UPDATE ON RULE 91A

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CHAPTER 3

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Kennon joined Scott, Douglass & McConnico LLP in 2011, after serving as the Rules Attorney for the Supreme Court of Texas, working as an associate for Baker Botts LLP (in Austin), and clerking for former Chief Justice Wallace B. Jefferson of the Supreme Court of Texas. As Rules Attorney, she handled inquiries and issues relating to local and statewide rules and assisted the Court with promulgating and amending rules. At Scott, Douglass & McConnico, her docket includes a broad range of civil litigation and appeals involving, among other things, allegations of breach of fiduciary duty, breach of contract, business tort, personal injury, and professional malpractice. She represents Fortune 500 corporations, law firms, lawyers, judges, family-owned businesses, associations, and individuals. Her education includes the University of Texas at Austin (BA with highest honors, 1999) and the University of Texas School of Law (JD with honors, 2004). In her third year of law school, she served as the Head Teaching Quizmaster. Kennon is actively involved with the bar. She served as the President of the Austin Young Lawyers Association in 2012-2013 and currently serves as the Vice Chair of the State Bar of Texas Court Rules Committee, as the Secretary on the Board of Directors for the Texas Legal Service Center, and as a member of the Texas Commission to Expand Civil Legal Services, Austin Bar Association Board of Directors, and Editorial Board for The Advocate (a quarterly publication of the State Bar). She is also serving as Editor-in-Chief for Austin Lawyer, a monthly publication of the Austin Bar. In 2011, she received a Special Commendation of the Supreme Court of Texas and State Bar for her work relating to the disciplinary rules in Texas. She is a frequent CLE speaker and has been named as a Texas Rising Star in 2008, 2009, and 2013-2016.

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Recent Experience
In recent years, Carlos' work includes obtaining settlements on behalf of plaintiffs in wrongful death and personal injury cases involving trucking and other accidents, as well as being asked to assist in representing plaintiffs and defendants in preparing, submitting, and arguing jury instructions, and other appellate work particular to complex cases.

Carlos is Board-Certified in Personal Injury Trial Law and has tried, as either first chair or in a supporting role, a variety of cases to juries, the bench, and arbitrators. He has published and lectured in the area of trial practice including Evidence, Jury Selection, *Daubert*, and Choice of Law Issues.

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Yale Law School, J.D. 1994
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Cindy's practice includes a wide range of complex commercial litigation with an emphasis in technology litigation, fiduciary duty litigation, estate litigation, officer and director disputes and legal malpractice defense. Cindy has extensive experience representing individuals and companies in Austin's technology and emerging growth market. These cases typically involve claims of fraud, breach of licensing agreements, breach of non-disclosure agreements, misappropriation of trade secrets and violations of covenants not to compete. Cindy has also defended attorneys in cases arising from underlying patent infringement litigation, personal injury litigation, commercial litigation, airplane leases, probate and estate work, bridge loan financing and other transactional matters. Cindy graduated cum laude from Duke University in 1993 and from The University of Texas School of law in 1996. Cindy has served on the board of the Travis County Women Lawyers' Association and Foundation for many years and served as the Association President 2011-12 and the Foundation Chair 2015-16. Cindy also serves as a Director to the Austin Bar Association. Cindy was awarded the Kristi Couvillon Pro Bono Award in 2014. She is a frequent CLE speaker and has been named a Texas Rising Star in 2005 and a Texas Super Lawyer from 2014-2016.

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UPDATE ON RULE 91A

I. INTRODUCTION

The Supreme Court of Texas (the "Court") has broad authority to promulgate and amend rules governing practice and procedure in civil actions. Tex. Const. art. V, § 31(b) (directing the Court to "promulgate rules of civil procedure for all courts not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts"); Tex. Gov't Code Ann. § 22.004(a) (West Supp. 2015) ("The supreme court has the full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify the substantive rights of a litigant."). To ensure that this power is sufficiently robust, the Legislature even allows the Court to repeal statutes through rules to the extent that the rules address procedural—as opposed to substantive—matters. *Id*. § 22.004(c) (providing that "a rule adopted by the [Court] repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed" and setting forth a procedure for repealing statutes through rules). Generally, the Court must publish all Texas Rules of Civil Procedure for 60 days before they become effective. *Id*. § 22.004(b). Proposed rules are published in the *Texas Bar Journal* and in administrative orders posted on the Court's website (at http://www.txcourts.gov/supreme/administrative-orders.aspx). The Court invites public comments during this 60-day period, analyzes the comments received (with assistance from its Rules Attorney), and often modifies proposed rules in response to comments.[1]

Sometimes new rules and amendments to existing rules are prompted by legislative mandate. At other times, the Court decides to promulgate or amend rules on its own initiative, often because members of the bar or the general public have identified a need for change.

In the last few years, the Court has promulgated several rules in response to legislative mandates. This article addresses one set of these rules: the rules governing dismissal procedures.

II. DISMISSAL PROCEDURES

A. Impetus for Rules Governing Dismissal Procedures

The dismissal procedures in Rule 91a of the Texas Rules of Civil Procedure stem from House Bill 274, which the 82nd Legislature enacted in 2011. In the bill, the Legislature added subsection (g) to Section 22.004 of the Texas Government Code and mandated the Court to:

> "adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence."

Id. § 22.004(g). The Legislature also provided that:

> "[t]he rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss"

and

> "shall not apply to actions under the Family Code."

Id. Finally, the Legislature added Section 30.021 to the Texas Civil Practice and Remedies Code, which reads:

> "In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the [Court] under Section 22.004(g), Government Code, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party."

Tex. Civ. Prac. & Rem. Code Ann. § 30.021 (West 2015). Of note, however:

> "actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law"

are excluded from Section 30.021. *See id*.

B. Overview of Rules Governing Dismissal Procedures

In an administrative order dated November 13, 2012, the Court issued a proposed version of Rule 91a. *See* Misc. Docket No. 12-9191 (Nov. 13, 2012) (attached hereto as **Exhibit A**). The Court revised the proposed rule in response to public comments received and issued the final version of Rule 91a in an administrative order dated February 12, 2013. *See* Misc. Docket No. 13-9022 (Feb. 12, 2013) (attached hereto as **Exhibit B**).

Rule 91a allows a party to move to dismiss a cause of action that "has no basis in law or fact." Tex. R. Civ. P. 91a.1. Since Rule 91a took effect on March 1, 2013, it has been analyzed in multiple Texas cases relating to

[1] For more information on rulemaking, see Chief Justice Nathan L. Hecht, Martha G. Newton & Kennon L. Wooten, *How Texas Court Rules are Made* (May 13, 2016), http://www.txcourts.gov/rules-forms/rules-standards.aspx.

multiple types of causes of action.[2] The discussion below addresses the cases that provide the most useful guidance regarding the procedures in Rule 91a, as well as some interesting observations about the development of Rule 91a jurisprudence.

[2] *See, e.g.*, *In re Essex Ins. Co.*, 450 S.W.3d 524, 526-28 (Tex. 2014) (per curiam) (orig. proceeding) (holding that trial court abused discretion by not dismissing plaintiff's declaratory judgment claim against insurer in personal injury action); *Walker v. Owens*, No. 01-15-00361-CV, 2016 WL 1590681 *3 (Tex. App.—Houston [1st Dist.] Apr. 19, 2016, no pet.) (affirming dismissal of prisoner's claims for violation of due process); *Vasquez v. Legend Natural Gas III, L.P.*, No. 04-14-00899-CV, 2016 WL 1729390 *4-7 (Tex. App.—San Antonio Apr. 29, 2016, no pet. h.) (affirming dismissal of negligence claim because no legal duty existed); *Boswell v. Ector Co. ISD*, No. 11-15-00013-CV, 2016 WL 1443606 *3-4 (Tex. App.—Eastland Apr. 7, 2016, no pet. h.) (mem. op.) (affirming dismissal of whistleblower, breach of contract and non-client claims against attorney); *Highland Capital Management, LP v. Looper Reed & McGraw, P.C.*, No. 05-15-00055-CV, 2016 WL 164528 *2-6 (Tex. App.—Dallas Jan. 14, 2016, pet. filed) (mem. op.) (affirming dismissal of theft, breach of duty, conversion, tortious interference with contract, civil conspiracy and disparagement on attorney immunity doctrine); *Parkhurst v. Office of Attorney General of Texas*, 481 S.W.3d 400, 402 (Tex. App.—Amarillo 2015, no pet.) (affirming dismissal of petition for bill of review); *Guillory v. Seaton, LLC*, 470 S.W.3d 237, 243 (Tex. App.—Houston [1st Dist.] 2015, pet. filed) (affirming dismissal of negligent undertaking claims); *Kidd v. Cascos*, No. 03-14-00805, 2015 WL 9436655 (Tex. App.—Austin Dec. 22, 2015, no pet.) (affirming dismissal of request for declaratory judgment that Seventeenth Amendment was not constitutionally ratified); *Stedman v. Paz*, No. 13-13-00595-CV, 2015 WL 5157598 *3 (Tex. App.—Corpus Christi-Edinburg Sept. 2, 2015, no pet.) (reversing dismissal of application to revive judgment by *scire facias*); *McClain v. Dell, Inc.*, No. 07-15-00141-CV, 2015 WL 5674885 *3 (Tex. App.—Amarillo Sept. 24, 2015, pet. denied) (mem. op.) (affirming dismissal of DTPA, Theft Liability Act, conspiracy and violation of "statutes and rules" claims on *res judicata* grounds); *Gonzales v. Dallas Cty. Appraisal Dist.*, No. 05-13-01658-CV, 2015 WL 3866530, at *4-5 (Tex. App.—Dallas June 23, 2015, no. pet.) (mem. op.) (affirming dismissal of taxpayer's suit alleging improper property appraisal); *Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 185-86 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (reversing dismissal of claims under Texas Timeshare Act and affirming dismissal of fraudulent inducement claim); *In Estate of Sheshtawy*, 478 S.W.3d 82, 86 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (affirming dismissal of claim to enjoin sale of homestead when petition admits homestead rights were waived); *Guzder v. Haynes & Boone, LLP*, No. 01-13-00985-CV, 2015 WL 3423731, at *3-8 (Tex. App.—Houston [1st Dist.] May 28, 2015, no pet. h.) (mem. op.) (affirming dismissal of party's fraud and civil conspiracy claims against law firm and lawyers who represented opposing parties in prior dispute); *Drake v. Walker*, No. 05-14-00355-CV, 2015 WL 2160565, at *2-4 (Tex. App.—Dallas May 8, 2015, no pet.) (mem. op.) (reversing dismissal of negligence claims and affirming dismissal of deceptive trade practices claim in dental malpractice case); *Chambers v. Tex. Dep't of Transp.*, No. 05-13-01537-CV, 2015 WL 1756087, at *2-3 (Tex. App.—Dallas Apr. 17, 2015, no pet.) (mem. op.) (affirming dismissal of bill of review as having no basis in law); *Davis v. Motiva Enters., L.L.C.*, No. 09-14-00434-CV, 2015 WL 1535694, at *1-5 (Tex. App.—Beaumont Apr. 2, 2015, pet. denied) (mem. op.) (relying on federal Communications Decency Act to affirm dismissal of claims against employer for negligent supervision, entrustment, and undertaking); *Townsend v. Montgomery Cent. Appraisal Dist.*, No. 14-14-00103-CV, 2015 WL 971313, at *8 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, no pet.) (mem. op.) (holding that Rule 91a provisions do not apply to summary judgment motions); *DeVoll v. Demonbreun*, No. 04-14-00116-CV, 2014 WL 7440314, at *1-3 (Tex. App.—San Antonio Dec. 31, 2014, no pet.) (affirming dismissal of debtor's claims for fraud, violations of Texas Debt Collection Act and Texas Deceptive Trade Practices Act, mental anguish, loss of consortium, damages/exemplary damages, and injunctive relief); *City of Dallas v. Sanchez*, 449 S.W.3d 645, 650-55 (Tex. App.—Dallas 2014, pet. filed) (analyzing immunity issues and affirming partial dismissal of claims against city); *Gaskill v. VHS San Antonio Partners, LLC*, 456 S.W.3d 234, 236-39 (Tex. App.—San Antonio 2014, pet. denied) (reversing dismissal of causes of action that occurred without notice of hearing, as required under Rule 91a); *Drake v. Chase Bank*, No. 02-13-00340-CV, 2014 WL 6493411, at *1-2 (Tex. App.—Fort Worth Nov. 20, 2014, no pet.) (mem. op.) (affirming dismissal of independent claim for irreparable harm to credit and claim for intentional infliction of emotional distress); *In re Sisk*, 14-13-00785-CV, 2014 WL 5492804, at *4-5 (Tex. App.—Houston [14th Dist.] Oct. 30, 2014, pet. denied) (mem. op.) (holding that parents' motion to dismiss child's suit for child support was not recognized under Rule 91a, which excludes cases brought under Family Code); *Dailey v. Thorpe*, 445 S.W.3d 785, 786-90 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (affirming dismissal of claims for breach of fiduciary duty and conspiracy to commit fraud in regard to seller-financed real-estate transaction); *Wooley v. Schaffer*, 447 S.W.3d 71, 74-78 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (relying on Peeler doctrine to affirm dismissal of claims against attorney for legal malpractice, breach of contract, and DTPA violations); *City of Austin v. Liberty Mut. Ins.*, 431 S.W.3d 817, 824-31 (Tex. App.—Austin 2014, no pet.) (analyzing immunity issues, reversing denial of motion to dismiss inverse-condemnation claims against city, and affirming denial of motion to dismiss common law tort claims against city); *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 754-61 (Tex. App.—Beaumont 2014, pet. denied) (holding that Communications Decency Act barred subject claims against so-called "revenge porn" websites and accordingly reversing trial court's denial of motion to dismiss said claims). This list does not include Texas cases that reference but do not analyze Rule 91a's dismissal procedures, nor does it include federal cases that address Rule 91a's dismissal procedures.

1. Grounds for and Contents of Motion

In all cases except cases brought under the Texas Family Code or Chapter 14 of the Texas Civil Practice and Remedies Code, a party may file a motion:

> "to dismiss a cause of action on the grounds that [the cause of action] has no basis in law or fact."

Tex. R. Civ. P. 91a.1.[3] Rule 91a provides the following guidance for assessing the merits of a cause of action:

> "A cause of action has no basis in law if the allegations, taken as true, together with the inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded."

Id.

A motion to dismiss must state that it is made pursuant to Rule 91a:

> "identify each cause of action to which it is addressed, and . . . state specifically the reasons the cause of action has no basis in law, no basis in fact, or both."

Id. 91a.2; *see also Quintanilla v. Trevino*, No. 13-15-00377-CV, 2016 WL 1552025, at *3 (Tex. App.—Corpus Christi Apr. 14, 2016, no pet. h.) (mem. op.) (finding that the trial court erred through *sue sponte* dismissal without a Rule 91a motion being filed). The trial court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any exhibits permitted by Rule 59 of the Texas Rules of Civil Procedure. Tex. R. Civ. P. 91a.6; *see also Wooley v. Schafer*, 447 S.W.3d 71, 75 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (finding Rule 91a motions to be analogous to pleas to the jurisdiction, which require a court to determine whether the pleader has alleged facts demonstrating jurisdiction).

Practice Tip: A vague assertion that a cause of action is groundless will not suffice. A motion to dismiss must state specifically the reasons why each challenged cause of action has no basis in law and/or in fact.

2. Timing Considerations

Under Rule 91a:

> "[a] motion to dismiss must be . . . filed within 60 days after the first pleading containing the challenged cause of action is served on the movant[.]"

Tex. R. Civ. P. 91a.3(a). Considering this tight time period, any discovery that will be helpful in determining the validity of a motion to dismiss should be initiated directly after the cause of action is pled. But a party need not engage in any discovery, much less thorough discovery, before filing a motion to dismiss under Rule 91a. *See Gonzales v. Dallas Cty. Appraisal Dist.*, No. 05-13-01658-CV, 2015 WL 3866530, at *5 (Tex. App.—Dallas June 23, 2015, no. pet.) (mem. op.) ("Rule 91a is intended to be asserted and determined soon after the filing of the case and before the opportunity for thorough discovery.").

Several deadlines in Rule 91a are based on the date the motion to dismiss is set to be heard. First, the motion must be filed at least 21 days before the hearing. Tex. R. Civ. P. 91a.3(b). Second:

> "[a]ny response to the motion must be filed no later than 7 days before the date of the hearing."

Id. 91a.4. Third, a court will be precluded from ruling on the motion if, at least three days before the date of the hearing, the respondent nonsuits the challenged cause of action or the movant withdraws the motion. *Id.* 91a.5(a); *see also Thuesen v. Amerisure Ins. Co.*, No. 14-14-00666-CV, 2016 WL 514404, at *7 (Tex. App.—Houston [14th Dist.] Feb. 9, 2016, no pet.) (stating that if a claimant timely nonsuits claims that are the subject of a Rule 91a motion, the court cannot rule on the motion). Fourth, if a respondent amends the challenged cause of action at least three days before the date of the hearing, the movant may—before the date of the hearing—withdraw the motion or file an amended motion directed to the amended cause of action. Tex. R. Civ. P. 91a.5(b); *see also Drake v. Walker*, No. 05-14-00355-CV, 2015 WL 2160565, at *2 (Tex. App.—Dallas May 8, 2015, no pet.) (mem. op.) (affirming dismissal of claims and finding that an amended petition did not cancel a motion to dismiss under Rule 91a).

If a movant responds to amended pleadings by filing an amended motion within the allotted time period—before the date of the hearing—the amended motion "restarts the time periods" in Rule 91a. Tex. R. Civ. P. 91a.5(d). But if any amendments, as well as nonsuits, are not filed within the allotted time period under Rule 91a, the court is prohibited from considering

[3] In *Ramirez v. Owens*, the trial court granted a Rule 91a motion in a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code. Because neither party complained of it on appeal, the dismissal was affirmed. No. 07-15-00152-CV, 2015 WL 7422890, at *1 (Tex. App.—Amarillo Nov. 19, 2015, pet. denied) (mem. op.).

them. *Id*. 91.a.5(c); *see also Dailey v. Thorpe*, 445 S.W.3d 785, 790 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (concluding that a plaintiff who chooses neither to nonsuit nor amend challenged causes of action before a hearing cannot cure a defective pleading after the hearing).

Practice Tip: If you file a motion to dismiss and then decide the grounds for the motion are faulty, withdraw the motion at least three days before the motion is set to be heard so that you can avoid incurring attorney fees and costs associated with losing the motion. For the same reason, if you file a cause of action that is challenged via a motion to dismiss and you decide the cause of action has no merit as pleaded, nonsuit or amend it at least three days before the motion to dismiss is set to be heard.

A court must grant or deny a motion to dismiss within 45 days after the motion is filed:

> "unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5."

Comment to 2013 Change to Rule 91a; *see also* Tex. R. Civ. P. 91a.3(c); *Drake*, 2015 WL 2160565, at *2 (noting that Rule "91a.5 requires the court to rule on a motion to dismiss that has not been withdrawn"). As indicated in Rule 91a.5:

> "[i]f an amended motion is filed in response to an amended cause of action in accordance with Rule 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion."

Comment to 2013 Change to Rule 91a. *But see Walker v. Owens*, No. 01-15-00361-CV, 2016 WL 1590681, at *3 (Tex. App.—Houston [1st Dist.] Apr. 19, 2016, no pet.) (finding that a trial court's failure to rule on a Rule 91a motion within 45 day deadline was harmless error).

3. Hearing on Motion to Dismiss

A hearing on a motion to dismiss may be oral or by submission. Tex. R. Civ. P. 91a.6. Regardless:

> "[e]ach party is entitled to at least 14 days' notice of the hearing[.]"

Id. Because dismissal is a "harsh remedy," Rule 91a's notice provision is strictly construed. *Gaskill v. VHS San Antonio Partners, LLC*, 456 S.W.3d 234, 238 (Tex. App.—San Antonio 2014, pet. denied). For example, the San Antonio Court of Appeals has held that a trial court must provide the parties with formal notice of a hearing before ruling on a Rule 91a motion, "regardless of whether the trial court will hold an oral hearing." *Id.* at 239. The San Antonio Court of Appeals also held:

> "that Rule 91a does not contain implied notice of a hearing on the forty-fifth day after the motion is filed that triggers the other deadlines in the rule."

Id. (concluding that a trial court erred by conducting a hearing on a Rule 91a motion without giving prior notice of said hearing).

Except to the extent required to determine an award of attorney's fees and costs, the court is prohibited from considering evidence when ruling on the motion:

> "and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule [of Civil Procedure] 59."

Id.; *see also Dailey*, 445 S.W.3d at 790 (concluding that the trial court did not err in granting a dismissal motion without giving the parties an opportunity to be heard so that credibility and/or demeanor of the parties and witnesses could be ascertained, reasoning that Rule 91a "expressly prohibits trial courts from considering the type of evidence that the [parties] complain that they were denied an opportunity to present").

4. "Loser-Pay" Provision

With some limited exceptions (for actions by or against a governmental entity or a public official acting in his her official capacity or under color of state law), a court is required to:

> "award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court."

Tex. R. Civ. P. 91a.7; *see also Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 187 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) ("Undisputedly, the rule mandates an award of attorney's fees to a prevailing party, and the award is not discretionary."); *Drake v. Chase Bank*, No. 02-13-00340-CV, 2014 WL 6493411 *2 (Tex. App.—Fort Worth Nov. 20, 2014, no pet.) (mem. op.) (noting that Rule 91a's "language suggests that an award of attorneys' fees to the prevailing party on a rule 91a motion to dismiss is mandatory, not discretionary[,]" and concluding that rule does not exempt "indigent parties from paying attorneys' fees to a party who prevails under rule 91a"). If the claimant nonsuits the claims challenged in a Rule

91a motion, there is no "prevailing party on the motion," and the court cannot award costs and attorney's fees under Rule 91a. *Thuesen*, 2016 WL 514404, at *7-9 (reversing the trial court's award of costs and attorney's fees because, even though the defendants prevailed in the lawsuit, the defendants were not the "prevailing party on the motion"). Once a trial court has decided a Rule 91a motion, it must "consider evidence regarding costs and fees in determining the award." Tex. R. Civ. P. 91a.7; *see also* Tex. R. Civ. P. 91a.7.

Courts have not limited the costs and fees awarded to those incurred in filing and answering the Rule 91a motion in the trial court. For example, the Fort Worth Court of Appeals recently affirmed the award of costs and fees related to a motion to reconsider a dismissal under Rule 91a. *See Drake*, 2014 WL 6493411, at *3. And the Houston Fourteenth District Court of Appeals recently held that a prevailing party on a Rule 91a motion is entitled to recover its reasonable and necessary appellate attorney's fees. *See Zheng*, 468 S.W.3d at 187–88.

Two appellate courts have addressed the costs and fees provision when a party moves to dismiss multiple claims and succeeds regarding some but not all claims. The Houston Fourteenth District Court of Appeals analyzed the issue and held that a party who prevails in regard to some but not all claims must segregate its fees by claim, if possible, and can only recover fees related to the claims on which it prevailed. *Id*. at 187. The court also concluded that, if a party seeks all fees, then it has the burden to show that segregation is not required. *Id.* The Dallas Court of Appeals also addressed the impact of a mixed outcome on appeal and concluded, without analysis, that a remand was necessary for reconsideration of attorney's fees. *See Drake*, 2015 WL 2160565, at *4 ("[E]ach party has prevailed in part and the award of attorney's fees is [thus] subject to reconsideration on remand.").

Practice Tip: "Attorney fees awarded under [Rule] 91a.7 are limited to those associated with [a] challenged cause of action, including fees for preparing or responding to the motion to dismiss." Comment to 2013 Change to Rule 91a. Thus, if you expect to file a motion or have to defend against a motion, segregate your billing records to delineate clearly which fees relate to each challenged cause of action, to the extent possible.

5. Impact on Other Procedures

Rule 91a.8 provides explicitly that a party does not open itself to a court's full jurisdiction by filing a motion to dismiss. Instead, the:

> "party submits to the court's jurisdiction only in proceedings on the motion[.]"

Tex. R. Civ. P. 91a.8.

Finally, Rule 91a.9 provides that the dismissal "rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal." *Id.* 91a.9. Examples of such "other procedures" include special exceptions and motions for summary judgment. *See, e.g., Zheng*, 468 S.W.3d at 185 (concluding that a party's Rule 91a contention "seem[ed] to be a summary-judgment ground" that the party was entitled to have evaluated under summary judgment standards); *Townsend v. Montgomery Cent. Appraisal Dist.*, No. 14-14-00103-CV, 2015 WL 971313, at *8 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, no pet.) (mem. op.) (refusing to apply Rule 91a deadlines to a summary judgment motion granted by a trial court).

6. Appellate Review of Trial Court's Ruling

Courts of appeals have asserted repeatedly that they "review de novo a trial court's ruling under [R]ule 91a." *Gonzales*, 2015 WL 3866530, at *4; *accord Drake*, 2015 WL 2160565, at *3; *City of Dallas v. Sanchez*, 449 S.W.3d 645, 649 (Tex. App.—Dallas 2014, pet. filed); *Dailey*, 445 S.W.3d at 788; *McClain v. Dell, Inc.*, No. 07-15-00141-CV, 2015 WL 5674885, at *3 (Tex. App.—Amarillo Sept. 24, 2015, pet. denied) (mem. op.); *Vasquez v. Legend Natural Gas III, L.P.*, No. 04-14-00899-CV, 2016 WL 1729390, at *3 (Tex. App.—San Antonio Apr. 29, 2016, no pet. h.); *Guillory v. Seaton, LLC*, 470 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2015, pet. filed). Multiple courts have asserted more specifically that:

> "[d]eterminations of whether a cause of action has any basis in law and in fact are both legal questions which [they] review de novo, based on the allegations of the live petition and any attachments thereto."

Zheng, 2015 WL 3424702, at *2; *accord Chambers v. Tex. Dep't of Transp.*, No. 05-13-01537-CV, 2015 WL 1756087, at *2 (Tex. App.—Dallas Apr. 17, 2015, no pet.) (mem. op.); *DeVoll v. Demonbreun*, No. 04-14-00116-CV, 2014 WL 7440314, at *2 (Tex. App.—San Antonio Dec. 31, 2014, no pet.); *Wooley*, 447 S.W.3d at 74-77; *Vasquez*, 2016 WL 1729390, at *3. Thus, like trial courts, appellate courts must "construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and accept as true the factual allegations in the pleadings" to determine if the petition sufficiently alleges a cause of action." *Wooley*, 447 S.W.3d at 76; *accord Gonzales*, 2015 WL 3866530, at *4; *Drake*, 2015 WL 2160565, at *3; *Chambers*, 2015 WL 1756087, at *2; *DeVoll*, 2014 WL 7440314, at *2; *Sanchez*, 449 S.W.3d at 648-49. And they have applied:

> "the fair-notice pleading standard to determine whether the allegations of the

> petition are sufficient to allege a cause of action."

Zheng, 2015 WL 3424702, at *2; *accord Wooley*, 447 S.W.3d at 76.

A few courts of appeals have questioned whether de novo review makes sense when the Rule 91a dismissal is based on a determination that the cause of action has no basis in fact.

> While we acknowledge that the determination of whether a cause of action has a basis in law is, on its face, a question of law, *see GoDaddy*, 429 S.W.3d at 754, the language of Rule 91a is less clear as to the determination of whether a cause of action has a basis in fact—in which case "no reasonable person could have believed the facts pleaded"—is a question of law.

Wooley, 447 S.W.3d at 75. And one court of appeals has questioned directly whether it makes sense to accept the pleaded facts to be true when determining whether no reasonable person could believe the facts pleaded. *See Drake*, 2015 WL 2160565, at *3.

Some courts of appeals have also "likened the standard for addressing a Rule 91a motion to the standard for addressing a motion under Federal Rule of Civil Procedure 12(b)(6), which allows dismissal if a plaintiff fails 'to state a claim upon which relief can be granted.'" *Zheng*, 2015 WL 3424702, at *4 (citing *Wooley*, 447 S.W.3d at 75-76, and Fed. R. Civ. P. 12(b)(6)). Although some of these courts have recognized that the language in Rule 91a is not identical to the language in federal Rule 12(b)(b), they have relied on federal Rule 12(b)(6) precedent in determining whether a claim should be dismissed under Rule 91a. *See, e.g.*, *Zheng*, 2015 WL 3424702, at *4; *Wooley*, 447 S.W.3d at 75-76; *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 754 (Tex. App.—Beaumont 2014, pet. denied); *Kidd v. Cascos*, No. 03-14-00805, 2015 WL 9436655 *2 (Tex. App.—Austin Dec. 22, 2015, no pet.). This reliance on federal jurisprudence brings into question what remains of the fair-notice pleading standard under Rule 45 of the Texas Rules of Civil Procedure. *See Davis v. Metro. Lloyds Ins. Co. of Texas*, No. 4:14-CV-957-A, 2015 WL 456726, at *2 (N.D. Tex. Feb. 3, 2015) ("As this court explained in *Plascencia*, the effect of Rule 91(a).1 [*sic*] . . . is to cause the pleading standard in Texas to be substantially the same as the federal standard, as outlined by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)."); *Craig Penfold Props., Inc. v. The Travelers Cas. Ins. Co.*, No. 3:14-CV-326-L, 2015 WL 356885 *3 (N.D. Tex. Jan. 28, 2015) ("This new rule now allows a state court to do what a federal court is allowed to do under Federal Rule of Civil Procedure 12(b)(6).").

Other courts have adopted a more "nuanced view" that recognizes:

> "Rule 91a.1 does not supersede prior pleading requirements set forth in Rule 45 of the Texas [R]ules [of Civil Procedure], but simply modified the standard such that 'fair notice' must now be judged in the context of Rule 91a."

Resendez v. Scottsdale Ins. Co., No. 1-15-CV-1082-RP, 2016 WL 756576, at *2 (W.D. Tex. Feb. 26, 2016); *see also New Life Assembly of God of City of Pampa, Tex. v. Church Mutual Ins. Co.*, No. 2:15-CV-00051-J, 2015 WL 2234890, at *5 (N.D. Tex. May 12, 2015) ("Rule 91a.1 has simply modified the existing Tex. R. Civ. P. 45(b) fair notice pleading standard such that fair notice must now be judged in the context of Rule 91a.") (internal quotes omitted).

When a Rule 91a motion contains multiple grounds for dismissal and the trial court's order does not specify the ground upon which it relied, one court of appeals has held that the claimant attacking the dismissal order must:

> "negate the validity of each ground upon which the trail court could have relied. *Parkhurst v. Office of Attorney Gen. of Tex.*, 481 S.W.3d 400, 402 (Tex. App.—Amarillo 2015, no pet.). Thus, as when challenging orders granting summary judgments, if a party "fails to address any particular ground, [the court] must uphold the order on the unchallenged ground."

Id. (citations omitted).

To date, the Supreme Court of Texas has addressed Rule 91a in only one opinion. *See In re Essex Ins. Co.*, 450 S.W.3d 524, 526 (Tex. 2014) (per curiam) (orig. proceeding). In that opinion, the Court held that mandamus relief is available when a trial court abuses its discretion by denying a party's Rule 91a motion to dismiss and the party has no adequate remedy by appeal. *Id.* at 526. Thus, unlike the typical *de novo* standard applicable to rulings on Rule 91a motions that are challenged on appeal, an abuse-of-discretion standard applies in the context of mandamus proceedings relating to rulings on Rule 91a motions. *See id.* at 526-28.

III. CONCLUSION

Litigants are using Rule 91a dismissal procedures successfully in a wide variety of cases. Case law relating to Rule 91a is developing rapidly. Existing case law makes clear that parties must carefully follow the procedures in Rule 91a and, to the extent possible, track

separately the attorney's fees incurred with respect to each cause of action challenged in a Rule 91a motion, both in the trial court and on appeal. The full extent to which the federal Rule 12(b)(6) standards will impact Rule 91a jurisprudence remains to be determined, and only time will tell whether and how Rule 91a jurisprudence will ultimately impact fair-notice pleading standards in Texas.

EXHIBIT A

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12- 9191

ADOPTION OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows, effective March 1, 2013.

2. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

3. These amendments may be changed in response to comments received on or before February 1, 2013. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

Dated: November 13, 2012

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Misc. Docket No. 12- 9191

PER CURIAM

In 2011, the 82nd Texas Legislature passed House Bill 274[1] (HB 274). HB 274 called upon the Court to promulgate four sets of procedural rule amendments in order to implement certain legislative policy initiatives. Two of those sets of rules — governing permissive appeals and offers of judgment — were completed by the Court last year.[2] This Order promulgates the remaining rules: a dismissal rule and a set of rules for expedited actions.

The Court is charged by the Texas Constitution with providing for "the efficient and uniform administration of justice".[3] The Legislature by enacting HB 274, and the Governor by signing it into law, have directed that a more determined effort be made to reduce the expense and delay of litigation, while maintaining fairness to litigants. Small measures cannot achieve that directive. These rules are a significant effort to improve the efficiency of the Texas court system while protecting the rights of litigants.

HB 274 added Government Code § 22.004(g), which calls for rules "for the dismissal of causes of action that have no basis in law or fact on motion and without evidence . . . [to be] granted or denied within 45 days of the filing of the motion to dismiss."[4] The Court referred the study of the

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[1] Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01.

[2] *See* Misc. Docket Nos. 11-9182, 11-9183.

[3] TEX. CONST. art. V, § 31(b).

[4] Tex. Gov't Code § 22.004(g).

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dismissal rule to the Supreme Court Advisory Committee. A ten-member subcommittee, chaired by Hon. David Peeples, worked on drafting the dismissal rule. The full Committee reviewed the subcommittee's proposal, a second proposal drafted by a voluntary Working Group of representatives from the Texas Chapters of the American Board of Trial Advocates, the Texas Association of Defense Counsel, and the Texas Trial Lawyers Association, and a third proposal drafted by the State Bar of Texas Court Rules Committee. The Supreme Court Advisory Committee debated the proposals on November 18, 2011, and again on December 9, 2011. Following the Committee's review, the Court revised the subcommittee proposal. This Order contains the final proposed rule, Texas Rule of Civil Procedure 91a, "Dismissal of Baseless Causes of Action".

HB 274 also added Government Code § 22.004(h), which calls for "rules to promote the prompt, efficient, and cost-effective resolution of civil actions . . . in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000."[5] The Court appointed a Task Force to propose rule changes for these "expedited actions."[6] The Task Force was chaired by Hon. Thomas R. Phillips, former Chief Justice of the Court. The other members of the Task Force were: David Chamberlain, Denis Dennis, Martha S. Dickie, Wayne Fisher, Jeffrey J. Hobbs, Lamont Jefferson, Hon. Scott Jenkins, Kennon Peterson,

[5] Tex. Gov't Code § 22.004(h).

[6] Misc. Docket No. 11-9193.

Bradley Parker, Ricardo Reyna, and Alan Waldrop. In drafting its proposal, the Task Force reviewed the expedited actions rules proposed by the Working Group following the passage of HB 274. Two members of the Working Group were also members of the Task Force. The Task Force also studied expedited trial rules implemented in other states.

The Task Force completed its work and sent a report, proposing new rules and rule amendments, to the Court. The Court again referred study of the rules to the Supreme Court Advisory Committee, which reviewed the proposals of the Task Force on January 27 and 28, 2012. The Court also received a proposal from the State Bar of Texas Court Rules Committee. The Court reviewed the various proposals and drafted a set of rules that implements a mandatory expedited actions process for cases under $100,000. The final proposed rules — including new Texas Rule of Civil Procedure 169 and amendments to Texas Rules of Civil Procedure 47 and 190 and Texas Rule of Evidence 902 — are contained in this Order.

An important issue in formulating rules for expedited actions has been whether the rules should have a compulsory element to them or merely encourage lawyers to agree to more expedited procedures in smaller cases. Having carefully weighed the arguments of the Working Group, the report of the Task Force, the deliberations of the Supreme Court Advisory Committee, and the experience of other jurisdictions, the Court has concluded that the objectives of HB 274 cannot be achieved, or the benefits to the administration of justice realized, without rules that compel expedited procedures in smaller cases.

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DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

(a) The court may not rule on a motion to dismiss if, at least 7 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 7 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.

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(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. The court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The

term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;;

(b) ~~in all claims for unliquidated damages only the~~ a statement that the damages sought are within the jurisdictional limits of the court;;

(c) a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $500,000; or

(4) monetary relief over $500,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(ed) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

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Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. A pleading other than a counterclaim that contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(1).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed

before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.

(3) Time Limits for Trial. Each side is allowed five hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract, the court must not — by order or local rule — require the parties to engage in alternative dispute resolution.

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

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2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule. If multiple claimants each seek the monetary relief allowed under 169(a)(1) against the same defendant, the defendant may move to remove the case from the rule pursuant to 169(c)(1)(a).

3. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply.

4. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

. . .

190.2. Discovery Control Plan — ~~Suits Involving $50,000 or Less~~ Expedited Actions and Divorces Involving $50,000 or Less (Level 1)

(a) *Application.* This subdivision applies to:

(1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $50,000 or less, excluding costs, pre-judgment interest and attorneys' fees~~ any suit that is governed by the expedited actions process in Rule 169, and

(2) any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000.

~~(b) Exceptions. This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party~~.

(~~c~~b) *Limitations.* Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery Period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial~~ 180 days after the date the first request for discovery of any kind is served on a party.

(2) Total Time for Oral Depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than ~~25~~ 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

(~~d~~c) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable,~~ If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

. . .

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, t~~T~~he court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than $50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not

subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

. . .

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

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The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____.

_____
Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

_____
Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____

Comment to 2013 Change: Rule 902(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011).

EXHIBIT B

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9022

FINAL APPROVAL OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(10)(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows.

2. By Order dated November 13, 2012, in Misc. Docket No. 12-9191, the Court promulgated Rules of Civil Procedure 91a and 169 and Rule of Evidence 902(10)(c), as well as amendments to Rules of Civil Procedure 47 and 190, and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules, effective March 1, 2013.

3. Rule of Civil Procedure 91a and Rule of Evidence 902(10)(c) apply to all cases, including those pending on March 1, 2013. Rule of Civil Procedure 169 and the amendments to Rules of Civil Procedure 47 and 190 apply to cases filed on or after March 1, 2013, except for those filed in justice court.

4. This Order also promulgates a revised civil case information sheet required by Rule 78a of the Texas Rules of Civil Procedure, in accordance with the amendments to Rule of Civil Procedure 47. The revised case information sheet applies to cases filed on or after March 1, 2013.

5. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

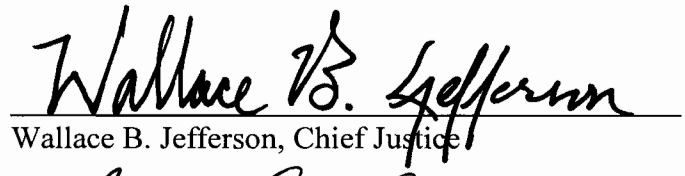
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

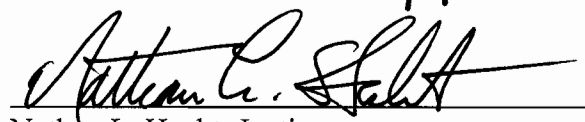
d. submit a copy of the Order for publication in the *Texas Register*.

Dated: February 12, 2013

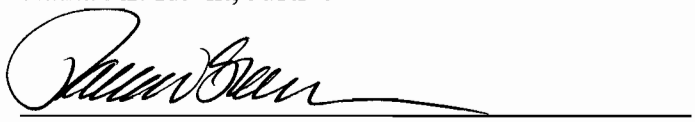
Misc. Docket No. 13-3022



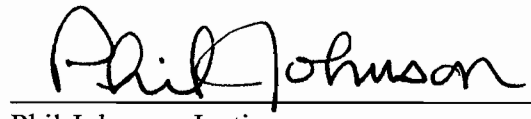
Wallace B. Jefferson, Chief Justice



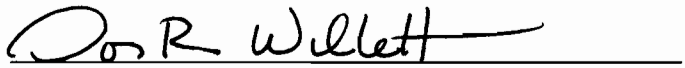
Nathan L. Hecht, Justice



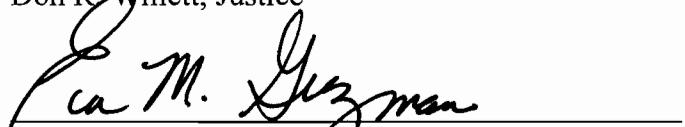
Paul W. Green, Justice



Phil Johnson, Justice

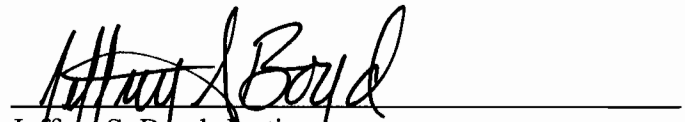


Don R. Willett, Justice

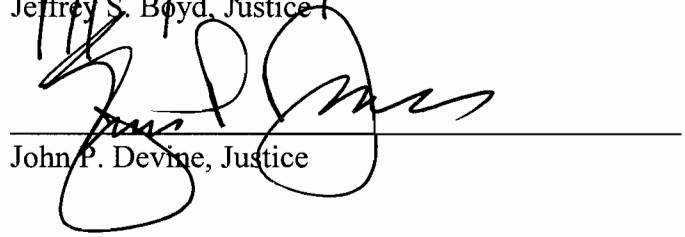


Eva M. Guzman, Justice

Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice

Misc. Docket No. 13- 9022

DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

(a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a

withdrawal of the motion or an amended motion directed to the amended cause of action.

(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a.7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be

ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved;;

(b) ~~in all claims for unliquidated damages only the~~ a statement that the damages sought are within the jurisdictional limits of the court;;

(c) except in suits governed by the Family Code, a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $200,000; or

(4) monetary relief over $200,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(~~c~~d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

> Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(l).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution.

(A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:

(i) not exceed a half-day in duration, excluding scheduling time;

(ii) not exceed a total cost of twice the amount of applicable civil filing fees; and

(iii) be completed no later than 60 days before the initial trial setting.

(B) The court must consider objections to the referral unless prohibited by statute.

(C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule.

3. In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that

allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

4. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of $100,000 to the party. The limitation in 169(b) does not apply to a counter-claimant that seeks relief other than that allowed under 169(a)(1).

5. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

. . .

190.2. Discovery Control Plan — ~~Suits Involving $50,000 or Less~~ Expedited Actions and Divorces Involving $50,000 or Less (Level 1)

(a) *Application.* This subdivision applies to:

(1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $50,000 or less, excluding costs, pre-judgment interest and attorneys' fees~~ any suit that is governed by the expedited actions process in Rule 169; and

(2) unless the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000.

~~(b) Exceptions. This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party~~.

(e<u>b</u>) *Limitations.* Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery Period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial~~ <u>180 days after the date the first request for discovery of any kind is served on a party</u>.

(2) Total Time for Oral Depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than ~~25~~ <u>15</u> written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

<u>(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.</u>

<u>(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.</u>

<u>(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic</u>

information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

(~~d~~c) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable,~~ If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

. . .

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, t~~T~~he court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than

$50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(10)(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

. . .

(10) Business Records Accompanied by Affidavit.

. . .

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____.

_____
Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

_____
Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011).

Misc. Docket No. 13-

CAUSE NUMBER *(FOR CLERK USE ONLY)*: _____ **COURT** *(FOR CLERK USE ONLY)*: _____

STYLED _____
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:

Name: _____ Email: _____

Address: _____ Telephone: _____

City/State/Zip: _____ Fax: _____

Signature: _____ State Bar No: _____

Names of parties in case:

Plaintiff(s)/Petitioner(s): _____

Defendant(s)/Respondent(s): _____

[Attach additional page as necessary to list all parties]

Person or entity completing sheet is:

☐ Attorney for Plaintiff/Petitioner
☐ *Pro Se* Plaintiff/Petitioner
☐ Title IV-D Agency
☐ Other: _____

Additional Parties in Child Support Case:

Custodial Parent: _____

Non-Custodial Parent: _____

Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case *(select only 1)*:

Civil

Contract

Debt/Contract
☐ Consumer/DTPA
☐ Debt/Contract
☐ Fraud/Misrepresentation
☐ Other Debt/Contract: _____

Foreclosure
☐ Home Equity—Expedited
☐ Other Foreclosure

☐ Franchise
☐ Insurance
☐ Landlord/Tenant
☐ Non-Competition
☐ Partnership
☐ Other Contract: _____

Injury or Damage

☐ Assault/Battery
☐ Construction
☐ Defamation
Malpractice
☐ Accounting
☐ Legal
☐ Medical
☐ Other Professional Liability: _____
☐ Motor Vehicle Accident
☐ Premises
Product Liability
☐ Asbestos/Silica
☐ Other Product Liability List Product: _____
☐ Other Injury or Damage: _____

Real Property

☐ Eminent Domain/ Condemnation
☐ Partition
☐ Quiet Title
☐ Trespass to Try Title
☐ Other Property: _____

Related to Criminal Matters

☐ Expunction
☐ Judgment Nisi
☐ Non-Disclosure
☐ Seizure/Forfeiture
☐ Writ of Habeas Corpus—Pre-indictment
☐ Other: _____

Employment

☐ Discrimination
☐ Retaliation
☐ Termination
☐ Workers' Compensation
☐ Other Employment: _____

Other Civil

☐ Administrative Appeal
☐ Antitrust/Unfair Competition
☐ Code Violations
☐ Foreign Judgment
☐ Intellectual Property
☐ Lawyer Discipline
☐ Perpetuate Testimony
☐ Securities/Stock
☐ Tortious Interference
☐ Other: _____

Family Law

Marriage Relationship

☐ Annulment
☐ Declare Marriage Void
Divorce
☐ With Children
☐ No Children

Post-judgment Actions (non-Title IV-D)

☐ Enforcement
☐ Modification—Custody
☐ Modification—Other

Title IV-D

☐ Enforcement/Modification
☐ Paternity
☐ Reciprocals (UIFSA)
☐ Support Order

Other Family Law

☐ Enforce Foreign Judgment
☐ Habeas Corpus
☐ Name Change
☐ Protective Order
☐ Removal of Disabilities of Minority
☐ Other: _____

Parent-Child Relationship

☐ Adoption/Adoption with Termination
☐ Child Protection
☐ Child Support
☐ Custody or Visitation
☐ Gestational Parenting
☐ Grandparent Access
☐ Parentage/Paternity
☐ Termination of Parental Rights
☐ Other Parent-Child: _____

Tax

☐ Tax Appraisal
☐ Tax Delinquency
☐ Other Tax

Probate & Mental Health

Probate/Wills/Intestate Administration
☐ Dependent Administration
☐ Independent Administration
☐ Other Estate Proceedings
☐ Guardianship—Adult
☐ Guardianship—Minor
☐ Mental Health
☐ Other: _____

3. Indicate procedure or remedy, if applicable *(may select more than 1)*:

☐ Appeal from Municipal or Justice Court
☐ Arbitration-related
☐ Attachment
☐ Bill of Review
☐ Certiorari
☐ Class Action
☐ Declaratory Judgment
☐ Garnishment
☐ Interpleader
☐ License
☐ Mandamus
☐ Post-judgment
☐ Prejudgment Remedy
☐ Protective Order
☐ Receiver
☐ Sequestration
☐ Temporary Restraining Order/Injunction
☐ Turnover

4. Indicate damages sought (*do not select if it is a family law case*):

☐ Less than $100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
☐ Less than $100,000 and non-monetary relief
☐ Over $100, 000 but not more than $200,000
☐ Over $200,000 but not more than $1,000,000
☐ Over $1,000,000