

Subcommittee Draft (November 17, 2011)

Rule 94a. Motion to Dismiss Claim Having No Basis in Law or Fact.

A. Grounds and content of motion.

(1) Upon motion and hearing, a court must dismiss a claim for relief that has no basis in law or fact.

(a) A claim has no basis in law when it is not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law or the establishment of new law.

(b) A claim has no basis in fact when no reasonable person could believe that the material allegations are true.

(2) A motion to dismiss must:

(a) state that it is filed pursuant to this rule;

(b) identify each claim subject to the motion and state whether the claim has no basis in law, no basis in fact, or both; and

(c) state the specific grounds for dismissal.

B. Time. A motion to dismiss a claim must be filed within 60 days after the pleading containing the claim was served and must be decided within 45 days of the hearing.

C. No evidence. The court must decide a motion to dismiss on the pleadings, accepting as true the facts pleaded, without considering evidence.

D. Right to amend. Before granting a motion to dismiss, the court must, upon request, allow the party asserting the claim to amend at least once.

E. No waiver of motion to transfer venue or special appearance. Neither the filing nor the determination of a motion to dismiss under this rule waives the right to seek a transfer of venue or dismissal for lack of personal jurisdiction.

37 **F. Attorneys' fees.** Upon granting or denying the motion in whole or in part, the court
38 must award costs and reasonable and necessary attorneys' fees to the prevailing party for
39 preparing and presenting, or responding to, the motion. This subsection does not apply
40 to actions by or against the state, other governmental entities, or public officials acting in
41 their official capacity or under color of law.

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43 **G. Family Code.** This rule does not apply in cases brought under the Family Code.

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45 **H. Dismissal procedure cumulative.** This rule is in addition to, and does not supersede
46 or affect, other procedures that authorize dismissal.