

Rutter Group Practice Guide

FEDERAL CIVIL TRIALS AND EVIDENCE

Chapters 1-7

William E. Wegner

Original Author
(1995-2021)

Hon. Robert E. Jones

Original Author
(1995-2025)

Hon. Gerald E. Rosen (Ret.)

JAMS Neutral, Detroit, Michigan
Former United States District Judge
Eastern District of Michigan

Hon. Jeffrey S. Jones

State Circuit Court Judge
Clackamas County
Oregon City, Oregon

Matthew K. Wegner

Brown Wegner LLP
Irvine, California

Lisa A. Wegner

Call & Jensen
Newport Beach, California

2026

CONTINUING LEGAL EDUCATION  PROGRAMS AND PUBLICATIONS

THE RUTTER GROUP™

A DIVISION OF THOMSON REUTERS

ATTORNEY EDITORS

FOUNDERS

William A. Rutter
Linda Diamond Raznick

Kathleen K. Andrews
Shilpa G. Doshi
Kelly K. Frazier
Amy M. Hinkley
Christina J. Imre
Katherine K. Lee
Morgan W. McCall
Lorie Dewhirst Porter
Lisa K. Rozzano
Chelsea M. Scharf
Angelica C. Vogel
Lisa E. Ward

© Copyright 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 by THE RUTTER GROUP, A DIVISION OF THOMSON REUTERS

Permission is hereby granted for the copying of pages or portions of pages of this book by photocopy, Xerox or other similar process, or by manual transcription, by or under the direction of licensed attorneys for use in the practice of law. Otherwise, all rights reserved; no copying for in-house training distribution or other use is permitted which will infringe the copyright without the express written consent of The Rutter Group, a Division of Thomson Reuters.

To contact us: Phone (800) 747-3161; or visit our website, www.TheRutterGroup.com.

This book should be cited as Wegner, Jones, Rosen, Jones, Wegner & Wegner, *Rutter Group Prac. Guide: Federal Civil Trials & Evidence* (The Rutter Group 2026).

Please note: Programs and publications by The Rutter Group (TRG), a Division of Thomson Reuters, are intended to provide attorneys with current and accurate information about the subjects covered. However, such information may not be sufficient in dealing with a client's particular legal problem, and TRG does not warrant or represent its suitability for such purpose. Attorneys attending programs presented by TRG or using its publications do so with the understanding that TRG is not engaged in the practice of law and does not render legal, accounting or other professional services; and that the information published by TRG should not be relied upon as a substitute for independent research to original sources of authority.

FROM THE RUTTER GROUP FAMILY
DEDICATED TO AND IN MEMORY OF
OUR FOUNDERS

WILLIAM A. RUTTER

(OCTOBER 21, 1928 - FEBRUARY 2, 2012)



LINDA DIAMOND RAZNICK

(OCTOBER 2, 1951 - NOVEMBER 15, 2025)



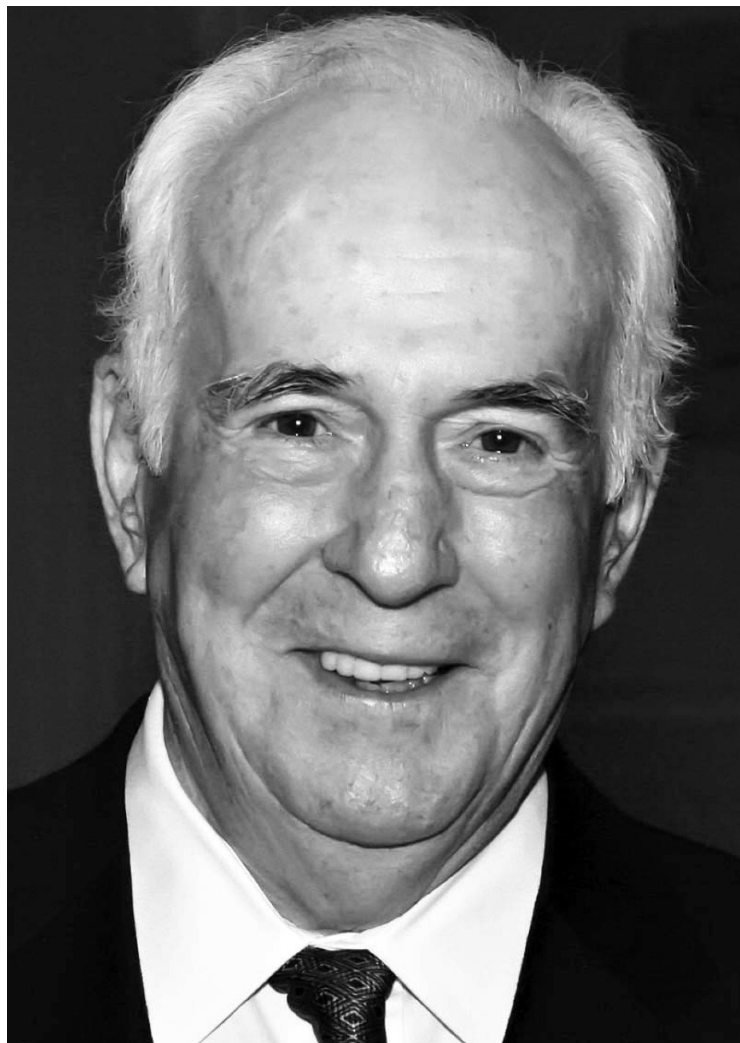
**IN MEMORY OF
ORIGINAL AUTHOR
WILLIAM E. WEGNER**

(April 2, 1950 - October 14, 2021)



**IN MEMORY OF
ORIGINAL AUTHOR
HON. ROBERT E. JONES**

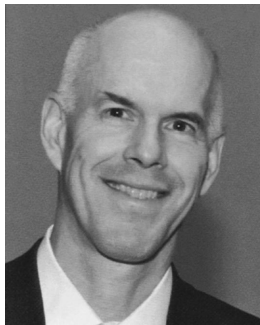
(July 5, 1927 - March 29, 2025)



ABOUT THE AUTHORS



HON. GERALD E. ROSEN (Ret.) is a JAMS neutral in Detroit, Michigan following 26 years of service on the federal bench as a United States District Judge for the Eastern District of Michigan, including seven years as that Court's Chief Judge. Judge Rosen served as the Chief Judicial Mediator in the Detroit bankruptcy. Before appointment to the bench, he was a Senior Partner at the law firm of Miller, Canfield, Paddock and Stone where he was a trial lawyer specializing in commercial, employment and constitutional litigation. Earlier in his career, he served as a legislative assistant to U.S. Senator Robert P. Griffin. Judge Rosen was also a member of the U.S. Judicial Conference's Criminal Law Committee (1995-2001). He is active in legal education and serves as an adjunct professor at University of Michigan Law School, Wayne State University Law School and Western Michigan University Thomas M. Cooley Law School. Judge Rosen has written extensively on evidence and civil procedure topics and is a coauthor of The Rutter Group's *Federal Employment Litigation Practice Guide*. He has also lectured at numerous international conferences of judges and lawyers.



HON. JEFFREY S. JONES is a State Circuit Court Judge in Clackamas County, Oregon. He is a former prosecutor and insurance defense counsel. Judge Jones taught evidence for 25 years as an adjunct professor at Lewis and Clark Law School and has also taught advanced advocacy at Willamette Law School. He is a frequent lecturer on evidence and trial advocacy in continuing legal education programs, and a co-author of *Evidence: Oregon*, published by the Oregon State Bar.



MATTHEW K. WEGNER is a founding partner at Brown Wegner LLP, in Irvine, California, where he specializes in commercial, intellectual property, and business litigation and trials. Mr. Wegner has been practicing for 20 years, has authored several articles on business litigation, is a fellow in the Litigation Counsel of America, and serves on the Board of Directors for the local chapter of the Federal Bar Association. Mr. Wegner is a coauthor of *California Practice Guide: Civil Trials and Evidence*, published by The Rutter Group.



LISA A. WEGNER is a shareholder at Call & Jensen, which is located in Newport Beach, California. She specializes in complex civil and employment litigation. Ms. Wegner is a member of the Administration of Justice Committee with the Orange County Bar Association and is a coauthor of *California Practice Guide: Civil Trials and Evidence*, published by The Rutter Group.

PREFACE

We set several objectives in writing this Practice Guide in order to make it useful to all trial lawyers, regardless of their experience level:

Our first objective is to be *comprehensive*. Accordingly, we cover all stages of trial practice, from pretrial preparation to post-trial motions. We provide detailed coverage of the Federal Rules of Civil Procedure and Federal Rules of Evidence governing civil trials. We cite cases from all the federal circuits and note significant splits.

Our second objective is to suggest the most *efficient* methods for accomplishing each procedure at trial. To this end, we provide practice pointers, checklists and guidelines utilized by experienced trial lawyers.

Our third objective is to provide *insight into the “art”* of trying a lawsuit. Obviously, there is no single “best” method and each lawyer’s personality differs. But certain strategies and tactics are often helpful, and we present these for your consideration.

Our final objective is to be *current*. Thus, we focus on the rules and procedures currently in effect and minimize historical discussion. We will revise this book frequently in order to keep you current and to catch new trends as they develop.

Having stated our objectives, let us express some caveats:

First and foremost, you must become intimately familiar with the *local rules* in effect in the district courts in which you practice. This Practice Guide identifies various matters that are commonly the subject of local rules, as a reminder to check whether applicable rules are in effect in your district. But even where no mention of local rules is made, it is your job to *know* whatever local rules may apply in your district court.

In addition, many judges have their own standing orders (sometimes called “local local rules”) governing how a lawsuit should be tried in their particular courtrooms. Again, it is your job to *find out* whether any such orders are in effect and to prepare and present your case accordingly.

Finally, you should be aware that each judge has different “tolerance levels” to evidence, argument and motions, and may have distinct policies and preferences on how a lawsuit should be tried. Some judges may disagree with the practice pointers we suggest; some may even disagree with our interpretation of relevant statutes and case law. This reinforces the need for you to *learn as much as possible* about the judge who is trying your case and to guide yourself accordingly.

We realize trial lawyers operate in an environment that demands precision and that moves at the speed of sound. The aim of this Practice Guide is to put reliable information at your fingertips and hopefully make life a little easier!

Hon. Gerald E. Rosen (Ret.)
JAMS
Detroit, Michigan

Hon. Jeffrey S. Jones
State Circuit Court Judge
Clackamas County
Oregon City, Oregon

Matthew K. Wegner
Brown Wegner LLP
Irvine, California

Lisa A. Wegner
Call & Jensen
Newport Beach, California

ACKNOWLEDGMENTS

The authors are grateful to the many judges and lawyers who took an active part in planning, providing material for and reviewing drafts of this Practice Guide, including the following:

Hon. Kathleen M. Banke
Associate Justice
California Court of Appeal
First Appellate Dist., Div. 1

Atty. Angela D. Brunson
Los Angeles, California

Atty. Nancy Greene
Portland, Oregon

Atty. Ewa Pasik
Detroit, Michigan

Rebecca Peer
Portland, Oregon

DEDICATIONS

The authors dedicate this Practice Guide to their families who put up with loss of “prime time” hours over the several years it took to get this book written. Specifically:

Hon. Rosen’s dedication is to his wife, Laurie, and son, Jacob, “who in more ways than one were the motivation and inspiration to write and complete this book!”

Hon. Jeffrey Jones’ dedication is to his wonderful wife and children and to Judge Robert Jones—his “father, friend, mentor and coauthor.”

Matt Wegner is proud to continue the work of his father, original co-author William E. (“Bill”) Wegner, on this book. Matt dedicates his efforts to Bill Wegner and all of Bill’s grandchildren.

Ms. Wegner’s dedication is to her children, her husband, her parents, and William Wegner, whose hard work and dedication she aims to carry forward.