

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 \$250,000 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 \$250,000.

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

- (1) *Discovery period.* For all cases except not governed by the Family Code, aAll discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues for 180 days.

For those cases governed by the Family Code, 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.

...

190.3 Discovery Control Plan - By Rule (Level 2)

(a) **Application.** Unless a suit is governed by a discovery control 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.* For all cases not governed by the Family Code aAll discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues until:

Commented [TC1]: Should we mention the family code here? Or in a comment

Commented [TC2]: Same comment

~~(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 first initial disclosures are due.

For those cases governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until thirty days before the date set for trial.

...

190.4 Discovery Control Plan - By Order (Level 3)

(a) Application. The court must, on a party's motion, and may, on its own initiative, order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of the specific suit. The parties may submit an agreed 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.

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:

Commented [TC3]: Does the new statute preclude trial court changes?

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

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

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

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

...

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.

Commented [TC4]: Does the new statute change this?

...

192.1 Forms of Discovery.

Permissible forms of discovery are:

(a) required disclosures, [except in cases governed by the Family Code](#);

[\(b\) Requests for Disclosures in cases governed by the Family Code](#)

[\(c\)](#) requests for production and inspection of documents and tangible things;

[\(d\)](#) requests and motions for entry upon and examination of real property;

[\(e\)](#) interrogatories to a party;

[\(f\)](#) requests for admission;

(~~g~~f) oral or written depositions; and

(~~h~~g) motions for mental or physical examinations.

192.2 Timing and Sequence of Discovery.

(a) Timing. Unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due, in cases not governed by the Family Code.

In cases governed by the Family Code, Requests for Disclosure can be served with the Original Petition.

(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*. 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. 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 the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained first-hand 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 in cases not governed by the Family Code.*

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) *for cases governed by the Family Code the scope of discovery for testifying experts is as follows:*

~~1-~~ A party may discover the following information regarding a testifying expert:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for those impressions and opinions, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting that information; and

Commented [TC5]: Not mentioned in the new statute. Do we keep this part for Family Law cases?

Commented [TC6]: Although not specifically discussed in the statute under "scope of discovery," the statute clearly limits expert discovery in 301.052

(D)if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

- (1) 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
- (2)the expert 's current resume and biography.

Commented [TC7]: Statute uses biography instead of bibliography

(g~~f~~) Indemnity and insuring agreements. Except as otherwise provided by law, a party may obtain discovery of 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.

(h~~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.

(i~~h~~) Statements of persons with knowledge of relevant facts.

...

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 or required disclosure to which they apply.

Commented [TC8]: Can this be done

...

RULE 194. REQUIRED DISCLOSURES IN CASES THAT ARE NOT GOVERNED BY THE FAMILY CODE.

194.1 Duty to Disclose; Production.

(a) Duty to Disclose. Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties 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.

(b) Production. If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with the response, the response must state a reasonable time and method for the production of these items. The responding party must produce the items at the time and in the method 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 Initial Disclosures.

(a) Time for Initial Disclosures. A party must make the initial disclosures within 30 days after the filing of the first answer or general appearance unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer or general appearance must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.

(b) Content. Without awaiting a discovery request, a party must provide to the other parties:

- (1) the correct names of the parties to the lawsuit;
- (2) the name, address, and telephone number of any potential parties;
- (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);
- (4) the amount and any method of calculating economic damages;
- (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;
- (6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding 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;
- (7) any indemnity and insuring agreements described in Rule 192.3(f);

- (8) any settlement agreements described in Rule 192.3(g);
- (9) any witness statements described in Rule 192.3(h);
- (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;
- (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; and
- (12) the name, address, and telephone number of any person who may be designated as a responsible third party.

~~(c) Content in Certain Suits Under the Family Code.~~

~~(1) In a suit for divorce, annulment, or to declare a marriage void, a party must, without awaiting a discovery request, provide to the other party the following, for the past two years or since the date of marriage, whichever is less:~~

~~(A) all deed and lien information on any real property owned and all lease information on any real property leased;~~

~~(B) all statements for any pension plan, retirement plan, profit sharing plan, employee benefit plan, and individual retirement plan;~~

~~(C) all statements or policies for each current life, casualty, liability, and health insurance policy; and~~

~~(D) all statements pertaining to any account at a financial institution, including banks, savings and loans institutions, credit unions, and brokerage firms.~~

~~(2) In a suit in which child or spousal support is at issue, a party must, without awaiting a discovery request, provide to the other party:~~

~~(A) information regarding all policies, statements, and the summary description of benefits for any medical and health insurance coverage that is or would be available for the child or the spouse;~~

~~(B) the party's income tax returns for the previous two years or, if no return has been filed, the party's Form W-2, Form 1099, and Schedule K-1 for such years; and~~

~~(C) the party's two most recent payroll check stubs.~~

(d) Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure:

(1) an action for review on an administrative record;

(2) a forfeiture action arising from a state statute;

(3) a petition for habeas corpus;

~~(4) an action under the Family Code filed by or against the Title IV-D agency in a Title IV-D case;~~

~~(5) a child protection action under Subtitle E, Title 5 of the Family Code;~~

~~(6) a protective order action under Title 4 of the Texas Family Code;~~

(7) other actions involving domestic violence; and

(8) an action on appeal from a justice court.

194.3 Testifying Expert Disclosures.

In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties testifying expert information as provided by Rule 195.

194.4 Pretrial Disclosures.

(a) In General. In addition to the disclosures required by Rule 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 exhibits, 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. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.

~~(c) Proceedings Exempt from Pretrial Disclosure. An action arising under the Family Code filed by or against the Title IV-D agency in a Title IV-D case is exempt from pretrial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure.~~

194.5 No Objection or Assertion of Work Product.

No objection or assertion of work product is permitted to a disclosure under this rule.

194.6 Certain Responses Not Admissible.

A disclosure under Rule 194.2(b)(3) and (4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

RULE 194A. REQUESTS FOR DISCLOSURE IN CASES GOVERNED BY THE FAMILY CODE [did not reformat due to time constraints]

Commented [TC9]: The statute is imported verbatim.

Sec. 301.051. REQUEST. Not later than the 30th day before the last day of any applicable discovery period, a party may obtain disclosure from another party of the information or material described by Section 301.052 by serving the other party the following request:

"Under Subchapter B, Chapter 301, Family Code, you are requested to disclose, not later than the 30th day after the date of service of this request, the information or material described by Section (state applicable provision of Section 301.052)."

Sec. 301.052. CONTENT. (a) A party may request disclosure under Section 301.051 of any or all of the following:

- (1) the correct names of the parties to the action;
- (2) the name, address, and telephone number of any potential parties;
- (3) the legal theories and, in general, the factual bases of the responding party's claims or defenses;
- (4) the amount and any method of calculating economic damages;
- (5) the name, address, and telephone number of any person having knowledge of relevant facts and a brief statement of each identified person's connection with the action;
- (6) for any testifying expert:
 - (A) the expert's name, address, and telephone number;
 - (B) the subject matter on which the expert will testify;
 - (C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for those impressions and opinions, or if

the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting that information; and

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) 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

(ii) the expert's current resume and biography;

(7) any discoverable settlement agreement described by Rule 192.3(g), Texas Rules of Civil Procedure;

(8) any discoverable witness settlement described by Rule 192.3(h), Texas Rules of Civil Procedure;

(9) in an action alleging physical or mental injury and damages from the occurrence that is the subject of the action:

(A) all medical records and bills that are reasonably related to the injuries or damages asserted; or

(B) an authorization permitting the disclosure of the information described by Paragraph (A);

(10) in an action alleging physical or mental injury and damages from the occurrence that is the subject of the action, all medical records and bills obtained by the responding party through an authorization provided by the requesting party; and

(11) the name, address, and telephone number of any person who may be designated as a responsible third party.

(b) For purposes of Subsection (a)(3), the responding party is not required to compile all evidence that may be offered at trial.

Sec. 301.053. RESPONSE. The responding party must serve a written response on the requesting party not later than the 30th day after the date the requesting party serves a request under Section 301.051, except that:

(1) a defendant served with a request before the defendant's answer is due is not required to respond until the 50th day after the date the request is served; and

(2) a response to a request under Section 301.052(a)(6) is governed by Subchapter C.

Sec. 301.054. PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS. The responding party shall provide copies of documents and other tangible items with the response to a request served under Section 301.051 unless:

(1) the responsive documents are voluminous;

(2) the responding party states a reasonable time and place for the production of the documents;

(3) the responding party produces the documents at the time and place stated under Subdivision (2) unless otherwise agreed by the parties or ordered by the court; and

(4) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

Sec. 301.055. WORK PRODUCT OBJECTION PROHIBITED. A party may not assert a work product privilege for or object on the basis of a work product privilege to a request served under Section 301.051.

Sec. 301.056. CERTAIN RESPONSES NOT ADMISSIBLE. A response to a request under Section 301.052(a)(3) or (4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES IN CASES THAT ARE NOT GOVERNED BY THE FAMILY CODE

...

RULE 195A DISCOVERY REGARDING TESTIFYING EXPERTS FOR CASES GOVERNED BY THE FAMILY CODE [[did not reformat due to time constraints]]

Sec. 301.101. PERMISSIBLE DISCOVERY METHODS. A party may request another party to designate and disclose information concerning testifying expert witnesses only through:

(1) a disclosure request served under Section 301.051; or

(2) a deposition or report permitted by this subchapter.

Commented [TC10]: The statute is imported verbatim.

Sec. 301.102. DEADLINE FOR RESPONSE. Unless otherwise ordered by the court, a responding party shall provide the information requested under Section 301.052(a)(6) not later than the later of:

(1) the 30th day after the date the request is served; or

(2) either, as applicable:

(A) with respect to an expert testifying for a party seeking affirmative relief, the 90th day before the end of the discovery period; or

(B) with respect to an expert not described by Paragraph (A), the 60th day before the end of the discovery period.

Sec. 301.103. DEPOSITION AVAILABILITY. (a) A party seeking affirmative relief shall make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with this section.

(b) If a party seeking affirmative relief does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party shall make the expert available for a deposition reasonably promptly after the designation. If the deposition cannot be reasonably concluded more than 15 days before the deadline for designating other experts due to the actions of the party who designated the expert, the court shall extend the deadline for other experts testifying on the same subject.

(c) If a party seeking affirmative relief provides a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.

(d) A party not seeking affirmative relief shall make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

Sec. 301.104. CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED REPORTS. In addition to a disclosure request served under Section 301.051, a party may obtain discovery by oral deposition and a report prepared in accordance with Section 301.105 of:

(1) the subject matter on which a testifying expert is expected to testify;

(2) the expert's mental impressions and opinions;

(3) the facts known to the expert, regardless of when the factual information is acquired, that relate to or form the basis of the expert's mental impressions and opinions; and

(4) other discoverable items, including documents not produced in response to a disclosure request.

Sec. 301.105. COURT-ORDERED REPORTS. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced in addition to the deposition.

Sec. 301.106. AMENDMENT AND SUPPLEMENTATION OF DISCOVERY. A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5, Texas Rules of Civil Procedure. If a party retains, employs, or otherwise controls an expert witness, the party must amend or supplement the expert's deposition testimony or written report only with regard to the expert's mental impressions or opinions and the basis for those impressions or opinions.

Sec. 301.107. COST OF EXPERT WITNESSES. When a party takes the oral deposition of an expert witness retained by an opposing party, the party retaining the expert shall pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

Sec. 301.108. EXPERT COMMUNICATIONS PROTECTED. Communications between a party's attorney and a testifying expert witness in an action subject to this chapter are protected 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 the expert will express; or

(3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.