



2021 Amendments Texas Rules of Civil Procedure Overview

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Purpose for New Rules



- The new amendments to the Texas Rules of Civil Procedure are to comply with Act of May 27, 2019, 86th Leg., R.S., ch. 696 (Senate Bill 2342) aka Section 1. 22.004, Government Code
- Generally, the Rules the Texas Supreme Court adopts shall address:
 1. The need for lowering discovery costs, and
 2. The procedure ensuring that these actions will be expedited in civil justice system.
- The Texas Supreme Court shall adopt rules:
 1. To promote prompt, efficient, and cost-effective resolution of civil actions
 2. Balance the need for lowering discovery costs against the complexity of and discovery needs

Prompt, Efficient, Cost-Effective



TRCP Rules 47, 99, 169



- **Rule 47 Claims for Relief** – (except in Family Law cases) Jurisdictional amount changes from \$100,000 or less to \$250,000 or less excluding interest, statutory or punitive damages and penalties, and attorney fees and costs – and new “only non-monetary relief” category
- **Rule 99 Issuance and Form of Citation** – Citation must notify defendant that defendant may be required to make initial disclosures to other parties of the suit and must be made not later than 30 days after filing a written answer with clerk
- **Rule 169 Expedited Actions** – Relief aggregated to \$250,000 or less excluding interest, statutory or punitive damages and penalties, and attorney fees and costs (removed the exception that expedited actions do not apply to the Family, Property, or Tax Codes or Chapter 74 of Civil Practice and Remedies Code)

Discovery Limitations TRCP Rule 190



Rule 190 Discovery Limitations – Discovery period runs from due date of first initial disclosures for all three levels

1. **Level 1** - Rule 190.2 - Discovery Control Plan - Expedited Actions and Divorces
 - involving \$250,000 or less
 - discovery continues for 180 days, and
 - limits each party to no more than 20 hours (was 6 hours) in total to examine and cross-examine all witnesses in oral depositions unless court modifies time
2. **Level 2** – Rule 190.3 - Discovery Control Plan - discovery continues until
 - under the Family Code - 30 days before date set for trial
 - in other cases – 30 days before date set for trial or nine months after ***“first” initial*** disclosures are due
 - limits each party to no more than 50 hours in total to examine and cross-examine all witnesses in oral depositions unless court modifies time (no change)
3. **Level 3** – Rule 190.4 – no changes

Discovery TRCP Rules 192-193



- **Rule 192 Permissible Discovery** - Serving discovery
Discovery cannot be served on another party until after the other party's initial disclosures are due unless otherwise agreed to by parties or ordered by the court
Also, written discovery definition no longer includes "requested disclosures" but now does include "required disclosures"
- **Rule 193 Written Discovery** –
Answers, objections, and other responses must be preceded by the request or required disclosure to which they apply
- **Rule 193(d) Privilege not Waived by Production** - now when privilege asserted, "any party who has obtained specific material or information must promptly return" - no longer "requesting party" only
- **Rule 193.6 Failing to Timely Respond**
Party who fails to make, amend, or supplement a discovery response, "including a required disclosure" timely manner may not introduce in evidence the material or information not timely disclosed (except unless the court finds good cause or no unfair surprise or prejudice to allow the untimely discovery in as evidence)

TRCP Rule 194 Required Disclosures



- **Rule 194 Required Disclosures**

Duty to Disclose - Without awaiting a discovery request, a party must make the initial disclosures within 30 days after the filing of the first answer or general appearance or 30 days from being joined as a party unless a different time is agreed to by parties or by court order

Production - If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with response, then response must state a reasonable time and method for production of items

Rule 194.2(b) Initial Disclosures



- **Content (required) (number 6 is NEW)**

1. Correct names of parties to lawsuit
2. Name, address, and telephone number of any potential parties
3. Legal theories – factual bases of responding party's claims/defenses
4. Amount and any method of calculating economic damages
5. Name, address, and telephone number of persons having knowledge of relevant facts, and brief statement of each identified person's connection to case
6. **NEW - Copy of description by category and location of all documents, electronically stored information, and tangible things responding party has in possession, custody, or control, and may use to support its claim/defenses, unless use would be solely for impeachment**
7. Any indemnity and insuring agreements described in Rule 192.3(f)
8. Any settlement agreements described in Rule 192.3(g)
9. Any witness statements described in Rule 192.3(h)
10. Suit alleging physical or mental injury and damages – all medical records and bills reasonably related to injuries or damages or an authorization permitting disclosure of such records
11. Suit alleging physical or mental injury and damages – all medical records and bills obtained by responding party by virtue of authorization furnished by requesting party, and
12. Name, address, and telephone number of any person who may be designated a responsible third party

Rule 194.2 (c) Content in Certain Suits Under the Family Code



- **Suits for divorce, annulment, or to declare marriage void** - Party without awaiting discovery request, must provide to other party certain listed discovery for the past two years or since the date of marriage:
 1. All deed and lien information on any real property owned and all lease information on any real property leased
 2. All statements for any pension plan, retirement plan, profit-sharing plan, employee benefit plan, and individual retirement plan
 3. All statements or policies for each current life, casualty, liability, and health insurance policy, and
 4. All statements for any account at financial institutions, including banks, savings and loans, credit unions, and brokerage firms

Rule 194.2 (c) Content in Certain Suits Under the Family Code cont.



- **Suit with child or spousal support at issue**, a party without awaiting discovery request must provide to other party:
 1. Information regarding all policies, statements, and summary description of benefits for any medical and health insurance coverage that is or would be available for the child or spouse
 2. Party's income tax returns for the previous two years, if no return has been filed, the party's Form W-2, Form 1099, and Schedule K-1 for such years, and
 3. Party's two most recent payroll check stubs

TRCP Rule 194 Exemptions



- **Rule 194 (d) Proceedings Exempt from Initial Disclosure** - List of exemptions but court may order particular disclosures and set time due:
 1. Action for review on an administrative record
 2. Forfeiture action arising from a state statute
 3. Petition for habeas corpus
 4. Action filed by or against Title IV-D agency in Title IV-D case
 5. Child protection action under Subtitle E, Title 5 Family Code
 6. Protective order action under Title 4 Family Code
 7. Actions involving domestic violence
 8. Action on appeal from a justice court

TRCP Rules 194.3-194.4 Required Disclosures



- **Rule 194.3 Testifying Expert Disclosures** – Party must disclose testifying expert information as provided by Rule 195
- **Rule 194.4 Pretrial Disclosures** - Party must provide to other parties at least 30 days before trial the information about evidence to be used at trial other than solely for impeachment (exemption Title IV-D agency in Title IV-D case):
 - Name, address, telephone number of each witness – separately identifying who party expects to present and who may be called if need arises
 - Identification of each document or other exhibits, including summaries of evidence separately identifying who party expects to present and who may be called if need arises

TRCP Rules 195 Discovery of Testifying Expert Witness



- **Rule 195 Discovery Regarding Testifying Expert Witnesses** - Without awaiting a discovery request, a party must provide a list of disclosures and reports under Rule 195.5(a) regarding testifying expert:
 1. Expert's name, address, and telephone number
 2. Subject matter on which the expert will testify
 3. General substance of expert's mental impressions, opinions, and brief summary of basis for them (expert not retained/employed) documents reflecting such information
 4. Retained by, employed by, or subject to control of responding party:
 - A. All documents, tangible things, reports, models, data compilations provided to, reviewed by, prepared by, or for expert in anticipation of expert's testimony
 - B. Expert's current resume and bibliography
 - C. Expert's qualifications, including list of all publications authored in previous 10 years
 - D. Except when expert is responding party's attorney and is testifying to attorney fees, a list of all other cases during previous four years when expert testified as expert at trial or deposition
 - E. Statement of compensation to be paid for expert's study and testimony in case

TRCP Rules 195 Discovery of Testifying Expert Witness cont.



- **Rule 195.5(c) Expert Communications Protected** - Communications between attorney and testifying expert and draft expert reports are protected from discovery, regardless of form of communications except where communications:
 1. Relate to compensation for the expert's study or testimony
 2. Identify facts or date the party's attorney provided and expert considered in forming opinions to be expressed
 3. Identify assumptions the party's attorney provided and the expert relied on in forming opinions to be expressed
- **Rule 195.5(d) Draft Expert Reports and Disclosures Protected** – Draft expert report or draft disclosure required under this rule is protected from discovery, regardless of form in which draft is recorded

TRCP Rules 196-198 Discovery Responses



- **Rule 196.2 Response-Requests for Production and Inspection**
- **Rule 196.7 Response-Request of Motion for Entry Upon Property**
- **Rule 197.2 Response-Interrogatories to Parties**
- **Rule 198 Response-Requests for Admissions**

Each type of discovery response above requires responding party to serve a written response on the requesting party within 30 days

Note: Above rules no longer provide exceptions to required response within 30 days—previously the rule provided an extension up to 50 days to respond if defendant's answer was still due is irrelevant



Applying the Rules of Game

How will these new rules play out?

Does it mean there will no longer be “requested disclosures?”

Will agreements (Rule 11) be more widely used?

Court orders to change deadlines?

Some Potential Future Issues



- Gathering Initial Disclosure materials in a timely manner
- Lack of timely manner of making Discovery Responses, amended responses, or supplemental responses-including a required disclosure-may preclude the introducing of evidence that is in the responses
- Strict deadlines unless agreed to or by court order
- More amended and supplemental responses (timely?)
- Are there advantages to one party over another (element of surprise)

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