Texas Supreme Court Advisory Committee
Discovery Subcommittee Proposed Amendments

Index

General Rules and Disclosures, Stipulations about Discovery Procedure: Tex. R. Civ. P. 190-194, 205

RULE 190. DISCOVERY LIMITATIONS **190.1 Discovery Control Plan Required.** Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.	
190.2 Discovery Control Plan - Expedited Actions and Divorces Involving $~~50,000~~100,000 or Less (Level 1) (a) **Application.** This subdivision applies to: (1) 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~~100,000. (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 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. If one side designates more than one expert, the opposing side may have an additional two hours of total deposition time for each	Discovery Subcommittee recommends increasing the amount for Level 1 cases in TRCP 190.2, and increasing total time for depositions if more than one expert is designated in TRCP 190.2(b)(2).

additional expert designated. 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 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.~~ (c) **Reopening Discovery**. 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. **190.3 Discovery Control Plan - By Rule (Level 2)** (a) **Application**. Unless a suit is governed by a discovery control	The Discovery Subcommittee recommends mandatory disclosures for all Levels (*infra* Rule 194). Therefore, this provision should be removed.

plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision. (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 suit is filed and continues until: (A) 30 days before the date set for trial, in cases under the Family Code; or (B) in other cases, the earlier of (i) 30 days before the date set for trial, or (ii) nine months after the earlier of the date of the first oral deposition or the due date of the first response to written discovery. (2) **Total time for oral depositions.** Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage. (3) **Interrogatories.** Any party may serve on any other party no more than 25 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.	[The Discovery Subcommittee discussed limiting the number of Requests for Production and recommends this topic for future consideration. With mandatory disclosure of production under TRCP 194, there may not be a need for as many Requests for Production. One consideration is whether and how to include 30(b)(6) and depositions with documents in the limit.]
190.4 Discovery Control Plan - By Order (Level 3) (a) **Application.** The court must, on a party's motion, and may,	[The Discovery Subcommittee discussed requiring Level 3 cases, in

on its own initiative, order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of the specific suit. After a conference required by this rule, t~~T~~he parties ~~may~~ must submit an agreed discovery control order to the court for its consideration. The court should act on a party's motion or agreed order under this subdivision as promptly as reasonably possible. (b) **Limitations.** The discovery control plan ordered by the court may address any issue concerning discovery or the matters listed in Rule 166, and may change any limitation on the time for or amount of discovery set forth in these rules. The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless specifically changed in the discovery control plan ordered by the court. The plan must include~~:~~ ~~(1) a date for trial or for a conference to determine a trial setting;~~ ~~(2) a discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it;~~ ~~(3) appropriate limits on the amount of discovery; and~~ ~~(4) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses.~~ the items listed in 190.4(d). (c) **Conference.** (1) **Conference timing.** For suits governed by a discovery control plan under Rule 190.4 (Level 3) or for any other suit when the court orders, the parties must confer as soon as practicable. (2) **Conference content; Parties' responsibilities.** In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 194; discuss any issues about preserving discoverable information; and develop a proposed discovery control plan. The attorneys of record and all unrepresented parties that have	those counties that have a central docket, be assigned to a specific court for management purposes, i.e. in the Rules of Judicial Administration, and recommends this topic for future consideration.] The Discovery Subcommittee recommends mandatory meet and confer requirement for Level 3 cases (or any case by court order), similar to the requirement in FRCP 26(f). The Discovery Subcommittee does not recommend a meet and confer requirement for Level 1 or Level 2 cases (except by court order) because the TRCPs set out specific plans for these cases, and differences in docket size and management practices. [Suggestion: Some Discovery Subcommittee members recommend including additional limits on conference timing in TRCP 190.4(c)(1): "and in any event at least 21 days before a court discovery control plan conference is to be held or the discovery control order is due under Rule 190.4(e)."] Some Discovery Subcommittee members

appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery control plan, and for submitting to the court within 14 days after the conference a written report outlining the proposed discovery control plan. (3) **No discovery before conference.** A party may not seek discovery from any source before the parties have conferred as required by this rule. (d) **Discovery control plan.** The discovery control plan must state the parties' views and proposals on: (1) a date for trial or for a conference to determine a trial setting; (2) a discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it; ~~(3) appropriate limits on the amount of discovery; and~~ (43) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses.; (4) what changes should be made in the timing, form, or requirement for disclosures under Rule 194, including a statement of when initial disclosures were made or will be made; (5) the subjects on which discovery may be needed, and whether discovery should be conducted in phases or be limited to or focused on particular issues; (6) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced; (7) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Texas Rule of Evidence 511; (8) what changes should be made in the limitations on	recommend including the following language from FRCP 26(f)(2) in TRCP 190.4(c)(2): "The court may order the parties or attorneys attend the conference in person." The Discovery Subcommittee also recommends limiting discovery requests until after the conference. TRCP 190.4(d)(3) is omitted because it is duplicative of new TRCP 190.4(d)(8) below. The Discovery Subcommittee recommends Level 3 discovery control plans include the items required in FRCP 26(f)(3), in addition to the items already required by the TRCPs.

discovery imposed under these rules or by local rule, and what other limitations should be imposed; and (9) any other orders that the court should issue under Rule 192.6, Rule 190.4, or Rule 166. [(e) **Discovery control order.** (1) **Order.** The court must issue a discovery control order after receiving the parties' report under Rule 190.4(d); or after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means. (2) **Time to issue.** The judge must issue the order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the petition or 90 days after any defendant has appeared. (3) **Contents.** The discovery control order must include the dates set out in Rule 190.4(d)(1)-(3), and may address any issue concerning discovery or the matters listed in Rule 166 or addressed in the proposed discovery control plan, and may change any limitation on the time or amount of discovery set forth in these rules. The discovery limitations of Rule 190.3 (or if applicable of Rule 190.2) apply unless specifically changed in the discovery control order.]	[Suggestion: Some Discovery Subcommittee members recommend including TRCP 190.4(e), or something similar, based on FRCP 16(b) (federal scheduling order rule). If included, TRCP 190.4(b) will need to be omitted or amended.]
[(f) **Failure to participate in framing a discovery control plan.** If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery control plan as required by Rule 190.4, the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.]	[Suggestion: Some Discovery Subcommittee members recommend including TRCP 190.4(f), modeled after FRCP 37(f), in light of revisions to the TRCPs requiring parties to meet and confer.]
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, the court must allow additional discovery: (a) related to new, amended or supplemental pleadings, or new	[Suggestion: A Discovery Subcommittee member suggested changing the standard for modifying discovery control orders for Level 3 cases only to follow FRCP 16(b) (scheduling order provision): "(4)

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(a) are met. **190.6 Certain Types of Discovery Excepted** This rule's limitations on discovery do not apply to or include discovery conducted under Rule 202 ("Depositions Before Suit or to Investigate Claims"), or Rule 621a ("Discovery and Enforcement of Judgment"). But Rule 202 cannot be used to circumvent the limitations of this rule.	Modifying the discovery control order. The discovery control order may be modified only for good cause and with the judge's consent." If that change is made, the standard in TRCP 190.5 would only apply to Level 1 and Level 2 cases.]

RULE 191. MODIFYING DISCOVERY PROCEDURES AND LIMITATIONS; CONFERENCE REQUIREMENT; SIGNING DISCLOSURES; DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS; FILING REQUIREMENTS **191.1 Modification of Procedures** Except where specifically prohibited, the procedures and limitations set forth in the rules pertaining to discovery may be modified in any suit by the agreement of the parties or by court order ~~for good cause~~. An agreement of the parties is enforceable if it complies with Rule 11 or, as it affects an oral deposition, if it is made a part of the record of the deposition. **191.2 Conference** Parties and their attorneys are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions or requests for hearings relating to discovery must contain a certificate by the party filing the motion or request that a reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed. **191.3 Signing of Disclosures, Discovery Requests, Notices, Responses, and Objections** (a) **Signature required.** Every disclosure, discovery request, notice, response, and objection must be signed: (1) by an attorney, if the party is represented by an attorney, and must show the attorney's State Bar of Texas identification number, address, telephone number, e-mail address, and, if available, fax number ~~and fax number, if any~~; or (2) by the party, if the party is not represented by an attorney, and must show the party's address, telephone number, and fax number, if any.	[The Discovery Subcommittee discussed whether the standard for modifying discovery procedures and limitations should be "for good cause" as it is now. Note the standard for modifying a control plan in TRCP 190.5 ("may modify a discovery control plan at any time and must do so when the interest of justice requires"). The "good cause" requirement could be removed (FRCP 26(b)(2) permits a court to alter the number of depositions and interrogatories, the length of depositions, and the number of admissions without requiring a showing of "good cause.").] TRCP 191.3(a) is revised to correspond with the Texas pleading requirements in TRCP 57.

(b) **Effect of signature on disclosure.** The signature of an attorney or party on a disclosure constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made. (c) **Effect of signature on discovery request, notice, response, or objection.** The signature of an attorney or party on a discovery request, notice, response, or objection constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection: (1) is consistent with the rules of civil procedure and these discovery rules and warranted by existing law or ~~a good faith argument for the extension, modification, or reversal of existing law~~by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law; (2) has a good faith factual basis; (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) is not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.	FRCP 26(g)(1) uses this language, but changing TRCP 191.3(c)(1) will affect other language in other rules, including TRCP 13 and maybe various TRAPs.
(d) **Effect of failure to sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.~~If a request, notice, response, or objection is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, notice, response, or objection. A party is not required to take any action with respect to a request or notice that is not signed.~~ (e) **Sanctions.** If the certification is false without substantial justification, the court may, upon motion or its own initiative,	The Discovery Subcommittee recommends revising TRCP 191.3(d) to conform to FRCP 26(g)(2) and improve readability.

impose on the person who made the certification, or the party on whose behalf the request, notice, response, or objection was made, or both, an appropriate sanction as for a frivolous pleading or motion under Chapter 10 of the Civil Practice and Remedies Code. **191.4 Filing of Discovery Materials.** (a) **Discovery materials not to be filed.** The following discovery materials must not be filed: (1) discovery requests, deposition notices, and subpoenas required to be served only on parties; (2) responses and objections to discovery requests and deposition notices, regardless on whom the requests or notices were served; (3) documents and tangible things produced in discovery; and (4) statements prepared in compliance with Rule 193.3(b) or (d). (b) **Discovery materials to be filed.** The following discovery materials must be filed: (1) discovery requests, deposition notices, and subpoenas required to be served on nonparties; (2) motions and responses to motions pertaining to discovery matters; and (3) agreements concerning discovery matters, to the extent necessary to comply with Rule 11. (c) **Exceptions.** Notwithstanding paragraph (a): (1) the court may order discovery materials to be filed; (2) a person may file discovery materials in support of or in opposition to a motion or for other use in a court proceeding; and (3) a person may file discovery materials necessary for a	

proceeding in an appellate court. (d) **Retention requirement for persons.** Any person required to serve discovery materials not required to be filed must retain the original or exact copy of the materials during the pendency of the case and any related appellate proceedings begun within six months after judgment is signed, unless otherwise provided by the trial court. (e) **Retention requirement for courts.** The clerk of the court shall retain and dispose of deposition transcripts and depositions upon written questions as directed by the Supreme Court. **191.5 Service of Discovery Materials.** Every disclosure, discovery request, notice, response, and objection required to be served on a party or person must be served on all parties of record. **RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS** **192.1 Forms of Discovery.** Permissible forms of discovery are: (a) ~~requests for~~required disclosures; (b) requests for production and inspection of documents and tangible things; (c) requests and motions for entry upon and examination of real property; (d) interrogatories to a party; (e) requests for admission; (f) oral or written depositions; and (g) motions for mental or physical examinations.	[Suggestion: Is TRCP 192.1 necessary in light of other provisions of the TRCPs detailing the methods of discovery?] TRCP 192.1(a) is revised to correspond with changes to TRCP 194, described below. [The Discovery Subcommittee discussed revising TRCP 192.2(a) to make clear that discovery

192.2 Timing and Sequence of Discovery. (a) **Timing.** A party may not seek discovery from any source before the defendant's answer is due. (b) **Sequence.** The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence. **192.3 Scope of Discovery.** (a) **Generally.** Unless otherwise ordered by the court, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case as set forth in 192.4(b). Information within this scope of discovery need not be admissible in evidence to be discoverable.~~In general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~ (b) **Documents and tangible things.** A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of documents and tangible things (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations) that constitute or contain matters relevant to ~~the subject matter of the action~~any party's claim or defense. A person is required to produce a document or tangible thing that is within the person's possession, custody, or control. ~~(c) **Persons with knowledge of relevant facts.** A party may obtain discovery of the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case. A person has knowledge of relevant facts when that person has or may have knowledge of any discoverable matter. The person need not have admissible information or personal knowledge of~~	cannot be served with a petition. One Subcommittee member suggested using a time limit similar to the time limit used in FRCP 16(b)(2): "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared."]] The Discovery Subcommittee recommends revising 192.3(a) to adopt some of the language in FRCP 26(b)(1) regarding proportionality, and to adopt the relevancy language from the FRCPs. The Discovery Subcommittee recommends deleting language relating to "subject matter of the pending action" and "reasonably calculated" from the existing TRCP. Also see companion revisions to TRCP 192.4(b) (below). The Discovery Subcommittee recommends adopting the relevancy language from the FRCPs (i.e. 26(b)(1)). TRCP 192.3(c)-(i) is incorporated into the new mandatory disclosure requirement of Rule 194 (see below). The Discovery Subcommittee does not recommend including the

~~the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained firsthand or if it was not obtained in preparation for trial or in anticipation of litigation.~~ ~~(d) **Trial witnesses.** A party may obtain discovery of the name, address, and telephone number of any person who is expected to be called to testify at trial. This paragraph does not apply to rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before trial.~~ ~~(e) **Testifying and consulting experts.** The identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable. A party may discover the following information regarding a testifying expert or regarding a consulting expert whose mental impressions or opinions have been reviewed by a testifying expert:~~ ~~(1) the expert's name, address, and telephone number;~~ ~~(2) the subject matter on which a testifying expert will testify;~~ ~~(3) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case in which the discovery is sought, regardless of when and how the factual information was acquired;~~ ~~(4) the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them;~~ ~~(5) any bias of the witness;~~ ~~(6) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony;~~ ~~(7) the expert's current resume and bibliography.~~ ~~(f) **Indemnity and insuring agreements.** Except as otherwise provided by law, a party may obtain discovery of the existence~~	State Bar of Texas Committee on Court Rules proposed amendment to TRCP 192.3(c). The State Bar of Texas Committee on Court Rules Proposed Amendment to TRCP 192.3(d) is incorporated into the new mandatory disclosure requirement of Rule 194 (see below). [Question: does moving all items from TRCP 192.3 to TRCP 194 preserve the scope of discovery?]

~~and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial.~~ ~~(g) **Settlement agreements.** A party may obtain discovery of the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial.~~ ~~(h) **Statements of persons with knowledge of relevant facts.** A party may obtain discovery of the statement of any person with knowledge of relevant facts--a "witness statement" regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.~~ ~~(i) **Potential parties.** A party may obtain discovery of the name, address, and telephone number of any potential party.~~ (j) **Contentions.** A party may obtain discovery of any other party's legal contentions and the factual bases for those contentions. **192.4 Limitations on Scope of Discovery.** The discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that: (a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or	The Discovery Subcommittee recommends revising 192.4(b) to adopt some of the language in

(b) the discovery sought is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. ~~the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.~~	FRCP 26(b)(1) regarding proportionality. Also see companion revisions to TRCP 192.3(a) (above). The Discovery Subcommittee rejects the following language from FRCP 26(b)(2)(C)(ii)-(iii) because the concepts are already covered by the other limits in this rule: "(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (ii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)."
192.5 Work Product. (a) **Work product defined.** Work product comprises: (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents. (b) **Protection of work product.** (1) **Protection of core work product--attorney mental processes.** Core work product - the work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories - is not discoverable. (2) **Protection of other work product.** Any other work	

product is discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the material by other means. (3) **Incidental disclosure of attorney mental processes.** It is not a violation of subparagraph (1) if disclosure ordered pursuant to subparagraph (2) incidentally discloses by inference attorney mental processes otherwise protected under subparagraph (1). (4) **Limiting disclosure of mental processes.** If a court orders discovery of work product pursuant to subparagraph (2), the court must--insofar as possible--protect against disclosure of the mental impressions, opinions, conclusions, or legal theories not otherwise discoverable. (c) **Exceptions.** Even if made or prepared in anticipation of litigation or for trial, the following is not work product protected from discovery: (1) information discoverable under Rule ~~192.3~~ 194 concerning experts, trial witnesses, witness statements, and contentions; (2) trial exhibits ordered disclosed under Rule 166 or Rule ~~190.4~~194; (3) the name, address, and telephone number of any potential party or any person with knowledge of relevant facts; (4) any photograph or electronic image of underlying facts (e.g., a photograph of the accident scene) or a photograph or electronic image of any sort that a party intends to offer into evidence; and (5) any work product created under circumstances within an exception to the attorney-client privilege in Rule 503(d) of the Rules of Evidence.	TRCP 192.5(c) is revised to correspond with changes to TRCP 192, 190, and 194.

(d) **Privilege.** For purposes of these rules, an assertion that material or information is work product is an assertion of privilege. **192.6 Protective Order.** (a) **Motion.** A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought. <u>The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.</u> A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion. (b) **Order.** To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may - among other things - order that: (1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court; (5) the results of discovery be sealed or otherwise	The Discovery Subcommittee recommends including this language in TRCP 192.6(a) from FRCP 26(c)(1)(protective order provision).

protected, subject to the provisions of Rule 76a. **192.7 Definitions.** As used in these rules (a) *Written discovery* means requests for disclosure, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission. (b) *Possession, custody, or control* of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item. (c) A *testifying expert* is an expert who may be called to testify as an expert witness at trial. (d) A *consulting expert* is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert. **RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY** **193.1 Responding to Written Discovery; Duty to Make Complete Response.** A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request to which they apply.	[Suggestion: Are TRCP 192.7(c) and (d) definitions necessary given amendments to expert disclosure requirements?]

193.2 Objecting to Written Discovery (a) **Form and time for objections.** A party must make any objection to written discovery in writing - either in the response or in a separate document - within the time for response. The party must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request. An objection must state whether any responsive materials are being withheld on the basis of that objection. (b) **Duty to respond when partially objecting; objection to time or place of production.** A party must comply with as much of the request to which the party has made no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. If the responding party objects to the requested time or place of production, the responding party must state a reasonable time and place for complying with the request and must comply at that time and place without further request or order. (c) **Good faith basis for objection.** A party may object to written discovery only if a good faith factual and legal basis for the objection exists at the time the objection is made. (d) **Amendment.** An objection or response to written discovery may be amended or supplemented to state an objection or basis that, at the time the objection or response initially was made, either was inapplicable or was unknown after reasonable inquiry. (e) **Waiver of objection.** An objection that is not made within the time required, or that is obscured by numerous unfounded objections, is waived unless the court excuses the waiver for good cause shown. (f) **No objection to preserve privilege.** A party should not object to a request for written discovery on the grounds that it calls for production of material or information that is privileged but should instead comply with Rule 193.3. A party who objects to production of privileged material or information does not waive the privilege but must comply with Rule 193.3 when the error is	The Discovery Subcommittee recommends adding this sentence to TRCP 193.2(a). The language is from FRCP 34(b)(2)(C).

pointed out. **193.3 Asserting a Privilege** A party may preserve a privilege from written discovery in accordance with this subdivision. (a) **Withholding privileged material or information.** A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state--in the response (or an amended or supplemental response) or in a separate document--that: (1) information or material responsive to the request has been withheld, (2) the request to which the information or material relates, and (3) the privilege or privileges asserted. (b) **Description of withheld material or information.** After receiving a response indicating that material or information has been withheld from production, the party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that: (1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and (2) asserts a specific privilege for each item or group of items withheld. (c) **Exemption.** Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative (1) created or made from the point at which a party consults a lawyer with a view to obtaining professional	

legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested, and (2) concerning the litigation in which the discovery is requested. (d) **Privilege not waived by production.** A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if - within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made - the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, the requesting party must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege. **193.4 Hearing and Ruling on Objections and Assertions of Privilege.** (a) **Hearing.** Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing. (b) **Ruling.** To the extent the court sustains the objection or claim of privilege, the responding party has no further duty to respond to that request. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or	

assertion of privilege to preserve the objection or privilege. (c) **Use of material or information withheld under claim of privilege.** A party may not use--at any hearing or trial--material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery. **193.5 Amending or Supplementing Responses to Written Discovery.** (a) **Duty to amend or supplement.** If a party learns that the party's response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct, the party must amend or supplement the response: (1) to the extent that the written discovery sought the identification of persons with knowledge of relevant facts, trial witnesses, or expert witnesses, and (2) to the extent that the written discovery sought other information, unless the additional or corrective information has been made known to the other parties in writing, on the record at a deposition, or through other discovery responses. (b) **Time and form of amended or supplemental response**. An amended or supplemental response must be made reasonably promptly after the party discovers the necessity for such a response. Except as otherwise provided by these rules, it is presumed that an amended or supplemental response made less than 30 days before trial was not made reasonably promptly. An amended or supplemental response must be in the same form as the initial response and must be verified by the party if the original response was required to be verified by the party, but the failure to comply with this requirement does not make the amended or supplemental response untimely unless the party making the response refuses to correct the defect within a reasonable time after it is pointed out.	

(c) **Use of Material or Information Withheld under other Objection.** A party may not use—at any hearing or trial—material or information withheld from discovery under any objection, including an objection sustained by the court, without timely amending or supplementing the party's response to include that discovery in accordance with these rules. **193.6 Failing to Timely Respond - Effect on Trial** (a) **Exclusion of evidence and exceptions.** A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that: (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties. (b) **Burden of establishing exception.** The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness. A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record. (c) **Continuance.** Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response. **193.7 Production of Documents Self-Authenticating** A party's production of a document in response to written	The Discovery Subcommittee recommends adding TRCP 193.5(c) to require parties to disclose information and documents used at hearing or trial.

discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless - within ten days or a longer or shorter time ordered by the court, after the producing party has actual notice that the document will be used - the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the record or in writing and must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.	
RULE 194. ~~REQUESTS FOR DISCLOSURE~~DUTY TO DISCLOSE	The Discovery Subcommittee recommends adopting FRCP 26(a)'s requirement of mandatory disclosures for all cases, including initial disclosures and pretrial disclosures. The specific recommended changes are described below.
194.1 ~~Request~~Required Disclosures. ~~A party may obtain disclosure from another party of the information or material listed in Rule 194.2 by serving the other party no later than 30 days before the end of any applicable discovery period the following request: "Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, e.g., 194.2, or 194.2(a), (c), and (f), or 194.2(d) (g)]."~~	
(a) **In general.** Except as exempted by this Rule or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4. Unless the court orders otherwise, all disclosures under Rule 194 must be in writing, signed, and served. In ruling on an objection that initial disclosures are not appropriate in this action, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.	TRCP 194.1(a) is from FRCP 26(a)(1)(A)(Initial Disclosure In General), 26(a)(1)(C)(Time for Initial Disclosures), and 26(a)(4) (Form of Disclosures).
(b) **Production.** Copies of documents and other tangible items required to be disclosed under this rule ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party	TRCP 194.1(b) is moved from prior TRCP 194.4 for clarity, and revised to make clear it concerns production of documents as part of this rule. Note, this rule could cross-reference requirements in TRCP 196, to the extent they are

must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. **194.2 ~~Content~~Initial Disclosures.** (a) **Time for initial disclosures.** A party must make the initial disclosures at or within 30 days after the filing of the answer unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action. A party that is first served or otherwise joined after the filing of the first answer must make the initial disclosures within 30 days after the filing of the party's answer, unless a different time is set by stipulation or court order. (b) **Content.** Without awaiting a discovery request, ~~A~~ a party ~~may request disclosure of any or all of~~ must provide the following: (~~a~~1) the correct names of the parties to the lawsuit; (~~b~~2) the name, address, and telephone number of any potential parties; (~~c~~3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial); (~~d~~4) the amount and any method of calculating economic damages; (~~e~~5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case. A person has knowledge of relevant facts when that person has or may have knowledge of any discoverable matter. The person need not have admissible information or personal knowledge of the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained firsthand or if it was not obtained in preparation for trial or in anticipation of litigation.;	applicable. The addition at TRCP 194.2(a) is from FRCP 26(a)(1)(C) and (D), modified to fit state rules. [As for timing for initial disclosures, one suggestion is adopting something similar to FRCP 16(b)(2): "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." Another suggestion is pinning each party's due date to the date of the party's own answer, with the exception of the Plaintiff.] TRCP 194.2(b) maintains the disclosure topics from the current Texas rule, with a few additions. Note many members of the Discovery Subcommittee recommend including FRCP 26(a)(1)(A)(iii)'s damages disclosure requirement at TRCP 194.2(b)(4): "a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based,

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(6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;	including materials bearing on the nature and extent of injuries suffered." The addition at TRCP 194.2(b)(5) is from TRCP 192.3(c) to remove the unnecessary cross-reference.
~~(f) for any testifying expert:~~ ~~(1) the expert's name, address, and telephone number;~~ ~~(2) the subject matter on which the expert will testify;~~ ~~(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;~~ ~~(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:~~ ~~(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and~~ ~~(B) the expert's current resume and bibliography;~~	The addition at TRCP 194.2(b)(6) is from FRCP 26(a)(1)(A)(ii). The TRCPs did not previously include this requirement. Expert disclosures are now addressed in Rule 195 and Rule 194.3.
(g7) except as otherwise provided by law, the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial~~any indemnity and insuring agreements described in Rule 192.3(f);~~	The addition at TRCP 194.2(b)(7) is from TRCP 192.3(f) to remove the unnecessary cross-reference.

(~~h~~8) the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial~~any settlement agreements described in Rule 192.3(g)~~;	The addition at TRCP 194.2(b)(8) is from TRCP 192.3(g) to remove the unnecessary cross-reference.
(~~i~~9) the statement of any person with knowledge of relevant facts--a "witness statement"-regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.~~any witness statements described in Rule 192.3(h)~~;	The addition at TRCP 194.2(b)(9) is from TRCP 192.3(h) to remove the unnecessary cross-reference.
(~~j~~10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;	
(~~k~~11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;	
(~~l~~12) the name, address, and telephone number of any person who may be designated as a responsible third party.	
(c) **Proceedings exempt from initial disclosure**. The following proceedings are exempt from initial disclosure, but a court may order that the parties make particular disclosures as appropriate:	The addition at TRCP 194.2(c) is from FRCP 26(a)(1)(B), modified to fit state rules and to clarify that all the listed initial disclosure topics are within
(1) an action for review on an administrative record;	

(2) a forfeiture action arising from a state statute; (3) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence; (4) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision; (5) an action to enforce or quash an administrative summons or subpoena; (6) an action by the state to recover benefit payments; (7) an action by the state to collect on a student loan guaranteed by the state; (8) a proceeding ancillary to a proceeding in another court; and (9) an action to enforce an arbitration award.	the scope of discoverable information in all cases. Because the disclosure rule does not fit family law cases, there should be an additional disclosure rule for family law cases in line with the local orders of major counties as discussed by the SCAC on January 12, 2001, and March 30, 2001.
194.2A Initial Disclosures Under Title I and V of the Texas Family Code [TBD].	
~~**194.3 Response.**~~ ~~The responding party must serve a written response on the requesting party within 30 days after service of the request, except that:~~ ~~(a) a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request, and~~ ~~(b) a response to a request under Rule 194.2(f) is governed by Rule 195.~~	Prior TRCP 194.3 is no longer necessary.
194.3 Expert Disclosure. In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties expert information as provided by Rule 195.	TRCP 194.3 is to clarify expert disclosure requirements exist, as described in TRCP 195.
~~**194.4 Production.**~~ ~~Copies of documents and other tangible items ordinarily must be~~	Prior TRCP 194.4 is moved

~~served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~ **194.4 Pretrial Disclosures.** (a) **In General**. In addition to the disclosures required by Rules 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment: (1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises; (2) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises. (b) **Time for Pretrial Disclosures; Objections**. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. ~~**194.6**~~**194.5 No Objection or Assertion of Work Product**. No objection or assertion of work product is permitted to a ~~request~~ disclosure under this rule. **194.~~7~~ 5 Certain Responses Not Admissible.** A ~~response to requests~~ disclosure under Rule 194.2(b)(~~c~~3) and (~~d~~4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.	to TRCP 194.1(b). The addition at TRCP 194.4 is from FRCP 26(a)(3). Note TRCP 166 touches on some of these issues as well and may also need to be amended. TRCP 194.4(a)(1) incorporates the amendment to TRCP 192.3(d) proposed by the State Bar of Texas Committee on Court Rules. Note the following language from FRCP 26(a)(3) is not incorporated into TRCP 194.4(b) at this time: "Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of any objections, together with the grounds for the objections, that may be made to the admissibility of materials identified. An objection not so made—except for one under Texas Rule of Evidence 402 or 403—is waived unless excused by the court for good cause." [Question: Should the limit in TRCP 194.5 only apply to initial disclosures?]

RULE 205. DISCOVERY FROM NON-PARTIES

205.1 Forms of Discovery; Subpoena Requirement.

A party may compel discovery from a nonparty--that is, a person who is not a party or subject to a party's control--only by obtaining a court order under Rules 196.7, 202, or 204, or by serving a subpoena compelling:

(a) an oral deposition;

(b) a deposition on written questions;

(c) a request for production of documents or tangible things, pursuant to Rule 199.2(b)(5) or Rule 200.1(b), served with a notice of deposition on oral examination or written questions; and

(d) a request for production of documents and tangible things under this rule.

205.2 Notice.

A party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery. A notice of oral or written deposition must be served before or at the same time that a subpoena compelling attendance or production under the notice is served. A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served.

205.3 Production of Documents and Tangible Things Without Deposition.

(a) **Notice; subpoena.** A party may compel production of documents and tangible things from a nonparty by serving - reasonable time before the response is due but no later than 30

days before the end of any applicable discovery period - the notice required in Rule 205.2 and a subpoena compelling production or inspection of documents or tangible things. (b) **Contents of notice.** The notice must state: (1) the name of the person from whom production or inspection is sought to be compelled; (2) a reasonable time and place for the production or inspection; and (3) the items to be produced or inspected, either by individual item or by category, describing each item and category with reasonable particularity, and, if applicable, describing the desired testing and sampling with sufficient specificity to inform the nonparty of the means, manner, and procedure for testing or sampling. (c) **Requests for production of medical or mental health records of other non-parties.** If a party requests a nonparty to produce medical or mental health records of another nonparty, the requesting party must serve the nonparty whose records are sought with the notice required under this rule. This requirement does not apply under the circumstances set forth in Rule 196.1(c)(2). (d) **Response.** The nonparty must respond to the notice and subpoena in accordance with Rule 176.6. (e) **Custody, inspection and copying.** The party obtaining the production must make all materials produced available for inspection by any other party on reasonable notice, and must furnish copies to any party who requests at that party's expense. (f) **Cost of production.** A party requiring production of documents by a nonparty must reimburse the nonparty's reasonable costs of production.	

Experts: Tex. R. Civ. P. 195

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES	
195.1 Permissible Discovery Tools.	
A party may request another party to designate and disclose information concerning testifying expert witnesses only through ~~a request for disclosure~~disclosure under Rule 194 and through ~~depositions and reports as~~other discovery permitted by this rule.	The Discovery Subcommittee recommends revising TRCP 195.1 to correspond with changes to TRCP 194 (above).
195.2 Schedule for Designating Experts.	
Unless otherwise ordered by the court, a party must designate experts - that is, furnish information ~~requested under Rule 194.2(f)~~described in Rule 195.5(b) - by the ~~later of the~~ following ~~two~~ dates: ~~30 days after the request is served, or~~ (a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; (b) with regard to all other experts, 60 days before the end of the discovery period.	The Discovery Subcommittee recommends revising TRCP 195.2 to correspond with changes to TRCPs 194 and 195.5.
195.3 Scheduling Depositions. (a) **Experts for party seeking affirmative relief.** A party seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition as follows: (1) **If no report furnished.** If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is not produced when the expert is designated, then the party must make the expert available for deposition reasonably promptly after the expert is designated. If the deposition cannot--due to the actions of the tendering party--reasonably be concluded more than 15 days before the deadline for	

designating other experts, that deadline must be extended for other experts testifying on the same subject. (2) **If report furnished.** If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is produced when the expert is designated, then the party need not make the expert available for deposition until reasonably promptly after all other experts have been designated. (b) **Other experts.** A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition reasonably promptly after the expert is designated and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.	
195.4 Oral Deposition. In addition to ~~disclosure under Rule 194~~the information disclosed under Rule 195.5, a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.	The Discovery Subcommittee recommends revising TRCP 195.4 to correspond with changes to TRCPs 194 and 195.5.
195.5 ~~Court-Ordered Reports~~Expert Disclosures and Reports. (a) **Disclosures.** Pursuant to Rule 194.3, and without awaiting a discovery request, a party must provide the following for any testifying expert:	A portion of the Discovery Subcommittee recommends revising TRCP 195.5 to incorporate some elements of FRCP 26, including protecting draft reports, expanding expert disclosure requirements, exempting expert communications from disclosure, and expressly incorporating the consulting expert

(1) the expert's name, address, and telephone number; (2) the subject matter on which the expert will testify; and (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information; (4) For any expert retained by, employed by, or otherwise subject to the control of the responding party, a party must provide the following: (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; (B) the expert's current resume and bibliography; (C) the witness's qualifications, including a list of all publications authored in the previous 10 years; (D) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and (E) a statement of the compensation to be paid for the study and testimony in the case. (b) **Expert reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition. If the trial court orders an expert report for a witness retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, the report must contain: (1) a complete statement of all opinions the witness will express and the basis and reasons for them; (2) the facts or data considered by the witness in forming them;	exemption. The Discovery Subcommittee does not recommend requiring expert reports. Specific changes are noted below and areas of disagreement among the committee are highlighted. TRCP 195.5(a)(1)-(4) is moved from prior TRCP 194 due to proposed amendments to TRCP 194. The addition of TRCP 195.5(a)(4)(C)-(E) is from FRCP 26(a)(2)(B)'s expert report requirements. The addition to TRCP 195.5(b) is based on FRCP 26(a)(2)(B).

and (3) any exhibits that will be used to summarize or support them. (c) **Expert communication exempt from disclosure.** Communications between the party's attorney and any testifying expert witness in the case are exempt from discovery regardless of the form of the communications, except to the extent that the communications: (1) relate to compensation for the expert's study or testimony; (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. (d) **Draft reports or disclosures.** Any draft of a report by an expert or disclosure required under this rule is protected from disclosure regardless of the form in which the draft is recorded. (e) **Expert employed for trial preparation.** A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial and whose mental impressions or opinions have not been reviewed by a testifying expert. But a party may do so as provided in Rule 204.2 (Report of Examining Physician or Psychologist) or on showing exceptional circumstances under which it is impracticable for the party to obtain facts on the same subject by other means. **195.6 Amendment and Supplementation.** A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If an expert witness is retained by, employed by, or otherwise under the control of a party, that party must also amend or supplement	The addition of TRCP 195.5(c) is based on FRCP 26(b)(4)(C). The Discovery Subcommittee is not unanimous on this revision. The addition of TRCP 195.5(d) is based on FRCP 26(b)(4)(B). The Discovery Subcommittee is not unanimous on this revision. The addition of TRCP 195.5(e) is based on FRCP 26(b)(4)(D), which expressly incorporates the consulting expert exemption referred to in the comments and TRCP 192.3(e) and provides for an exceptional circumstance exception to the exemption. The Discovery Subcommittee recommends one revision to the "exceptional circumstances" exception to remove the ability to discover the *opinions* of consulting experts on a showing of exceptional circumstances.

any deposition testimony or written report by the expert, but only with regard to the expert's mental impressions or opinions and the basis for them. **195.7 Cost of Expert Witnesses.** When a party takes the oral deposition of an expert witness retained by the opposing party, all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition must be paid by the party that retained the expert.	The Discovery Subcommittee does not recommend adopting FRCP 26(b)(4)(E), which requires the party deposing a testifying expert pay the expert a reasonable fee for time spent responding to discovery. The Discovery Subcommittee takes the position that this would invite abuse and hearings. Additionally, the TRCPs do not require expert reports like the FRCPs do, and the TRCPs impose limitations on depositions.

Production and Inspection: Tex. R. Civ. P. 196

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY	The Discovery Subcommittee recommends revising the format of TRCP 196.1 to follow FRCP 34's format for clarity.
196.1 Request for Production and Inspection to Parties.	
(a) **Request.** A party may serve on another party ~~no later than 30 days before the end of the discovery period~~ a request for production or for inspection within the scope of discovery, to inspect, sample, test, photograph and copy ~~documents or tangible things within the scope of discovery.~~ the following items in the responding party's possession, custody, or control:	The Discovery Subcommittee recommends revising TRCP 196.1 based on FRCP 34(a) because the FRCP more specifically covers electronically stored information.
(1) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or	
(2) any designated tangible things.	
(b) **Timing of request.** The request must be served no later than 30 days before the end of the discovery period.	
(~~b~~c) **Contents of request.** The request	The Discovery Subcommittee recommends revising the format of former subsection b (now c) to follow FRCP 34(b)(1) for clarity.
(1) must ~~specify the items to be produced or inspected, either by individual item or by category, and~~ describe with reasonable particularity each item ~~and~~ or category of items to be inspected;	
(2) ~~The request~~ must specify a reasonable time (on or after the date on which the response is due), ~~and~~ place, and manner for the production or inspection and for performing the related acts; and	
(3) If the requesting party will sample or test the requested items, the means, manner and procedure for testing or sampling must be described with sufficient	

specificity to inform the producing party of the means, manner, and procedure for testing or sampling. (~~c~~d) **Requests for production of medical or mental health records regarding nonparties.** (1) **Service of request on nonparty.** If a party requests another party to produce medical or mental health records regarding a nonparty, the requesting party must serve the nonparty with the request for production under Rule 21a. (2) **Exceptions.** A party is not required to serve the request for production on a nonparty whose medical records are sought if: (A) the nonparty signs a release of the records that is effective as to the requesting party; (B) the identity of the nonparty whose records are sought will not directly or indirectly be disclosed by production of the records; or (C) the court, upon a showing of good cause by the party seeking the records, orders that service is not required. (3) **Confidentiality.** Nothing in this rule excuses compliance with laws concerning the confidentiality of medical or mental health records. **196.2 Response to Request for Production and Inspection.** (a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.~~. (b) **Content of response.** ~~With respect to~~For each item or category of items, the ~~responding party must state objections and assert privileges as required by these rules, and state, as appropriate, that~~response:	The Discovery Subcommittee recommends removing this language from TRCP 196.2(a) so that no discovery can be served prior to the answer. The Discovery Subcommittee also rejected the following language from FRCP 34(b)(2)(A) because another TRCP already permits this: "A shorter or longer time may be stipulated to under

(1) must either state that ~~production, inspection, or other requested action~~ inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request or assert privileges as required by these rules, including the reasons; (2) ~~the requested items are being served on the requesting party with the response~~may state that it will produce copies of documents or electronically stored information instead of permitting inspection; (3) state, as appropriate, that production, inspection, or other requested action will take place at a specified time and place, if the responding party is objecting to the time and place of production; or (4) state, as appropriate, that no items have been identified - after a diligent search - that are responsive to the request.	Rule 29 or be ordered by the court." The Discovery Subcommittee recommends revising TRCP 196.2(b) based on FRCP 34(b)(2)(B).
196.3 Production. (a) **Time and place of production.** Subject to any objections stated in the response, the production must be completed no later than the time for the production or inspection specified in the request or another reasonable time specified in the response. Subject to any objections stated in the response, the responding party must produce the requested documents or tangible things within the person's possession, custody or control at ~~either~~ the ~~time and~~ place requested or the ~~time and~~ place stated in the response, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. (b) **Copies.** The responding party may produce copies in lieu of originals unless a question is raised as to the authenticity of the original or in the circumstances it would be unfair to produce copies in lieu of originals. If originals are produced, the responding party is entitled to retain the originals while the requesting party inspects and copies them.	The Discovery Subcommittee recommends revising TRCP 196.3(a) to include language in the last sentence of FRCP 34(b)(2)(B). The Discovery Subcommittee recommends revising TRCP 196.3(c) to give a party the

(c) **Organization.** The responding party must ~~either~~ produce documents and tangible things as they are kept in the usual course of business or organize and label them to correspond with the categories in the request.	option of asking the court to order production using the other organizational method.
196.4 ~~Electronic or Magnetic Data~~Electronically Stored Information. (a) **Request.** To obtain discovery of data or information that exists in electronic ~~or magnetic~~ form ("electronically stored information"), the requesting party must ~~specifically request production of electronic or magnetic data and~~ specify the form in which the requesting party wants it produced. (b) **Responses and Objections.** ~~The responding party~~The response: (1) must either state that production of the electronically stored information ~~or magnetic data~~ that is responsive to the request and is reasonably available to the responding party in its ordinary course of business will occur or state with specificity the grounds for objecting to the request or assert privileges as required by these rules, including the reasons; (2) may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use; and (3) must object to the production, ~~.~~ ~~I~~if the responding party cannot - through reasonable efforts - retrieve the ~~data or~~electronically stored information requested or produce it in the form requested~~, the responding party must state an objection complying with these rules~~. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.	The Discovery Subcommittee recommends revising TRCP 196.4 based on FRCP 34(b)(2)(D) and (E).

(c) **Producing the Electronically Stored Information**. Unless otherwise stipulated or ordered by the court, if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and a party need not produce the same electronically stored information in more than one form. **196.5 Destruction or Alteration.** Testing, sampling or examination of an item may not destroy or materially alter an item unless previously authorized by the court. **196.6 Expenses of Production.** Unless otherwise ordered by the court for good cause, the expense of producing items will be borne by the responding party and the expense of inspecting, sampling, testing, photographing, and copying items produced will be borne by the requesting party. **196.7 Request of Motion for Entry Upon Property.** (a) **Request or motion.** ~~A party may gain entry on designated land or other property to inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon by serving no later than 30 days before the end of any applicable discovery period~~A party may serve on any other party a request within the scope of discovery to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it. If – ~~(1) a request on all parties if~~ the land or property belongs to a ~~party~~non-party, ~~or~~ the party seeking entry onto designated land or other property possessed or controlled by the nonparty must file	The Discovery Subcommittee recommends revising TRCP 196.7(a) based on FRCP 34(a)(2).

~~(2)~~ a motion and notice of hearing on all parties and the nonparty ~~if the land or property belongs to a nonparty~~. If the identity or address of the nonparty is unknown and cannot be obtained through reasonable diligence, the court must permit service by means other than those specified in Rule 21a that are reasonably calculated to give the nonparty notice of the motion and hearing.	
(b) **Timing of request.** The request for entry upon a party's property, or the order for entry upon a nonparty's property, must be filed no later than 30 days before the end of any applicable discovery period.	The Discovery Subcommittee recommends setting out TRCP 196.7(b) for clarity.
(~~b~~c) ~~**Time**~~**Requested time, place, and other conditions of inspection.** ~~The request for entry upon a party's property, or the order for entry upon a nonparty's property,~~The request must state the time, place, manner, conditions, and scope of the inspection, and must specifically describe any desired means, manner, and procedure for testing or sampling, and the person or persons by whom the inspection, testing, or sampling is to be made.	The Discovery Subcommittee recommends making these stylistic changes to TRCP 196.7(c) for clarity.
(~~e~~d) **Response to request for entry.**	
(1) **Time to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request~~.	The Discovery Subcommittee recommends removing this language from TRCP 196.7(d) so that no discovery can be served prior to the answer.
(2) **Content of response.** The responding party must state with specificity the grounds for ~~objections~~ objecting and assert privileges as required by these rules, including the reasons, and state, as appropriate, that:	The Discovery Subcommittee recommends revising TRCP 196.7(d)(2) to correspond with other changes in this Rule.
(A) entry or other requested action will be permitted as requested;	
(B) entry or other requested action will take place at a specified time and place, if the responding party is objecting to the time and	

place of production; or (C) entry or other requested action cannot be permitted for reasons stated in the response. (~~d~~e) **Requirements for order for entry on nonparty's property.** An order for entry on a nonparty's property may issue only for good cause shown and only if the land, property, or object thereon as to which discovery is sought is relevant to the ~~subject matter~~claims or defenses of the action.	The Discovery Subcommittee recommends revising TRCP 196.7(e) to parallel the scope of discovery in FRCP 26.

Interrogatories: Tex. R. Civ. P. 197

RULE 197. INTERROGATORIES TO PARTIES	
197.1 Interrogatories – In General.~~.~~	The Discovery Subcommittee recommends revising the format of TRCP 197.1 to follow FRCP 33's format for clarity.
(a) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 written interrogatories in a Level 1 case or 25 written interrogatories in Level 2 or Level 3 cases, including all discrete subparts, but excluding interrogatories asking a party only to identify or authenticate specific documents.	The Discovery Subcommittee recommends adding 197.1(a), based on FRCP 33(a)(1), for convenience.
(b) **Scope.** A written ~~interrogatories~~ interrogatory ~~to~~ may inquire about any matter within the scope of discovery except matters covered by Rule 195. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial.	The Discovery Subcommittee rejected the following language from FRCP 33(a)(2) because parties do not need to be invited to do this: "the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time."
(c) **Timing of request.** A party may serve written interrogatories on another party –no later than 30 days before the end of the discovery period.	
197.2 Response to Interrogatories.	The Discovery Subcommittee recommends moving the verification requirement to TRCP 197.2(a) from 197.2(d) to track the format of FRCP 33 and to indicate who must respond earlier in the rule. The Discovery Subcommittee also revised the verification requirement to: (1) remove confusing language indicating an agent could not
(a) **Responding parties; verification.** A responding party - not an attorney of record as otherwise permitted by Rule 14 - must sign the answers under oath or a declaration except that: (1) when answers are based on information obtained from other persons, the party may so state, and (2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions.	

(b) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories~~, except that a defendant served with interrogatories before the defendant's answer is due need not respond until 50 days after service of the interrogatories.~~. (~~b~~c) **Content of response.** A response must include the party's answers to the interrogatories and may include objections and assertions of privilege as required under these rules. (d) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. (~~e~~e) **Option to produce records.** If the answer to an interrogatory may be derived or ascertained from public records, from the responding party's business records, or from an examination, auditing, ~~a~~compilation, abstract or summary of the responding party's business records (including electronically stored information), and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party, the responding party may answer the interrogatory by (1) specifying the records that must be reviewed, in sufficient detail to enable the requesting party to locate and identify them as readily as the responding party could; and, (2) if applicable, producing the records or compilation, abstract or summary of the records; and~~. The records from which the answer may be derived or ascertained must be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party.~~ (3) ~~If the responding party has specified business records, the responding party must state~~stating a reasonable time and place for examination of the documents. The responding party must produce the documents at the time and place stated, unless	respond, and (2) to add declaration language. The Discovery Subcommittee recommends removing this language from TRCP 197.2(b) so that no discovery can be served prior to the answer. The Discovery Subcommittee also rejected the following language from FRCP 33(b)(2) because another TRCP already permits this: "A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court." The Discovery Subcommittee recommends adding TRCP 197.2(d) from FRCP 33(b)(4). The Discovery Subcommittee recommends revising TRCP 197.2(e) to correspond with language in FRCP 33(d).

otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. **197.3 Use.** Answers to interrogatories may be used only against the responding party. An answer to an interrogatory inquiring about matters described in Rule 194.2(c) and (d) that has been amended or supplemented is not admissible and may not be used for impeachment.	

Admissions: Tex. R. Civ. P. 198

RULE 198. REQUESTS FOR ADMISSIONS	
198.1 Request for Admissions.	The Discovery Subcommittee recommends breaking down TRCP 198.1 into subsections for clarity.
(a) **Request.** A party may serve on another party ~~no later than 30 days before the end of the discovery period~~ written requests that the other party admit, for purposes of the pending action only, the truth of any matter within the scope of discovery, including:	
(1) ~~statements of opinion or of fact or of the application of law to fact~~facts, the application of law to fact, or opinions about either~~, or~~; and	The revisions to TRCP 198.1(a)(1)-(2) are from FRCP 36(a)(1) and 36(b).
(2) the genuineness of any described documents~~served with the request or otherwise made available for inspection and copying.~~.	
(b) **Number**. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 written requests for admissions in a Level 1 case or 25 written requests for admissions in Level 2 or Level 3 cases, including all discrete subparts, but excluding requests asking a party only to identify or authenticate specific documents.	The Discovery Subcommittee recommends limiting the number of requests for admissions in TRCP 198.1(b) to correspond with the limit on interrogatories.
(c) **Timing of request.** The request must be served no later than 30 days before the end of the discovery period.	
(d) **Form; copy of a document**. Each matter for which an admission is requested must be stated separately. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.	The revisions to TRCP 198.1(d) are from FRCP 36(a)(2).
198.2 Response to Requests for Admissions.	The Discovery Subcommittee recommends removing this language from TRCP 198.2(a) so that no discovery can be served
(a) **Time ~~for response~~to respond; effect of failure to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request~~,~~	

~~except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.~~. If a response is not timely served, the request is considered admitted without the necessity of a court order. (b) ~~**Content of response**~~**Answer.** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. ~~Unless the responding party states an objection or asserts a privilege, the responding party must specifically admit or deny the request or explain in detail the reasons that the responding party cannot admit or deny the request. A response must fairly meet the substance of the request. The responding party may qualify an answer, or deny a request in part, only when good faith requires. Lack of information or knowledge is not a proper response unless the responding party states that a reasonable inquiry was made but that the information known or easily obtainable is insufficient to enable the responding party to admit or deny. An assertion that the request presents an issue for trial is not a proper response.~~ ~~(c) **Effect of failure to respond.** If a response is not timely served, the request is considered admitted without the necessity of a court order.~~ (c) **Motion regarding the sufficiency of an answer or objection.** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.	prior to the answer. The Discovery Subcommittee recommends adding this language to TRCP 198.2(a) from TRCP 198.2(c) for clarity. The revisions to TRCP 198.2(b) are from FRCP 36(a)(4). TRCP 198.2(c) is moved to TRCP 198.2(a). The addition of TRCP 198.2(c) is from FRCP 36(a)(6).

198.3 Effect of an Admissions; Withdrawal or Amendment. An~~y~~ admission made by a party under this rule ~~may be used solely in the pending action~~is not an admission for any other purpose and cannot be used against the party in any other proceeding. A matter admitted under this rule is conclusively established ~~as to the party making the admission~~ unless the court, on motion, permits the party to withdraw or amend the admission. The court may permit the party to withdraw or amend the admission if: (a) the party shows good cause for the withdrawal or amendment; and (b) the court finds that ~~the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.~~the withdrawal or amendment would promote the presentation of the merits of the action and the court is not persuaded that the withdrawal or amendment would prejudice the requesting party in maintaining or defending the action on the merits.	The revisions to TRCP 198.3 are from FRCP 36(b). It is also stylistically revised for clarity and parallelism.

Depositions, Pre-Suit Depositions, and Depositions Pending Appeal:

Tex. R. Civ. P. 199-203

RULE 199. DEPOSITIONS UPON ORAL EXAMINATION	
199.1 Oral Examination; Alternative Methods of Conducting or Recording. (a) **Generally.** A party may take the testimony of any person or entity by deposition on oral examination before any officer authorized by law to take depositions. The testimony, objections, and any other statements during the deposition must be recorded at the time they are given or made. (b) **Depositions by ~~telephone or other~~ remote ~~electronic~~ means.** ~~A party may take~~The parties may stipulate—or the court may on motion order—an oral deposition by telephone or other remote electronic means~~ if the party gives reasonable prior written notice of intent to do so~~. For the purposes of these rules, an oral deposition taken by telephone or other remote electronic means is considered as having been taken in the district and at the place where the witness is located when answering the questions. The officer taking the deposition may be located with the party noticing the deposition instead of with the witness if the witness is placed under oath by a person who is present with the witness and authorized to administer oaths in that jurisdiction. (c) **Non-stenographic recording.** Any party may cause a deposition upon oral examination to be recorded by other than stenographic means, including videotape recording. The party requesting the non-stenographic recording will be responsible for obtaining a person authorized by law to administer the oath and for assuring that the recording will be intelligible, accurate, and trustworthy. At least five days prior to the deposition, the party must serve on the witness and all parties a notice, either in the notice of deposition or separately, that the deposition will be recorded by other than stenographic means. This notice must state the method of non-stenographic recording to be used and whether the deposition will also be recorded	The Discovery Subcommittee considered revising TRCP 199.1(a) to adopt part of FRCP 30(a)(2) to require a party to obtain leave of court to take more than 10 depositions (change only for oral depositions). However, due to deposition time limits already in the TRCPs, many committee members disagree with this change. The Discovery Subcommittee recommends revising TRCP 199.1(b) to be consistent with FRCP 30(b)(4), which requires agreement or leave of court for remote depositions.

stenographically. Any other party may then serve written notice designating another method of recording in addition to the method specified, at the expense of such other party unless the court orders otherwise. **199.2 Procedure for Noticing Oral Depositions.** (a) **Time to notice deposition.** A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court. (b) **Content of notice.** (1) **Identity of witness; organizations.** The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules. (2) **Time and place.** The notice must state a reasonable time and place for the oral deposition. The place may be in: (A) the county of the witness's residence; (B) the county where the witness is employed or regularly transacts business in person; (C) the county of suit, if the witness is a party or a person designated by a party under Rule	

199.2(b)(1); (D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or (E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending. (3) **Alternative means of conducting and recording.** The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c). (4) **Additional attendees.** The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3). (5) **Request for production of documents.** A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196. **199.3 Compelling Witness to Attend.** A party may compel the witness to attend the oral deposition by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the notice of oral deposition upon the party's attorney has the same effect	

as a subpoena served on the witness.

199.4 Objections to Time and Place of Oral Deposition.

A party or witness may object to the time and place designated for an oral deposition by motion for protective order or by motion to quash the notice of deposition. If the motion is filed by the third business day after service of the notice of deposition, an objection to the time and place of a deposition stays the oral deposition until the motion can be determined.

199.5 Examination, Objection, and Conduct During Oral Depositions.

(a) **Attendance.**

(1) **Witness.** The witness must remain in attendance from day to day until the deposition is begun and completed.

(2) **Attendance by party.** A party may attend an oral deposition in person, even if the deposition is taken by telephone or other remote electronic means. If a deposition is taken by telephone or other remote electronic means, the party noticing the deposition must make arrangements for all persons to attend by the same means. If the party noticing the deposition appears in person, any other party may appear by telephone or other remote electronic means if that party makes the necessary arrangements with the deposition officer and the party noticing the deposition.

(3) **Other attendees.** If any party intends to have in attendance any persons other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the oral deposition, that party must give reasonable notice to all parties, either in the notice of deposition or separately, of the identity of the other persons.

(b) **Oath; examination.** Every person whose deposition is taken

by oral examination must first be placed under oath. The parties may examine and cross-examine the witness. Any party, in lieu of participating in the examination, may serve written questions in a sealed envelope on the party noticing the oral deposition, who must deliver them to the deposition officer, who must open the envelope and propound them to the witness. The record must state: (1) the officer's name and business address; (2) the date, time, and place of the deposition; (3) the deponent's name; (4) the administration of the oath or affirmation to the deponent; and (5) the identity of all persons present.	The Discovery Subcommittee recommends revising TRCP 199.5(b) to adopt FRCP 30(b)(5)(A), amended to require only that the record must state these items. The Discovery Subcommittee does not recommend requiring an officer begin the deposition with an on-the-record statement of these items like the FRCPs.
(c) **Time limitation.** No side may examine or cross-examine an individual witness for more than six hours. Breaks during depositions do not count against this limitation. The court must allow additional time consistent with Rule 192.3 and Rule 192.4 if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.	The Discovery Subcommittee recommends revising TRCP 199.5(c) to adopt language from FRCP 30(d); the Discovery Subcommittee does not recommend adopting the FRCP's limit of "one day of 7 hours" for a deposition.
(d) **Conduct during the oral deposition; conferences.** The oral deposition must be conducted in the same manner as if the testimony were being obtained in court during trial. If the deposition is recorded nonstenographically, the deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques. Counsel should cooperate with and be courteous to each other and to the witness. The witness should not be evasive and should not unduly delay the examination. Private conferences between the witness and the witness's attorney during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Private conferences may be held, however, during agreed recesses and adjournments. If the lawyers and witnesses do not comply with this rule, the court may allow in evidence at trial statements, objections, discussions, and other occurrences during the oral deposition	The Discovery Subcommittee recommends revising TRCP 199.5(d) to adopt language in FRCP 30(b)(5)(B). The Discovery Subcommittee recommends considering adopting the FRCP option for TRCP 199.5(e). FRCP 30(c)(2) provides: "An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's

that reflect upon the credibility of the witness or the testimony. (e) **Objections.** Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, non-responsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. The officer taking the oral deposition will not rule on objections but must record them for ruling by the court. The officer taking the oral deposition must not fail to record testimony because an objection has been made. (f) **Instructions not to answer.** An attorney may instruct a witness not to answer a question during an oral deposition only if necessary to preserve a privilege, comply with a court order or these rules, protect a witness from an abusive question or one for which any answer would be misleading, or secure a ruling pursuant to paragraph (g). The attorney instructing the witness not to answer must give a concise, non-argumentative, non-suggestive explanation of the grounds for the instruction if requested by the party who asked the question. (g) **Suspending the deposition.** If the time limitations for the deposition have expired or the deposition is being conducted or defended in violation of these rules, a party or witness may suspend the oral deposition for the time necessary to obtain a ruling. (h) **Good faith required.** An attorney must not ask a question at an oral deposition solely to harass or mislead the witness, for any other improper purpose, or without a good faith legal basis at the time. An attorney must not object to a question at an oral deposition, instruct the witness not to answer a question, or suspend the deposition unless there is a good faith factual and legal basis for doing so at the time.	qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion [to terminate or limit the deposition.]" If the FRCP option is not adopted, the Discovery Subcommittee recommends adopting a rule requiring objections to a party's conduct or officer's qualifications be noted on the record.

199.6 Hearing on Objections. Any party may, at any reasonable time, request a hearing on an objection or privilege asserted by an instruction not to answer or suspension of the deposition; provided the failure of a party to obtain a ruling prior to trial does not waive any objection or privilege. The party seeking to avoid discovery must present any evidence necessary to support the objection or privilege either by testimony at the hearing or by affidavits served on opposing parties at least seven days before the hearing. If the court determines that an *in camera* review of some or all of the requested discovery is necessary to rule, answers to the deposition questions may be made in camera, to be transcribed and sealed in the event the privilege is sustained, or made in an affidavit produced to the court in a sealed wrapper. **RULE 200. DEPOSITIONS UPON WRITTEN QUESTIONS** **200.1 Procedure for Noticing Deposition Upon Written Questions.** (a) **Who may be noticed; when.** A party may take the testimony of any person or entity by deposition on written questions before any person authorized by law to take depositions on written questions. A notice of intent to take the deposition must be served on the witness and all parties at least 20 days before the deposition is taken. A deposition on written questions may be taken outside the discovery period only by agreement of the parties or with leave of court. The party noticing the deposition must also deliver to the deposition officer a copy of the notice and of all written questions to be asked during the deposition. (b) **Content of notice.** The notice must comply with Rules 199.1(b), 199.2(b), and 199.5(a)(3). If the witness is an organization, the organization must comply with the requirements of that provision. The notice also may include a request for production of documents as permitted by Rule	Note the Discovery Subcommittee does not recommend adopting FRCP 30(a)'s 10-deposition rule for depositions on written questions.

199.2(b)(5), the provisions of which will govern the request, service, and response. **200.2 Compelling Witness to Attend.** A party may compel the witness to attend the deposition on written questions by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the deposition notice upon the party's attorney has the same effect as a subpoena served on the witness. **200.3 Questions and Objections.** (a) **Direct questions.** The direct questions to be propounded to the witness must be attached to the notice. (b) **Objections and additional questions.** Within ten days after the notice and direct questions are served, any party may object to the direct questions and serve cross-questions on all other parties. Within five days after cross-questions are served, any party may object to the cross-questions and serve redirect questions on all other parties. Within three days after redirect questions are served, any party may object to the redirect questions and serve re-cross questions on all other parties. Objections to re-cross questions must be served within five days after the earlier of when re-cross questions are served or the time of the deposition on written questions. (c) **Objections to form of questions.** Objections to the form of a question are waived unless asserted in accordance with this subdivision. **200.4 Conducting the Deposition Upon Written Questions.** The deposition officer must: take the deposition on written questions at the time and place designated; record the testimony of the witness under oath in response to the questions; and prepare, certify, and deliver the deposition transcript in accordance with Rule 203. The deposition officer	

has authority when necessary to summon and swear an interpreter to facilitate the taking of the deposition. **RULE 201. DEPOSITIONS IN FOREIGN JURISDICTIONS FOR USE IN TEXAS PROCEEDINGS; DEPOSITIONS IN TEXAS FOR USE IN FOREIGN PROCEEDINGS** **201.1 Depositions in Foreign Jurisdictions for Use in Texas Proceedings.** (a) **Generally.** A party may take a deposition on oral examination or written questions of any person or entity located in another state or a foreign country for use in proceedings in this State. The deposition may be taken by: (1) notice; (2) letter rogatory, letter of request, or other such device; (3) agreement of the parties; or (4) court order. (b) **By notice.** A party may take the deposition by notice in accordance with these rules as if the deposition were taken in this State, except that the deposition officer may be a person authorized to administer oaths in the place where the deposition is taken. (c) **By letter rogatory.** On motion by a party, the court in which an action is pending must issue a letter rogatory on terms that are just and appropriate, regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter must: (1) be addressed to the appropriate authority in the jurisdiction in which the deposition is to be taken; (2) request and authorize that authority to summon the witness before the authority at a time and place stated in the letter for examination on oral or written	Note the Discovery Subcommittee does not recommend adopting FRCP 30(a)'s 10-deposition rule in TRCP 201.

questions; and (3) request and authorize that authority to cause the witness's testimony to be reduced to writing and returned, together with any items marked as exhibits, to the party requesting the letter rogatory. (d) **By letter of request or other such device.** On motion by a party, the court in which an action is pending, or the clerk of that court, must issue a letter of request or other such device in accordance with an applicable treaty or international convention on terms that are just and appropriate. The letter or other device must be issued regardless of whether any other manner of obtaining the deposition is impractical or inconvenient. The letter or other device must: (1) be in the form prescribed by the treaty or convention under which it is issued, as presented by the movant to the court or clerk; and (2) must state the time, place, and manner of the examination of the witness. (e) **Objections to form of letter rogatory, letter of request, or other such device.** In issuing a letter rogatory, letter of request, or other such device, the court must set a time for objecting to the form of the device. A party must make any objection to the form of the device in writing and serve it on all other parties by the time set by the court, or the objection is waived. (f) **Admissibility of evidence.** Evidence obtained in response to a letter rogatory, letter of request, or other such device is not inadmissible merely because it is not a verbatim transcript, or the testimony was not taken under oath, or for any similar departure from the requirements for depositions taken within this State under these rules. (g) **Deposition by electronic means.** A deposition in another jurisdiction may be taken by telephone, video conference, teleconference, or other electronic means under the provisions of Rule 199. **201.2 Depositions in Texas for Use in Proceedings in Foreign**	

Jurisdictions.

If a court of record of any other state or foreign jurisdiction issues a mandate, writ, or commission that requires a witness's oral or written deposition testimony in this State, the witness may be compelled to appear and testify in the same manner and by the same process used for taking testimony in a proceeding pending in this State.

RULE 202. DEPOSITIONS BEFORE SUIT OR TO INVESTIGATE CLAIMS

202.1 Generally.

A person may petition the court for an order authorizing the taking of a deposition on oral examination or written questions either:

(a) to perpetuate or obtain the person's own testimony or that of any other person for use in an anticipated suit; or

(b) to investigate a potential claim or suit.

202.2 Petition

The petition must:

(a) be verified;

(b) be filed in a proper court of any county:

(1) where venue of the anticipated suit may lie, if suit is anticipated; or

(2) where the witness resides, if no suit is yet anticipated;

(c) be in the name of the petitioner;

(d) state either:

(1) that the petitioner anticipates the institution of a suit in which the petitioner may be a party; or

(2) that the petitioner seeks to investigate a potential claim by or against petitioner; (e) state the subject matter of the anticipated action, if any, and the petitioner's interest therein; (f) if suit is anticipated, either: (1) state the names of the persons petitioner expects to have interests adverse to petitioner's in the anticipated suit, and the addresses and telephone numbers for such persons; or (2) state that the names, addresses, and telephone numbers of persons petitioner expects to have interests adverse to petitioner's in the anticipated suit cannot be ascertained through diligent inquiry, and describe those persons; (g) state the names, addresses and telephone numbers of the persons to be deposed, the substance of the testimony that the petitioner expects to elicit from each, and the petitioner's reasons for desiring to obtain the testimony of each; and (h) request an order authorizing the petitioner to take the depositions of the persons named in the petition. **202.3 Notice and Service.** (a) **Personal service on witnesses and persons named.** At least 15 days before the date of the hearing on the petition, the petitioner must serve the petition and a notice of the hearing – in accordance with Rule 21a - on all persons petitioner seeks to depose and, if suit is anticipated, on all persons petitioner expects to have interests adverse to petitioner's in the anticipated suit. (b) **Service by publication on persons not named.** (1) **Manner.** Unnamed persons described in the petition whom the petitioner expects to have interests adverse to petitioner's in the anticipated suit, if any, may be served by publication with the petition and notice of the hearing. The notice must state the place for the hearing	

and the time it will be held, which must be more than 14 days after the first publication of the notice. The petition and notice must be published once each week for two consecutive weeks in the newspaper of broadest circulation in the county in which the petition is filed, or if no such newspaper exists, in the newspaper of broadest circulation in the nearest county where a newspaper is published. (2) **Objection to depositions taken on notice by publication.** Any interested party may move, in the proceeding or by bill of review, to suppress any deposition, in whole or in part, taken on notice by publication, and may also attack or oppose the deposition by any other means available. (c) **Service in probate cases.** A petition to take a deposition in anticipation of an application for probate of a will, and notice of the hearing on the petition, may be served by posting as prescribed by Section 33(f)(2) of the Probate Code. The notice and petition must be directed to all parties interested in the testator's estate and must comply with the requirements of Section 33(c) of the Probate Code insofar as they may be applicable. (d) **Modification by order.** As justice or necessity may require, the court may shorten or lengthen the notice periods under this rule and may extend the notice period to permit service on any expected adverse party. **202.4 Order.** (a) **Required findings.** The court must order a deposition to be taken if, but only if, it finds that: (1) allowing the petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit; or (2) the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.	

(b) **Contents.** The order must state whether a deposition will be taken on oral examination or written questions. The order may also state the time and place at which a deposition will be taken. If the order does not state the time and place at which a deposition will be taken, the petitioner must notice the deposition as required by Rules 199 or 200. The order must contain any protections the court finds necessary or appropriate to protect the witness or any person who may be affected by the procedure. **202.5 Manner of Taking and Use.** Except as otherwise provided in this rule, depositions authorized by this rule are governed by the rules applicable to depositions of non-parties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed. A court may restrict or prohibit the use of a deposition taken under this rule in a subsequent suit to protect a person who was not served with notice of the deposition from any unfair prejudice or to prevent abuse of this rule. **RULE 203. SIGNING, CERTIFICATION AND USE OF ORAL AND WRITTEN DEPOSITIONS** **203.1 Signature and Changes.** (a) **Deposition transcript to be provided to witness.** The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness. (b) **Changes by witness; signature.** The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the	

changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer. If the witness does not return the transcript to the deposition officer within ~~20~~ 30 days of the date the transcript was provided to the witness or the witness's attorney, the witness may be deemed to have waived the right to make the changes. (c) **Exceptions.** The requirements of presentation and signature under this subdivision do not apply: (1) if the witness and all parties waive the signature requirement; (2) to depositions on written questions; or (3) to non-stenographic recordings of oral depositions. **203.2 Certification.** The deposition officer must file with the court, serve on all parties, and attach as part of the deposition transcript or non-stenographic recording of an oral deposition a certificate duly sworn by the officer stating: (a) that the witness was duly sworn by the officer and that the transcript or non-stenographic recording of the oral deposition is a true record of the testimony given by the witness; (b) that the deposition transcript, if any, was submitted to the witness or to the attorney for the witness for examination and signature, the date on which the transcript was submitted, whether the witness returned the transcript, and if so, the date on which it was returned. (c) that changes, if any, made by the witness are attached to the deposition transcript; (d) that the deposition officer delivered the deposition transcript or nonstenographic recording of an oral deposition in accordance with Rule 203.3;	The Discovery Subcommittee recommends revising TRCP 203.1 to conform with FRCP 30(e).

(e) the amount of time used by each party at the deposition; (f) the amount of the deposition officer's charges for preparing the original deposition transcript, which the clerk of the court must tax as costs; and (g) that a copy of the certificate was served on all parties and the date of service. **203.3 Delivery.** (a) **Endorsement; to whom delivered.** The deposition officer must endorse the title of the action and "Deposition of (name of witness)" on the original deposition transcript (or a copy, if the original was not returned) or the original nonstenographic recording of an oral deposition, and must return: (1) the transcript to the party who asked the first question appearing in the transcript, or (2) the recording to the party who requested it. (b) **Notice.** The deposition officer must serve notice of delivery on all other parties. (c) **Inspection and copying; copies.** The party receiving the original deposition transcript or non-stenographic recording must make it available upon reasonable request for inspection and copying by any other party. Any party or the witness is entitled to obtain a copy of the deposition transcript or non-stenographic recording from the deposition officer upon payment of a reasonable fee. **203.4 Exhibits.** At the request of a party, the original documents and things produced for inspection during the examination of the witness must be marked for identification by the deposition officer and annexed to the deposition transcript or non-stenographic recording. The person producing the materials may produce copies instead of originals if the party gives all other parties fair opportunity at the deposition to compare the copies with the	

originals. If the person offers originals rather than copies, the deposition officer must, after the conclusion of the deposition, make copies to be attached to the original deposition transcript or non-stenographic recording, and then return the originals to the person who produced them. The person who produced the originals must preserve them for hearing or trial and make them available for inspection or copying by any other party upon seven days' notice. Copies annexed to the original deposition transcript or non-stenographic recording may be used for all purposes. **203.5 Motion to Suppress.** A party may object to any errors and irregularities in the manner in which the testimony is transcribed, signed, delivered, or otherwise dealt with by the deposition officer by filing a motion to suppress all or part of the deposition. If the deposition officer complies with Rule 203.3 at least one day before the case is called to trial, with regard to a deposition transcript, or 30 days before the case is called to trial, with regard to a non-stenographic recording, the party must file and serve a motion to suppress before trial commences to preserve the objections. **203.6 Use.** (a) **Non-stenographic recording; transcription.** A non-stenographic recording of an oral deposition, or a written transcription of all or part of such a recording, may be used to the same extent as a deposition taken by stenographic means. However, the court, for good cause shown, may require that the party seeking to use a non-stenographic recording or written transcription first obtain a complete transcript of the deposition recording from a certified court reporter. The court reporter's transcription must be made from the original or a certified copy of the deposition recording. The court reporter must, to the extent applicable, comply with the provisions of this rule, except that the court reporter must deliver the original transcript to the attorney requesting the transcript, and the	

court reporter's certificate must include a statement that the transcript is a true record of the non-stenographic recording. The party to whom the court reporter delivers the original transcript must make the transcript available, upon reasonable request, for inspection and copying by the witness or any party. (b) **Same proceeding.** All or part of a deposition may be used for any purpose in the same proceeding in which it was taken. If the original is not filed, a certified copy may be used. "Same proceeding" includes a proceeding in a different court but involving the same subject matter and the same parties or their representatives or successors in interest. A deposition is admissible against a party joined after the deposition was taken if: (1) the deposition is admissible pursuant to Rule 804(b)(1) of the Rules of Evidence, or (2) that party has had a reasonable opportunity to redepose the witness and has failed to do so. (c) **Different proceeding.** Depositions taken in different proceedings may be used as permitted by the Rules of Evidence.	

Physical and Mental Examinations: Tex. R. Civ. P. 204

RULE 204. PHYSICAL AND MENTAL EXAMINATION **204.1 Motion and Order Required.** (a) **Motion.** A party may - no later than 30 days before the end of any applicable discovery period - move for an order compelling another party to: (1) submit to a physical or mental examination ~~by a qualified physician or a mental examination by a qualified psychologist~~by a suitably licensed or certified examiner; or (2) produce for such examination a person in the other party's custody, conservatorship or legal control. (b) **Service.** The motion and notice of hearing must be served on the person to be examined and all parties. (c) **Requirements for obtaining order.** The court may issue an order for examination only for good cause shown and only in the following circumstances: (1) when the mental or physical condition (including the blood group) of a party, or of a person in the custody, conservatorship or under the legal control of a party, is in controversy; or (2) except as provided in Rule 204.4, an examination by a psychologist may be ordered when the party responding to the motion has designated a psychologist as a testifying expert or has disclosed a psychologist's records for possible use at trial. (d) **Requirements of order.** The order must be in writing and must specify the time, place, manner, conditions, and scope of the examination and the person or persons by who~~m it is to be made~~will perform it.	The Discovery Subcommittee recommends revising TRCP 204.1(a) to adopt language in FRCP 35(a). This would permit vocational examinations and other similar examinations upon satisfaction of the other rule requirements. The Discovery Subcommittee recommends revising TRCP 204.1(d) to match FRCP 35(a)(2)(B) for clarity. The Discovery

204.2 Examiner's **Report ~~of Examining Physician or Psychologist~~.** (a) **Right to report** by the party or person examined**.** Upon request of the person ordered to be examined, the party causing the examination to be made must deliver to the person a copy of a detailed written report of the examining physician or psychologist. The court on motion may limit delivery of a report on such terms as are just. (b) **Contents of report.** The written report must set out in detail ~~setting out~~ the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. (c) **Request by the moving party.** ~~After delivery of the report, upon request of the party causing the examination, the party against whom the order is made must produce a like report of any examination made before or after the ordered examination of the same condition, unless the person examined is not a party and the party shows that the party is unable to obtain it. The court on motion may limit delivery of a report on such terms as are just.~~After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them. The court on motion may limit delivery of a report on such terms as are just. (d) **Waiver of privilege.** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition. (e) **Failure to deliver a report.** If a physician or psychologist fails or refuses to make a report the court may exclude the testimony if offered at the trial. (~~b~~f) **Agreements; relationship to other rules**. This subdivision applies to examinations made by agreement of the parties,	Subcommittee recommends breaking up the provisions of TRCP 204.2 into separately numbered paragraphs like FRCP 35(b) for clarity. The Discovery Subcommittee recommends revising TRCP 204.2(b) to add the language "in detail" from FRCP 35(b)(2). The Discovery Subcommittee recommends revising TRCP 204.2(c) to use language from FRCP 35(b)(3) for clarity. The Discovery Subcommittee recommends adding TRCP 204.2(d) based on FRCP 35(b)(4).

unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with the provisions of any other rule. **204.3 Effect of No Examination.** If no examination is sought either by agreement or under this subdivision, the party whose physical or mental condition is in controversy must not comment to the court or jury concerning the party's willingness to submit to an examination, or on the right or failure of any other party to seek an examination. **204.4 Cases Arising Under Titles II or V, Family Code.** In cases arising under Family Code Titles II or V, the court may - on its own initiative or on motion of a party - appoint: (a) one or more psychologists or psychiatrists to make any and all appropriate mental examinations of the children who are the subject of the suit or of any other parties, and may make such appointment irrespective of whether a psychologist or psychiatrist has been designated by any party as a testifying expert; (b) one or more experts who are qualified in paternity testing to take blood, body fluid, or tissue samples to conduct paternity tests as ordered by the court. **204.5 Definitions.** For the purpose of this rule, a psychologist is a person licensed or certified by a state or the District of Columbia as a psychologist.	