Rule 55.27—Defenses
§ 6.39	Answer—Defenses and forms of denials— Affirmative defenses—Rule 55.08
§ 6.40	Third party claims
§ 6.41	Cross-claims
§ 6.42	Counterclaims
§ 6.43	Counterclaims—Compulsory v. Permissive
§ 6.44	The reply—Rules 55.01, 55.09

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 6.45 The reply—Time for Filing
- § 6.46 The reply—Form of reply
- § 6.47 Amended pleadings—Rule 55.33
- § 6.48 Amended pleadings—Time concerns
- § 6.49 Amended pleadings—Form of amended pleadings
- § 6.50 Amended pleadings—Response to amended pleadings
- § 6.51 Amended pleadings—Relation back of amendments—Rule 55.33(c)
- § 6.52 Supplemental pleadings—Rule 55.33(d)
- § 6.53 Motions Relating to Pleadings
- § 6.54 Motion to dismiss—Rule 55.27(a)
- § 6.55 Motion to strike—Rule 55.27(e)
- § 6.56 Motion for more definite statement
- § 6.57 Motion for judgment on the pleadings—Rule 55.27(b)
- § 6.58 Qualified privilege
- § 6.59 Judicial admissions

## CHAPTER 7. PARTIES

- § 7.1 In general
- § 7.2 Real party in interest
- § 7.3 Joinder of parties
- § 7.4 Compulsory joinder—Rule 52.04
- § 7.5 Permissive joinder—Rule 52.05
- § 7.6 Misjoinder and nonjoinder—Rule 52.06
- § 7.7 Interpleader
- § 7.8 Intervention
- § 7.9 Intervention of right—Rule 52.12(a)
- § 7.10 Permissive intervention
- § 7.11 Third party practice—Rule 52.11
- § 7.12 Substitution of parties—Rule 52.13
- § 7.13 Death—Rule 52.13(a)
- § 7.14 Incompetency—Rule 52.13(b)
- § 7.15 Transfer of interest—Rule 52.13(c)
- § 7.16 Death or separation from office—Rule 52.13(d)
- § 7.17 Dissolution of corporation—Rule 52.13(e)
- § 7.18 Class actions—Rules 52.08 and 52.10
- § 7.19 Shareholders' derivative action—Rule 52.09
- § 7.20 Wrongful death
- § 7.21 Consolidation
- § 7.22 Survival actions



## TABLE OF CONTENTS

### § 7.23 Standing

## CHAPTER 8. DISMISSALS

- § 8.1 Voluntary dismissal
- § 8.2 Involuntary dismissal
- § 8.3 Effect of dismissal on the lawsuit and on the parties
- § 8.4 Effect of dismissal on counterclaims, cross claims and third party claims

## CHAPTER 9. DISCOVERY

- § 9.1 History
- § 9.2 Purposes of discovery
- § 9.3 Scope and frequency of use generally
- § 9.4 Stipulations regarding discovery
- § 9.5 Depositions upon oral examinations
- § 9.6 Deposition notices
- § 9.7 Subpoena duces tecum
- § 9.8 Where depositions may be taken
- § 9.9 Persons before whom depositions may be taken—  
Oath
- § 9.10 Recording the deposition
- § 9.11 Presentment and signature
- § 9.12 Objections and protective orders
- § 9.13 Sanctions for failure to follow proper procedure
- § 9.14 Telephone depositions
- § 9.15 Depositions before action is filed
- § 9.16 Depositions upon written questions
- § 9.17 Interrogatories to parties
- § 9.18 Service of interrogatories
- § 9.19 Answers to interrogatories and objections
- § 9.20 Option to produce business records
- § 9.21 Duty to supplement interrogatory answers
- § 9.22 Production of documents and things and entry upon land for inspection
- § 9.23 Timing of requests for production or inspection and response
- § 9.24 Procedure for production or inspection
- § 9.25 Discoverability of computer data bases
- § 9.26 Physical and mental examination of persons
- § 9.27 Request for admissions
- § 9.28 Timing of requests to admit

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 9.29 Procedure for serving and responding to request for admissions
- § 9.30 Effect and use of admissions pursuant to request for admissions
- § 9.31 Sanctions to enforce requests for admissions
- § 9.32 Scope of discovery—Missouri vs. Federal Courts
- § 9.33 Discovery of insurance agreements
- § 9.34 Discovery of privileged information
- § 9.35 Privileges contained in V.A.M.S. § 491.060
- § 9.36 Other privileges
- § 9.37 Work product doctrine
- § 9.38 Elements of work product protection
- § 9.39 Limitations on the work product doctrine
- § 9.40 Discovery of experts
- § 9.41 Discovery of non-retained experts
- § 9.42 Protective orders
- § 9.43 Medical authorizations
- § 9.44 Sanctions—In general
- § 9.45 Employment authorizations
- § 9.46 Records under seal
- § 9.47 Spoliation
- § 9.48 Corporate representative depositions

## **CHAPTER 10. JURIES AND JURY SELECTION**

- § 10.1 Right to a jury trial
- § 10.2 Jury demands and waivers
- § 10.3 Jury lists and jury panels
- § 10.4 General qualifications of jurors
- § 10.5 Voir dire
- § 10.6 Misconduct on voir dire
- § 10.7 Challenges for cause
- § 10.8 Peremptory challenges
- § 10.9 Juror note-taking
- § 10.10 Questions by the jury
- § 10.11 Juror misconduct

## **CHAPTER 11. SUBPOENAS**

### **A. DEPOSITION SUBPOENAS**

- § 11.1 Compelling attendance of witnesses

## TABLE OF CONTENTS

§ 11.2	Subpoena duces tecum
§ 11.3	Issuance
§ 11.4	Service and tender of witness fees
§ 11.5	Deposition for use in foreign jurisdiction
§ 11.6	Application for order directing issuance of subpoena—Form
§ 11.7	Proposed order directing issuance of subpoena—Form
§ 11.8	Depositions in other jurisdictions for use in Missouri
§ 11.9	Sanctions associated with deposition subpoenas

## B. TRIAL SUBPOENAS

§ 11.10	Compelling attendance of witness at trial
§ 11.11	Trial subpoenas duces tecum
§ 11.12	Issuance
§ 11.13	Service
§ 11.14	Enforcement of trial subpoenas and sanctions
§ 11.15	Miscellaneous subpoena provisions

## CHAPTER 12. PRE-TRIAL CONFERENCES

§ 12.1	In general
§ 12.2	Purpose and goals
§ 12.3	Settlement—Goal or byproduct
§ 12.4	Timing in relation to trial
§ 12.5	Topics for consideration
§ 12.6	Who attends
§ 12.7	Pretrial order
§ 12.8	Obtaining the most value from conference

## CHAPTER 13. EVIDENCE

§ 13.1	In general—Scope
§ 13.2	Relevance—In general
§ 13.3	Relevance—Exclusion
§ 13.4	Character evidence—Similar acts
§ 13.5	Character evidence
§ 13.6	Methods of proving character
§ 13.7	Habit or routine practice
§ 13.8	Subsequent remedial measures
§ 13.9	Collateral source rule

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 13.10 Competency of witnesses—Types
- § 13.11 Dead man’s statute
- § 13.12 Impeachment of witnesses
- § 13.13 Evidence of character and conduct
- § 13.14 Impeachment by evidence of criminal conviction
- § 13.15 Prior inconsistent statements
- § 13.16 Exclusion of witnesses
- § 13.17 Opinion testimony—Lay witnesses
- § 13.18 Expert witnesses
- § 13.19 Opinion on ultimate issues
- § 13.20 Privileges
- § 13.21 Attorney-client
- § 13.22 Other privileges
- § 13.23 Hearsay—In general
- § 13.24 Exceptions to the hearsay rule, irrespective of availability of declarant
- § 13.25 Statement of present sense impression—Contemporaneous statements
- § 13.26 Excited utterances—Spontaneous declarations
- § 13.27 Statements of declarant’s then existing mental, emotional or physical condition
- § 13.28 Statements for purposes of medical diagnosis or treatment
- § 13.29 Recorded recollection
- § 13.30 Business records
- § 13.31 Public records and reports
- § 13.32 Vital statistics
- § 13.33 Records of religious organizations
- § 13.34 Marriage certificates
- § 13.35 Family records
- § 13.36 Documents affecting property interest
- § 13.37 Ancient documents
- § 13.38 Market reports and commercial publications
- § 13.39 Learned treatises
- § 13.40 Admission by party opponent
- § 13.41 Party’s own statement
- § 13.42 Statements adopted by party opponent
- § 13.43 Authorized statements
- § 13.44 Statements by one in privity with party opponent
- § 13.45 Statement of coconspirator
- § 13.46 Other exceptions
- § 13.47 Hearsay exceptions based on unavailability of

## TABLE OF CONTENTS

	declarant
§ 13.48	Prior testimony
§ 13.49	Dying declarations
§ 13.50	Declarations against interest
§ 13.51	Statements of personal or family history
§ 13.52	Hearsay within hearsay
§ 13.53	Judicial notice
§ 13.54	Authentication
§ 13.55	Jury view of site
§ 13.56	Best evidence rule
§ 13.57	Rebuttal
§ 13.58	Alcohol
§ 13.59	“Litigation syndrome”
§ 13.60	Cross-examination
§ 13.61	Secret recordings
§ 13.62	Increased risk of medical complications
§ 13.63	Proof of causation—Market share evidence
§ 13.64	Offer of proof

## CHAPTER 14. ORDER OF TRIAL

§ 14.1	In general
§ 14.2	Closing a courtroom
§ 14.3	Right to open and close
§ 14.4	Opening statement
§ 14.5	Misconduct of jurors
§ 14.6	Misconduct of party, witness, attendant or bystander
§ 14.7	Misconduct of counsel
§ 14.8	Prejudicial actions of the trial judge
§ 14.9	Mistrial
§ 14.10	Objections
§ 14.11	Closing argument
§ 14.12	Bifurcation

## CHAPTER 15. JURY INSTRUCTIONS

§ 15.1	Introduction
§ 15.2	MAI approach to instructing a jury
§ 15.3	Preparing jury instructions
§ 15.4	Tendering and marking instructions
§ 15.5	Objections
§ 15.6	General instructions
§ 15.7	Instructions for specific claims

- § 15.8 Optional instructions
- § 15.9 Forms of verdict
- § 15.10 Comparative fault
- § 15.11 Roving commissions

## **CHAPTER 16. VERDICTS**

- § 16.1 Verdicts
- § 16.2 General and special verdicts
- § 16.3 Responsiveness to all issues—Surplusage
- § 16.4 Verdict forms
- § 16.5 Interpretation of the verdict
- § 16.6 Inconsistent verdicts
- § 16.7 Amendment of the verdict
- § 16.8 Impeachment of the verdict
- § 16.9 Waiver of objections
- § 16.10 Damages award—Remittitur and additur

## **CHAPTER 17. PRESERVATION OF ERROR—POST TRIAL MOTIONS**

- § 17.1 Preservation of error—In general
- § 17.2 Objections at trial—Exceptions unnecessary
- § 17.3 Timeliness
- § 17.4 Preservation of error previously ruled upon or earlier urged
- § 17.5 Specificity
- § 17.6 Proper ground
- § 17.7 Multi-parties
- § 17.8 Ruling on objections
- § 17.9 Offer of proof—When necessary
- § 17.10 Exceptions to offer of proof requirement
- § 17.11 Necessity of obtaining a ruling on the offer of proof
- § 17.12 Requirement of post trial motion to preserve error
- § 17.13 Jury tried cases
- § 17.14 Specificity of allegations of error in new trial motion
- § 17.15 Exceptions to rule requiring a new trial motion to preserve error
- § 17.16 Plain error rule
- § 17.17 Preserving error in non-jury tried case
- § 17.18 Motion for directed verdict—In general

## TABLE OF CONTENTS

- § 17.19 After opening statements
- § 17.20 After the close of evidence
- § 17.21 Standard for granting
- § 17.22 Motion for judgment notwithstanding the verdict
- § 17.23 Motion to alter or amend
- § 17.24 Party's motion to alter or amend judgment in a judge-tried case
- § 17.25 Court's authority to amend judgment on its own motion
- § 17.26 Necessity of notice and an opportunity to be heard
- § 17.27 Court's power is limited by a finding of good cause
- § 17.28 Motion for additur/remittitur

## CHAPTER 18. BENCH TRIALS

- § 18.1 In general
- § 18.2 Missouri bench trial procedural rules
- § 18.3 Amendment of pleadings
- § 18.4 Bench trial proceedings—Trial judge as finder of fact
- § 18.5 Bench trial proceedings—Advisory juries
- § 18.6 Bench trial proceedings—Admission of evidence
- § 18.7 Bench trial proceedings—Rulings on objections to admissibility
- § 18.8 Bench trial proceedings—Trial record of evidence ruled inadmissible
- § 18.9 Bench trial proceedings—Reopening of the trial court record
- § 18.10 Findings of fact
- § 18.11 Dispositive motions during trial
- § 18.12 Post-trial motions
- § 18.13 Scope of appellate review
- § 18.14 Bench trial litigation considerations

## CHAPTER 19. JUDGMENTS

- § 19.1 In general
- § 19.2 Form of judgment
- § 19.3 Decrees in equity
- § 19.4 Correction of clerical mistakes
- § 19.5 Nunc pro tunc
- § 19.6 Effect of judgments—Liens
- § 19.7 Effect of judgments—Life of lien

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 19.8 Effect of judgments—Revival
- § 19.9 Effect of judgments—Transcript of judgment
- § 19.10 Res judicata (claim preclusion)
- § 19.11 Res judicata (claim preclusion)—Merger or bar
- § 19.12 Res judicata (claim preclusion)—Prior litigation
- § 19.13 Res judicata (claim preclusion)—Summary judgment
- § 19.14 Res judicata (claim preclusion)—Default judgment
- § 19.15 Res judicata (claim preclusion)—Dismissals
- § 19.16 Res judicata (claim preclusion)—Consent judgments
- § 19.17 Collateral estoppel (issue preclusion)
- § 19.18 Effect of pending appeal
- § 19.19 Law of the case
- § 19.20 Election of remedies
- § 19.21 Final judgment
- § 19.22 Interest on judgments—Prejudgment interest
- § 19.23 Interest on judgments—Post judgment interest
- § 19.24 Default judgments
- § 19.25 Summary judgment
- § 19.26 Satisfaction of judgment
- § 19.27 Registration of foreign judgments

## CHAPTER 20. COSTS AND ATTORNEY FEES

- § 20.1 Terminology
- § 20.2 Attorney fees
- § 20.3 Prevailing party
- § 20.4 Dismissal, non-suits
- § 20.5 Equity cases
- § 20.6 Tender or offer of judgment
- § 20.7 Bill of costs
- § 20.8 Allowable costs
- § 20.9 Notary fees
- § 20.10 Service of process
- § 20.11 Jury fees
- § 20.12 Interpreter's fees
- § 20.13 Depositions
- § 20.14 Guardian ad litem fee
- § 20.15 Items not allowed as costs
- § 20.16 Costs against state or countries



## TABLE OF CONTENTS

- § 20.17 Common fund
- § 20.18 Objections to costs

## CHAPTER 21. RELIEF FROM JUDGMENT

- § 21.1 In general
- § 21.2 Control of judgments
- § 21.3 Amendment of a judgment
- § 21.4 Motion to set aside
- § 21.5 Relief from default judgment pursuant to Rule 74.05(d)
- § 21.6 Relief pursuant to Rule 74.06(b)
- § 21.7 Independent action in equity
- § 21.8 Collateral attack

## CHAPTER 22. APPELLATE REVIEW

- § 22.1 Preservation of issues for appeal prior to trial—  
An overview
- § 22.2 Preservation of issues at trial
- § 22.3 Preservation of objections to instructions
- § 22.4 Preservation of issues in post-trial motions
- § 22.5 What is an appealable judgment
- § 22.6 Who may appeal
- § 22.7 When to appeal—Court control of judgment for  
30 days
- § 22.8 When to appeal—The effect of posttrial motions
- § 22.9 Where to appeal—Supreme court or court of  
appeals
- § 22.10 Filing the notice of appeal, supersedeas bonds,  
and other required documents
- § 22.11 Settlement conferences
- § 22.12 The record on appeal
- § 22.13 Contents of the appellate brief—General and  
technical requirements
- § 22.14 Citation of unpublished opinions/memorandum  
decisions
- § 22.15 Contents of the appellate brief—Jurisdictional  
statement
- § 22.16 Contents of the appellate brief—Statement of  
facts
- § 22.17 Contents of the appellate brief—Points relied on
- § 22.18 Contents of the appellate brief—Argument and

- conclusion
- § 22.19 Oral argument—Basic requirements
- § 22.20 Oral argument—A few words to the wise
- § 22.21 The decision-making process, and alternative methods of disposition on appeal
- § 22.22 Costs, dismissal, and other sanctions
- § 22.23 Rehearings
- § 22.24 Transfer of cases to the missouri supreme court
- § 22.25 Miscellaneous rules governing filing and service of motions and other pleadings

## **CHAPTER 23. ENFORCEMENT OF JUDGMENTS**

- § 23.1 Enforcing the court's judgment
- § 23.2 Right to execution
- § 23.3 Issuance of writ of execution
- § 23.4 Quashing execution
- § 23.5 Effect of modification, vacation or reversal of judgment
- § 23.6 Examination of judgment debtor
- § 23.7 Creation and duration of judgment liens
- § 23.8 Revival of the lien and the judgment
- § 23.9 Effect of judgment liens
- § 23.10 Priority of liens—Generally
- § 23.11 Levy on personal property
- § 23.12 Levy on real property
- § 23.13 Debtors right to select property and order a sale
- § 23.14 Sale of real property
- § 23.15 Sale of personal property
- § 23.16 Setting aside execution sales
- § 23.17 Property exemptions—Generally
- § 23.18 Persons entitled to exemption rights
- § 23.19 Protection and enforcement of exemption rights
- § 23.20 Real property exempt from execution
- § 23.21 Selection of homestead
- § 23.22 Enforcement of foreign judgments
- § 23.23 Application for execution—Form
- § 23.24 Writ of execution—Form
- § 23.25 Motion for revival of judgment and suggestions in support thereof—Form
- § 23.26 Petition for stay or quashing of execution—Form
- § 23.27 Notice of petition to stay or quash execution—

## TABLE OF CONTENTS

	Form
§ 23.28	Motion for examination of judgment debtor— Form
§ 23.29	Election of property to be levied upon—Form
§ 23.30	Notice to person whose land is levied upon— Form
§ 23.31	Notice of sheriff's sale of personal property under execution—Form

## Volume 2A

### CHAPTER 24. PREJUDGMENT ATTACHMENT

§ 24.1	Prejudgment attachment—In general
§ 24.2	Constitutionality
§ 24.3	Jurisdiction and venue
§ 24.4	Obtaining a writ of attachment—In general
§ 24.5	Grounds for attachment
§ 24.6	Evidentiary showing
§ 24.7	Bond requirement
§ 24.8	Service and notice
§ 24.9	Levy
§ 24.10	Return of property
§ 24.11	Quashing the writ of attachment
§ 24.12	Action by third parties
§ 24.13	Wrongful attachment
§ 24.14	Postjudgment procedure

### CHAPTER 25. GARNISHMENT

§ 25.1	In general
§ 25.2	Federal limitations
§ 25.3	When available—Who may be summoned as garnishee
§ 25.4	Property subject to garnishment
§ 25.5	Exempt property
§ 25.6	Delivery of property to sheriff—Bond
§ 25.7	Writ or summons of garnishment and notice
§ 25.8	Advice to garnishee
§ 25.9	Interrogatories
§ 25.10	Failure of garnishee to answer
§ 25.11	Intervention

- § 25.12 Disposition
- § 25.13 Wrongful garnishment
- § 25.14 Conclusion
- § 25.15 Equitable garnishment of insurance policies

## **CHAPTER 26. REPLEVIN**

- § 26.1 Introduction
- § 26.2 Constitutionality
- § 26.3 Replevin procedure—In general
- § 26.4 Affidavit
- § 26.5 Notice
- § 26.6 Bond
- § 26.7 Redelivery of property
- § 26.8 Quashing the order of delivery
- § 26.9 Trial

## **CHAPTER 27. WORKERS' COMPENSATION**

- § 27.1 Philosophy and history
- § 27.2 Jurisdiction
- § 27.3 Employer-employee relationship
- § 27.4 Accident arising out of and in the course of employment
- § 27.5 Occupational disease
- § 27.6 Notice
- § 27.7 Medical aid and rehabilitation benefits
- § 27.8 Temporary total disability
- § 27.9 Temporary partial disability
- § 27.10 Permanent partial disability and disfigurement
- § 27.11 Permanent total disability
- § 27.12 Death benefits
- § 27.13 Second injury fund
- § 27.14 Specialized losses
- § 27.15 Penalties
- § 27.16 Safety programs
- § 27.17 Administration
- § 27.18 Representing the employee
- § 27.19 Representing the employer and insurer
- § 27.20 Subrogation
- § 27.21 Discovery of physicians
- § 27.22 Mediation
- § 27.23 Statutory employee

## TABLE OF CONTENTS

- § 27.24 Dual capacity doctrine
- § 27.25 Co-employee liability
- § 27.26 False representations
- § 27.27 Workers' compensation practice forms
- § 27.28 Standard of review
- § 27.29 Tolling of statute of limitations

## CHAPTER 28. ADMINISTRATIVE PRACTICE AND PROCEDURE

- § 28.1 In general
- § 28.2 Missouri Administrative Procedure Act
- § 28.3 Rulemaking
- § 28.4 Definition of "rule" under the Missouri APA
- § 28.5 Categories of administrative rules
- § 28.6 Legislative and substantive rules
- § 28.7 Interpretative rules
- § 28.8 Other types of "rules"
- § 28.9 Statutory exclusions from the definition of rule
- § 28.10 Sources of rulemaking authority
- § 28.11 Rulemaking procedures under the requirements of the Missouri APA
- § 28.12 Judicial review of agency rulemaking
- § 28.13 Adjudication
- § 28.14 Adjudication of contested cases
- § 28.15 Initiation of contested cases
- § 28.16 Notice of a contested case and notice of hearing
- § 28.17 The hearing in a contested case
- § 28.18 The decisionmaker in contested cases
- § 28.19 The administrative hearing commission
- § 28.20 Discovery in contested cases
- § 28.21 Subpoenas in contested cases
- § 28.22 Evidence in contested cases
- § 28.23 Sufficiency of evidence
- § 28.24 Witnesses and testimony in contested cases
- § 28.25 Admissibility of certain types of evidence
- § 28.26 The record in a contested case
- § 28.27 The decision and order in a contested case
- § 28.28 Judicial review of administrative action
- § 28.29 Judicial review of noncontested cases
- § 28.30 Contested cases—Petitions for review
- § 28.31 Scope of judicial review and reviewing court's decision

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 28.32 Limitations on judicial review of agency action
- § 28.33 Standing
- § 28.34 Competitor standing
- § 28.35 Taxpayer standing
- § 28.36 Association standing
- § 28.37 Exhaustion of administrative remedies
- § 28.38 Ripeness
- § 28.39 Primary jurisdiction
- § 28.40 Res judicata and collateral estoppel
- § 28.41 Attorney fees for “prevailing party”

## **CHAPTER 29. ACTIONS AGAINST THE GOVERNMENT AND ITS EMPLOYEES**

- § 29.1 In general
- § 29.2 Actions against governmental entities
- § 29.3 Exceptions to sovereign immunity for governmental entities
- § 29.4 Motor vehicle exception
- § 29.5 Dangerous condition on property exception
- § 29.6 Contribution claims—No waiver
- § 29.7 Insurance exception
- § 29.8 Additional exceptions to sovereign immunity for municipalities
- § 29.9 Procedural issues
- § 29.10 Actions against government employees—Official immunity
- § 29.11 Official immunity—Who is immune?
- § 29.12 Discretionary versus ministerial—What acts are immune?
- § 29.13 What immunity is granted?
- § 29.14 Procedural issues
- § 29.15 The public duty doctrine—Another bar to actions
- § 29.16 Arbitration at plaintiff’s option

## **CHAPTER 30. EXTRAORDINARY WRITS-PROHIBITION, MANDAMUS AND QUO WARRANTO**

- § 30.1 In general
- § 30.2 Prohibition in general
- § 30.3 Situations where prohibition is available
- § 30.4 Prohibition procedure

## TABLE OF CONTENTS

§ 30.5	Basis and form of mandamus proceeding
§ 30.6	Elements of mandamus
§ 30.7	Situations where mandamus is used
§ 30.8	When mandamus is inappropriate
§ 30.9	Quo warranto in general
§ 30.10	Situations where quo warranto is available
§ 30.11	Quo warranto procedure
§ 30.12	Conclusion

## CHAPTER 31. ARBITRATION

§ 31.1	Introduction and overview
§ 31.2	Non-binding court-annexed arbitration
§ 31.3	Practical considerations involved in a decision to use binding arbitration
§ 31.4	Pre-existing agreements, arbitration clauses and submission agreements
§ 31.5	Arbitration and third parties
§ 31.6	Waiver of the right to arbitrate
§ 31.7	Getting the arbitration started—Filing the demand or submission agreement
§ 31.8	The response to an arbitration demand and counterclaims
§ 31.9	The role of federal and state acts in judicial actions to compel arbitration, to stay arbitration, or to enjoin conduct pending arbitration
§ 31.10	Motion to compel arbitration
§ 31.11	Motion for a stay of proceedings
§ 31.12	Actions to enjoin conduct of a party pending the outcome of the arbitration
§ 31.13	Selection of the arbitrator
§ 31.14	Documents, depositions, pre-hearing conferences and other pre-hearing matters
§ 31.15	The arbitration hearing
§ 31.16	Evidence
§ 31.17	The arbitration award
§ 31.18	The arbitration award—The issue of punitive damages
§ 31.19	The arbitration award—Specific performance
§ 31.20	Motion to modify or amend the arbitration award
§ 31.21	Motions to confirm or vacate an award
§ 31.22	International arbitration transactions

- § 31.23 Arbitration in specific areas of the law
- § 31.24 Construction industry arbitration
- § 31.25 Conclusion regarding the use of arbitration and ADR
- § 31.26 Collateral estoppel
- § 31.27 AAA suggestions for drafting dispute resolution clauses

## **CHAPTER 32. ASSOCIATE CIRCUIT PRACTICE**

- § 32.1 Associate circuit divisions—In general
- § 32.2 Chapter 517 cases
- § 32.3 Non-chapter 517 cases
- § 32.4 Procedure in Chapter 517 cases—In general
- § 32.5 Rules applicable to Chapter 517 cases
- § 32.6 Procedure in non-chapter 517 cases
- § 32.7 Discovery in associate circuit court
- § 32.8 Appeals and trial de novo

## **CHAPTER 33. SMALL CLAIMS**

- § 33.1 In general
- § 33.2 Jurisdiction
- § 33.3 Who can sue
- § 33.4 Claims exceeding jurisdictional amount
- § 33.5 Where to sue
- § 33.6 Procedure for instituting a claim
- § 33.7 Counterclaims
- § 33.8 Counterclaim arising out of same transaction or occurrence as plaintiff's claim
- § 33.9 Counterclaim—Same transaction discovered during trial
- § 33.10 Counterclaim—Same transaction; exceeding jurisdictional amount
- § 33.11 Counterclaims not arising out of the same transaction or occurrence
- § 33.12 Counterclaim not arising out of same transaction or occurrence—Exceeding jurisdictional amount
- § 33.13 Trials
- § 33.14 Judgments
- § 33.15 Appeals
- § 33.16 Petition—Form



## TABLE OF CONTENTS

- § 33.17 Summons—Form
- § 33.18 Counterclaim arising out of same transaction—  
Form
- § 33.19 Counterclaim not arising out of same  
transaction—Form
- § 33.20 Request for execution—Form
- § 33.21 Satisfaction of judgment—Form
- § 33.22 Dismissal—Form

## CHAPTER 34. SETTLEMENTS

- § 34.1 In general
- § 34.2 Essential elements
- § 34.3 Essential elements—Offer and acceptance
- § 34.4 Withdrawal or revocation
- § 34.5 Consideration
- § 34.6 Form and execution
- § 34.7 Operation and effect
- § 34.8 Operation and effect—Joint tortfeasors
- § 34.9 Enforcement or defense
- § 34.10 Impeachment or setting aside
- § 34.11 Presumptions and burden of proof
- § 34.12 Authority of attorney to settle claims
- § 34.13 Types of settlement agreements—Full release
- § 34.14 Types of settlement agreements—Partial release
- § 34.15 Types of settlement agreements—Agreement to  
limit recovery to particular assets
- § 34.16 Types of settlement agreements—Loan receipt
- § 34.17 Types of settlement agreements—Mary carter  
agreements
- § 34.18 Types of settlement agreements—Structured  
settlements
- § 34.19 Types of settlement agreements—Loy release
- § 34.20 Admissibility of settlement negotiations and  
agreements
- § 34.21 Settlement of minors' claims—In general
- § 34.22 Settlement of minors' claims—Legal problems  
unique to minors' claims
- § 34.23 Settlement of minors' claims—Approval in the  
circuit court
- § 34.24 Settlement of minors' claims—Approval in the  
probate division
- § 34.25 Settlement of minors' claims—Procedure for  
court approval over \$10,000.00

## METHODS OF PRACTICE—LITIGATION GUIDE

- § 34.26 Settlement of minors' claims—Parents' and others' claims
- § 34.27 Petition for appointment of next friend—Form
- § 34.28 Consent to act as next friend—Form
- § 34.29 Order appointing next friend—Form
- § 34.30 Petition for approval of minor's settlement agreement—Form
- § 34.31 Order approving minor's settlement—Form
- § 34.32 Receipt (no funds to minor)—Form
- § 34.33 Receipt of attorney—Form
- § 34.34 Final report of settlement of minor's claim—Form
- § 34.35 Order of release and satisfaction of judgment—Form
- § 34.36 Settlement agreement and full and general release—Form
- § 34.37 Wrongful death settlements—In general
- § 34.38 Wrongful death settlements—Notice to other parties
- § 34.39 Wrongful death settlements—Hearing
- § 34.40 Wrongful death settlement—Judgment
- § 34.41 Wrongful death settlements—Apportionment of proceeds
- § 34.42 Wrongful death settlement agreement—Form
- § 34.43 Notice of proposed settlement of wrongful death action—Form
- § 34.44 Order approving wrongful death settlement—Form
- § 34.45 Negotiating and drafting agreement considerations
- § 34.46 Full release and settlement agreement—Form
- § 34.47 Settlements and spouses
- § 34.48 Liens and reimbursement rights
- § 34.49 Release of future negligence; waiver of jury
- § 34.50 Medical malpractice settlements
- § 34.51 Consent judgments

## CHAPTER 35. DECLARATORY JUDGMENTS

- § 35.1 In general
- § 35.2 Justiciable controversy
- § 35.3 Adequacy of other remedies
- § 35.4 Jurisdiction

## TABLE OF CONTENTS

§ 35.5	Pleading
§ 35.6	Additional relief
§ 35.7	Parties
§ 35.8	Right to jury
§ 35.9	Res judicata
§ 35.10	Costs
§ 35.11	Specific applications

## CHAPTER 36. RECEIVERS

§ 36.1	In general
§ 36.2	Grounds for appointment of receiver
§ 36.3	Appropriate instances of appointment of receiver
§ 36.4	Inappropriate instances of appointment of receiver
§ 36.5	Jurisdiction
§ 36.6	Persons who may seek appointment of receiver
§ 36.7	Allegations and elements of proof
§ 36.8	Notice and hearing required
§ 36.9	Discretion of the court
§ 36.10	Qualifications of receiver
§ 36.11	Receiver undertakes same property rights as owner
§ 36.12	Receiver empowered only by court order
§ 36.13	Receiver represents court and parties
§ 36.14	Bond and liability of receiver
§ 36.15	Court appointing receiver may have exclusive jurisdiction
§ 36.16	Claims against property in the hands of receiver
§ 36.17	Compensation of receiver and costs and expenses of receivership
§ 36.18	Counsel fees
§ 36.19	Final accounting and discharge

## CHAPTER 37. CONTEMPT

§ 37.1	In general
§ 37.2	Power to punish
§ 37.3	Direct and indirect contempt
§ 37.4	Civil contempt
§ 37.5	Criminal contempt
§ 37.6	Due process
§ 37.7	Defenses
§ 37.8	Punishment

§ 37.9 Appeal

**CHAPTER 38. SOLDIERS' AND SAILORS'  
CIVIL RELIEF ACT**

- § 38.1 History and purpose of act
- § 38.2 To whom the act applies
- § 38.3 Default judgments
- § 38.4 Financial obligations
- § 38.5 Credit rights
- § 38.6 Leasehold interests
- § 38.7 Taxes
- § 38.8 Insurance
- § 38.9 Installment contracts—Secured and unsecured
- § 38.10 Statutes of limitation
- § 38.11 Stay of civil proceedings
- § 38.12 Affidavit as to military service—Form
- § 38.13 Application for appointment of attorney for  
defendant in armed forces—Form
- § 38.14 Order appointing attorney for defendant in  
armed forces—Form
- § 38.15 Application for stay of proceedings—Form
- § 38.16 Order granting stay of proceedings—Form

**CHAPTER 39. THE AUTOMOBILE  
ACCIDENT CASE**

- § 39.1 Initial client contact
- § 39.2 Threshold legal questions
- § 39.3 Potential conflicts of interest
- § 39.4 Fee arrangements
- § 39.5 Communicating with the client
- § 39.6 Organizing and reviewing the file
- § 39.7 Determining collection sources
- § 39.8 Insurance issues
- § 39.9 Insurance—Policy limits
- § 39.10 Insurance—Uninsured/underinsured
- § 39.11 Insurance—Exclusions and multiple insureds
- § 39.12 Insurance—Negligent entrustment
- § 39.13 Investigation
- § 39.14 Liability facts
- § 39.15 Injuries
- § 39.16 The petition and answer
- § 39.17 Pretrial discovery

## TABLE OF CONTENTS

§ 39.18	Independent medical examinations
§ 39.19	Valuing the claim
§ 39.20	Cost of litigation
§ 39.21	Settlement demand presentation
§ 39.22	Prejudgment interest
§ 39.23	Settlement demand response
§ 39.24	Offer of judgment
§ 39.25	Discussing settlement
§ 39.26	Alternative dispute resolution
§ 39.27	Accident reconstruction
§ 39.28	Measuring the injuries
§ 39.29	Treating doctors
§ 39.30	Trial

