



DURHAM, PITTARD & SPALDING, L.L.P.

Texas ▪ New Mexico

MEMORANDUM

TO: Firm
FROM: Thad D. Spalding
DATE: December 30, 2020
RE: 2020 Discovery Rule Amendments – Applies to cases filed on or after 1/1/21

Table with 3 columns: Rule, Old law, New law. Rows include: 47 - Claims for Relief, 99 - Issuance/Form of Citation, 169 - Expedited Actions, 190 - Discovery Limitations.

1 Link to December 23, 2020 Order with redlined rule changes: https://www.txcourts.gov/media/1450176/209153.pdf.

	<p>Discovery period begins when suit is filed and continues until 180 days after the date the 1st discovery request is served on a party</p> <p>Time for depositions - 6 hours</p> <p>RFDs - allowed for an additional RFD to include “all documents, electronic info, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses.”</p> <p>Level 2 Discovery period - begins when suit is filed and ends earlier of 30 days before trial or 9 months after the earlier of date of 1st depo or due date of 1st response to written discovery</p>	<p>Discovery period begins when the 1st initial disclosures are due and continues for 180 days.</p> <p>Time for depositions - 20 hours</p> <p>RFDs - deletes provision for additional RFD category (moved to Rule 194.2)</p> <p>Level 2 Discovery period - begins when the first initial disclosure is due and ends earlier of 30 days before trial or 9 months after first initial disclosures are due</p>
192 – Permissible Discovery, etc.	<p>192.1 – Forms of Discovery (a) <i>requests for disclosure</i></p> <p>192.2 – Sequence of Discovery May be combined in same document and may be taken in any order or sequence.</p>	<p>192.1 – Forms of Discovery (a) <i>required disclosures</i></p> <p>192.2 – <i>Timing and Sequence of Discovery</i> Adds timing provision – unless otherwise agreed or ordered, <i>cannot serve written discovery on another party until after the other party's initial disclosures are due</i></p>
193 – Written Discovery		Adds references to “required” disclosures throughout. Otherwise, no real substantive change.
194 – Disclosures	<p><i>Requests for Disclosures</i> 194.1 – Request</p> <p>194.2 - Content</p>	<p><i>Required Disclosures</i>² 194.1 – Duty to Disclose; Production. (a) Duty to disclose – must disclose to other parties info or material described in 194.2, 194.3, 194.4 (b) Production – If party does not produce copies of all responsive documents...response must state reasonable time and method for the production of these items.</p> <p>194.2 – Initial Disclosures</p>

² Per comment, “Rule 194 is amended based on FRCP 26(a) to require disclosure of basic discovery automatically, without awaiting a discovery request.”

	<p>194.3-Response</p> <p>194.4-Production</p>	<p>(a) Time – must make initial disclosures w/i 30 days after filing of <i>the first answer or general appearance</i>, unless different time set by agreement or court order. Party first served or otherwise joined after the filing of the first answer or general appearance must make initial disclosures within 30 days after being served or joined.</p> <p>(b) Content – same as prior Rule 194.2, except:</p> <ul style="list-style-type: none"> • (6) copy – or description by category and location – of all documents...that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment • Removes required information for expert witnesses (<i>moved to 195.5</i>) <p>(c) Content in Certain Suits Under Family Code</p> <p>(d) Proceedings exempt from initial disclosure – see list</p> <p>194.3-Testifying Expert Disclosures In addition to disclosures required by 194.2, a party must disclose to other parties testifying expert info as provided by 195.</p> <p>194.4 – Pretrial Disclosures</p> <p>(a) General – in addition to 194.2 and 194.3, must provide to other parties <i>and promptly file</i> following info about evidence it may present at trial (other than impeachment):</p> <ol style="list-style-type: none"> 1. Witnesses – name and, if not previously provided, address and phone # of each witness – separately identifying those the party expects to present and those it may call if need arises. 2. Exhibits – identification of each document or other exhibits, including summaries of other evidence – separately identifying those it expects to offer and those it may offer <p>(b) Time – Unless ordered otherwise, 30 days before trial.</p> <p>(c) Proceedings exempt from pretrial disclosures – certain family code cases.</p>
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<p>195 – Testifying Experts</p>	<p>195.2 – Schedule Unless otherwise ordered, must designate by later of 30 days after RFD is made or: (a) Parties seeking aff relief--90 days before end of discovery period; (b) All others – 60 days before end of discovery period</p> <p>195.5 – Court Ordered Reports Court may order opinions of an expert reduced to tangible form</p>	<p>195.2 – Schedule Removes the “30 days after RFD” deadline</p> <p>195.5 – Expert Disclosures and Reports (a) Disclosures – same general content as 194.2(f), <i>except adds 3 new disclosures based on FRCP 26(a)(2)(B)</i>: (C) – expert qualifications, including all publications authored in last 10 years; (D) – except for attorneys re: attorney’s fees, a list of all cases in which, during previous 4 years, expert has testified at trial or depo; (E) – statement of compensation to be paid for expert’s “study and testimony” in the case.</p> <p>(b) Expert reports – court can order opinions reduced to tangible form (same as old 195.5)</p> <p>(c) Expert communications protected³ – communications between expert and attorney are protected from discovery, regardless of form, except to extent that: 1. relates to compensation of expert; 2. identify facts or data that attorney provided and expert considered; or 3. identify assumptions that attorney provided and expert relied on in forming opinion.</p> <p>(d) Draft expert reports and disclosures protected⁴ – protected from discovery regardless of form in which draft is recorded.</p>
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³ Based on FRCP 26(b)(4)(C).

⁴ Based on FRCP 26(b)(4)(B).

196 – Requests for Production	<p>196.2 – Response to RFP & Inspection (a) Time for Response - Defendant served with request before answer is due need not respond until 50 days after service of the request.</p> <p>196.7 – Request of Motion for Entry Upon Property (c)(1) - 50-day deadline to respond if request served prior to answer deadline</p>	<p>196.2 – Response to RFP & Inspection (a) removes the 50-day deadline, since you cannot serve RFP's with your petition anymore</p> <p>196.7 – Request of Motion for Entry Upon Property (c)(1) - removes 50-day deadline</p>
197 – Interrogatories	<p>197.2 – Response to Interrogatories (a) Time for Response - Defendant served with request before answer is due need not respond until 50 days after service of the request.</p>	<p>197.2 – Response to Interrogatories (a) removes 50-day deadline</p>
198 – Admissions	<p>198.2 – Responses to Requests for Admissions (a) Time for Response - Defendant served with request before answer is due need not respond until 50 days after service of the request.</p>	<p>198.2 – Responses to Requests for Admissions (a) removes 50-day deadline</p>