

Focus | Business Litigation/Franchise & Distribution Law

2021 Rule Changes: Texas Rules of Civil Procedure

BY NICOLE WILLIAMS
AND MACKENZIE WALLACE

While the Texas Rules of Civil Procedure are amended yearly, the amendments to the Texas Rules effective January 1, 2021 materially impacted discovery and expert litigation practice in Texas state courts. Specifically, the amendments significantly affected (1) Rule 194 initial disclosures, (2) the applicability of Rule 169 expedited action procedures, (3) Rule 195 expert designations, (4) Rule 106 service methods, and added (5) Rule 194.4 pretrial disclosures. Though there are additional amendments, this article is limited to these five important aspects of the 2021 amendments. For Rules 194, 169, and 195 these new requirements apply for all cases filed on or after January 1, 2021. The new service options under Rule 106 became effective on December 31, 2020.

Initial Disclosures Now Required Under Rule 194

The amendment to Rule 194 replaces “requests for” disclosures with a mandatory disclosure requirement similar to the disclosure requirement in the Federal Rules of Civil Procedure. Under amended Rule 194, disclosures are due within 30 days after the first answer is filed. Further, a party cannot serve discovery until after the initial disclosures are due, unless otherwise agreed to by the parties or ordered by the court.

The initial disclosure-content requirement under amended Rule 194 is similar to that required to be disclosed under the previous version of Rule 194. However, the parties must now also disclose a computation of each category of damages and provide copies of documents in support of such computation,

as well as any documents they may use to support their claims or defenses. Rule 194.3 also now provides that testifying expert disclosures will be made in conformance with Rule 195.

Broadened Applicability of Expedited Action Procedures Under Rule 169

Texas Rule of Civil Procedure 169 “expedited action” procedures apply limited discovery and expedited trial settings for cases under a certain amount in controversy. The maximum amount in controversy for Rule 169 to apply was previously \$100,000, but amended Rule 169 has increased this amount and now applies to lawsuits in which the claimant seeks monetary relief aggregating \$250,000 or less (excluding interest, punitive or statutory damages and penalties, attorneys’ fees and costs). Any party may still file a motion and showing of good cause, prompting the court to remove the suit from the expedited process. The court must still set the case for a trial date that is within 90 days after the discovery period ends. Further, amended Rule 190.2 increases the aggregate amount of oral deposition time permitted for expedited actions from 6 hours to 20 hours.

Altered Expert Designations Under Rule 195

Amended Rule 195.2 provides that parties seeking affirmative relief must designate experts 90 days before the end of the discovery period, and all other experts must be designated 60 days before the end of the discovery period, unless otherwise ordered by the court.

Rule 195.5 now requires certain disclosures regarding experts. These required disclosures include the expert information previously required in Rule 194 and additional information for retained experts: (a) the expert’s qualifications, including a list of all publications authored in the previous 10 years, (b) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition, and (c) a statement of the compensation to be paid for the expert’s study and testimony in the case.

Prior Rule 195.2 required disclosure of experts at the same time as initial disclosures. Although the information required as part of the expert designation has expanded under Rule 195, the new timing rule could have competing impacts on parties’ abilities to quickly retain and prepare for rebutting expert testimony.

Expanded Service Under Rule 106

Amended Rule 106 expands the methods for service of citation. Specifically, Rule 106(b) now specifically allows a court—upon a motion supported by a statement

sworn to before a notary or made under penalty of perjury that traditional methods of service were not successful—to authorize substituted service by social media, e-mail, or other technology that will be reasonably effective to give the defendant notice of suit. Thus, lawsuits can now be sent by email or posted on Facebook, Instagram, Twitter, or any other available social media platforms as long as some type of evidence indicates the defendants will learn of the case and could not be served through traditional methods.

Required Pretrial Disclosures Under Rule 194.4

Amended Rule 194.4 provides that parties file and serve information regarding witnesses, documents, and other exhibits (including summaries of evidence) that they may present at trial other than solely for impeachment. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. **HN**

Nicole Williams is the Managing Partner of Thompson Coburn’s Dallas office. Mackenzie Wallace is a Partner at the firm. They can be reached at nwilliams@thompsoncoburn.com and mwallace@thompsoncoburn.com, respectively.

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