Supreme Court of Texas

Misc. Docket No. 25-9106

Preliminary Approval of Amendments to
Rule 166a of the Texas Rules of Civil Procedure

ORDERED that:

1. In accordance with the Act of June 2, 2025, 89th Leg., R.S., ch. 1130 (S.B. 293) and the Act of August 26, 2025, 89th Leg., 2d C.S., ch. 7 (H.B. 16), the Court invites public comments on proposed amendments to Texas Rule of Civil Procedure 166a. Rule 166a has been completely rewritten. Therefore, this order includes only a clean version of the rule.

2. Comments regarding the amendments should be submitted in writing to rulescomments@txcourts.gov by February 28, 2026.

3. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the amendments to take effect on March 1, 2026.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. send a copy of this order to the Governor, the Lieutenant Governor, and each elected member of the Legislature; and

   c. submit a copy of this order for publication in the *Texas Register*.

5. The State Bar of Texas is directed to:

   a. cause a copy of this order to be sent to each registered member of the State Bar of Texas by email; and

   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*.

Dated: December 30, 2025.

James D. Blacklock, Chief Justice

Debra H. Lehrmann, Justice

John P. Devine, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice

Evan A. Young, Justice

James P. Sullivan, Justice

Kyle D. Hawkins, Justice

RULE 166a. SUMMARY JUDGMENT

(a) *Definitions.*

(1) A "traditional motion" for summary judgment is a motion claiming there is no genuine issue as to any material fact of a claim or defense on which the movant would have the burden of proof at trial.

(2) A "no-evidence motion" for summary judgment is a motion claiming there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial.

(b) *Motion.*

(1) In General. A party may move for summary judgment on a claim or defense. The motion may combine both traditional and no-evidence motions.

(2) Contents.

(A) Title. A motion for summary judgment must be titled "Traditional Motion for Summary Judgment," "No-Evidence Motion for Summary Judgment," or "Combined Motion for Summary Judgment." An absent or incorrect title is not grounds for denying the motion.

(B) Hearing Request. If a movant requests an oral hearing on the motion, the request must appear on the cover of the motion.

(C) Traditional Motion. A traditional motion must state the specific grounds in support of the motion.

(D) No-Evidence Motion. A no-evidence motion must state the elements as to which there is no evidence.

(3) Time to File.

(A) Traditional Motion. Unless a deadline for filing is set by court order, a party may file a traditional motion at any time after the adverse party has appeared or answered.

(B) No-Evidence Motion. A party may file a no-evidence motion after adequate time for discovery.

(c) *Clerk and Court Duties Upon Filing.* Upon the motion's filing, the clerk must immediately call the motion to the court's attention. The court must promptly set the motion for submission or a hearing according to this rule.

(d) *Response.*

(1) Time to File. Except on leave of court, the nonmovant must file any response within 21 days after the motion is filed.

(2) Contents. The response must include any evidence in support of the response and objections to the evidence supporting the motion. If the non-movant requests an oral hearing on the motion, the request must appear on the cover of the response. The court may reset the motion for a hearing if no hearing has been set.

(3) When Evidence Unavailable. If the nonmovant needs additional time to secure evidence in support of the response, the nonmovant must file an affidavit or declaration specifying the reasons why the nonmovant cannot present facts essential to justify its opposition. The court may extend the time to file the response, deny the motion without prejudice to permit additional discovery, or issue any other appropriate order.

(e) *Reply.*

(1) Time to File. The movant may file a reply. Except on leave of court, the movant must file the reply within 7 days after the response is filed.

(2) Contents. A reply must not raise new or independent summary judgment grounds, other than to address an amended pleading filed in response to the motion for summary judgment.

(f) *Withdrawal.* Any withdrawal of the motion must be filed and must identify the date the motion was filed.

(g) *Hearing or Written Submission.*

(1) Timing. A hearing or submission date must not be set within 35 days after the motion's filing. Unless the motion is withdrawn, the court must set the motion for a hearing or written submission within:

(A) 60 days after the motion's filing; or

(B) 90 days after the motion's filing:

(i) if the court's docket so requires;

(ii) on a showing of good cause; or

(iii) if the movant agrees.

(2) Reset Permitted. The court may reset a hearing or submission date within the time frames specified in this rule.

(3) Proposed Order. The parties must each submit a proposed order before the hearing or written submission date.

(4) No Oral Testimony. No oral testimony will be received at a hearing on a summary judgment motion.

(5) Docket. The court must record in the docket the date the motion was heard or submitted.

(h) *Standards.*

(1) Grounds. No judgment will be granted except on the grounds stated under (b)(2)(C) and (b)(2)(D).

(2) Traditional Motion. The court must grant a traditional motion for summary judgment if the movant shows that, except as to damages, there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law on the issues expressly set out in the motion.

(3) No-Evidence Motion. The court must grant a no-evidence motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

(i) *Ruling.* The court must sign a written ruling on the motion, file it with the clerk, and provide the ruling to the parties within 90 days after the hearing or written submission date.

(j) *Use of Discovery Not Otherwise on File.* Discovery not on file may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments are filed with a statement of intent to use the specified discovery as summary judgment evidence:

(1) at the time the motion is filed, if the evidence to be used to support the summary judgment; or

(2) at the time the response is filed, if the evidence is to be used to oppose the summary judgment.

(k) *All Requested Relief Not Granted.* If the court does not grant all the relief requested by the motion, the court may ascertain what material fact issues exist, issue an order specifying the facts that are established as a matter of law, and direct any other appropriate proceedings.

(l) *Form of Affidavit or Declaration; Further Testimony.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify to the matters stated. A document referred to in an affidavit or declaration must be attached and sworn or certified. The court may permit an affidavit or declaration to be supplemented or opposed by deposition or by another affidavit or declaration.

(m) *Affidavit or Declaration Submitted in Bad Faith.* If satisfied that an affidavit or declaration is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subject to other appropriate sanctions.

Notes and Comments

Comment to 1990 change: This amendment provides a mechanism for using previously non-filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).

Comment to 1997 change: This comment is intended to inform the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period but not before. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it

is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (Tex Civ. Prac. & Rem. Code §§ 9.001-10.006) and rule (Tex R. Civ. P. 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (c).

Comment to 2026 change: Rule 166a is rewritten to implement section 23.303 of the Texas Government Code and to modernize the rule. Other than the deadline changes, Rule 166a's rewrite is not intended to substantively change the law.