

# Supreme Court of Texas

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Misc. Docket No. 23-9052

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## Preliminary Approval of Texas Rules of Civil Procedure 194a and 195a and of Amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198

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### ORDERED that:

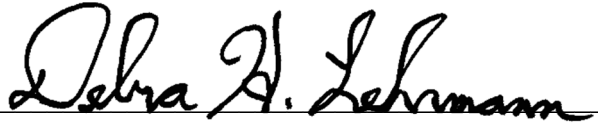
1. The Court invites public comments on proposed new Texas Rules of Civil Procedure 194a and 195a and on proposed amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198.
2. To effectuate the Act of May 24, 2023, 88th Leg., R.S., ch. 844 (H.B. 2850), the rules and amendments are effective September 1, 2023. But the rules and amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov) by November 1, 2023.
3. New Texas Rules of Civil Procedure 194a and 195a are demonstrated in clean form. The amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198 are demonstrated in redline form.
4. The rules and amendments approved by this Order apply only to an action filed on or after September 1, 2023.
5. 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 this Order for publication in the *Texas Register*.

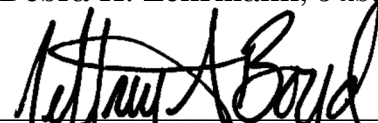
Dated: August 7, 2023.



Nathan L. Hecht, Chief Justice



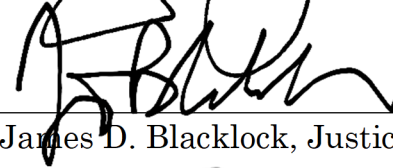
Debra H. Lehrmann, Justice



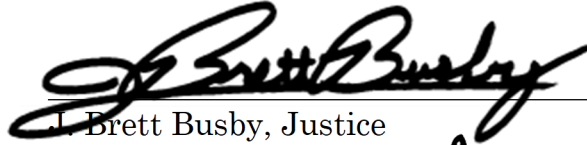
Jeffrey S. Boyd, Justice



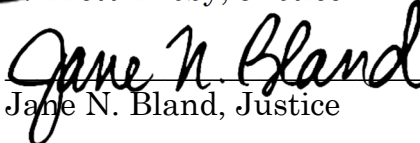
John P. Devine, Justice




James D. Blacklock, Justice



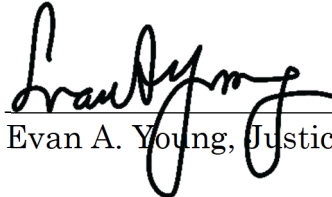
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

## TEXAS RULES OF CIVIL PROCEDURE

### RULE 190. DISCOVERY LIMITATIONS (Redline Form)

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#### 190.2 Discovery Control Plan - Expedited Actions and Divorces Involving \$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 \$250,000.
- (b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:
- (1) **Discovery period.**
    - (A) In a suit not governed by the Family Code, All discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues for 180 days.
    - (B) In a suit governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 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 20 hours in total to examine and cross-examine all witnesses in oral depositions. 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.
- (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.**

- (A) In a suit not governed by the Family Code, All discovery must be conducted during the discovery period, which begins when 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 first initial disclosures are due.

- (B) In a suit governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 30 days before the date set for trial.

- (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.

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

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

Permissible forms of discovery are:

- (a) except in a suit governed by the Family Code, required disclosures;
- (b) in a suit governed by the Family Code, requests for disclosure;
- (~~bc~~) requests for production and inspection of documents and tangible things;
- (~~ed~~) requests and motions for entry upon and examination of real property;
- (~~de~~) interrogatories to a party;
- (~~ef~~) requests for admission;
- (~~fg~~) oral or written depositions; and
- (~~gh~~) motions for mental or physical examinations.

## 192.2 Timing and Sequence of Discovery.

### (a) **Timing.**

(1) In a suit not governed by the Family Code. 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.

(2) In a suit governed by the Family Code, a party may serve discovery with the initial pleading.

(b) **Sequence.** The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.

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## 192.7 Definitions.

As used in these rules:

(a) *Written discovery* means required disclosures, requests for disclosure in suits governed by the Family Code, 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.

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## **RULE 194. REQUIRED DISCLOSURES IN SUITS NOT GOVERNED BY THE FAMILY CODE (Redline Form)**

### 194.1 Duty to Disclose; Production.

- (a) **Duty to Disclose.** Except in a suit governed by the Family Code, as exempted by Rule 194.2(~~dc~~), 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 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, a party must provide to the other parties:
  - (1) the correct names of the parties to the lawsuit;
  - (2) the name, address, and telephone number of any potential parties;
  - (3) 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);
  - (4) the amount and any method of calculating economic damages;
  - (5) 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;



- (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) 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;
- (11) 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
- (12) the name, address, and telephone number of any person who may be designated as a responsible third party.

~~(e) — 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.~~

~~(dc)~~ **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;~~

~~(74)~~ other actions involving domestic violence; and

~~(85)~~ an action on appeal from a justice court.

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#### 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.~~

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Comment to 2023 change: Rule 194 is amended to implement chapter 301 of the Family Code.

## **194a. REQUESTS FOR DISCLOSURE IN SUITS GOVERNED BY THE FAMILY CODE (Clean Form)**

### **194a.1 Request.**

No later than 30 days before the end of any applicable discovery period, a party may obtain disclosure from another party of the information or material described in Rule 194a.2 by serving the other party the following request: “Under Rule 194a, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, *e.g.*, 194a.2, or 194a.2(a), (c), and (f), or 194a.2(d)–(g)].”

### **194a.2 Content.**

A party may request disclosure under Rule 194a.1 of any of the following:

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party’s claims or defenses (but the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;

- (e) the name, address, and telephone number of any person having knowledge of relevant facts and a brief statement of each identified person's connection with the case;
- (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 that information; and
  - (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 biography;
- (g) any discoverable settlement agreement described by Rule 192.3(g);
- (h) any discoverable witness settlement described by Rule 192.3(h);
- (i) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case:
  - (1) all medical records and bills that are reasonably related to the injuries or damages asserted; or
  - (2) an authorization permitting the disclosure of the information described by paragraph (i)(1);
- (j) 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 through an authorization provided by the requesting party; and
- (k) the name, address, and telephone number of any person who may be designated as a responsible third party.

### **194a.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 is not required to respond until 50 days after service of the request; and
- (b) a response to a request under Rule 194a.2(f) is governed by Rule 195a.

### **194a.4 Production of Documents and Tangible Items.**

The responding party must provide copies of documents and other tangible items with the response unless:

- (a) the responsive documents are voluminous;
- (b) the responding party states a reasonable time and place for the production of the documents;
- (c) the responding party produces the documents at the time and place stated under paragraph (b) unless otherwise agreed by the parties or ordered by the court; and
- (d) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

### **194a.5 Work Product Objection Prohibited.**

A party may not assert a work product privilege for or object on the basis of a work product privilege to a request served under Rule 194a.1.

### **194a.6 Certain Responses Not Admissible.**

A response to a request under Rule 194a.2(c) or (d) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

Comment to 2023 change: New Rule 194a is added to implement chapter 301 of the Family Code.

**RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES  
IN SUITS NOT GOVERNED BY THE FAMILY CODE (Redline Form)**

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**195a. DISCOVERY REGARDING TESTIFYING EXPERTS IN SUITS  
GOVERNED BY THE FAMILY CODE (Clean Form)**

**195a.1 Permissible Discovery Methods.**

A party may request another party to designate and disclose information concerning testifying expert witnesses only through:

- (a) a disclosure request served under Rule 194a.1; or
- (b) a deposition or report permitted by this rule.

**195a.2 Deadline for Response.**

Unless otherwise ordered by the court, a responding party must provide the information requested under Rule 194a.2(f) by the later of the following dates:

- (a) 30 days after the request is served; or
- (b) either, as applicable:
  - (1) with respect to an expert testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; or
  - (2) with respect to an expert not described by paragraph (b)(1), 60 days before the end of the discovery period.

**195a.3 Deposition Availability.**

- (a) A party seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with this rule.
- (b) If a party seeking affirmative relief does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party must make the expert available for a deposition reasonably promptly after the designation. If the deposition cannot be reasonably concluded more than 15 days before the deadline for designating other experts due to the actions of the

party who designated the expert, the court must extend the deadline for other experts testifying on the same subject.

- (c) If a party seeking affirmative relief provides a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.
- (d) A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

#### **195a.4 Content of Oral Depositions and Court-Ordered Reports.**

In addition to a disclosure request served under Rule 194a.1, a party may obtain discovery by oral deposition and a report prepared in accordance with Rule 195a.5 of:

- (a) the subject matter on which a testifying expert is expected to testify;
- (b) the expert's mental impressions and opinions;
- (c) the facts known to the expert, regardless of when the factual information is acquired, that relate to or form the basis of the expert's mental impressions and opinions; and
- (d) other discoverable items, including documents not produced in response to a disclosure request.

#### **195a.5 Court-Ordered Reports.**

If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced in addition to the deposition.

#### **195a.6 Amendment and Supplementation of Discovery.**

A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If a party retains, employs, or otherwise controls an expert witness, the party must amend or supplement the expert's deposition

testimony or written report only with regard to the expert's mental impressions or opinions and the basis for those impressions or opinions.

#### **195a.7 Cost of Expert Witnesses.**

When a party takes the oral deposition of an expert witness retained by an opposing party, the party retaining the expert must pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

#### **195a.8 Expert Communications Protected.**

Communications between a party's attorney and a testifying expert witness in an action subject to this chapter are protected from discovery regardless of the form of the communications, except to the extent that the communications:

- (a) relate to compensation for the expert's study or testimony;
- (b) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions the expert will express; or
- (c) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.

Comment to 2023 change: New Rule 195a is added to implement chapter 301 of the Family Code.

### **RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY (Redline Form)**

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#### **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 in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

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



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(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 in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

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**RULE 197. INTERROGATORIES TO PARTIES (Redline Form)**

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**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 in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

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**RULE 198. REQUESTS FOR ADMISSIONS (Redline Form)**

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**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 in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

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