

## Subcommittee Draft (December 7, 2011)

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

#### 3 A. Grounds and content of motion.

5 (1) On motion a court must dismiss a claim that is not supported by existing law or by  
6 a reasonable argument for extending, modifying, or reversing existing law.

8 (2) In deciding the motion to dismiss the court must not hear evidence, except as to  
9 attorneys' fees, and must accept all allegations as true unless a reasonable person could  
10 not believe them.

12 (3) The motion to dismiss must state that it is filed pursuant to this rule, identify  
13 each claim subject to the motion, and state the specific reasons supporting the  
14 motion.

16 **B. Time.** A motion to dismiss a claim must be filed within 60 days after the pleading, or  
17 amended pleading, containing the claim was served and must be decided within 45 days  
18 after the motion was filed.

20 **C. Right to amend.** The court must allow the party asserting the claim and the party filing  
21 the motion to amend before the date of hearing or submission.

23 **D. Hearing.** Upon request the court must hold an oral hearing. Each party must be given  
24 at least seven days' notice of the date of hearing or submission.

26 **E. No waiver of venue motion or special appearance.** Notwithstanding the provisions  
27 of rules 86 and 120a, neither the filing nor the determination of a motion to dismiss under  
28 this rule waives the right to seek a transfer of venue or dismissal for lack of personal  
29 jurisdiction.

31 **F. Dismissal procedure cumulative.** This rule is in addition to, and does not supersede  
32 or affect, other procedures that authorize dismissal; but a motion filed under this rule must  
33 seek dismissal pursuant to this rule only and not pursuant to special exceptions or any  
34 other motion or pleading.

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

**H. Family Code.** This rule does not apply to cases brought under the Family Code.