

# 2021 Rules Update: What's New in the Texas Rules of Civil Procedure



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# Quick Primer on Rulemaking Process (Civil)



- **Authority** – Supreme Court of Texas
- **Prompting** – Various Sources (legislative, legal community, etc.)
- **Process** – Team Effort (rules attorney, committees, task forces, etc.)
- **Final Product** – Administrative Orders (including comments!)

*\*\*Comprehensive, searchable rule collections are on the court's website.\*\**

# Overview of New Rules for 2021



- Service of Citation
- Expedited Actions
- Discovery Rules
- Form of Citation

**\*\*CAUTION:** In some cases, former rules still govern the proceedings.\*\*

# Service of Citation



- Rules Amended → TRCP 106, 108a
  
- Relevant Materials
  - ❖ Misc. Docket No. 20-9103 (Appendix 1)
  - ❖ Misc. Docket No. 20-9148 (Appendix 2)
  
- Effective Date → December 31, 2020

# Service by of Electronic Communication: SB 891



- Legislative mandate: SB 891 (2019)
  
- TCPRC § 17.033:
  - (a) If **substituted service** of citation is authorized under the Texas Rules of Civil Procedure, the court, in accordance with the rules adopted by the supreme court under Subsection (b), may prescribe **as a method of service an electronic communication** sent to the defendant through a social media presence.
  
  - (b) The supreme court shall adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence.

# Rule 106: Method of Service



“(b) Upon **motion** supported by a **statement**—sworn to before a notary or made under penalty of perjury—listing any location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) [of TRCP 106] at the location named in the statement but has not been successful, the court may authorize service:”

....

“(2) in any other manner, including **electronically by social media, email, or other technology**, that the **statement or other evidence** shows will be **reasonably effective** to give the defendant notice of the suit.”

\*\*See the comment for guidance on establishing reasonable effectiveness.\*\*

# Due Process in the Electronic Realm



- Evidence that the social media profile is real, not fake
  - ❖ Age of profile
  - ❖ Quantity and history of posts
  - ❖ Instances of direct communication through social media account
- Evidence that intended recipient actually received the documents
- **Bottom Line:** Due process concerns will remain paramount.

# Rule 108a: Service on International Defendants



- Service by “other means” in TRCP 108a(6) now encompasses the electronic means that are expressly allowed under TRCP 106(b)(2)
- BUT amended TRCP 108a(a)(6) makes clear that service by “other means” must not violate “international agreement or the foreign country’s law”
- **Bottom Line:** State standards do not override international standards.



# Expedited Actions



- Rules Amended → TRCP 47, 169, 190.2
  
- Relevant Materials
  - ❖ SB 2342 (Appendix 3)
  - ❖ Misc. Docket No. 20-9153 (Appendix 4)
  
- Effective Date → January 1, 2021

# Expedited Actions: HB 274 (2011), SB 2342 (2019)



- TGC § 22.004(h): *original source for expedited actions (amended)*

...The supreme court may not adopt rules under this subsection that conflict with other statutory law ~~a provision of: (1) Chapter 74, Civil Practice and Remedies Code; (2) the Family Code; (3) the Property Code; or (4) the Tax Code.~~
- TGC § 22.004(h-1): *source for more expansive expedited actions (added)*

...The supreme court shall adopt **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**. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

# Expedited Actions: SB 2342 (2019)



## TGC § 25.0003(c)(1):

In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed **\$250,000** [~~\$200,000~~], **excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs**, as alleged on the face of the petition . . . .

# Rule 47: Claims for Relief



- Subpart (c)(1) – contains new expedited actions standard 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**
- “A party that fails to comply with (c) may not conduct discovery until the party’s pleading is amended to comply.” TRCP 47.
- TRCP 47(c) doesn’t apply to cases governed by the Family Code. But these cases are no longer exempt from the expedited actions process.

# Rule 169: Expedited Actions



## Former Rule 169(a)(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** or less, **including** damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.” (Emphasis added.)

## Current Rule 169(a)

“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 **\$250,000** or less, **excluding** interest, statutory or punitive damages and penalties, and attorney fees and costs.” (Emphasis added.)

# Rule 169: Expedited Actions



## Former Rule 169(a)(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.”

[**NOTE:** This language was struck.]

## Comment to 2021 Change

“ . . . [A]ny 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.”

# Rule 169: Expedited Actions



- If you litigate a claim using the expedited actions process, your recovery is still limited accordingly. But TRCP 169(b) was amended to reflect the new cap on recovery. NOTE: This limit does not apply to counterclaimants.
  
- The ways to remove a case from the process have not changed.
  - ❖ Motion and showing of good cause by any party
  - ❖ Any claimant other than counterclaimant seeks non-monetary relief
  
- Level 1 discovery (in Rule 190.2) continues to apply to expedited actions.

# Discovery Rules



- Rules Amended → TRCP 190 and TRCP 192–198
  
- Relevant Materials
  - ❖ SB 2342 (Appendix 3)
  - ❖ Misc. Docket No. 20-9153 (Appendix 4)
  
- Effective Date → January 1, 2021



# Amended Discovery Rules



- The amendments were prompted by the Legislature’s mandate in SB 2342 for “rules to promote the prompt, efficient, and cost-effective resolution of civil actions,” as well as Supreme Court Advisory Committee recommendations based on analysis of comparable federal discovery rules.
- “The amendments **apply to cases filed on or after January 1, 2021**, except for those filed in justice court. The rules amended . . . continue to govern procedures and limitations in cases filed before January 1, 2021.” Misc. Docket No. 20-9153 (emphasis added).
- **NOTE:** Other proposed amendments are in the pipeline.

# Amended Discovery Control Plans - Levels 1 & 2



- **Level 1** now allows 20 hours total for oral depositions and now applies to higher-dollar cases. TRCP 190.2.
  - Expedited actions with new **\$250,000** limit
  - Divorces not involving children with marital estate valued at **\$250,000 or less** (unless the parties agree to Level 2 or the court orders Level 3)
- **Level 1 and Level 2** reflect initial disclosures. TRCP 190.2, 190.3.
  - Discovery periods now begin when the first initial disclosures are due, as opposed to when the suit is filed
  - Requests for disclosure are removed (here and throughout the rules)

# Amended Discovery Rules – Required Disclosures



- There are **three main categories** of **required disclosures**. TRCP 194.1.
  - Initial Disclosures (TRCP 194.2)
  - Testifying Expert Disclosures (TRCP 194.3, 195.5)
  - Pretrial Disclosures (TRCP 194.4)
  
- But keep in mind that **the requirements aren't always rigid**.
  - Certain proceedings are exempt from initial disclosures (TRCP 194.2(d))
  - Certain proceedings are exempt from pretrial disclosures (TRCP 194.4(c))
  - Potential outs exist for all proceedings → agreement of the parties & court orders (TRCP 194.1(a), 194.2(a)); *see also* TRCP 190.5, 191.1

# Amended Discovery Rules – Initial Disclosures



## ➤ **Timing**

- General Rule: within 30 days after filing of first answer or general appearance
- Later-Served Parties: within 30 days after being served or joined
- All Parties: can agree to different deadlines or seek modification via court order

## ➤ **Content**

- Carry Over Content: content from former TRCP 194.2(a)–(e), (g)–(l)
- New Content:
  - ❖ **TRCP 194.2(b)(6)** – modelled after FRCP 26(a)(1)(A)(ii)
  - ❖ **TRCP 194.2(c)** – for certain suits under the Texas Family Code
- Excluded Content: testifying-expert content (now in TRCP 194.3, 195.5)

## ➤ **Prerequisite to Other Discovery** (as a general rule) – TRCP 192.2(a)

# Citation Rule Amendment – Initial Disclosures



- TRCP 99b now requires the citation to notify the defendant that the defendant may be required to make initial disclosures.
- TRCP 99c includes language for this new notification.
- TRCP 99c also directs people to [TexasLawHelp.org](https://www.texaslawhelp.org) for guidance.

# Amended Discovery Rules – Expert Disclosures



## ➤ **Timing (TRCP 195.2)**

- General Rule
  - ❖ For Parties Seeking Affirmative Relief: 90 days before end of discovery period
  - ❖ For Other Parties: 60 days before end of discovery period
- Case-Specific Order: the deadlines in the order apply

## ➤ **Content (TRCP 194.3, 195.5)**

- Carry Over Content: content from former TRCP 194.2(f), 195.5
- New Content:
  - ❖ TRCP 195.5(a)(4)(C)–(E) – modelled after FRCP 26(a)(2)(B)
  - ❖ TRCP 195.5(c)–(d) – modelled after FRCP 26(b)(4)(B)–(C)

# Amended Discovery Rules – Pretrial Disclosures



## ➤ **Timing (TRCP 194.4(b))**

- General Rule: at least 30 days before trial
- Case-Specific Order: the deadlines in the order apply

## ➤ **Content (TRCP 194.4(a))**

- Carry Over Content: *none (but commonly in local rules and/or orders)*
- New Content:
  - ❖ TRCP 194.4(a)(1) – witness lists
  - ❖ TRCP 194.4(a)(2) – exhibit lists

# Amended Discovery Rules – Privileges



- **TRCP 193.3** – privileges can be asserted for information or material responsive to a required disclosure (in addition to discovery requests)
- **TRCP 193.4** – snap-back provision applies not just to the party requesting the material or information, but to all parties who have obtained it
- **TRCP 194.5** – as with requests for disclosure, no assertion of work product is permitted in response to a disclosure required under TRCP 194



# Questions?

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**~Keep Calm and Carry On~**