

Summary of the 2020 Amendments to the Texas Rules of Civil Procedure

RULE 47. CLAIMS FOR RELIEF

- If an original pleading states the lowest category of damages (now \$250,000 or less), then the lawsuit will be governed by the expedited actions process in Rule 169.
 - o The lowest category of damages (47(c)(1)) was raised from monetary relief of “\$100,000” or less to “\$250,000” or less.
 - o Calculation of whether the claim is for \$250,000 now *excludes* interest, statutory or punitive damages and penalties, and attorney’s fees and costs.
 - o When the original petition states 47(c)(1), the suit is an expedited action.
 - o When a party seeks only non-monetary relief, the suit is an expedited action (change added 12/23/2020).

RULE 99. ISSUANCE AND FORM OF CITATION (12/23/2020 revision)

- The citation must notify the defendant about the required initial disclosures.
- Exact language to be added:
 - o “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 106. METHOD OF SERVICE

- A motion can now be supported by a statement made under the penalty of perjury, not necessarily an affidavit.
- The statement no longer must include language listing the defendant’s usual place of business or usual place of abode.
- Upon motion, the court can authorize service by social media, email, or other technology.
- The comment states that the court should consider whether the technology actually belongs to the defendant and whether the defendant regularly uses or recently used the technology.

RULE 108A. SERVICE OF PROCESS IN FOREIGN COUNTRIES

- “Other means” of service of process in foreign countries ordered by the court (like potentially authorizing service by social media) must not be prohibited by international agreement.

RULE 116. SERVICE OF CITATION BY PUBLICATION

- Texas Supreme Court completely restructured and rewrote the rules for service by publication.
- The citation must be served in the newspaper and on the Public Information Internet Website.

RULE 117. RETURN OF CITATION BY PUBLICATION

- Texas Supreme Court completely restructured and rewrote this rule also.
- The return from internet publication must be generated by the Office of Court Administration.
- The return from newspaper publication must state method and dates of publication and include an officer's signature and image of the publication.

RULE 145. PAYMENT OF COSTS NOT REQUIRED

- Rather than the previously used Supreme Court Form, a party must instead file a sworn statement stating the declarant's inability to afford payment.
- An order directing the declarant to pay costs must include notice of the declarant's right to appeal.
- Members of the public can send written comments relating to these three amendments to rulescomments@txcourts.gov until **April 2, 2021**.

RULE 169. EXPEDITED ACTIONS

- Calculation of whether the claim is for \$250,000 now *excludes* interest, statutory or punitive damages and penalties, and attorney's fees and costs (Matches Rule 47(c)(1)).
- Not all claims filed under the Family Code, Property Code, the Tax Code, or Ch. 74 of the CPRC are exempt anymore. Instead, only certain actions are exempt. The comment cites "See e.g., TEX. ESTATES CODE §§ 53.107, 1053.105" which are guardianship and probate proceedings.
- **12/23/2020 revisions:**
 - o The Comment that Rule 169's application is not limited to county courts at law was deleted.
 - o The Comment that discovery limitations for expedited actions are set out in Rule 190.2 was deleted.

RULE 190. DISCOVERY LIMITATIONS

- Disclosure requests are now replaced by required disclosures under Rule 194.
- Rule 190.2 (Level 1):
 - o The applicable amount was raised from \$50,000 to \$250,000 to match Rules 47(c)(1) and 169.

- Discovery period begins when (required) initial disclosures are due and runs 180 days.
- Allotted deposition time was raised from 6 hours to 20 hours.
- Rule 190.3 (Level 2):
 - Discovery period begins when (required) initial disclosures are due and runs until the earlier of 30 days before the date set for trial or 9 months after initial disclosures are due.
- [12/23/2020 Revisions](#):
 - The language “first initial disclosures” was revised to read “initial disclosures.”
 - The language quoting Tex. Gov. Code 22.004(h-1) was deleted from the Comment.

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

- Disclosure requests are now replaced by required disclosures.
- Parties cannot serve discovery until after the initial disclosures are due except by agreement or court order ([12/23/2020 revisions cleaned up this language](#)).

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

- The language “required disclosure” was added throughout to coincide with the other amendments and reflect that the rule applies to requests *and* disclosures.
- Any party, not just the requesting party must return privileged information that a party claws back.

RULE 194. REQUIRED DISCLOSURES

- 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.
- There are three types of disclosures: Initial, Expert, and Pretrial.
- **Initial Disclosures (required):**
 - Deadline (unless otherwise agreed or ordered):
 - 30 days after the first answer.
 - 30 days after being served or joined for party that is served/joined after the filing of the first answer.
 - Production:
 - By the same deadline, parties must produce all responsive ESI / documents or state a time and method for production of the same.
 - Content of Initial Disclosures:

- 12/23/2020 revision deleted proposed changes to the requirement for the disclosure of the “amount and any method of calculating economic damages.”
 - Parties are now required to disclose or produce “a copy—or a description by category and location—of all documents, electronically stored information, and tangible things...”
 - Specific content requirements for certain suits under the Family Code were added.
 - Proceeding Exempt from Initial Disclosures
 - Rule 194.2(d) lists classes of cases that are exempted from the requirements of initial disclosures, including a forfeiture action.
- Testifying Expert Disclosures:
 - Testifying expert disclosures must be made according to Rule 195.
- Pretrial Disclosures:
 - Deadline: 30 days before trial.
 - Content: witness list and exhibit list.
 - Exemption: 12/23/2020 revision added an exemption for certain cases under the Family Code.
- The comment states that, “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.”

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

- Disclosures and reports, if any, are required without a discovery request.
- Deadline:
 - For a party seeking affirmative relief, **90 days** before the end of the discovery period.
 - All other experts, **60 days** before the end of the discovery period.
- Rule 195.5 Expert Disclosures and Reports:
 - The disclosures lists the items that were formerly listed in Rule 194(f).
 - Three new disclosures were included based on Federal Rule of Civil Procedure 26(a)(2)(B):
 - Expert’s qualifications and publications.
 - Cases expert testified in during the previous 4 years (not required when the expert is the party’s attorney and is testifying to attorney fees- 12/23/2020 revision).
 - Expert’s compensation.
- 12/23/2020 Additions:
 - Expert communications between attorney and testifying expert are now protected from discovery except when those communications:
 - Relate to the expert’s compensation;

- Identify facts or data that the party's attorney provided or that the expert considered; or
- Identify assumptions that the party's attorney provided and relied on by the expert.
- Draft expert report or draft disclosure in protected from discovery.

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY(12/23/2020 revision)

- The language providing for a deadline for discovery served before an answer was deleted to coincide with the other amendments which state that a party cannot serve discovery until after the initial disclosures are due.

RULE 197. INTERROGATORIES TO PARTIES(12/23/2020 revision)

- The language providing for a deadline for discovery served before an answer was deleted to coincide with the other amendments which state that a party cannot serve discovery until after the initial disclosures are due.

RULE 198. REQUESTS FOR ADMISSIONS(12/23/2020 revision)

- The language providing for a deadline for discovery served before an answer was deleted to coincide with the other amendments which state that a party cannot serve discovery until after the initial disclosures are due.

RULE 277. SUBMISSION TO THE JURY

- This amendment narrowly relates to cases involving the termination of parental rights and the specific granulated jury questions now required.

RULE 500.3. APPLICATION OF RULES IN JUSTICE COURT CASES

- The jurisdictional limitation allowing only those claims for damages of no more than \$10,000 was raised to \$20,000.

RULE 502.3. FEES; INABILITY TO AFFORD FEES

- The language was amended to update a reference to Rule 145 in accordance with the amendments to the same.
- Members of the public can send written comments relating to these three amendments to rulescomments@txcourts.gov until **April 2, 2021**.

RULE 506.4. WRIT OF CERTIORARI

- The amendment corrects the heading of a paragraph to read “Inability” rather than “Indigency.”
- Members of the public can send written comments relating to these three amendments to rulescomments@txcourts.gov until **April 2, 2021**.

RULE 509.2. CONTENTS OF PETITION; COPIES; FORMS AND AMENDMENTS

- The language allowing only those claims for damages of no more than \$10,000 was raised to \$20,000 to coincide with the other amendments.

RULE 509.6. JUDGMENT: AMOUNT; FORM AND CONTENT; ISSUANCE AND SERVICE; FAILURE TO COMPLY

- The language allowing only those claims for damages of no more than \$10,000 was raised to \$20,000 to coincide with the other amendments.