Texas Supreme Court Advisory Committee
Discovery Subcommittee Proposed Amendments
February 2019

Key:

- Proposed rule amendments based on SCAC discussions September 2016-June 2017 are in yellow highlight in the draft.
- Deletions based on SCAC discussions September 2016-June 2017 have been removed from the draft.
- Previous subcommittee suggestions that were rejected by the SCAC have been removed.
- Discovery Subcommittee new suggested changes are underlined.

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

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) Initial Pleading. 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.

(b) Change by Court Order. On motion and showing of good cause by a party, the court may change the level designated by the plaintiff.

190.2 Discovery Control Plan - Expedited Actions and Divorces Involving $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 $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 initial disclosures are due and continues until 180 days after the date the initial disclosures are due.

(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 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.

(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 –Level 2

(a) **Application**. Discovery must be conducted in accordance with this subdivision for a level 2 suit.

(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 initial disclosures are due 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 initial disclosures are due; or

(C) a docket control order sets a new date for the end of 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.

(4) **Requests for Production.** Any party may serve on any other party no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

190.4 Discovery Control Plan - Level 3(a) **Application.** Discovery under level 3 is governed by this rule. After a conference required by this rule, the parties must submit a discovery control plan and proposed order(s) to the court for its consideration. The plan must include the items listed in 190.4(c).

(b) Conference

(1) **Conference timing.** 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 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. Unless otherwise ordered by the court,** a party may not seek discovery from any party before the parties have conferred as required by this rule. This does not include initial disclosures.

(c) **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) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses;

(4) what changes should be made in the timing, or form, of the initial 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 discovery imposed under these rules or by local rule, and what other limitations should be imposed;

(9) Dispositive Motion deadlines;

(10) Expert challenges deadlines; and

(11) proposed docket control order(s).

(d) Docket Control Order. Upon receipt of the discovery control plan, the trial court must issue a docket control order.

190.5 Modification of Docket Control Order

The court may modify a docket control order 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 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.

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.

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. 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, and service e-mail address; or
>
> (2) by the party, if the party is not represented by an attorney, and must show the party's address, telephone number, and service email address, if any.

(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;

(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.

(d) **Effect of failure to sign.** 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, 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) 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.

192.2 Timing and Sequence of Discovery.

(a) **Timing.** Unless otherwise agreed to by the parties, or ordered by the court a party may not serve discovery until after the initial disclosures are 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 the subject matter of the pending action 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.

(b) **Documents, information and tangible things.** A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of documents, information 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) **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

(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.

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 194 concerning experts, trial witnesses, witness statements, and contentions;

(2) trial exhibits ordered disclosed under Rule 166 or Rule 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.

(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. 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. 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 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.

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 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 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. DUTY TO DISCLOSE

194.1 Required Disclosures.

(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.

(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 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 Initial Disclosures.

(a) **Time for initial disclosures.** Both the plaintiff and the defendant must make the initial disclosures at or within 30 days after the filing of the defendant's answer unless a different time is set by agreement or court order. 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 agreement or court order.

(b) **Content.** Without awaiting a discovery request, a party must provide the following:

(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 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) a computation of each category of damages claimed by a party. Each disclosing party must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

(5) the name, address, e-mail, 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;

(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;

(7) 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

(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;

(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.;

(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;

(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:

(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.

194.2A Initial Disclosures Under Title I and V of the Texas Family Code [R. Orsinger to report from family law bar].

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.

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.

194.5 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.

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 disclosure under Rule 194 and through other discovery permitted by this rule.

195.2 Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts - that is, furnish information described in Rule 195.5(b) - by the following dates:

(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.

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 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.

195.5 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 and for any expert who has been retained or specially employed in anticipation of litigation or to prepare for trial and 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 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; 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 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.

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

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY

196.1 Request for Production and Inspection to Parties.

(a) **Request.** A party may serve on another party a request for production or for inspection within the scope of discovery, to inspect, sample, test, photograph and copy the following items in the responding party's possession, custody, or control:

> (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.

(c) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 15 requests for production or for inspection in a Level 1 case or 25 requests for production or for inspection in Level 2 or Level 3 cases, including all discrete subparts.

(d) **Contents of request.** The request

> (1) must describe with reasonable particularity each item or category of items to be inspected;
>
> (2) must specify a reasonable time (on or after the date on which the response is due), 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.

(e) **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.

(b) **Content of response.** For each item or category of items, the response:

(1) must either state that inspection and related activities will be permitted as requested or state an objection or privilege under Rule 193.;

(2) 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.

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 the place requested or the 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. Copies must be produced on the same level of resolution as the originals. If originals are produced, the responding party is entitled to retain the originals while the requesting party inspects and copies them.

(c) **Organization.** The responding party must 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.

196.4 Electronically Stored Information.

(a) **Request.** To obtain discovery of electronically stored information, the requesting party must specify the form in which the requesting party wants it produced.

(b) **Responses and Objections.** The response:

> (1) must either state that production of the electronically stored information that is responsive to the request and is reasonably available to the responding party in its ordinary course of business will occur or state an objection or privilege under Rule 193;
>
> (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. The court must order a reasonable form of production, considering the scope and limitations of discovery. If the court orders the responding party to comply with the request that the responding party cannot—through reasonable efforts—retrieve or produce as requested, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

(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 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 the land or property belongs to a non-party, the party seeking entry onto designated land or other property possessed or controlled by the nonparty must file a motion and notice of hearing on all parties and the 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.

(c) **Requested time, place, and other conditions of inspection.** 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.

(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.

(2) **Content of response.** The responding party must state an objection or privilege under Rule 193, and state, as appropriate, that:

(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.

(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 of the action.

Interrogatories: Tex. R. Civ. P. 197

RULE 197. INTERROGATORIES TO PARTIES

197.1 Interrogatories – In General.

(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.

(b) **Scope.** A written interrogatory 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.

(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.

(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.

(c) **Content of response.** A response must include the party's answers to the interrogatories and may include objections and assertions of privilege under Rule 193.

(d) **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, 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

(3) 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 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.

(a) **Request.** A party may serve on another party 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) facts, the application of law to fact, or opinions about either; and

(2) the genuineness of any described documents.

(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.

(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.

198.2 Response to Requests for Admissions.

(a) **Time 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. If a response is not timely served, the request is considered admitted without the necessity of a court order.

(b) **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.

(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.

198.3 Effect of an Admission; Withdrawal or Amendment.

An admission made by a party under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. An admission made by a party under this rule may be used only against the responding party. A matter admitted under this rule is conclusively established 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 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.

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) **Hour limitations.** Unless otherwise stipulated or ordered by the court, each party may have no more than the following amount of time for depositions:

(1) For Level 1 cases, 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 additional expert designated. The court may modify the deposition hours so that no party is given unfair advantage.

(2) For Level 2 cases, 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) For Level 3 cases, each side may have no more than 60 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.

(c) **Depositions by remote means.** The parties may stipulate—or the court may on motion

order—an oral deposition by telephone or other remote electronic means. 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.

(d) **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 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. The motion must offer an alternative time and place for oral 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. An objection at the time of the examination to the officer's 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. 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.

(c) **Qualifications and Objections to Translator** [Placeholder]

(d) **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.

(e) **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 that reflect upon the credibility of the witness or the testimony.

(f) **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.

(g) **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.

(h) **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.

(i) **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.

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 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 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 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;

(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 suitably licensed 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 will perform it.

204.2 Examiner's Report.

(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 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 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 an examiner fails or refuses to make a report the court may exclude the testimony if offered at the trial.

(f) **Agreements; relationship to other rules**. This subdivision applies to examinations made by agreement of the parties, 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.

Discovery from Non-Parties: Tex. R. Civ. P. 205

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.

Sanctions, including spoliation: Tex. R. Civ. P. 215

RULE 215. ABUSE OF DISCOVERY; SANCTIONS **215.1 Motion for Sanctions or Order Compelling Discovery.** A party, upon reasonable notice to other parties and all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows:	
a) **Appropriate court.** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty may be made in any district court where the discovery is or will be taken if different from the district where the action is pending. ~~On matters relating to a deposition, an application for an order to a party may be made to the court in which the action is pending, or to any district court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken. As to all other discovery matters, an application for an order will be made to the court in which the action is pending.~~	Parties must go to the court where case is pending; nonparties to the district where discovery taken if different from where action pending. NOTE: This allows nonparties who have to produce documents only to go to local court.
(b) **Motion.** (1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 194, any other party may move to compel disclosure and for the imposition of any sanction authorized by Rule 215.2(b) without the necessity of first having obtained a court order compelling such disclosure. (2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, response, designation, production, or inspection. This motion may be made if: (i) If a party or other deponent which is a corporation or other entity fails to make a designation under Rules 199.2(b)(1) or 200.1(b); or (ii~~2~~) if a party, or other deponent, or a person designated to testify on behalf of a party or other	Changed now that adopting initial disclosures. Used the federal rule's division between failure to make a disclosure and failure to respond to a request. This changes this rule substantively to allow for sanctions (other than fees) without a previous order compelling discovery ONLY when the party fails to make initial disclosures. The second portion of (b)(1) has been moved from elsewhere in the current rule.

deponent fails: (A) to appear before the officer who is to take his deposition, after being served with a proper notice; or (B) to answer a question propounded or submitted upon oral examination or upon written questions; or (iii~~3~~) if a party fails: (A) to serve answers or objections to interrogatories submitted under Rule 197, after proper service of the interrogatories; or (B) to answer an interrogatory submitted under Rule 197; or (C) to serve a written response to a request for inspection submitted under Rule 196, after proper service of the request; or (D) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under Rule 196.~~;~~ ~~the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the court in which the action is pending for the imposition of any sanction authorized by Rule 215.2(b) without the necessity of first having obtained a court order compelling such discovery.~~ When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 192.6. c) **Evasive or incomplete answer.** For purposes of this	

subdivision an evasive or incomplete answer is to be treated as a failure to answer. (d) **Disposition of motion to compel: award of expenses.** If the motion is granted, the court ~~shall~~must, after opportunity for hearing, require a party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay, at such time as ordered by the court, the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal from the final judgment. If the motion is denied, the court may, after opportunity for hearing, require the moving party or attorney advising such motion to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner. In determining the amount of reasonable expenses, including attorney fees, to be awarded in connection with a motion, the trial court shall award expenses which are reasonable in relation to the amount of work reasonably expended in obtaining an order compelling compliance or in opposing a motion which is denied. (e) **Providing person's own statement.** If a party fails to comply with any person's written request for the person's own statement as provided in Rule 192.3(h), the person who made the request may move for an order compelling compliance. If the motion is granted, the movant may recover the expenses incurred in obtaining the order, including attorney fees, which are reasonable in relation to the amount of work reasonably expended in obtaining the order.	Note TX uses “may” for award of sanctions after denial of motion. Federal Rules say “must”.

215.2 Failure to Comply with Order or with Discovery Request.

(a) **Sanctions by court in district where deposition is taken.** If a deponent fails to appear or to be sworn or to answer a question after being directed to do so by a district court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(b) **Sanctions by Court in Which Action is Pending.** If a party or an officer, director, or managing agent of a party or a person designated under Rules 199.2(b)(1) or 200.1(b) to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under Rules 204 or 215.1, the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are just, and among others the following:

(1) an order disallowing any further discovery of any kind or of a particular kind by the disobedient party;

(2) an order charging all or any portion of the expenses of discovery or taxable court costs or both against the disobedient party or the attorney advising him;

(3) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(5) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(6) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the

failure to obey any orders except an order to submit to a physical or mental examination; (7) when a party has failed to comply with an order under Rule 204 requiring him to appear or produce another for examination, such orders as are listed in paragraphs (1), (2), (3), (4) or (5) of this subdivision, unless the person failing to comply shows that he is unable to appear or to produce such person for examination. (8) In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay, at such time as ordered by the court, the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Such an order shall be subject to review on appeal from the final judgment. c) **Sanction against nonparty for violation of Rules 196.7 or 205.3.** If a nonparty fails to comply with an order under Rules 196.7 or 205.3, the court which made the order may treat the failure to obey as contempt of court. **215.3 Abuse of Discovery Process in Seeking, Making, or Resisting Discovery.** If the court finds a party is abusing the discovery process in seeking, making or resisting discovery or if the court finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for purposes of delay, then the court in which the action is pending may, after notice and hearing, impose any appropriate sanction authorized by paragraphs (1), (2), (3), (4), (5), and (8) of Rule 215.2(b). Such order of sanction shall be subject to review on appeal from the final judgment. **215.4 Failure to Comply with Rule 198** (a) **Motion.** A party who has requested an admission under Rule 198 may move to determine the sufficiency of the answer or	Note 215.4 could be included in Rule 198.

objection. For purposes of this subdivision an evasive or incomplete answer may be treated as a failure to answer. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of Rule 198, it may order either that the matter is admitted or that an amended answer be served. The provisions of Rule 215.1(d) apply to the award of expenses incurred in relation to the motion. (b) **Expenses on failure to admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 198 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 193, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had a reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit. **215.5 Failure of Party or Witness to Attend to or Serve Subpoena; Expenses.** (a) **Failure of party giving notice to attend.** If the party giving the notice of the taking of an oral deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees. (b) **Failure of witness to attend.** If a party gives notice of the taking of an oral deposition of a witness and the witness does not attend because of the fault of the party giving the notice, if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in	

attending, including reasonable attorney fees.

215.6 Exhibits to Motions and Responses.

Motions or responses made under this rule may have exhibits attached including affidavits, discovery pleadings, or any other documents.

215.7 Duty to Preserve Electronically Stored Information; Sanctions

(a) Duty. A party has a duty to take reasonable and proportional steps to preserve electronically stored information relevant to the dispute or lawsuit after:

(1) Service of a citation;
(2) Service of a notice that complies with 215.7(b); or
(3) From the time a claim of privilege under 192.5(a) arises.

(b) **Notice.** A written notice to preserve electronically stored information or of litigation triggers the duty described in 215.7(a). The notice shall state with specificity the claim or claims of the anticipated action. A party receiving such notice must take reasonable and proportional steps to preserve electronically stored information, which may differ from steps that the party seeking preservation demands.

(c) **Failure to Preserve Electronically Stored Information.** A court may order sanctions described in 215.7(d) if electronically stored information that should have been preserved is lost because:

(1) a party failed to take reasonable steps to preserve it;
(2) it cannot be restored or replaced through additional discovery; and
(3) the trial court finds prejudice to another party from loss of the information.

(d) **Sanctions.**

(1) the party may present evidence concerning the loss of the evidence;
(2) the court may order measures no greater than necessary to cure the prejudice but must not comment

on the failure to preserve the evidence or instruct the jury that a duty to preserve the evidence existed or the consequences of the failure to produce the evidence; and (3) only upon the trial court finding that the party acted with the intent to deprive another party of the information's use in the litigation, the trial court may: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment. (e) **Safe harbor.** Unless a party is subject to the duty to preserve described in 215.7(a), a party's management of electronically stored information in accordance with its usual course of business or ordinary practices does not constitute an intent to deprive another party the information's use in the litigation for purposes of 215.7(d)(3).	
215.8. Failure to Participate in Framing a Discovery Plan. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), 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.	Texas needs this.