

# Recent Changes to Texas Rules of Civil Procedure

BY TRENT W. REXING  
AND ANDREW J. UPTON

The Texas Supreme Court adopted amendments to the Texas Rules of Civil Procedure that apply to all cases filed on or after January 1, 2021. The amended Rules broaden the scope and applicability of the expedited action procedures and expand initial disclosure requirements and the timing of discovery to more closely align with the Federal Rules of Civil Procedure. Several of the key amendments are discussed below.

## Expedited Actions

In its comments, the Supreme Court notes that the amended expedited actions procedures are intended to carry out the “prompt, efficient, and cost-effective resolution of civil actions” by balancing the need for low-

ering discovery costs against the complexity (or lack thereof) of lawsuits to which the procedures apply. The expedited actions procedures under Rules 169 and 190.2 currently apply to cases under \$100,000. The newly amended expedited action procedures have increased that threshold and will now automatically apply to lawsuits seeking relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, attorney’s fees, and costs. The expedited actions discovery period now begins when initial disclosures are due and ends 180 days afterward. Each party is allowed 20 hours of total oral deposition time (increased from 6) but the trial court can modify this limit to avoid unfairness. The limit of 15 Interrogatories, Requests for Production, and Requests for Admission per litigant remain unchanged.

Expedited actions must be set for a

trial date within 90 days after the discovery period and can be continued twice up to a total of 60 days. It remains to be seen if courts will have capacity to set and call to trial the increased case volume—especially in light of the backlog of cases due to COVID-19.

## Updated Disclosure Requirements

In a clear attempt to more closely align the Texas Rules of Civil Procedure with the Federal Rules of Civil Procedure, the Supreme Court also adopted amendments to the disclosure requirements for all civil lawsuits.

Rule 194 Requests for Disclosure will now be known as Required Disclosures. Based on Federal Rule 26(a), this amendment requires automatic disclosure of basic discovery. Barring an agreement or court order, all parties must make their Initial Disclosures within 30 days after the first answer is filed or, for those served or joined later, within 30 days of service or joinder. A party is not excused from its disclosure obligations despite its inability to have previously investigated the matter. Similarly, the failure of one party to make its disclosures does not excuse the other of its obligation to provide same.

The content of the Required Disclosures is similar to the current Requests for Disclosure material, except that testifying expert discovery is now addressed separately. While parties currently must disclose a computation of each category of damages, they must now identify documents that support their computation of each category of damages. Litigants are now further required to disclose any documents that may be used to support their claims or defenses. Unless the trial court orders

otherwise, at least 30 days before trial, parties must also file identifying information about all witnesses, documents, and exhibits that they *may* present at trial, and must separately identify the witnesses and exhibits that they *expect* to be present or offered.

Unless otherwise agreed to or ordered, a party cannot serve discovery until after initial disclosures are due. While litigants may now benefit from additional frame-of-reference when drafting their discovery requests, this new amendment may be viewed as an unnecessary delay to those who are accustomed to state court litigation and want to get a quick handle on issues that fall outside of the scope of initial disclosures.

## Testifying Expert Discovery

The Supreme Court now has concrete deadlines for testifying expert designations: 90 days before discovery ends for parties seeking affirmative relief and 60 days before discovery ends for all other experts. In addition to the present disclosure requirements for testifying experts, Rule 195.5 now includes the disclosure of: (i) the expert’s qualifications, including a list of all publications authored in the previous 10 years, (ii) 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 (iii) a statement of the compensation to be paid for the expert’s study and testimony. The additional testifying expert information will permit counsel to more thoroughly prepare for rebutting expert testimony and depositions.

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Trent W. Rexing is a Partner at Mayer LLP and may be reached at [trexing@mayerllp.com](mailto:trexing@mayerllp.com). Andrew J. Upton is an attorney at the firm and may be reached at [aupton@mayerllp.com](mailto:aupton@mayerllp.com).



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