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## Texas New Discovery Rules (Updated) as of 1/1/2021

Presented by Michelle O'Neil

### Effective Date

 The new rules take effect January 1, 2021, and apply to cases filed on or after that date.

### Citation: Rule 99

Citation must now include a statement about the requirement of initial disclosures.

### Levels and Expedited Actions: Rule 169, 190.2

- Pleadings must plead a discovery level or there's no discovery until a level is plead.

#### Level 1

- Applies to action where all claimants (not counter-claimants) plead for monetary relief of \$250,000 or less excluding interest, punitive damages, and attorney's fees. Applies to any divorce without children with marital estate more than \$0 but less than \$250,000.
- Removes the exclusion for cases under the family code.
- Discovery period begins when the initial disclosures are due and continues until 180 days after the date the initial disclosures are due. (answer + 30 days = beginning; beginning + 180 days = ending; ending + 90 = trial deadline)
- Depos limited to 20 hours total per party; Interrogatories limited to 15 per party excluding authentication of documents interogs. RFP limited to 15. RFA limited to 15.
- No judgment more than \$250,000.
- Expedited process: Trial must be set within 90 days after discovery period ends. Two continuances allowed, not more than 60 days total.



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Levels and Expedited Actions: Rule 169, 190.2 continued

- Trial limited to 8 hours per side for jury selection, opening, evidence, and closing. May be extended to 12 hours per side on showing of good cause. Time limit does not include objections, bench conferences, bills of exception, or challenges for cause.
- Unless agreed, mediation required; limited to half-day duration. Cost of mediation cannot exceed 2x cost of filing fees. Completed 60 days before trial.
- Filing an amended pleading outside of Level 1 reopens the discovery period and adjusts the level.

Level 2

- Applies to divorce with kids, estate over \$250,000.
- Discovery period ends 30 days before trial.
- Depositions = 50 hours per party total.
- If more than 2 experts, additional 6 hours total deposition time.
- Interrogos = 25 total.

Level 3

- No changes.



Required Disclosures

- There are now 3 types of required disclosures: Initial Disclosures, Expert Disclosures, and Pretrial Disclosures.
- These are required without having to request them.
- No longer have Request for Disclosure.



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**Initial Disclosures: Rule 194**

- Due date: Both parties must file response to Initial Disclosures no later than 30 days after answer is filed or general appearance.
- Cannot serve other discovery until after initial disclosures are due.



**General Initial Disclosures: Rule 194.2**

Must list:

- (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) amount and calculation of 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;



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**General Initial Disclosures: Rule 194.2 continued**

(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.

Expert disclosures should be contained in initial disclosures, but must be designated by expert deadline below.



**Expert Disclosures: Rule 195**

- Due date: Affirmative experts must be designated 90 days before the end of the discovery period. Defensive experts must be designated 60 days before the end of the discovery period.



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**Family Law Initial Disclosures: Rule 194.2(c)**

- In a suit for divorce, must provide for last 2 years or since date of marriage, whichever is less:
  - all deed/lien info on real property owned or leased;
  - all statements on retirement type plans;
  - all statements on insurance policies; and
  - all bank statements.
- In a suit involving child support or spousal support, must provide:
  - information regarding health insurance coverage for the child or spouse;
  - tax returns for previous 2 years; and
  - two most recent payroll check stubs.



**Exempt Cases from Initial Disclosures: Rule 194.2(d)**

Actions that are exempt from initial disclosures, but court may order particular disclosures:

- review on administrative record;
- forfeiture actions;
- petition for habeas corpus;
- Title IV-D (child support) cases;
- CPS suits;
- suits for protective order;
- other actions involving domestic violence; and
- appeal from justice courts.



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**Expert Disclosures: Rule 195**

- Expert disclosure should be included in Initial Disclosures. Deadline to disclose: Affirmative experts must be designated 90 days before the end of the discovery period. Defensive experts must be designated 60 days before the end of the discovery period.
- Information to include about experts:
  - name, address, and telephone number;
  - subject matter on which expert will testify;
  - general substance of mental impressions and opinions and summary of basis, or if not a retained expert then documents reflecting such information;
  - if expert is retained or subject to control of party then all documents, provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; expert resume; expert's qualifications, including a list of publications authored in the previous 10 years; except as to attorney testifying as to attorney fees, list of all cases in previous 4 years the expert testified as an expert at trial or by deposition; and statement of compensation to be paid for the expert's study and testimony



**Expert Communications Protected: Rule 195.5(d)**

Communications between attorney and testifying expert are protected from discovery, except related to compensation; facts or data provided to the expert and the expert considered in forming opinions; or assumptions the attorney provided that the expert relied on in forming opinions.



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### Pretrial Disclosures: Rule 194.4

Due date: 30 days before trial unless court order otherwise. Must list:

- Name, address and telephone number of each witness and distinguish between those expected to present and those it may present if the need arises;
- Identification of each document or exhibit, including summaries of the evidence, distinguishing between those a party expects to offer and those it may offer if the need arises.
- Title IV-D (child support) cases are exempt from pretrial disclosure.



### Miscellaneous Rules

- No assertion of work product permitted to disclosure. Rule 194.5
- A party cannot serve discovery until after the initial disclosures are due. Rule 192.2 (a).
- Physical custody or control means physical possession or right to possession that is equal to or superior to the person with physical possession. Rule 192.7 So, no objection to "equally accessible" anymore.
- Response must be complete based on information reasonably available to the responding party or attorney at the time the response is made. Rule 193.1.
- Response to production must contain the documents or state a reasonable time and place for production. Rule 194.1.
- Only proceedings exempt from required disclosure are administrative review, forfeiture, and habeas corpus. Rule 194.2.
- Amended or supplemental response is not admissible and cannot be used for impeachment. Rule 194.6.
- Failure to respond to required disclosure results in exclusion. Rule 193.6