

# Contents

<i>Preface</i>	<i>xv</i>
<i>Acknowledgments</i>	<i>xix</i>
<i>Foreword: Storming the Court, with Procedure</i> <i>Harold Hongju Koh</i>	<i>xxi</i>
CHAPTER ONE	
<b>Introduction</b>	<b>1</b>
Events Leading Up to <i>McNary</i> : The <i>Baker</i> Litigation	4
A Quick Review of <i>McNary</i>	6
The Focus of This Book	10
The Main Players	10
<i>McNary</i> and the Federal Court System	12
The District Courts	12
The Circuit Courts	13
The U.S. Supreme Court	14
The Honorable Sterling Johnson, Jr.	14
Moving Forward	15
CHAPTER TWO	
<b>The Complaint</b>	<b>17</b>
Introduction	17
Notes and Comments	24
Interview: Sarah Cleveland on Researching and Drafting a Complaint	38
Class Exercise No. 1	43
CHAPTER THREE	
<b>Responding to the Complaint</b>	<b>45</b>
Introduction	45
Rule 12: Responding by Motion	46
Notes and Comments	50

Rule 8: Responding by Answer	53
Notes and Comments	60
CHAPTER FOUR	
<b>Rule 11</b>	<b>67</b>
Introduction	67
Notes and Comments	74
CHAPTER FIVE	
<b>Preliminary Injunctive Relief</b>	<b>83</b>
Introduction	83
The Temporary Restraining Order	84
Notes and Comments	88
Interview: Robert Begleiter on Opposing a Request for Emergency or Preliminary Relief	95
The Preliminary Injunction	98
Notes and Comments	99
CHAPTER SIX	
<b>Discovery: Overview and Written Discovery</b>	<b>103</b>
Introduction	103
Notes and Comments	104
CHAPTER SEVEN	
<b>Discovery: Depositions</b>	<b>123</b>
Introduction	123
Notes and Comments	123
Interview: Ronald Aubourg on Language and Cultural Barriers in Lawyer-Client Relationships	140
CHAPTER EIGHT	
<b>Summary Judgment and Trial</b>	<b>163</b>
Introduction	163
Summary Judgment—Notes and Comments	164
Trial—Notes and Comments	170
Interview: Judge Sterling Johnson, Jr. on Managing a Civil Trial	173

Interview: Joe Tringali on Cross-Examination	187
Class Exercise No. 2	195
Interview: Michael Ratner on Litigation Versus Lobbying as a Strategy to Achieve Change	198
CHAPTER NINE	
<b>Appeal and Settlement</b>	<b>201</b>
Introduction	201
Notes and Comments	204
Interview: Lisa Daugaard on Client-Centered Lawyering	226
Class Exercise No. 3	230
CHAPTER TEN	
<b>Preclusion</b>	<b>235</b>
Introduction	235
Notes and Comments	236
Class Exercise No. 4	248
Interview: Michael Wishnie on How <i>McNary</i> Affected the Big Picture for Him	252
<i>Index</i>	257