

# IN THE SUPREME COURT OF TEXAS

---

---

Misc. Docket No. 20-9153

---

---

---

---

## FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE 47, 99, 169, 190, 192, 193, 194, 195, 196, 197, AND 198

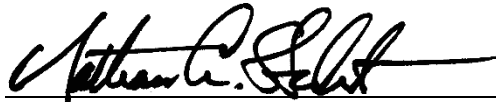
---

---

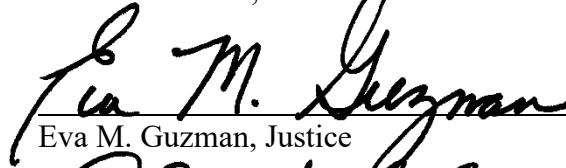
**ORDERED** that:

1. On August 21, 2020, in Misc. Dkt. No. 20-9101, the Court preliminarily approved amendments to Rules 47, 169, 190, 192, 193, 194, and 195 of the Texas Rules of Civil Procedure to comply with Act of May 27, 2019, 86th Leg., R.S., ch. 696 (SB 2342), and invited public comment. Following public comment, the Court made revisions to those rules and also revised Texas Rules of Civil Procedure 99, 196, 197, and 198. This Order incorporates the revisions and contains the final version of the rules, effective January 1, 2021.
2. The amendments apply to cases filed on or after January 1, 2021, except for those filed in justice court. The rules amended by this Order continue to govern procedures and limitations in cases filed before January 1, 2021.
3. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. submit a copy of the Order for publication in the *Texas Register*.

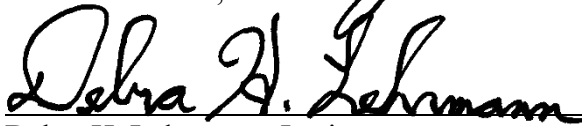
Dated: December 23, 2020



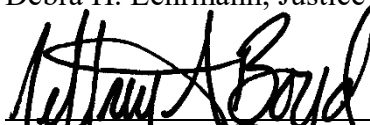
Nathan L. Hecht, Chief Justice



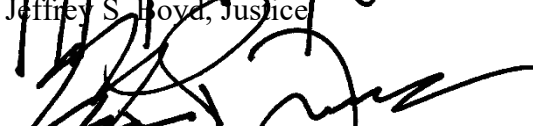
Eva M. Guzman, Justice



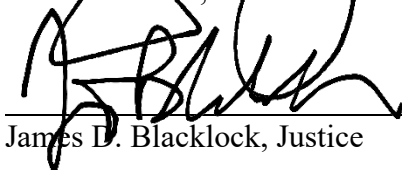
Debra H. Lehrmann, Justice



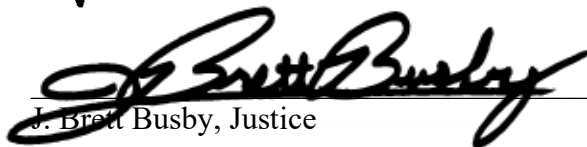
Jeffrey S. Boyd, Justice



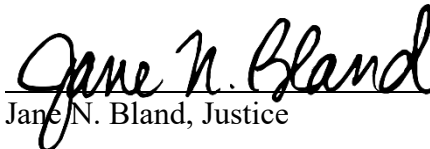
John P. Devine, Justice



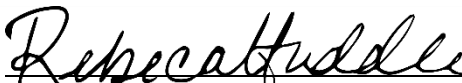
James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice

## RULE 47. CLAIMS FOR RELIEF

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

- (a) a short statement of the cause of action sufficient to give fair notice of the claim involved;
- (b) a statement that the damages sought are within the jurisdictional limits of the court;
- (c) except in suits governed by the Family Code, a statement that the party seeks:
  - (1) only monetary relief of \$~~100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney fees and costs;  
~~or~~
  - (2) monetary relief of \$~~100,000~~250,000 or less and non-monetary relief;~~or~~
  - ~~(3) monetary relief over \$100,000 but not more than \$250,000; or~~
  - ~~(4)~~ (3) monetary relief over \$250,000 but not more than \$1,000,000;~~or~~
  - ~~(5)~~ (4) monetary relief over \$1,000,000; ~~and~~or
  - (5) only non-monetary relief; and
- (d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2021 change: Rule 47 is amended to implement section 22.004(h-1) of the Texas Government Code. A suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process in Rule 169.

## RULE 99. ISSUANCE AND FORM OF CITATION

\* \* \*

- b. **Form.** The citation shall (1) be styled "The State of Texas," (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules

require the defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, ~~and~~ (12) ~~shall~~ notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition, and (13) notify the defendant that the defendant may be required to make initial disclosures. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsections 10, ~~and~~ 12, and 13 of this section shall be in the form set forth in section c of this rule.

- c. **Notice.** The citation shall include the following notice to the defendant: “You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.”

\* \* \*

## RULE 169. EXPEDITED ACTIONS

- (a) *Application.*

~~(1)~~ — The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$~~100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

~~(2)~~ — ~~The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.~~

- (b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of \$~~100,000~~250,000, excluding ~~post judgment~~interest, statutory or punitive damages and penalties, and attorney fees and costs.

- (c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

- (B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(4).
  - (2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.
  - (3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).
- (d) *Expedited Actions Process.*
- (1) Discovery. Discovery is governed by Rule 190.2.
  - (2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.
  - (3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.
    - (A) The term "side" has the same definition set out in Rule 233.
    - (B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.
  - (4) Alternative Dispute Resolution.
    - (A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:
      - (i) not exceed a half-day in duration, excluding scheduling time;
      - (ii) not exceed a total cost of twice the amount of applicable civil filing fees; and
      - (iii) be completed no later than 60 days before the initial trial setting.

- (B) The court must consider objections to the referral unless prohibited by statute.
  - (C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).
- (5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comment to 2021 change:

Rule 169 is amended to implement section 22.004(h-1) of the Texas Government Code— which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000—and changes to section 22.004(h) of the Texas Government Code. To ensure uniformity, and pursuant to section 22.004(b) of the Texas Government Code, Rule 169’s application is not limited to suits filed in county courts at law; any suit that falls within the definition of subsection (a) is subject to the provisions of the rule. However, certain suits are exempt from Rule 169’s application by statute. See, e.g., TEX. ESTATES CODE §§ 53.107, 1053.105. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h-1) of the Texas Government Code.

## **RULE 190. DISCOVERY LIMITATIONS**

### **190.1 Discovery Control Plan Required.**

Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

### **190.2 Discovery Control Plan - Expedited Actions and Divorces Involving ~~\$50,000~~\$250,000 or Less (Level 1)**

- (a) **Application.** This subdivision applies to:
  - (1) any suit that is governed by the expedited actions process in Rule 169; and
  - (2) unless the parties agree that rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than ~~\$50,000~~\$250,000.
- (b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

- (1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~the suit is filed~~ the first initial disclosures are due and continues ~~until for~~ 180 days ~~after the date the first request for discovery of any kind is served on a party.~~
- (2) **Total time for oral depositions.** Each party may have no more than ~~six~~20 hours in total to examine and cross-examine all witnesses in oral depositions. ~~The parties may agree to expand this limit up to ten hours in total, but not more except by court order.~~ The court may modify the deposition hours so that no party is given unfair advantage.
- (3) **Interrogatories.** Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.
- (4) **Requests for Production.** Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.
- (5) **Requests for Admissions.** Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.
- ~~(6) **Requests for Disclosure.** In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.~~
- (c) **Reopening Discovery.** If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

### 190.3 Discovery Control Plan - By Rule (Level 2)

- (a) **Application.** Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.
- (b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

- (1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~suit is filed~~the first initial disclosures are due and continues until:
  - (A) 30 days before the date set for trial, in cases under the Family Code; or
  - (B) in other cases, the earlier of
    - (i) 30 days before the date set for trial, or
    - (ii) nine months after ~~the earlier of the date of the first oral deposition or the due date of the first response to written discovery~~the first initial disclosures are due.
- (2) **Total time for oral depositions.** Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.
- (3) **Interrogatories.** Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

\* \* \*

Comment to 2021 change: Rule 190.2 is amended to implement section 22.004(h-1) of the Texas Government Code. Under amended Rule 190.2, Level 1 discovery limitations now apply to a broader subset of civil actions: expedited actions under Rule 169, which is also amended to implement section 22.004(h-1) of the Texas Government Code, and divorces not involving children in which the value of the marital estate is not more than \$250,000. Level 1 limitations are revised to impose a twenty-hour limit on oral deposition. Disclosure requests under Rule 190.2(b)(6) and Rule 194 are now replaced by required disclosures under Rule 194, as amended. The discovery periods under Rules 190.2(b)(1) and 190.3(b)(1) are revised to reference the required disclosures.

## **RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS**

### **192.1 Forms of Discovery.**

Permissible forms of discovery are:



- (a) ~~requests for~~required disclosures;
- (b) requests for production and inspection of documents and tangible things;
- (c) requests and motions for entry upon and examination of real property;
- (d) interrogatories to a party;
- (e) requests for admission;
- (f) oral or written depositions; and
- (g) motions for mental or physical examinations.

**192.2 Timing and Sequence of Discovery.**

- (a) Timing. ~~Unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due.~~
- (b) Sequence. The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.

\* \* \*

**192.7 Definitions.**

As used in these rules

- (a) *Written discovery* means ~~requests for~~required disclosures, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission.
- (b) *Possession, custody, or control* of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item.
- (c) *A testifying expert* is an expert who may be called to testify as an expert witness at trial.
- (d) *A consulting expert* is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.

**RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY**

**193.1 Responding to Written Discovery; Duty to Make Complete Response.**

A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request or required disclosure to which they apply.

\* \* \*

**193.3 Asserting a Privilege**

A party may preserve a privilege from written discovery in accordance with this subdivision.

- (a) **Withholding privileged material or information.** A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state—in the response (or an amended or supplemental response) or in a separate document—that:
- (1) information or material responsive to the request or required disclosure has been withheld,
  - (2) the request or required disclosure to which the information or material relates, and
  - (3) the privilege or privileges asserted.
- (b) **Description of withheld material or information.** After receiving a response indicating that material or information has been withheld from production, ~~the~~ party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that:
- (1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and
  - (2) asserts a specific privilege for each item or group of items withheld.
- (c) **Exemption.** Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative

- (1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested or required, and
  - (2) concerning the litigation in which the discovery is requested or required.
- (d) **Privilege not waived by production.** A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if—within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made—the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, ~~the requesting~~any party who has obtained the specific material or information must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege.

#### 193.4 Hearing and Ruling on Objections and Assertions of Privilege.

- (a) **Hearing.** Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery or required disclosure is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.
- (b) **Ruling.** To the extent the court sustains the objection or claim of privilege, the responding party has no further duty to respond to that request or required disclosure. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested or required material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.
- (c) **Use of material or information withheld under claim of privilege.** A party may not use—at any hearing or trial—material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery.

\* \* \*

#### 193.6 Failing to Timely Respond - Effect on Trial

- (a) **Exclusion of evidence and exceptions.** A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony

of a witness (other than a named party) who was not timely identified, unless the court finds that:

- (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or
  - (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.
- (b) **Burden of establishing exception.** The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record.
- (c) **Continuance.** Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response.

\* \* \*

## **RULE 194. ~~REQUESTS FOR~~ REQUIRED DISCLOSURES**

### **194.1 ~~Request~~ Duty to Disclose; Production.**

~~A party may obtain disclosure from another party of the information or material listed in Rule 194.2 by serving the other party no later than 30 days before the end of any applicable discovery period the following request: "Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, e.g., 194.2, or 194.2(a), (e), and (f), or 194.2(d) (g)]."~~

- (a) **Duty to Disclose.** ~~Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.~~
- (b) **Production.** ~~If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with the response, the response must state a reasonable time and method for the production of these items. The responding party must produce the items at the time and in the method stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~

### **194.2 ~~Content~~ Initial Disclosures.**

- (a) **Time for Initial Disclosures.** A party must make the initial disclosures within 30 days after the filing of the first answer or general appearance unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer or general appearance must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.
- (b) **Content.** Without awaiting a discovery request, Aa party may request disclosure of any or all of the following must provide to the other parties:
- (a1) the correct names of the parties to the lawsuit;
  - (b2) the name, address, and telephone number of any potential parties;
  - (e3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
  - (d4) the amount and any method of calculating economic damages;
  - (e5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
  - (6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;
  - (f) ~~for any testifying expert:~~
    - (1) ~~the expert's name, address, and telephone number;~~
    - (2) ~~the subject matter on which the expert will testify;~~
    - (3) ~~the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information.~~
    - (4) ~~if the expert is retained by, employed by, or otherwise subject to the control of the responding party:~~
      - (A) ~~all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and~~

~~(B) — the expert's current resume and bibliography;~~

- ~~(g7)~~ any indemnity and insuring agreements described in Rule 192.3(f);
- ~~(h8)~~ any settlement agreements described in Rule 192.3(g);
- ~~(i9)~~ any witness statements described in Rule 192.3(h);
- ~~(j10)~~ in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- ~~(k11)~~ in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- ~~(l12)~~ the name, address, and telephone number of any person who may be designated as a responsible third party.

(c) **Content in Certain Suits Under the Family Code.**

- (1) **In a suit for divorce, annulment, or to declare a marriage void, a party must, without awaiting a discovery request, provide to the other party the following, for the past two years or since the date of marriage, whichever is less:**
  - (A) **all deed and lien information on any real property owned and all lease information on any real property leased;**
  - (B) **all statements for any pension plan, retirement plan, profit-sharing plan, employee benefit plan, and individual retirement plan;**
  - (C) **all statements or policies for each current life, casualty, liability, and health insurance policy; and**
  - (D) **all statements pertaining to any account at a financial institution, including banks, savings and loans institutions, credit unions, and brokerage firms.**
- (2) **In a suit in which child or spousal support is at issue, a party must, without awaiting a discovery request, provide to the other party:**
  - (A) **information regarding all policies, statements, and the summary description of benefits for any medical and health insurance coverage that is or would be available for the child or the spouse;**

(B) the party's income tax returns for the previous two years or, if no return has been filed, the party's Form W-2, Form 1099, and Schedule K-1 for such years; and

(C) the party's two most recent payroll check stubs.

(d) **Proceedings Exempt from Initial Disclosure.** The following proceedings are exempt from initial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure:

(1) an action for review on an administrative record;

(2) a forfeiture action arising from a state statute;

(3) a petition for habeas corpus;

(4) an action under the Family Code filed by or against the Title IV-D agency in a Title IV-D case;

(5) a child protection action under Subtitle E, Title 5 of the Family Code;

(6) a protective order action under Title 4 of the Texas Family Code;

(7) other actions involving domestic violence; and

(8) an action on appeal from a justice court.

### **194.3 Response.**

~~The responding party must serve a written response on the requesting party within 30 days after service of the request, except that:~~

~~(a) a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request, and~~

~~(b) a response to a request under Rule 194.2(f) is governed by Rule 195.~~

### **194.3 Testifying Expert Disclosures.**

~~In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties testifying expert information as provided by Rule 195.~~

### **A Production.**

~~Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for~~

~~the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~

#### **194.4 Pretrial Disclosures.**

~~(a) **In General.** In addition to the disclosures required by Rule 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:~~

- ~~(1) the name and, if not previously provided, the address, and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;~~
- ~~(2) an identification of each document or other exhibits, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.~~

~~(b) **Time for Pretrial Disclosures.** Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.~~

~~(c) **Proceedings Exempt from Pretrial Disclosure.** An action arising under the Family Code filed by or against the Title IV-D agency in a Title IV-D case is exempt from pretrial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure.~~

#### **194.5 No Objection or Assertion of Work Product.**

No objection or assertion of work product is permitted to a ~~request~~disclosure under this rule.

#### **194.6 Certain Responses Not Admissible.**

A ~~response to requests~~disclosure under Rule 194.2~~(e)~~(3) and ~~(d)~~ that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

Comment to 2021 change: Rule 194 is amended to implement section 22.004(h-1) of the Texas Government Code. Rule 194 is amended based on Federal Rule of Civil Procedure 26(a) to require disclosure of basic discovery automatically, without awaiting a discovery request. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. As with other written discovery responses, required disclosures must be signed under Rule 191.3, complete under Rule 193.1, served under Rule 191.5, and timely amended or supplemented under Rule 193.5.



## RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

### 195.1 Permissible Discovery Tools.

A party may ~~request another party to designate and disclose~~obtain information concerning testifying expert witnesses only through ~~a request for~~ disclosure under ~~Rule 194~~this rule and through depositions and reports as permitted by this rule.

### 195.2 Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts—that is, furnish information ~~requested under~~described in Rule ~~194.2(f)~~195.5(a)—by the ~~later of the~~ following ~~two~~ dates: ~~30 days after the request is served, or~~

- (a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period;
- (b) with regard to all other experts, 60 days before the end of the discovery period.

\* \* \*

### 195.4 Oral Deposition.

In addition to the information ~~disclosed~~disclosed under Rule ~~194~~195.5(a), a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.

### 195.5 ~~Court-Ordered~~Expert Disclosures and Reports.

- (a) Disclosures. Without awaiting a discovery request, a party must provide the following for any testifying expert:
  - (1) the expert's name, address, and telephone number;
  - (2) the subject matter on which the expert will testify;
  - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
  - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

- (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;
- (B) the expert's current resume and bibliography;
- (C) the expert's qualifications, including a list of all publications authored in the previous 10 years;
- (D) except when the expert is the responding party's attorney and is testifying to attorney fees, a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and
- (E) a statement of the compensation to be paid for the expert's study and testimony in the case.

(b) **Expert Reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition.

(c) **Expert Communications Protected.** Communications between the party's attorney and any testifying expert witness in the case are protected from discovery, regardless of the form of the communications, except to the extent that the communications:

- (1) relate to compensation for the expert's study or testimony;
- (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(d) **Draft Expert Reports and Disclosures Protected.** A draft expert report or draft disclosure required under this rule is protected from discovery, regardless of the form in which the draft is recorded.

\* \* \*

Comment to 2021 change: Rule 195 is amended to reflect changes to Rule 194. Amended Rule 195.5(a) lists the disclosures for any testifying expert, which are now required without awaiting a discovery request, that were formerly listed in Rule 194(f). Amended Rule 195.5(a) also includes three new disclosures based on Federal Rule of Civil Procedure 26(a)(2)(B). New Rules 195.5(b) and (c) are based on Federal Rules of Civil Procedure 26(b)(4)(B) and (C) and are added to clarify protections available.

**RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES;  
REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY**

\* \* \*

**196.2 Response to Request for Production and Inspection.**

- (a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request, ~~except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.~~

\* \* \*

**196.7 Request of Motion for Entry Upon Property.**

\* \* \*

(c) **Response to request for entry.**

- (1) **Time to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request, ~~except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.~~

\* \* \*

**RULE 197. INTERROGATORIES TO PARTIES**

\* \* \*

**197.2 Response to Interrogatories.**

- (a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories, ~~except that a defendant served with interrogatories before the defendant's answer is due need not respond until 50 days after service of the interrogatories.~~

\* \* \*

**RULE 198. REQUESTS FOR ADMISSIONS**

\* \* \*

**198.2 Response to Requests for Admissions.**

- (a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request, ~~except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.~~

\* \* \*