

KEY POINTS: FINAL 2021 AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE

December 14, 2020

(Effective for cases filed on or after 01-01-2021)

1. Expedited Action Expansion

a. Rules 169, 47(c): amended to expand expedited action procedures to cover cases with amount in controversy of \$250k or less, excluding interest, statutory or punitive damages, and attorney fees

b. Rule 190.2(b)(2): in expedited actions, each party now has 20 total hours to depose all witnesses

2. New Mandatory Disclosure Requirements

a. *Mandatory Initial Disclosures*: Within 30 days after the first answer is filed or general appearance is made, or on a date set by agreement or court order, each party must:

i. Disclose all information previously subject to a request for disclosure (Rule 194.1-194.2),

ii. Provide a computation of each category of damages (documents used to compute damages must be made available to opposing party) (Rule 194.2(b)(4)), and

iii. Produce (or provide a description and location of) all documents, ESI, and tangible things in its possession, custody, or control that it may use to support its claims or defenses

(Rule 194.2(b)(6)). (N.B.: for disclosure doc/ESI/tangible item production, producing party may specify a reasonable time and method to produce under Rule 194.1(b)).

b. *Relevant proceedings exempt from initial disclosures*:

i. Action for review on an administrative record

- ii. Forfeiture action arising from state statute
- iii. Petition for habeas corpus
- c. *Exclusionary Rule* (193.6) applies to disclosures not timely made, amended, or supplemented.
- d. *Discovery Period Now Begins* when initial disclosures are due (Rules 190.2 and 190.3).
 - i. No discovery may be served on a party until after that party's initial disclosures are due (Rule 192.2).
- e. *Citations Must Include Mandatory Language Regarding Initial Disclosures* (Rule 99(c)).
- f. *Retained Testifying Expert Disclosures Expanded* (Rule 195.5) to also include:
 - i. Expert's qualifications, including list of all publications authored in previous 10 years
 - ii. List of all cases in which expert testified during prior 4 years
 - iii. Statement of expert's compensation for testimony
- g. *Additional Required Pretrial Disclosures* (Rule 194.4):
 - i. At least 30 days before trial, each party must provide to the other parties and promptly file:
 - 1. Name, address, and phone number of each witness
 - 2. Identification and summary of each document or other exhibit
 - a. Parties must distinguish between the witnesses/documents on which they will rely and those on which they may rely "other than solely for impeachment."

3. Expert Privilege Expanded

Under Rule 195.5(c)-(d) to protect draft reports and disclosures, and communications between party's attorney and testifying expert unless they:

- a. Relate to the expert's compensation for the study or testimony;
- b. Identify facts or data, which the party's attorney provided, that the expert considered in forming the opinions to be expressed; or
- c. Identify assumptions provided by the party's attorney that the expert relied upon to form the opinions to be expressed.

4. Bonus: FRCP 30(b)(6) Revisions

- a. Subpoenas must now also notify the nonparty organization being subpoenaed of its duty to confer with the serving party and designate a person to testify.

b. Before or promptly after a notice of deposition or subpoena is served on an organization, the serving party and the organization must confer in good faith about the matters for examination.