

Recent Changes to Texas Rules of Civil Procedure

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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.

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. **HN**

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