MEETING MATERIALS
JULY 11, 1997
SCAC MEETING

INDEX

1. Report on Rule 706, Appointment of Experts

2. Report on Rule 76a

3. Report of Subcommittee on TRCP 166-209 regarding Third Supplemental Agenda

4. Report on Texas Rules of Civil Procedure -- Recodification Project

6/27/97
4543.001
cc: LHS

JAMES W. HAMBRIGHT
GILBERT I. LOW
J. HOKE PEACOCK II
JOHN CREIGHTON III
JAMES H. CHESNUTT II
J. B. WHITTENBURG
GARY NEALE REGER
JOHN W. NEWTON III
D. ALLAN JONES
HOLLIS HORTON
LOIS ANN STANTON
ROBERT J. HAMBRIGHT
HOWARD L. CLOSE
CURRY L. COOKSEY
CHARLES K. KEBODEAUX
MICHAEL J. TRUNCALE
LANCE C. FOX
LEANNE JOHNSON
DAVID J. FISHER
JOHN W. JOHNSON
JACK P. CARROLL

ORGAIN, BELL & TUCKER, L.L.P.

ATTORNEYS AT LAW

470 ORLEANS STREET

BEAUMONT, TEXAS

77701

TELEPHONE (409) 838-6412

FAX (409) 838-6959

T. LYNN WALDEN
DONEAN SU[illegible]
DAVID G. ALLEN
LARRY A. FLOURNOY, JR.
CLAUDE R. LEMASTERS
JONATHAN GILCHRIST
WILLIAM A. DAVIS, JR.
SCOTT L. FRANCK
MARTHA R. CAMPBELL
JACQUELINE B. RYALL
GLENN D. SEELEY

OF COUNSEL:
B. D. ORGAIN
STANLEY PLETTMAN
BENNY H. HUGHES, JR.

JOHN G. TUCKER (RETIRED)
CLEVE BACHMAN (RETIRED)

WILL E. ORGAIN (1882-1965)
MAJOR T. BELL (1897-1969)

June 25, 1997

Mr. Luther H. Soules III
Soules & Wallace
Frost Bank Tower, 15th Floor
100 W. Houston, Suite 1500
San Antonio, TX 78205-1457

Dear Luke:

Enclosed herein please find Chart Showing Action Taken by Supreme Court Advisory Committee at Meeting of May 16-17, 1997. Please make copies to distribute at the meeting.

Thanks.

Sincerely,

Gilbert I. Low

GIL:cc

Enclosure

CHART SHOWING ACTION TAKEN
BY SUPREME COURT ADVISORY COMMITTEE
AT MEETING OF MAY 16-17, 1997

RULE NO.	ACTION TAKEN BY SUPREME COURT ADVISORY COMMITTEE
705	Approve recommendation of Evidence Subcommittee so that rule that previously applied only to criminal cases is now applied to both civil and criminal
106 & 107	Approve recommendation of Evidence Subcommittee to change comment in rule to refer to "Rule 107" instead of Article 38.24
202 & 204	Approve recommendation of Evidence Subcommittee to provide for mandatory judicial notice upon motion of a party if other requirements of rule are satisfied
410	Voted to make no change in Rule 410
509 & 510	Approve recommendation of Evidence Subcommittee to update and cite correct authorites
513(d)	Approve recommendation of Evidence Subcommittee to apply instruction to both civil and criminal cases
802	Approve recommendation of Evidence Subcommittee to make no change
103(a)(2)	Voted to make rule same for both civil and criminal by merely striking the words "additionally in criminal cases." *Rule as adopted is attached hereto
702	Voted to have Evidence Subcommittee consider this rule further and also consider procedural rule in connection therewith
706	It was decided that Paul Gold and Paula Sweeney would be added to committee and further work would be done on this with regard to the Evidence Subcommittee version and the State Bar Evidence Committee version

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

(a) **Disclosure of Facts or Data.** The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.

(b) **Voir Dire.** Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered shall, upon request, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) **Admissibility of Opinion.** If the court determines that the expert does not have a sufficient basis for the expert's opinion, the opinion is inadmissible unless the party offering the testimony first establishes sufficient underlying facts or data.

(d) **Balancing Test; Limiting Instructions.** When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If the facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Notes and Comments

COMMENT TO 1997 CHANGE: This rule does not preclude a party in any case from conducting a voir dire examination into the qualifications of an expert or into the bases of the expert's opinion under Rule 703. This rule does not preclude the application of Rule 403.[1]

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[1]The prior Criminal Evidence Rule comment provided, "This rule does not preclude a party from conducting a voir dire examination into the qualifications of an expert."

RULE 103(a)(2)

Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence must be made known to the court by offer or was apparent from the context within which questions were asked.

JAMES W HAMBRIGHT
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ATTORNEYS AT LAW

470 ORLEANS STREET

BEAUMONT, TEXAS

77701

TELEPHONE (409) 838-6412

FAX (409) 838-6959

T LYNN WALDEN
DONEAN SURRATT
DAVID G ALLEN
LARRY A FLOURNOY, JR
CLAUDE R LEMASTERS
JONATHAN GILCHRIST
WILLIAM A DAVIS, JR
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MARTHA R CAMPBELL
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WILL E ORGAIN (1882-1965)
MAJOR T BELL (1897-1969)

June 25, 1997

Mr. Luther H. Soules III
Soules & Wallace
Frost Bank Tower, 15th Floor
100 W. Houston, Suite 1500
San Antonio, TX 78205-1457

Dear Luke:

The Subcommittee on Evidence met concerning Rule 706. There were many differences of opinion and we were unable to come up with a specific recommendation. However, we have three alternatives and it was decided that we should perhaps submit again to the Committee the question of whether or not we should draw a rule providing for advisory experts to assist the court. Therefore, it was recommended as follows by the Evidence Subcommittee:

1. Discussion at our next meeting as to whether or not there should be a rule pertaining to advisory experts to assist the court; and

2. If there is a rule, then we have three alternative rules to be discussed by the full Supreme Court Advisory Committee. These alternative rules are included as follows:

(1) Amendments to the original rule that was drafted by the Evidence Subcommittee which finalizes the draft proposed by the Evidence Subcommittee;

(2) The rule drawn by the State Bar Committee on Evidence, along with recommended changes by the Supreme Court Advisory Subcommittee on Evidence; and

(3) Simplify alternative 3 which was drafted by one or more members of the Supreme Court Advisory Evidence Subcommittee.

Thank you very much.

Sincerely,

Gilbert I. Low

GIL:cc

P.S. Please make copies to distribute at the meeting.

BL

cc: Mr. Paul Gold
Ms. Paula Sweeney
Mr. Tommy Jacks
Mr. John H. Marks, Jr.
Judge Scott A. Brister

RULE 706. ADVISORY EXPERTS RETAINED TO ASSIST THE COURT

(a) **Retention.** The court may on its own motion or on the motion of any party enter an order to show cause why an advisory expert should not be retained to assist the court in [performing its gate-keeping function with respect to expert testimony/ruling on a Rule 702 objection]*, and may request the parties to submit nominations. The court may retain an advisory expert agreed upon by the parties, or may retain an advisory expert of its own selection. An advisory expert shall not be retained by the court unless the advisory expert consents to act. An advisory expert so retained shall be informed by the court that the advisory expert's duties are to evaluate whether the criteria of Rule 702 have been met by the challenged expert(s). An advisory expert so retained shall advise the court of the advisory expert's findings in a written report which complies with Rule 166(b)(2)(e) and which points out which criteria of Rule 702 have and have not been met by the challenged expert(s). The advisory expert's deposition may not be taken by any party nor may any party have any contact or communication with the advisory expert nor may the advisory expert be called to testify at trial or any hearing by the court or any party.

(b) **Compensation.** An advisory expert so retained is entitled to reasonable compensation in whatever sum the court may authorize in the exercise of its discretion. The compensation thus fixed is payable from funds which may be provided by law in criminal cases

and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) **Disclosure of Retention and Findings.** The fact that the court retained the advisory expert and the advisory expert's findings shall not be disclosed to a jury in that or any other litigation. The advisory expert's findings shall not be a part of the record for any purpose other than review of a court's order [in performing its gate-keeping function with respect to expert testimony/on a Rule 702 objection].**

(d) **Parties' Experts of Own Selection.** Nothing in this rule limits the parties in calling expert witnesses of their own selection.

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* Alternate ways of describing a Robinson v. DuPont hearing.
** Alternate ways of describing a Robinson v. DuPont hearing.

RULE 706. ADVISORY EXPERTS ~~APPOINTED~~ RETAINED TO ASSIST THE COURT

(a) ~~Appointment~~. Retention. The court may on its own motion or on the motion of any party enter an order to show cause why an advisory expert ~~witness~~ should not be ~~appointed~~ retained to assist the court in [performing its gate-keeping function with respect to expert testimony/ruling on a Rule 702 objection]*, and may request the parties to submit nominations. The court may ~~appoint~~ retain an advisory expert ~~witness~~ agreed upon by the parties, ~~and~~ or may ~~appoint~~ retain an advisory expert ~~witness~~ of its own selection. An advisory expert ~~witness~~ shall not be ~~appointed~~ retained by the court unless the advisory expert ~~witness~~ consents to act. An advisory expert ~~witness~~ so ~~appointed~~ retained shall be informed by the court that the advisory expert's duties are to evaluate whether the criteria of Rule 702 have been met by the challenged expert(s). An advisory expert so retained shall advise the court of the advisory expert's findings in a written report which complies with Rule 166(b)(2)(e) and which points out which criteria of Rule 702 have and have not been met by the challenged expert(s). ~~A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk. A witness so appointed shall advise the parties and the court of the witness' findings in writing.~~ The ~~witness'~~ advisory expert's deposition may not be taken by any party nor may any party have any contact or communication with the ~~witness~~ advisory expert ~~except to the extent allowed herein,~~ nor may the ~~witness~~ advisory expert be called to testify at trial or any hearing by the court or any party.

(b) Compensation. An advisory expert ~~witness~~ so ~~appointed~~ retained is entitled to reasonable compensation in whatever sum the court may authorize in the exercise of its discretion. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil

actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) **Disclosure of ~~Appointment~~ Retention and Findings.** The fact that the court ~~appointed~~ retained the advisory expert ~~witness~~ and the advisory expert's ~~witness'~~ findings shall not be disclosed to a jury in that or any other litigation. The advisory expert's ~~witness'~~ findings shall not be a part of the record for any purpose other than review of a court's order [in performing its gate-keeping function with respect to expert testimony/on a Rule 702 objection].**

(d) **Parties' Experts of Own Selection.** Nothing in this rule limits the parties in calling expert witnesses of their own selection.

---

* Alternate ways of describing a Robinson v. DuPont hearing.
** Alternate ways of describing a Robinson v. DuPont hearing.

Comments of the Supreme Court Rules Advisory Committee's Subcommittee on Rule 706 on the State Bar Rules Committee's draft of Rule 706

EXHIBIT # 1

Rule 706. ~~Appointment~~ Retention of an Expert to Advise the Court on Admissibility of Scientific Opinions

(A) Authority to ~~Appoint~~ Retain. When a court learns that a party in a civil or criminal case will offer or proposes to offer into evidence an expert witness' opinions based to a significant degree upon scientific principles or scientific methodology, the court may ~~appoint~~ retain an ~~qualified~~ expert to advise the court as specified in this rule. 1

1. The term "appoint" should be changed to "retain" throughout to more accurately reflect the contemplated process.
2. The word "qualified" in line 3 should be deleted. Otherwise, preliminary litigation over the expert's qualifications is encouraged, leading to additional delay and cost.
3. Section (A) does not limit the court's use of the Rule 706 process to situations in which there is a challenge by one or more parties to an expert tendered by another party. Without such challenge, the Rule 706 ability to retain an expert does not apply.

(B) The ~~Appointment~~ Retention. The court may request the parties to submit nominations and may ~~appoint~~ retain either an ~~qualified~~ Advisory Expert agreed upon by the parties or an ~~qualified~~ Advisory Expert of its own selection. The court, prior to ~~appointment~~ retention shall find that the Advisory Expert has the requisite scientific knowledge to be qualified to perform the duties specified in this Rule. The order ~~appointing~~ retaining the Advisory Expert shall be in writing and shall state the duties of the Advisory Expert and the limitations upon the ~~authority~~ issues to be addressed by ~~of~~ the Advisory Expert. The order shall give an outline of the factors in Rule 702 generally to be considered in evaluating the reliability of scientific principles and methodologies. The order shall be filed with the clerk of the court and copies delivered to the Advisory Expert and to each party. No person may be ~~appointed~~ retained as an Advisory Expert until that person has agreed in writing to act.

1. The word "qualified" in line 2 is deleted for the reason stated above.
2. The word "authority" is deleted in line 6 and replaced with "issues to be addressed" to clearly delineate the limited scope of the Advisory Expert's duties under this Rule and Rule 702.
3. "...in Rule 702" is added to line 7 for the same reasons.

(C)Role of the ~~Appointed~~ Retained Advisory Expert. The general duty of the Advisory Expert is to furnish written advice to the court as to whether the particular scientific principles and the particular scientific methodologies relied upon by a party's scientific expert are, in the opinion of the Advisory Expert, sufficiently reliable to assist the trier of fact to understand the proffered expert's evidence or to determine a fact in issue. The Advisory Expert shall not express any opinion or evaluation regarding the validity, accuracy or credibility of the opinions of a party's proffered expert witness.

(D) Report and Opinions of the ~~Appointed~~ Retained Advisory Expert. The Advisory Expert shall proceed after appointment with reasonable diligence to make a written report to the court and ~~shall furnish to~~ the clerk shall ~~sufficient copies of the report for~~ distribution copies to all parties. The report shall contain: (1) the Advisory Expert's opinions or detailed evaluations of the extent to which each of the factors or elements listed in the court's written order indicates reliability ~~vel non~~ or non-reliability of the scientific principles or scientific methodology upon which the ~~proffered~~ challenged opinions of the party's expert witness are based to a significant degree; and (2) the Advisory Expert's opinions or detailed evaluations regarding the extent to which any factor, deemed by the Advisory Expert to be particularly relevant to reliability but not listed in the court's written statement, indicates reliability ~~vel non~~ or non-reliability of the scientific principles or scientific methodology upon which the ~~proffered~~ challenged opinions of the party's expert witness are based to a significant degree. The report may not include any opinion or evaluation by the Advisory Expert regarding the validity, accuracy or credibility of the opinions of the expert witness proffered by a party; and a report containing such impermissible opinion or evaluation shall be completely disregarded and given no effect by the court.

1. Line 3 is modified to provide that the clerk shall provide copies to the parties, rather than requiring that the Advisory Expert undertake what, in a large, multi-party case, might be a substantial burden.
2. The Latin "*~~vel non~~*" is replaced with the phrase "or non-reliability" because three members or the SCAC subcommittee did not know what it meant. Paul Gold did, however, know the meaning.

(E) Cross-Examination of the ~~Appointed~~ Retained Advisory Expert. After the filing of the Advisory Expert's report, the court upon the request of any party in a civil case and upon the request of the prosecution in a criminal case may, and upon the request of the defendant in a criminal case shall, permit cross-examination of the Advisory Expert regarding any matter contained in or relevant to the report of the Advisory Expert. The cross-examination may not take place in the presence of the jury in the proceeding.

1. The section does not contain provisions for when and where the cross-examination shall take place. Is it contemplated that a deposition will be convened when cross-examination under this section is permitted? Will the cross-examination occur at trial but outside the jury's presence? Clarification of the contemplated procedure is needed.

(F) Supporting and Opposing Evidence by the Parties. Within a reasonable time after receipt of the report of the Advisory Expert and before ruling upon the admissibility of the expert opinion

~~proffered~~ challenged by a party, the court shall provide each party with reasonable opportunity to present testimony, documents, and other relevant evidence relating to the reliability of the scientific principles and the scientific methodology upon which the ~~proffered~~ challenged opinions of the party's expert witness are based to a significant degree.

1. "Proffered" is changed to "challenged" throughout to emphasize the limited application of the Rule.

(G) Rulings by the Court. The ruling by the court pursuant to Rule 104(a) on the admissibility under Rule 702 of the ~~proffered~~ challenged expert opinions of a party's witness shall be contained in a written order and shall include findings of fact supporting the court's conclusion that the ~~proffered~~ challenged opinion is, or is not, based upon scientific principles and scientific methodology sufficiently reliable to assist the trier of fact to understand the evidence or to determine a fact in issue, within the meaning of Rule 702

(H) Disclosures Prohibited. No information relating to any aspect of the use by the court of an ~~appointed~~ retained Advisory Expert shall be conveyed by the court, court personnel, a party, or a party's lawyer to any jury or juror.

(I) Compensation of the ~~Appointed~~ Retained Advisory Expert. The Advisory Expert shall be awarded reasonable compensation to be fixed by order of the court. The compensation is payable from any funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment. In other civil actions, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(J) Record on Appeal. All orders of the court pertaining to the ~~appointment~~, retention, duties, and compensation of the Advisory Expert, the Advisory Expert's report, and all rulings on the admissibility of the ~~proffered~~ challenged evidence to which the Advisory Expert's report relates, shall be contained in the record on appeal, but only for the purposes of reviewing the court's use of an Advisory Expert and the court's decision to admit or exclude the ~~proffered~~ challenged opinions of the party's expert witness. It shall be a sufficient compliance with Rule 51(b), Texas Rules of Appellate Procedure, for a party to simply designate "all papers on record relating to the use of an ~~appointed~~ retained Advisory Expert to assist the court." The statement of facts on appeal, if timely requested in compliance with Rule 53, Texas Rules of Appellate Procedure, shall contain the cross-examination, if any, of the Advisory Expert, but only for the purposes of reviewing the court's use of an Advisory Expert and the court's decision to admit or exclude the ~~proffered~~ challenged opinions of the party's expert witness.

Notes and Comments are omitted

Rule 706. APPOINTMENT OF AN EXPERT TO ADVISE THE COURT ON ADMISSIBILITY OF SCIENTIFIC OPINIONS.

a) Appointment. When the court is called upon to perform its gate-keeping function under Rule 702, the court may obtain the advice of a disinterested expert on the applicable issue, provided, however, that the court shall give notice to all parties of the person consulted and the substance of the advice, and shall afford the parties reasonable opportunity to respond.

b) **Compensation.** An expert so retained is entitled to reasonable compensation in whatever sum the court may authorize in the exercise of its discretion. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the Fifth Amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

c) **Disclosure of Retention and Findings.** The fact that the court retained the expert and the expert's findings shall not be disclosed to a jury in any litigation. The expert's findings shall not be a part of any record for any purpose.

6/9/97
4543.001
cc: LHS
Original fax
DC.

HON. SCOTT BRISTER
234th District Court
June 4, 1997

Mr. Charles L. Babcock
Fax: (713) 752-4557

Ms. Paula Sweeney
Fax: (214) 523-8888

Mr. John Marks
Fax: (214) 220-4899

Dear Chuck, Paula, & John:

Enclosed please find my red-lined redraft of TRCP 76a in accordance with the SCAC's vote at our last meeting. The redraft is intended to accomplish the following:

1. remove from the definition of "court records" anything that is not among the records at the court; and

2. provide that the court can order the matters thus excluded from the current definition of court records to be filed (and thus become court records) upon the motion of any person.

Paragraph 3 is entirely new, but some portions have not been underlined because they are verbatim from other places in the current rule.

I will be on vacation during the July meeting. I will leave it to Luke's discretion whether to address this draft then or wait until September.

Very truly yours,

Hon. Scott Brister
Judge, 234th District Court

cc: Mr. Luther H. Soules III
Soules & Wallace
100 West Houston, Suite 1500
San Antonio, Texas 78205

RULE 76a. SEALING COURT RECORDS

1. **Standard for Sealing Court Records.** Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. Court Records. For purposes of this rule, court records means:

~~(a)~~ all documents of any nature filed in connection with any matter before any civil court, except:

(~~1~~a) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(~~2~~b) documents in court files to which access is otherwise restricted by law;

(~~3~~c) documents filed in an action originally arising under the Family Code.

~~(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.~~

~~(c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.~~

3. Motion or Appearance by Non-parties. Any person may intervene as a matter of right at any time before or after judgment for the limited purpose of participating in the proceedings required by this rule, upon payment of the fee required for filing a plea in intervention. Such non-parties may be heard on any motion to seal or unseal court records, and may move that the following documents be filed with the court as court records:

(~~b~~a) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.

(~~c~~b) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

The burden of showing that there are no documents complying with subparts (a) or (b), or that any such documents should be sealed pursuant to paragraph 1, shall always be on the party seeking to seal records.

3~~4~~. Notice. Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file

a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

45. **Hearing.** A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. ~~Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention.~~ The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.

56. **Temporary Sealing Order.** A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 45 and shall direct that the movant immediately give the public notice required by paragraph 34. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 45.

67. **Order on Motion to Seal Court Records.** A motion relating to sealing or unsealing court records or requiring documents to be filed as court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the documents should be filed as court records or whether the showing required by paragraph 1 has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

78. **Continuing Jurisdiction.** ~~Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records.~~ A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1 shall always be on the party seeking to seal records.

89. **Appeal.** Any order (or portion of an order or judgment) relating to filing, sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.

910. **Application.** Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:

(a) all court records filed or exchanged after the effective date;

(b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

DISPOSITION CHART
FOR THE THIRD SUPPLEMENTAL AGENDA

TRCP 166 - 209

RULE NO.	PAGE NO.	CHANGE SUGGESTED / BY	RECOMMENDED ACTION	REASON
166a	3RD0173-182	A proposed SJ Rule By: Court Rules Committee	Reject	This proposal was before Court when it promulgated new rule and was fully considered
166a	3RD0183-184	Proposed changes in SJ Rule By: Judge Scott Brister	Reject	This was considered by the Court when it promulgated new rule
166a	3RD0185-187	1. Same standard should apply regardless of when motion heard 2. Nonmovant should be required to present admissible evidence to create a fact issue By: Dean J. Schaner	1. Reject 2. Reject	1. The non-movant should not have to establish his case until he completes discovery 2. Ditto

166a	3RD0187.1 - 187.2	Opposes any change in SJ Rule on ground that it will vastly increase SJMs filed and granted By: Fred Davis	Reject	While proposed rule will increase SJ practice, the Court was aware of this in promulgating new rule
166a	3RD0187.3	Favors conforming state rule to federal one By: Rob H. Holt	Reject	The Court considered this
166b	3RD0188-190	Should change present practice where appellate court affirms sustaining objections to discovery if any objection, whether or not relied on by trial court, has merit By: Paul Gold	Reject	The proposed Rule goes as far as SCAC thought appropriate to discourage multifarious objections
167	3RD0191-202	A completely new rule to govern RPODs and to replace SCAC R.11 By: Court Rules Committee	Accept if Court feels something more must be done to regulate document requests	The SCAC thought the current rule was working and that document discovery was too useful to be further restricted. If Court wants a more detailed rule on this subject, the proposal is as good as any

167	3RD0203-205	Wants further restriction of document request abuses By: Bob Gwinn	See comment above	The rule proposed by Court Rules Comm. would do the job
168	3RD0206-297	Wants to require party serving discovery requests to provide computer disc so that responding party need not retype requests By: Richard E. Tulk	Accept	The proposed rules require this
168	3RD0208-211	1. A party may call as a witness any person identified by the opposing party in a discovery response 2. Only those interog answers to which the party has personal knowledge need be verified by the party By: Steven Amis	1. Reject 2. Accept	1. Stating this explicitly is unnecessary. It should be the effect of R. 6 in any event 2. R.12 should be revised to make this clear. It makes good sense
173	3RD0212-213	Proposed new rule governing appointment of guardians ad litem By: Patrick Hazel, Subcommittee Chair	Accept	The SCAC didn't consider this rule. The reasons for the proposed changes make good sense

177b	3RD0214-215	Proposed new rule requiring party or his agent or one subject to his control, to appear for trial upon notice without need for subpoena By: Patrick Hazel, Subcommittee Chair	Accept	Not considered by SCAC. Reasons for rule make sense.
181	3RD0216-217	Delete current Rule 181 providing that either party may examine the opposing party as a witness and shall have the same process to compel his attendance as in the case of any other witness By: Patrick Hazel, Subcommittee Chair	Accept	Rule is unnecessary
New Rule 182	3RD0218-220	Proposed new rule for handling firearms in court by civil litigants By: Kevin R. Madison	Reject	There doesn't appear to be any big problem requiring such a rule

200	3RD0221-226	Would require party deposing a non-retained expert to pay the fees of that expert in preparing for, giving, reviewing and correcting deposition By: Court Rules Committee	Reject	There seems to be little doubt under current practice that the party retaining an expert pays these expenses. If expert is not retained, why should he be paid for his testimony unlike other witnesses

TEXAS RULES OF CIVIL PROCEDURE

RECODIFICATION PROJECT

Supreme Court Advisory Committee
July, 1997

TEXAS RULES OF CIVIL PROCEDURE
RECODIFICATION PROJECT

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PROPOSED RULES	CURRENT RULES
Rule 1. Objective and Scope of Rules The proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. To attain this objective with as great expedition and dispatch and at the least expense to the litigants and the state as may be practicable, these rules must be given a liberal construction. These rules govern the procedure in the county and district courts of the State of Texas in civil cases.	**Rule 1. Objective of Rules** The proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, these rules shall be given a liberal construction. **Rule 2. Scope of Rules** These rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these Rules, and not included in the "List of Repealed Statutes," such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the "List of Repealed Statutes," prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits.

Rule 2. Local Rules	Rule 3a. Local Rules
Each administrative judicial region, district court, county court, county court at law, and probate court may make and amend local rules governing practice before these courts, provided:	Each administrative judicial region, district court, county court, county court at law, and probate court may make and amend local rules governing practice before such courts, provided:
(a) that a proposed rule or amendment must not be inconsistent with these rules or with a rule of the administrative judicial region in which the court is located;	**(1)** that any proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located;
(b) no time period provided by these rules may be altered by local rules;	**(2)** no time period provided by these rules may be altered by local rules;
(c) a proposed local rule or amendment is not effective until it is approved by the Supreme Court of Texas;	**(3)** any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;
(d) a proposed local rule or amendment is not effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of the attorneys practicing before the court or courts for which it is made;	**(4)** any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;
(e) the local rules are available upon request to the members of the bar;	**(5)** all local rules or amendments adopted and approved in accordance herewith are made available upon request to members of the bar;
(f) no local rule, order, or practice of any court, other than local rules and amendments that comply with the requirements of this rule can be applied to determine the merits of any matter.	**(6)** no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a, shall ever be applied to determine the merits of any matter.

SECTION1.WPD

DRAFT -- 7/10/97 9:23 AM
No changes noted under cover letter dated 5/23/97

Rule 5. Commencement of Suit A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk. No civil suit shall be commenced on Sunday, except in cases of injunction, attachment, garnishment, sequestration or distress proceedings.	**Rule 22. Commenced by Petition** A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk. **Rule 6. Suits Commenced on Sunday** No civil suit shall be commenced nor process issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings; provided that citation by publication published on Sunday shall be valid.
Rule 6. Time **(a) Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays must not be counted for any purpose in any time period of five days or less in these rules, except for purposes of the three-day periods in Rules ____ (current Rule 21) and _____ (current Rule 21a), extending other periods by three days when service is made by registered or certified mail or by facsimile, and for purposes of the five-day periods provided for under Rules ____ (current Rules 748, 749, 749a, 749b, and 749c).	**Rule 4. Computation of Time** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

Rule 6. Time [continued]	Rule 5. Enlargement of Time
(b) Enlargement. When by these rules, by a notice given thereunder or by order of a court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if an application is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act; but it may not extend the time for taking any action under Rules ____ (current Rules, 306a, 329b), except under the conditions stated in them.	When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (a) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (b) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act. The court may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules.
(c) Use of United States Postal Service. If any document is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing the document, it shall be filed by the clerk and be deemed timely filed if it is received by the clerk not more than ten days after the filing deadline. Though it may consider other proof, the court will accept the following as conclusive proof of the date of mailing: (1) a legible postmark affixed by the United States Postal Service; (2) a receipt for registered or certified mail if the receipt is endorsed by the United States Postal Service; or (3) a certificate of mailing by the United States Postal Service.	If any document is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, the same, if received by the clerk not more than ten days tardily, shall be filed by the clerk and be deemed filed in time. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

Rule 7. Issuance and Service of Process; Citation **(a) Form; Issuance and Service.** The style of all writs and processes shall be "The State of Texas;" and unless otherwise specially provided by law or these rules every such writ and process must be directed to any person authorized by law or these rules to serve process and must include a return of service. No process may be issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration or distress proceedings. Citation by publication may be published on Sunday.	**Rule 15. Writs and Process** The style of all writs and process shall be "The State of Texas;" and unless otherwise specially provided by law or these rules every such writ and process shall be directed to any sheriff or any constable within the State of Texas, shall be made returnable on the Monday next after expiration of twenty days from the date of service thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of issuance shall be noted thereon.
Rule 7. Issuance and Service of Process; Citation [continued] **(b) Endorsement.** For all process, every officer or authorized person must endorse the day and hour on which the person received them, the manner of service, and the time and place the process was served and the person must sign the returns officially.	**Rule 105. Duty of Officer or Person Receiving** The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay. **Rule 16. Shall Endorse All Process.** Every officer or authorized person shall endorse on all process and precepts coming to his hand the day and hour on which he received them, the manner in which he executed them, and the time and place the process was served and shall sign the returns officially.

Rule 7. Issuance and Service of Process; Citation [continued] **(c) Fees.** No sheriff or constable may be compelled to execute any process in civil cases, unless the fees allowed by law for service of process are paid in advance, except when affidavit is filed, as provided by law or these rules. The clerk issuing the process must endorse thereon the words "affidavit of inability filed," and the officer in whose hands such process is placed for service must serve the same. The fee will be taxed as costs in the case. The clerk of the court may collect the service fee at the time of the request for issuance.	**Rule 17. Officer to Execute Process.** Except where otherwise expressly provided by law or these rules, the officer receiving any process to be executed shall not be entitled in any case to demand his fee for executing the same in advance of such execution, but his fee shall be taxed and collected as other costs in the case. **Rule 126. Fee for Execution of Process Demand.** No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words "pauper oath filed," and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same.

Rule 7. Issuance and Service of Process; Citation
[continued]

(d) Citation. Upon the filing of the complaint and when requested, the clerk of the court must issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the complaint. Upon request, separate or additional citations must be issued by the clerk of the court.

(e) Form. The citation must:

(1) be styled "The State of Texas," and unless otherwise specially provided by law or these rules shall be directed to any person authorized by law or these rules to serve process;
(2) be signed by the clerk of the court under seal of court;
(3) contain the name and location of the court;
(4) contain the date of filing of the petition;
(5) show the date of issuance of the citation;
(6) contain the file number;
(7) contain style of case and names of parties;
(8) be directed to the defendant;
(9) contain the name and address of the lead attorney for the plaintiff; otherwise the address of the plaintiff;
(10) contain the address of the clerk of the court; and,
(11) contain the following notice: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk of the court who issued this citation within thirty days after you were served with this citation and complaint, a default judgment for the relief demanded in the complaint may be taken against you."

(f) Copies of Pleadings to be Served with Citation. The party filing any pleading upon which citation is to be issued and served shall furnish the clerk of the court with a sufficient number of copies for use in serving the parties to be served, and when copies are so furnished the clerk of the court may not charge for the copies.

Rule 99. Issuance and Form of Citation

a. Issuance. Upon the filing of the petition, the clerk, when requested, shall forthwith issue a citation and deliver the citation as directed by the requesting party. The party requesting citation shall be responsible for obtaining service of the citation and a copy of the petition. Upon request, separate or additional citations shall be issued by the clerk.

b. Form. The citation shall (1) be styled "The State of Texas," (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, and (12) shall notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsections 10 and 12 of this section shall be in the form set forth in section c of this Rule.

c. Notice. The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

d. Copies. The party filing any pleading upon which citation is to be issued and served shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when copies are so furnished the clerk shall make no charge for the copies.

Rule 7. Issuance and Service of Process; Citation [continued] **(g) Who May Serve.** Except where otherwise expressly provided by law or these rules, citation and other notices may be served anywhere by **(1)** any sheriff or constable or other person authorized by law or, **(2)** by any person authorized by law or by written order of the court who is not less than eighteen years of age. No person who is a party to or interested in the outcome of a suit may serve any process. Service by registered or certified mail must, if requested, be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order. Subpoenas for a hearing or trial may be served by any person who is not a party and is not less than eighteen years of age.	**Rule 103. Who May Serve** Citation and other notices may be served anywhere by (1) any sheriff or constable or other person authorized by law or, (2) by any person authorized by law or by written order of the court who is not less than eighteen years of age. No person who is a party to or interested in the outcome of a suit shall serve any process. Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order. **Rule 178. Service of Subpoenas.**

Rule 7. Issuance and Service of Process; Citation [continued]	Rule 106. Method of Service
(h) Method of Service of Citation. **(1) Personal Delivery or Certified Mail.** Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by subdivision (f) by: **(A)** delivering to the defendant, in person, a true copy of the citation with a copy of the pleading attached, or **(B)** mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the pleading attached. **(2) Alternative Service; Motion Practice.** Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (1)(A) or (1)(B) at the location named in the affidavit but has not been successful, the court may authorize service: **(A)** by leaving a true copy of the citation, with a copy of the pleading attached, with anyone over sixteen years of age at the location specified in the affidavit, or **(B)** in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.	**(a)** Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by (1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or (2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto. **(b)** Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service (1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or (2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

Rule 7. Issuance and Service of Process; Citation [continued] **(i) Return of Service.** **(1) In General.** The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. When the citation was served by registered or certified mail as authorized by subdivision (h), the return by the officer or authorized person must also contain the return receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if the defendant's whereabouts are ascertainable. Where citation is executed by an alternative method as authorized by subdivision (h), proof of service must be made in the manner ordered by the court. **(2) Filing of Citation and Return; Default Judgment.** No default judgment will be granted in any cause until the citation and the return of service have been on file with the clerk of the court for ten days, exclusive of the day of filing and the day of judgment.	**Rule 107. Return of Service** The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court. No default judgment shall be granted in any cause until the citation, or process under Rules 108 or 108a, with proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

Rule 7. Issuance and Service of Process; Citation [continued] **(j) Defendant Not In State.** If the defendant is absent from the State, or is a nonresident of the State, the defendant may be served with citation by any disinterested person competent to make oath. The return of service must be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the officer's hand and official seal. A defendant served with such notice is required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State to the full extent that he may be required to appear and answer under the Constitution of the United States in an action either in rem or in personam.	**Rule 108. Defendant Without State** Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person competent to make oath of the fact in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be endorsed on or attached to the original notice, and shall be in the form provided in Rule 107, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State to the full extent that he may be required to appear and answer under the Constitution of the United States in an action either in rem or in personam.

Rule 7. Issuance and Service of Process; Citation [continued]

(k) Service in Foreign Country.

(1) Manner. Service of process may be effected upon a party in a foreign country if service of the citation and petition is made:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(B) as directed by the foreign authority in response to a letter rogatory or a letter of request;

(C) in the manner provided by Rule ____ (current Rule 106);

(D) pursuant to the terms and provisions of any applicable treaty or convention;

(E) by diplomatic or consular officials when authorized by the United States Department of State; or

(F) by any other means directed by the court that is not prohibited by the law of the country where service is to be made.

The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this subdivision is required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with citation within this state to the full extent that he may be required to appear and answer under the Constitution of the United States or under any applicable convention or treaty in an action either in rem or in personam.

(2) Return. Proof of service may be made as prescribed by the law of the foreign country, by order of the court, by a method provided in any applicable treaty or convention, or as provided in subdivision (i).

Rule 108a. Service of Process in Foreign Countries

(1) Manner. Service of process may be effected upon a party in a foreign country if service of the citation and petition is made: (a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (b) as directed by the foreign authority in response to a letter rogatory or a letter of request; or (c) in the manner provided by Rule 106; or (d) pursuant to the terms and provisions of any applicable treaty or convention; or (e) by diplomatic or consular officials when authorized by the United States Department of State; or (f) by any other means directed by the court that is not prohibited by the law of the country where service is to be made. The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this rule shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with citation within this state to the full extent that he may be required to appear and answer under the Constitution of the United States or under any applicable convention or treaty in an action either in rem or in personam.

(2) Return. Proof of service may be made as prescribed by the law of the foreign country, by order of the court, by Rule 107, or by a method provided in any applicable treaty or convention.

Rule 7. Issuance and Service of Process; Citation [continued] **(l) Acceptance of Service.** After the action is commenced, the defendant may accept service of process, or waive the issuance or service, by a written memorandum signed by the defendant or by a duly authorized agent or attorney, if such memorandum is sworn to before a proper officer, excluding any attorney in the case, and filed with the court. Such acceptance or waiver will have the same force and effect as if the citation had been issued and served as provided by law. The party signing the memorandum must be delivered a copy of plaintiff's petition, and the memorandum must state that it was received by the party. In every divorce action the memorandum must also include the defendant's mailing address.	**Rule 119. Acceptance of Service** The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him, or by his duly authorized agent or attorney, after suit is brought, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff's petition, and the receipt of the same shall be acknowledged in such memorandum. In every divorce action such memorandum shall also include the defendant's mailing address.
(m) Amendment. At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or return of service to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.	**Rule 118. Amendment** At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 8. Citation by Publication **(a) In General.** Upon oath made by a party to a suit, his agent or attorney that one or more of the following situations exist, the clerk of the court must issue citation for a defendant for service by publication: **(1)** if the residence of any defendant is unknown to the party, **(2)** if the defendant is a transient person whose whereabouts are unknown and cannot be ascertained through the exercise of diligence or **(3)** if the defendant is absent from or is a nonresident of the State and the party has been unable to obtain personal service as provided in Rule 7. In all such cases it shall be the duty of the court to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of citation on the nonresident before granting any judgment.	**Rule 109. Citation by Publication** When a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of nonresident notice, as the case may be, before granting any judgment on such service.
(b) Effect of This Rule on Other Statutes. Where a statute authorizing citation by publication provides expressly for requisites of such citation, these rules will not govern. Otherwise, the provisions of these rules will govern.	**Rule 110. Effect of Rules on Other Statutes** Where by statute or these rules citation by publication is authorized and the statute or rules do not specify the requisites of such citation or the method of service thereof, or where they direct that such citation be issued or served as in other civil actions, the provisions of these rules shall govern. Where, however, the statute authorizing citation by publication provides expressly for requisites of such citation or service thereof, or both, differing from the provisions of Rules 114, 115, and 116, these rules shall not govern, but the special statutory procedure shall continue in force; provided, however, that Rule 117a shall control with respect to citation in tax suits.

Rule 8. Citation by Publication [continued]	Rule 114. Citation by Publication; Requisites
(c) Contents. Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rule 7 (current Rules 15 and 99), unless otherwise stated in this rule but no copy of the plaintiff's complaint must be published with the citation. The citation shall be directed: **(1)** to the defendant or defendants by name, if known, or to the defendant or defendants as designated in the complaint, or such other classification as may be fixed by any statute or by these rules;	Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 15 and 99, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation, and the citation shall be styled "The State of Texas" and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown, or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet.

Rule 8. Citation by Publication **(c) Contents.** **[continued]** (2) if the plaintiff, his agent, or attorney, shall make oath that the names of the heirs or stockholders against whom an action is authorized by Section 17.004, Civil Practice and Remedies Code, are unknown to the affiant, such citation shall be addressed to the defendants by a concise description of their classification, as "the Unknown Heirs of A.B., deceased," or " Unknown Stockholders of _____ Corporation," as the case may be; or	**Rule 111. Citation by Publication in Action Against Unknown Heirs or Stockholders of Defunct Corporations** If the plaintiff, his agent, or attorney, shall make oath that the names of the heirs or stockholders against whom an action is authorized by Section 17.004, Civil Practice and Remedies Code, are unknown to the affiant, the clerk shall issue a citation for service by publication. Such citation shall be addressed to the defendants by a concise description of their classification, as "the Unknown Heirs of A.B., deceased," or "Unknown Stockholders of _____ Corporation," as the case may be, and shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116.

Rule 8. Citation by Publication
(c) Contents.
[continued]

(3) in suits authorized by Section 17.005, Civil Practice and Remedies Code, all persons claiming under a land conveyance whose names are known to plaintiff shall be made parties by name and cited to appear, in the manner now provided by law as in other suits; all other persons claiming any interest in such land under such conveyance may be made parties to the suit and cited by publication under the designation "all persons claiming any title or interest in land under deed heretofore given to _____ of _____ as grantee" (inserting in the blanks the name and residence of grantee as given in such conveyance). It shall be permissible to join in one suit all persons claiming under two or more conveyances affecting title to the same tract of land.

Rule 112. Parties to Actions Against Unknown Owners or Claimants of Interest in Land

In suits authorized by Section 17.005, Civil Practice and Remedies Code, all persons claiming under such conveyance whose names are known to plaintiff shall be made parties by name and cited to appear, in the manner now provided by law as in other suits; all other persons claiming any interest in such land under such conveyance may be made parties to the suit and cited by publication under the designation "all persons claiming any title or interest in land under deed heretofore given to _____ of _____ as grantee" (inserting in the blanks the name and residence of grantee as given in such conveyance). It shall be permissible to join in one suit all persons claiming under two or more conveyances affecting title to the same tract of land.

Rule 113. Citation by Publication in Actions Against Unknown Owners or Claimants of Interest in Land

In suits authorized by Section 17.005, Civil Practice and Remedies Code, plaintiff, his agent or attorney shall make and file with the clerk of the court an affidavit, stating

(a) the name of the grantee as set out in the conveyance constituting source of title of defendants, and

(b) stating that affiant does not know the names of any persons claiming title or interest under such conveyance other than as stated in plaintiff's petition and

(c) if the conveyance is to a company or association name as grantee, further stating whether grantee is incorporated or unincorporated, if such fact is known, and if such fact is unknown, so stating.

Said clerk shall thereupon issue a citation for service upon all persons claiming any title or interest in such land under such conveyance. The citation in such cases shall contain the requisites and be served in the manner provided in Rules 114, 115 and 116.

Rule 8. Citation by Publication [continued]

(d) Form. The citation must contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit.

Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required time.

Rule 114. Citation by Publication; Requisites

Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 15 and 99, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation, and the citation shall be styled "The State of Texas" and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown, or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet.

Rule 115. Form of Published Citation in Actions Involving Land

In citations by publication involving land, it shall be sufficient in making the brief statement of the claim in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in

Rule 8. Citation by Publication [continued]	Rule 114. Citation by Publication; Requisites
(e) **Issuance.** If issued from the district or county court, the citation shall command the parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, and the time of day the defendant is required to answer.	Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 15 and 99, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation, and the citation shall be styled "The State of Texas" and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown, or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim) a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a.m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet.

Rule 8. Citation by Publication [continued]

(f) Manner of Publication. The citation must be published in the English language one time in some newspaper published in the county.

(1) where the suit is pending in all suits which do not involve the title to land or the partition of real estate and if there is no newspaper published in the county, then in an adjoining county where a newspaper is published

(2) where the land or a portion thereof is situated in all suits which involve the title to land or partition of real estate and if there is no newspaper published in the county, then in an adjoining county to the county where the land or a part thereof is situated

(3) in which the property is located in suits for delinquent ad valorem taxes and if there is no newspaper published in the county, then the publication may be made in a newspaper in an adjoining county.

The newspaper must have been in general circulation for at least one year immediately prior to the first publication and shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose, the first publication to be not less than twenty-eight days prior to the return day fixed in the citation; and the affidavit of the editor or publisher of the newspaper giving the date of publication, together with a printed copy of the citation as published, shall constitute sufficient proof of due publication when returned and filed in court.

The maximum fee for publishing the citation shall be the lowest published word or line rate of that newspaper for classified advertising. Should the newspaper require advance payment of publication fees or payment other than on a contingency basis if and when the fees are collected as costs or if the publication of the citation in a suit for delinquent ad valorem taxes cannot be had for the lowest published word or line rate fee, chargeable as costs and payable upon sale of the property, as provided by law, and this fact is supported by the affidavit of

Rule 116. Service of Citation by Publication

The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas or by the clerk of the court in which the case is pending, by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes

In all suits for collection of delinquent ad valorem taxes, the rules of civil procedure governing issuance and service of citation shall control the issuance and service of citation therein, except as herein otherwise specially provided.

1. Personal Service: Owner and Residence Known, Within State. Where any defendant in a tax suit is a resident of the State of Texas and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rules 99 to 107, inclusive.

2. Personal Service: Owner and Residence Known, Out of State. Where any such defendant is absent from the State or is a nonresident of the State and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of

Rule 8. Citation by Publication [continued] **(f) Manner of Publication. [continued]** the attorney for the plaintiff or the attorney requesting the issuance of the process, then service of the citation may be made by posting a copy at the courthouse door of the county in which the suit is pending, the citation to be posted at least twenty-eight days prior to the return day fixed in the citation. Proof of the posting of the citation must be made by affidavit of the attorney for the plaintiff, or of the person posting it. When citation is served as here provided it will be sufficient, and no other form of citation or notice to the named defendants therein will be necessary.	**Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes [continued]** **3. Service by Publication: Nonresident, Absent From State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.** Where any defendant in a tax suit is a nonresident of the State, or is absent from the State, or is a transient person, or the name or the residence of any owner of any interest in any property upon which a tax lien is sought to be foreclosed, is unknown to the attorney requesting the issuance of process or filing the suit for the taxing unit, and such attorney shall make affidavit that such defendant is a nonresident of the State, or is absent from the State, or is a transient person, or that the name or residence of such owner is unknown and cannot be ascertained after diligent inquiry, each such person in every such class above mentioned, together with any and all other persons, including adverse claimants, owning or claiming or having any legal or equitable interest in or lien upon such property, may be cited by publication. All unknown owners of any interest in any property upon which any taxing unit seeks to foreclose a lien for taxes, including stockholders of corporations-defunct or otherwise-their successors, heirs, and assigns, may be joined in such suit under the designation of "unknown owners" and citation be had upon them as such; provided, however, that record owners of such property or of any apparent interest therein, including, without limitation, record lien holders, shall not be included in the designation of "unknown owners"; and provided further that where any record owner has rendered the property involved within five years before the tax suit is filed, citation on such record owner may not be had by publication or posting unless citation for personal service has been issued as to such record owner, with a notation thereon setting forth the same address as is contained on the rendition sheet made within such five years, and the sheriff or other person to whom citation has been delivered makes his return thereon that he is unable to locate the defendant. Where any attorney filing a tax suit for a taxing unit, or requesting the issuance of process in such suit, shall

	Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes make affidavit that a corporation is the record owner of any interest in any property upon which a tax lien is sought to be foreclosed, and that he does not know, and after diligent inquiry has been unable to ascertain, the location of the place of business, if any, of such corporation, or the name or place of residence of any officer of such corporation upon whom personal service may be had, such corporation may be cited by publication as herein provided. All defendants of the classes enumerated above may be joined in the same citation by publication. An affidavit which complies with the foregoing requirements therefor shall be sufficient basis for the citation above mentioned in connection with it but shall be held to be made upon the criminal responsibility of affiant. Such citation by publication shall be directed to the defendants by names or by designation as hereinabove provided, and shall be issued and signed by the clerk of the court in which such tax suit is pending. It shall be sufficient if it states the file number and style of the case, the date of the filing of the petition, the names of all parties by name or by designation as hereinabove provided, and the court in which the suit is pending; shall command such parties to appear and defend such suit at or before 10 o'clock a.m. of the first Monday after the expiration of forty-two days from the date of the issuance thereof, specifying such date when such parties are required to answer; shall state the place of holding the court, the nature of the suit, and the date of the issuance of the citation; and shall be signed and sealed by the clerk. The citation shall be published in the English language one time a week for two weeks in some newspaper published in the county in which the property is located, which newspaper must have been in general circulation for at least one year immediately prior to the first publication and shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose, the first publication to be not less than twenty-eight days prior to the return day fixed in the citation; and the affidavit

	Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes [continued] publication, together with a printed copy of the citation as published, shall constitute sufficient proof of due publication when returned and filed in court. If there is no newspaper published in the county, then the publication may be made in a newspaper in an adjoining county, which newspaper shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose. The maximum fee for publishing the citation shall be the lowest published word or line rate of that newspaper for classified advertising. If the publication of the citation cannot be had for this fee, chargeable as costs and payable upon sale of the property, as provided by law, and this fact is supported by the affidavit of the attorney for the plaintiff or the attorney requesting the issuance of the process, then service of the citation may be made by posting a copy at the courthouse door of the county in which the suit is pending, the citation to be posted at least twenty-eight days prior to the return day fixed in the citation. Proof of the posting of the citation shall be made by affidavit of the attorney for the plaintiff, or of the person posting it. When citation is served as here provided it shall be sufficient, and no other form of citation or notice to the named defendants therein shall be necessary. **4. Citation in Tax Suits: General Provisions.** Any process authorized by this rule may issue jointly in behalf of all taxing units who are plaintiffs or intervenors in any tax suit. The statement of the nature of the suit, to be set out in the citation, shall be sufficient if it contains a brief general description of the property upon which the taxes are due and the amount of such taxes, exclusive of interest, penalties, and costs, and shall state, in substance, that in such suit the plaintiff and all other taxing units who may set up their claims therein seek recovery of the delinquent ad valorem taxes due on said property, and the (establishment and foreclosure) of liens, if any, securing the payment of same, as provided by law; that in addition to the taxes all interest, penalties, and costs allowed by law up to and including the day of judgment are included in the suit; and that all parties to

	Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes [continued] including plaintiff, defendants, and intervenors, shall take notice that claims for any taxes on said property becoming delinquent subsequent to the filing of the suit and up to the day of judgment, together with all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered therein without further citation or notice to any parties thereto. Such citation need not be accompanied by a copy of plaintiff's petition and no such copy need be served. Such citation shall also show the names of all taxing units which assess and collect taxes on said property not made parties to such suit, and shall contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, or who may intervene therein and set up their respective tax claims against said property. After citation or notice has been given on behalf of any plaintiff or intervenor taxing unit, the court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued and of all taxing units intervening after such process is issued, not only for the taxes, interest, penalties, and costs which may be due on said property at the time the suit is filed, but those becoming delinquent thereon at any time thereafter up to and including the day of judgment, without the necessity of further citation or notice to any party to said suit; and any taxing unit having a tax claim against said property may, by answer or intervention, set up and have determined its tax claim without the necessity of further citation or notice to any parties to such suit. **5. Form of Citation by Publication or Posting.** The form of citation by publication or posting shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient: | THE STATE OF TEXAS | COUNTY OF _____ ||

Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes
[continued]

In the name and by the authority of the State of Texas

Notice is hereby given as follows:

To _____
_____
_____
_____

and any and all other persons, including adverse claimants, owning or having or claiming any legal or equitable interest in or lien upon the following described property delinquent to Plaintiff herein, for taxes, to-wit:

_____
_____
_____
_____

Which said property is delinquent to Plaintiff for taxes in the following amounts:

$_____, exclusive of interest, penalties, and costs, and there is included in this suit in addition to the taxes all said interest, penalties, and costs thereon, allowed by law up to and including the day of judgment herein.

You are hereby notified that suit has been brought by _____ as Plaintiffs, against _____ as Defendants, by petition filed on the _____ day of _____, 19____, in a certain suit styled _____v. _____ for collection of the taxes on said property and that said suit is now pending in the District Court of _____ County, Texas, _____ Judicial District, and the file number of said suit is _____, that the names of all taxing units which assess and collect taxes on the property hereinabove described, not made parties to this suit, are _____
_____.

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described,

Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes
[continued]

costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens, if any, securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in said cause by all other parties herein, and all of those taxing units above named who may intervene herein and set up their respective tax claims against said property.

You are hereby commanded to appear and defend such suit on the first Monday after the expiration of forty-two (42) days from and after the date of issuance hereof, the same being the _____ day of _____, A.D., 19____ (which is the return day of such citation), before the honorable District Court of _____ County, Texas, to be held at the courthouse thereof, then and there to show cause why judgment shall not be rendered for such taxes, penalties, interest, and costs, and condemning said property and ordering foreclosure of the constitutional and statutory tax liens thereon for taxes due the plaintiff and the taxing units parties hereto, and those who may intervene herein, together with all interest, penalties, and costs allowed by law up to and including the day of judgment herein, and all costs of this suit.

Issued and given under my hand and seal of said court in the City of _____, _____ County, Texas, this _____ day of _____, A.D., 19 ____.

_____
Clerk of the District Court. _____ County, Texas, _____ Judicial District.

Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes
[continued]

6. Form of Citation by Personal Service in or out of State.

The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS

To _____, Defendant,

GREETING:

YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Plaintiff, filed in said Court on the _____ day of _____, A.D., 19____, against _____, Defendant, said suit being number _____ on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter described.

The amount of taxes due Plaintiff, exclusive of interest, penalties, and costs, is the sum of $_____, said property being described as follows, to-wit:_____
_____
_____
_____
_____
_____

The names of all taxing units which assess and collect taxes on said property, not made parties to this suit, are: _____

	Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes [continued] Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens securing the payment of same, as provided by law. All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in this cause by all other parties hereto, and by all of those taxing units above named, who may intervene herein and set up their respective tax claims against said property. If this citation is not served within 90 days after the date of its issuance, it shall be returned unserved. The officer executing this return shall promptly serve the same according to the requirements of law and the mandates hereof and make due return as the law directs. Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, A.D., 19____. _____ _____ Clerk of the District Court of _____ County, Texas. By _____, Deputy. _____

Rule 8. Citation by Publication [citation] **(g) Return.** The return of the officer executing such citation shall be endorsed or attached to the same, and show how and when the citation was executed, specifying the date of publication, be signed by him officially and must be accompanied by a printed copy of such publication.	**Rule 117. Return of Citation by Publication** The return of the officer executing such citation shall be endorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.
(h) Amendment. At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.	**Rule 118. Amendment** At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.
(i) Other Substituted Service. Whenever citation by publication is authorized, the court may, on motion, prescribe a different method of substituted service, if the court finds, and so recites in its order, that the method so prescribed would be as likely as publication to give defendant actual notice. When such method of substituted service is authorized, the return of the officer executing the citation must state particularly the manner in which service is accomplished, and must attach any return receipt, returned mail, or other evidence showing the result of such service. Failure of defendant to respond to such citation will not render the service invalid. When such substituted service has been obtained and the defendant has not appeared, the provisions of Rules ____ (current Rules 244 and 329) will apply as if citation had been served by publication.	**Rule 109a. Other Substituted Service** Whenever citation by publication is authorized, the court may, on motion, prescribe a different method of substituted service, if the court finds, and so recites in its order, that the method so prescribed would be as likely as publication to give defendant actual notice. When such method of substituted service is authorized, the return of the officer executing the citation shall state particularly the manner in which service is accomplished, and shall attach any return receipt, returned mail, or other evidence showing the result of such service. Failure of defendant to respond to such citation shall not render the service invalid. When such substituted service has been obtained and the defendant has not appeared, the provisions of Rules 244 and 329 shall apply as if citation had been served by publication.

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes In all suits for collection of delinquent ad valorem taxes, the rules of civil procedure governing issuance and service of citation will control the issuance and service of citation, except as herein otherwise specially provided. The process must conform substantially to the form set out for personal service and must contain the essential elements of the citation as provided in Rule ___ (currently Rule 99). **(a) Personal Service: Owner and Residence Known, Within State.** Where any defendant in a tax suit is a resident of the State of Texas and is not subject to citation by publication under subdivision (c) below, the process must conform substantially to the form set out for personal service and must contain the essential elements of Rule ___ (currently Rule 99) and be served and returned and otherwise regulated by the provisions for service in these rules. **(b) Personal Service: Owner and Residence Known, Out of State.** Where any such defendant is absent from the State or is a nonresident of the State and is not subject to citation by publication under subdivision (c), the process must conform substantially to the form hereinafter set out for personal service and must contain the essential elements of Rule ___ (currently Rule 99) and be served and returned and otherwise regulated by the provisions for service in these rules.	

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes [continued] **(c) Service by Publication: Nonresident, Absent from State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.** Where any defendant in a tax suit is a nonresident of the State, or is absent from the State, or is a transient person, or the name or the residence of any owner of any interest in any property upon which a tax lien is sought to be foreclosed, is unknown to the attorney requesting the issuance of process or filing the suit for the taxing unit, and such attorney shall make affidavit that such defendant is a nonresident of the State, or is absent from the State, or is a transient person, or that the name or residence of such owner is unknown and cannot be ascertained after diligent inquiry, each such person in every such class above mentioned, together with any and all other persons, including adverse claimants, owning or claiming or having any legal or equitable interest in or lien upon such property, may be cited by publication. All unknown owners of any interest in any property upon which any taxing unit seeks to foreclose a lien for taxes, including stockholders of corporations -- defunct or otherwise -- their successors, heirs, and assigns, may be joined in such suit under the designation of "unknown owners" and citation be had upon them as such; provided, however, that record owners of such property or of any apparent interest therein, including, without limitation, record lien holders, must not be included in the designation of "unknown owners"; and provided further that where any record owner has rendered the property involved within five years before the tax suit is filed, citation on such record owner may not be had by publication or posting unless citation for personal service has been issued as to such record owner, with a notation thereon setting forth the same address as is contained on the rendition sheet made within such	

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes
[continued]

(c) Service by Publication: Nonresident, Absent from State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.
[continued]

five years, and the sheriff or other person to whom citation has been delivered makes his return thereon that he is unable to locate the defendant. Where any attorney filing a tax suit for a taxing unit, or requesting the issuance of process in such suit, makes affidavit that a corporation is the record owner of any interest in any property upon which a tax lien is sought to be foreclosed, and that he does not know, and after diligent inquiry has been unable to ascertain, the location of the place of business, if any, of such corporation, or the name or place of residence of any officer of such corporation upon whom personal service may be had, such corporation may be cited by publication as herein provided. All defendants of the classes enumerated above may be joined in the same citation by publication.

An affidavit which complies with the foregoing requirements therefor shall be sufficient basis for the citation above mentioned in connection with it but shall be held to be made upon the criminal responsibility of affiant.

Such citation by publication shall contain the requisites prescribed by Rule ___ (currently Rule 99), in so far as that they are not inconsistent herewith, provided that no copy of the plaintiff's complaint shall accompany the citation and the citation shall be directed to the defendants by names or by designation as hereinabove provided, shall be issued and signed by the clerk of the court in which such tax suit is pending, shall command such parties to appear and defend such suit at or before 10

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes
[continued]

(c) Service by Publication: Nonresident, Absent from State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owing or Claiming or Having an Interest.
[continued]

o'clock a.m. of the first Monday after the expiration of forty-two days from the date of issuance thereof, specifying such date when such parties are required to answer; and shall state the nature of the suit.

(d) Citation in Tax Suits: General Provisions.

Any process authorized by this Rule may issue jointly in behalf of all taxing units who are plaintiffs or intervenors in any tax suit. The statement of the nature of the suit, to be set out in the citation, shall be sufficient if it contains a brief general description of the property upon which the taxes are due and the amount of such taxes, exclusive of interest, penalties, and costs, and shall state, in substance, that in such suit the plaintiff and all other taxing units who may set up their claims therein seek recovery of the delinquent ad valorem taxes due on said property, and the (establishment and foreclosure) of liens, if any, securing the payment of same, as provided by law; that in addition to the taxes all interest, penalties, and costs allowed by law up to and including the day of judgment are included in the suit; and that all parties to the suit, including plaintiff, defendants, and intervenors, shall take notice that claims for any taxes on said property becoming delinquent subsequent to the filing of the suit and up to the day of judgment, together with all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered therein without further citation or notice to any parties thereto. Such citation need not be accompanied by a copy of plaintiff s complaint and no such copy need be served. Such citation shall also show the names of all taxing units which assess and collect taxes on

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes [continued]

(d) Citation in Tax Suits: General Provisions. [continued]

property not made parties to such suit, and shall contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, or who may intervene therein and set up their respective tax claims against said property. After citation or notice has been given on behalf of any plaintiff or intervenor taxing unit, the court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued and of all taxing units intervening after such process is issued, not only for the taxes, interest, penalties, and costs which may be due on said property at the time the suit is filed, but those becoming delinquent thereon at any time thereafter up to and including the day of judgment, without the necessity of further citation or notice to any party to said suit; and any taxing unit having a tax claim against said property may, by answer or intervention, set up and have determined its tax claim without the necessity of further citation or notice to any parties to such suit.

(e) Form of Citation by Publication or Posting.

The form of citation by publication or posting shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS)
COUNTY OF _____)

In the name and by the authority of the State of Texas

Rule 9. Citation in Suits for Delinquent Ad Valorem Taxes [continued]

(e) Form of Citation by Publication or Posting. [continued]

Notice is hereby given as follows:
TO:_____
_____
_____
and any and all other persons, including adverse claimants, owning or having or claiming any legal or equitable interest in or lien upon the following described property delinquent to Plaintiff herein, for taxes, to-wit:
_____
_____
_____
_____
Which said property is delinquent to Plaintiff for taxes in the following amounts:

$_____, exclusive of interest, penalties, and costs, and there is included in this suit in addition to the taxes all said interest, penalties, and costs thereon, allowed by law up to and including the day of judgment herein.

You are hereby notified that suit has been brought by _____ as Plaintiffs, against _____ as Defendants, by complaint filed on the _____ day of _____19___, in a certain suit styled _____ v. _____ for collection of the taxes on said property and that said suit is now pending in the District Court of _____ County, Texas, _____ Judicial District, and the file number of said suit is _____, that the names of all taxing units which assess and collect taxes on the property hereinabove described, not made parties to this suit, are _____.

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to

Rule 9. Citation in Suits For Delinquent Ad Valorem Taxes
[continued]

(e) Form of Citation by Publication or Posting.
[continued]

and including the day of judgment herein, and the establishment and foreclosure of liens, if any, securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in said cause by all other parties herein, and all of those taxing units above named who may intervene herein and set up their respective tax claims against said property.

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk of the court who issued this citation by 10:00 a.m. on the Monday after the expiration of forty-two (42) days from and after the date of issuance hereof, the same being the ____ day of _____, A.D., 19__ (which is the return day of such citation), a default -judgment for the relief demanded in the complaint may be taken against you." You are hereby commanded to appear and defend such suit before the _____ Judicial District Court of _____ County, Texas, to be held at the courthouse thereof, then and there to show cause why judgment shall not be rendered for such taxes, penalties, interest, and costs, and condemning said property and ordering foreclosure of the constitutional and statutory tax liens thereon for taxes due the plaintiff and the taxing units parties hereto, and those who may intervene herein, together with all interest, penalties, and costs allowed by law up to and including the day of judgment herein, and all costs of this suit.

Rule 9. Citation in Suits For Delinquent Ad Valorem Taxes
[continued]

(e) Form of Citation by Publication or Posting.
[continued]

Issued and given under my hand and seal of said court in the City of _____, _____ County, Texas, this ___ day of _____, A.D., 19___.

_____ Name
and Address of Attorney for Plaintiff;
Clerk of the District Court
_____
_____ County, Texas,
_____
_____ Judicial District.

Address:
_____
_____
_

(f) Form of Citation by Personal Service In or Out of State

The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS
To _____, Defendant, GREETING:

"You have been sued, You may employ an attorney. If you or your attorney do not file a written answer with the clerk of the court who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and complaint, a default judgment for the relief demanded in the complaint may be taken against you."
The petition of Plaintiff was filed in the _____ Judicial District Court of _____, Texas, at the

Rule 9. Citation in Suits For Delinquent Ad Valorem Taxes
[continued]

(f) Form of Citation by Personal Service In or Out of State.
[continued]

Courthouse of said county in _____, Texas, said Court on the __ day of _____ A.D., 19____, against _____, Defendant, said suit being number _____ on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter described.

The amount of taxes due Plaintiff, exclusive of interest, penalties, and costs suit being number __on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter, is the sum of $____, said property being described as follows, to-wit:_____
_____
_____

The names of all taxing units which assess and collect taxes on said property, not made parties to this suit, are:
_____
_____
_____

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest,

Rule 9. Citation in Suits For Delinquent Ad Valorem Taxes
[continued]

(f) Form of Citation by Personal Service In or Out of State.
[continued]

penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in this cause by all other parties hereto, and by all of those taxing units above named, who may intervene herein and set up their respective tax claims against said property.

The officer executing this return shall promptly serve the same according to the requirements of law and the mandates hereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at _____, Texas, this the ____ day of A.D., 19__.

_____
Name and Address of Attorney for Plaintiff:

Clerk of the District Court of
_____ County, Texas.
By _____, Deputy.
Address:
_____
_____

Rule 10. Service and Filing of Pleadings, Motions and Other Papers **(a) Filing and Serving Pleadings and Motions.** Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties. An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court. If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge. The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application. After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.	**Rule 21. Filing and Serving Pleadings and Motions** Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket. An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court. If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge. The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application. After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.
(b) Clerk's Office Closed or Inaccessible. If the act to be done is filing a document, and the clerk's office where the document is to be filed is closed or inaccessible during regular hours on the last day for filing the document, the period for filing the document extends to the end of the next day when the clerk's office is open and accessible. The closing or inaccessibility of the clerk's office may be proved by a certificate of the clerk or counsel, by a party's affidavit, or by other satisfactory proof, and may be controverted in the same manner.	**Texas Rule of Appellate Procedure 4.1 Computing Time Subpart (b)** [verbatim]

Rule 10. Service and Filing of Pleadings, Motions and Other Papers [continued] **(c) Methods of Service.** **(1) General.** Except as otherwise provided in these rules every pleading, plea, motion or other form of request required to be served under subdivision (a), other than pleadings or other papers served with citation, may be served by: **(A)** delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record as the case may be, either in person or by agent; **(B)** courier receipted delivery; **(C)** certified or registered mail, to the party's last known address; **(D)** confirmed fax to the recipients current telecopier number; or **(E)** such other manner as the court in its discretion may direct.	**Rule 21a. Methods of Service** Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or by telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

Rule 10. Service and Filing of Pleadings, Motions and Other Papers	Rule 21a. Methods of Service
(c) Methods of Service. [continued] **(2) When Complete.** Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or by facsimile, three days shall be added to the prescribed period. **(3) Who May Serve.** Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing on the filed instrument. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. **(4) Extension of Time.** Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and, upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. **(5) Cumulative.** The provisions of this section relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.	Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or by telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

Rule 10. Service and Filing of Pleadings, Motions and Other Papers [continued] **(d) Sanctions.** If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, or other application to the court for an order in accordance with this Rule, the court may in its discretion, after notice and hearing, impose an appropriate sanction available under Rules ____ (current Rule 215-2b).	**Rule 21b. Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions** If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, or other application to the court for an order in accordance with Rules 21 and 21a, the court may in its discretion, after notice and hearing, impose an appropriate sanction available under Rule 215-2b.

SECTION2.WPD

DRAFT -- 5/28/97 6:44 PM
Including all changes under
cover letter dated 5/23/97

SECTION 3
PLEADINGS AND MOTIONS

PROPOSED RULES	CURRENT RULES
Rule 20. Pleadings Allowed; Separate Pleas and Motions **(a) Pleadings.** Pleadings include a complaint and an answer; a reply to an answer, including a reply to a counterclaim; an answer to a cross-claim; a third-party complaint, if a person who was not an original party is served under the provisions of Rule 27; and a third-party answer, if a third-party complaint is served.	**Rule 78. Petition; Original and Supplemental; Indorsement.** The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed. **Rule 80. Plaintiff's Supplemental Petition.** The plaintiff's supplemental petitions may contain special exceptions, general denials, and the allegations of new matter not before alleged by him, in reply to those which have been alleged by the defendant. **Rule 85. Original Answer; Contents.** The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff. Matters in avoidance and estoppel may be stated together, or in several special pleas, each presenting a distinct defense, and numbered so as to admit of separate issues to be formed on them. **Rule 98. Supplemental Answers.** The defendant's supplemental answers may contain special exceptions, general denial, and the allegations of new matter not before alleged by him, in reply to that which has been alleged by the plaintiff.

Rule 20. Pleadings Allowed; Separate Pleas and Motions [continued] **(b) Motions and Pleas.** An application to the court for an order, whether in the form of a motion, plea, application or other form of request, unless made orally during a hearing or trial, shall be made in writing, state the grounds for the request and set forth the relief or order sought.	**Rule 21. Filing and Serving Pleadings and Motions.** Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.
(c) General Demurrers. General demurrers must not be used.	**Rule 90. Waiver of Defects in Pleading.** General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the judgment is signed, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

Rule 21. General Rules of Pleading. **(a) Claims for Relief.** A pleading which sets forth a claim for relief, whether a complaint, counterclaim, cross-claim, or third-party claim, shall contain: **(1)** a short statement of the claims, stating the legal theories and describing in general the factual bases of the claims sufficient to give fair notice, and **(2)** a demand for judgment for all of the relief sought by the claimant, provided that in all claims for unliquidated damages for more than $50,000 the demand must state only that the damages sought are within the jurisdictional limits of the court. Upon special exception, the court must require the pleader to amend and to specify the maximum amount claimed.	**Rule 47. Claims for Relief.** An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain (a) a short statement of the cause of action sufficient to give fair notice of the claim involved, (b) in all claims for unliquidated damages only the statement that the damages sought are within the jurisdictional limits of the court, and (c) a demand for judgment for all the other relief to which the party deems himself entitled. Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed.
(b) Defenses. **(1) In General.** A pleading which sets forth a defense, whether an answer, a reply to an answer or a third-party answer, may contain dilatory pleas, special exceptions, a general denial, specific denials, and an affirmative statement in plain and concise language that is sufficient to give fair notice of any affirmative defense.	**Rule 85. Original Answer; Contents.** The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff. Matters in avoidance and estoppel may be stated together, or in several special pleas, each presenting a distinct defense, and numbered so as to admit of separate issues to be formed on them.

Rule 21. General Rules of Pleading. **(b) Defenses** **[continued]** **(2) General Denial.** Unless a specific denial is required by law or these rules, a general denial of matters pleaded by the opposing party will be sufficient to put the same in issue. When a party has pleaded a general denial, and the claimant amends the claim, the original denial extends to all matters subsequently alleged by the claimant.	**Rule 92. General Denial.** A general denial of matters pleaded by the adverse party which are not required to be denied under oath, shall be sufficient to put the same in issue. When the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.
(3) Specific Denials. **(A) Denials of Legal Existence or Capacity.** When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue, be sued or recover or the authority of a party to sue, be sued or recover in a representative capacity or as to whether another party is doing business under an assumed name or trade name as alleged, the party desiring to raise the issue must do so by a specific denial, which includes supporting particulars as are peculiarly within the pleader's knowledge.	**[Comment: this subdivision is based largely on Fed. R. Civ. P. 9(a). This subdivision combines Tex. R. Civ. P. 93 (1), (2), (5), (6) and (14) into one paragraph].**
(B) Denials of Execution of Written Instrument, Indorsement or Assignment. A party desiring to raise an issue as to the execution by the party or by the party's authority or by a deceased person, of any instrument in writing, upon which any pleading is founded and not alleged to be lost or destroyed or the genuineness of an indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee, must raise the issue by a specific denial, which includes supporting particulars as are peculiarly within the pleader's knowledge. In the absence of a specific denial, the written instrument or the indorsement or assignment will be received in evidence or otherwise held as fully proved.	**[Comment: This subdivision is an amalgamation of Tex. R. Civ. P. 93 (7), (8), drafted to resemble the draft of the preceding subdivision.**

Rule 21. General Rules of Pleading. **(b) Defenses** **[continued]** **(C) Denials of Conditions Precedent.** A party desiring to raise an issue as to whether a condition precedent has been performed or has occurred, as alleged by a claimant, must do so by a specific denial, which includes supporting particulars as are peculiarly within the pleader's knowledge. In the absence of a specific denial of a condition precedent, its performance or occurrence is presumed and no evidence to the contrary is admissible.	**Rule 54. Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it shall be sufficient to aver generally that all conditions precedent have been performed or have occurred. When such performances or occurrences have been so plead, the party so pleading same shall be required to prove only such of them as are specifically denied by the opposite party.
(D) Denials of Notice and Proof of Loss. A party desiring to raise an issue as to whether a notice and proof of loss or a proof of claim required by law has been given, as alleged by a claimant, must make a specific denial that such notice or proof has been given. Unless such a denial is made, notice and proof shall be presumed and no evidence to the contrary is admissible.	**Rule 93. Certain Pleas to Be Verified.** **[Subpart 12]** That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.
(4) Deemed Denials of Counterclaims or Cross-claims. When a counterclaim or cross-claim is served upon a party who has made an appearance in the action, the party so served, in the absence of a responsive pleading, is deemed to have pleaded a general denial of the counterclaim or cross-claim, but the party is not deemed to have waived any special appearance motion or motion to transfer venue. In all other respects the rules prescribed for pleadings of defensive matter are applicable to answers to counterclaims and cross-claims.	**Rule 81. Defensive Matters.** When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him.

Rule 21. General Rules of Pleading **(b) Defenses** **[continued]** **(5) Affirmative Defenses. Replies to Affirmative Defenses.** Any matter constituting an avoidance of an opposing party's claims or defenses must be set forth affirmatively in pleading to a preceding pleading, including among other matters in avoidance, the following affirmative defenses: accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, exceptions or exclusions from insurance coverage, failure of consideration, want of consideration for a written contract, fraud, fraudulent concealment, illegality, laches, payment, release, res judicata, statute of frauds, statute of limitations, tolling of limitations, usury, and waiver. An affirmative defense need not be denied in a responsive pleading, but an avoidance of an affirmative defense must be alleged affirmatively in pleading to a preceding pleading.	**Rule 82. Special Defenses.** The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted. **Rule 94. Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. **Rule 95. Pleas of Payment.** When a defendant shall desire to prove payment, he shall file with his plea an account stating distinctly the nature of such payment, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof.
(c) Pleading to be Plain and Concise; Consistency **(1)** Each allegation must be made in plain and concise language.	**Rule 45. Definition and System.** **[Subpart (b)]** Pleadings in the district and county courts shall (b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;

(c) Pleading to be Plain and Concise; Consistency [continued] (2) A party may state two or more claims or defenses alternatively. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based upon legal or equitable grounds or both.	**Rule 48. Alternative Claims for Relief.** A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based upon legal or equitable grounds or both.
(d) Construction of Pleadings. All pleadings shall be construed to do substantial justice. When a party has mistakenly designated any plea or pleading, the court, if justice so requires, must treat the plea or pleading as if it had been properly designated.	**Rule 45. Definition and System.** All pleadings shall be construed so as to do substantial justice. **Rule 71. Misnomer of Pleading.** When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated.
(e) Special Exceptions. **(1) Purpose; Form of Exceptions.** A special exception may be used to object to a pleading defect. A special exception must point out the particular pleading excepted to, be specific enough to notify the pleader of the defect or omission, and state the basis for the exception. A proper special exception must confine itself to the factual matters shown on the face of the challenged pleading and must not make factual statements not appearing in the challenged pleading. If an exception is sustained, the pleader must be given an opportunity to amend to cure the defect, if it can be cured.	**Rule 91. Special Exceptions.** A special exception shall not only point out the particular pleading excepted to, but it shall also point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations in the pleading excepted to.

Rule 21. General Rules of Pleading. **(e) Special Exceptions** **[continued]** **(2) Waiver of Pleading Defects.** Every pleading defect of form or substance not made the basis of a special exception and presented to the judge at a reasonable time before trial is waived. But a failure to make or present a special exception before trial does not waive an objection that a cause of action or ground of defense contained in the opposing party's pleadings has no legal basis. This paragraph may not be applied to any party against whom default judgment is rendered unless fair notice of a lawful claim has been given to the defaulted party by the allegations as a whole.	**Rule 90. Waiver of Defects in Pleading.** General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the judgment is signed, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.
Rule 22. Pleading Special Matters	**Rule 53. Special Act or Law.** A pleading founded wholly or in part on any private or special act or law of this State or of the Republic of Texas need only recite the title thereof, the date of its approval, and set out in substance so much of such act or laws as may be pertinent to the cause of action or defense.
(a) Conditions Precedent. In pleading the performance of a condition precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. When such performances or occurrences have been so pleaded, the party pleading some will be required to prove only such of them as are specifically denied by the defending party.	**Rule 54. Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it shall be sufficient to aver generally that all conditions precedent have been performed or have occurred. When such performances or occurrences have been so plead, the party so pleading same shall be required to prove only such of them as are specifically denied by the opposite party.
(b) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.	**Rule 55. Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it shall be sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(c) Special Damage. When items of special damage are claimed, they must be specifically stated.	**Rule 56. Special Damage.** When items of special damage are claimed, they shall be specifically stated.
Rule 23. Form of Pleadings, Motions and Other Papers. **(a) Heading; Names of Parties.** Every pleading or motion must contain a heading setting forth the file number, the names of the parties, the court and county in which the case is pending, and the title of the pleading or motion. The initial complaint must state the names of all of the parties in the heading. Unless the court orders otherwise, in other pleadings and motions, including any amended complaint, it is sufficient to state the name of the first party on each side as shown in the initial complaint, with an appropriate indication of other parties. Compliance with this subdivision is not a prerequisite to the clerk's duty to file a pleading or motion and does not affect the validity of the pleading or motion.	**Rule 78. Petition; Original and Supplemental; Indorsement.** The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed. **Rule 79. The Petition.** The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 above. **Rule 83. Answer; Original and Supplemental; Indorsement.** The answer of defendant shall consist of an original answer, and such supplemental answers as may be necessary, in the course of pleading by the parties to the suit. The original answer and the supplemental answers shall be indorsed, so as to show their respective positions in the process of pleading, as "original answer," "defendant's first supplemental answer," "defendant's second supplemental answer," and so on, to be successively numbered, named and indorsed.

Rule 23. Form of Pleadings, Motions and Other Papers. **[continued]** **(b) Paragraphs.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.	**Rule 50. Paragraphs, Separate Statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, so long as the pleading containing such paragraph has not been superseded by an amendment as provided by Rule 65. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.
(c) Adoption by Reference; Exhibits. Statements in a pleading or motion may be adopted by reference in a different part of the same pleading or motion or in another pleading or motion, as long as the pleading or motion containing such statements has not been superseded by an amendment. A copy of any written instrument which is an exhibit to a pleading or motion is a part thereof for all purposes. An instrument that has been made an exhibit to a pleading or motion may be incorporated by reference in a subsequent pleading or motion even if the pleading or motion to which the exhibit is attached has been superseded by an amendment.	**Rule 58. Adoption by Reference.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion, so long as the pleading containing such statements has not been superseded by an amendment as provided by Rule 65.
Rule 24. Signing of Pleadings, Motions, and Other Papers; Sanctions **(a) Signature Requirement.** Every pleading, motion, and other paper of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, with the attorney's State Bar of Texas identification number, address, telephone number, and, if available, telecopier number. A party not represented by an attorney must sign pleadings, state the party's address, telephone number, and, if available, a telecopier number.	**Rule 57. Signing of Pleadings.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, and, if available, telecopier number. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, and, if available, telecopier number.

Rule 24. Signing of Pleadings, Motions, and Other Papers; Sanctions [continued]	Rule 13. Effect of Signing of Pleadings, Motions and Other Papers; Sanctions.
(b) **Sanctions.** Sanctions for frivolous pleadings and motions are governed by Chapter 10 of the Civil Practice and Remedies Code.	The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both. Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation for this rule.

Rule 25. Presentation of Defenses; Motion Practice	Rule 99. Issuance and Form of Citation.
(a) When presented. An answer to a complaint, or a third-party complaint must be filed within 30 days after the date of service. Any written answer filed in response to a cross-claim or any written reply filed to a counterclaim, must be filed within the time for filing amended pleadings as provided in Rule 28.	b. Form. The citation shall (1) be styled "The State of Texas," (2) be signed by the clerk under seal of court, (3) contain name and location of the court, (4) show date of filing of the petition, (5) show date of issuance of citation, (6) show file number, (7) show names of parties, (8) be directed to the defendant, (9) show the name and address of attorney for plaintiff, otherwise the address of plaintiff, (10) contain the time within which these rules require the defendant to file a written answer with the clerk who issued citation, (11) contain address of the clerk, and (12) shall notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition. The citation shall direct the defendant to file a written answer to the plaintiff's petition on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof. The requirement of subsections 10 and 12 of this section shall be in the form set forth in section c of this rule.

Rule 25. Presentation of Defenses; Motion Practice [continued] **(b) How presented.** The following pleas may at the option of the pleader be made in a responsive pleading or by a separate motion: **(1)** lack of jurisdiction over the person; **(2)** improper or inconvenient venue; **(3)** lack of jurisdiction over the subject matter; **(4)** change of venue because an impartial trial cannot be had where the action is pending; **(5)** insufficiency of citation; **(6)** insufficiency of service of process; **(7)** any basis for abatement or dismissal of the action, including the failure to join a person needed for just adjudication or the pendency of a prior action involving the same parties and subject matter. The defenses described in (1) and (2) must be made in due order as prescribed in subdivisions (c) and (d) of this rule. Any pleading or motion filed concurrently with or after the filing of a motion to dismiss for lack of personal jurisdiction or a motion to transfer venue is deemed filed subject to and without waiving the motions.	**None**

Rule 25. Presentation of Defenses; Motion Practice [continued]	Rule 120a. Special Appearance.
(c) Special Appearances to Challenge Personal Jurisdiction. **(1) Purpose of Motion.** A defendant may appear specially for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such person or property is not amenable to process issued by the courts of this State. A special appearance may be made as to an entire proceeding or as to any severable claim involved therein. **(2) Due Order Requirements.** Any motion to challenge the court's personal jurisdiction must be filed and determined prior to any other plea, pleading, or motion provided that a motion to transfer venue and any other plea, pleading or motion may be contained in the same instrument without waiving the objection to jurisdiction. The issuance of process for witnesses, the taking of depositions, the serving of requests for admissions, and the use of discovery processes in connection with the objection to the court's jurisdiction do not constitute a general appearance. **(3) Hearing of Motion.** Any motion to challenge personal jurisdiction must be heard before a motion to transfer venue and before any other motion or pleading may be heard. The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony. The affidavits, if any, shall be served at least seven days before the hearing, shall be made on personal knowledge, shall set forth specific	1. Notwithstanding the provisions of Rules 121, 122 and 123, a special appearance may be made by any party either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State. A special appearance may be made as to an entire proceeding or as to any severable claim involved therein. Such special appearance shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion; provided however, that a motion to transfer venue and any other plea, pleading, or motion may be contained in the same instrument or filed subsequent thereto without waiver of such special appearance; and may be amended to cure defects. The issuance of process for witnesses, the taking of depositions, the serving of requests for admissions, and the use of discovery processes, shall not constitute a waiver of such special appearance. Every appearance, prior to judgment, not in compliance with this rule is a general appearance. 2. Any motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard. No determination of any issue of fact in connection with the objection to jurisdiction is a determination of the merits of the case or any aspect thereof. 3. The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony. The affidavits, if any, shall be served at least seven days before the hearing, shall be made on

Rule 25. Presentation of Defenses; Motion Practice (3) Hearing of Motion [continued]	Rule 120a. Special Appearance. [Subpart 3] [continued]
facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.	personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.
Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts to justify the opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.	Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
Should it appear to the satisfaction of the court at any time that any of such affidavits are presented in violation of Rule _____, the court shall impose sanctions in accordance with Chapter 10 of the The Civil Practice and Remedies Code.	Should it appear to the satisfaction of the court at any time that any of such affidavits are presented in violation of Rule 13, the court shall impose sanctions in accordance with that rule.
(4) Orders. If the court sustains the objection to jurisdiction, an appropriate order shall be made. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose without waiving the objection to personal jurisdiction. No determination of any issue of fact in connection with the objection to jurisdiction is a determination of the merits of the case.	4. If the court sustains the objection to jurisdiction, an appropriate order shall be entered. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose. Any such special appearance or such general appearance shall not be deemed a waiver of the objection to jurisdiction when the objecting party or subject matter is not amenable to process issued by the courts of this State.

Rule 25. Presentation of Defenses; Motion Practice
[continued]

(d) Improper or Inconvenient Venue.

(1) Purpose; Due Order Requirements. A motion to transfer venue because venue is improper or inconvenient must be filed prior to or concurrently with any other plea, pleading or motion, except a challenge to the court's personal jurisdiction. A motion challenging a plaintiff's intervention on the ground that the intervenor cannot establish independently of any other plaintiff proper venue in the county of suit must be filed within 30 days of the intervention. The determination of a motion to transfer venue shall be made promptly by the court in due order and in a reasonable time before trial.

(2) Motions to Transfer; Responses and Replies. A motion to transfer must state that the case should be transferred to another specified county of proper venue, state the legal basis for the transfer, and plead venue facts establishing that the county to which venue is sought is a proper venue. The movant must request a hearing on the motion at a reasonable time prior to trial. Any response, including proof filed in opposition to the motion, must be filed at least 30 days prior to the hearing. Any reply to a response, including additional proof in support of the motion, must be filed not later than 7 days before the hearing.

(3) Improper Venue: Burdens. A party seeking to maintain venue in the county of suit has the burden of proof that the county of suit is a proper venue. A party seeking transfer has the burden of proof that the county specified in the motion to which transfer is sought is a proper venue. All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party.

Rule 86. Motion to Transfer Venue.

1. Time to File. An objection to improper venue is waived if not made by written motion filed prior to or concurrently with any other plea, pleading or motion except a special appearance motion provided for in Rule 120a. A written consent of the parties to transfer the case to another county may be filed with the clerk of the court at any time. A motion to transfer venue because an impartial trial cannot be had in the county where the action is pending is governed by the provisions of Rule 257.

2. How to File. The motion objecting to improper venue may be contained in a separate instrument filed concurrently with or prior to the filing of the movant's first responsive pleading or the motion may be combined with other objections and defenses and included in the movant's first responsive pleading.

3. Requisites of Motion. The motion, and any amendments to it, shall state that the action should be transferred to another specified county of proper venue because:

(a) The county where the action is pending is not a proper county; or

(b) Mandatory venue of the action in another county is prescribed by one or more specific statutory provisions which shall be clearly designated or indicated.

The motion shall state the legal and factual basis for the transfer of the action and request transfer of the action and request transfer of the action to a specific county of mandatory or proper venue. Verification of the motion is not required. The motion may be accompanied by supporting affidavits as provided in Rule 87.

Rule 25. Presentation of Defenses; Motion Practice
(3) Improper Venue: Burdens [continued]

When a venue fact is specifically denied, the party pleading the venue fact satisfies its burden of proof by making prima facie proof of the venue fact. The existence of a claim when pleaded properly shall be taken as established for venue purposes, and no party shall be required to establish a claim by prima facie proof.

(4) Inconvenient Venue: Burdens. A party seeking transfer to another county of proper venue pursuant to § 15.002(b) of the Civil Practice and Remedies Code has, in addition to the burden of proving proper venue, the burden of proving that transfer is justified for the convenience of the parties and witnesses and in the interest of justice, regardless of whether the adverse party specifically denies the movant's allegations. The nonmovant may file and serve opposing affidavits that the court shall also consider when determining whether transfer is justified. The judge may transfer the case for convenience and in the interest of justice after reviewing all of the evidence filed in support of and opposing the transfer and making the findings required by § 15.002(b) of the Civil Practice and Remedies Code by a preponderance of the evidence.

(5) Burden of Proof for Plaintiffs or Intervenors. A plaintiff or intervening plaintiff responding to a motion under this rule must independently of any other plaintiff satisfy the burden of proving proper venue in accordance with paragraph (3) of this subdivision 5 or satisfy the requirements of subsections (1) through (4) of § 15.003(a) of the Civil Practice

Rule 86. Motion to Transfer Venue. [continued]

4. Response and Reply. Except as provided in paragraph 3(a) of Rule 87, a response to the motion to transfer is not required. Verification of a response is not required.

5. Service. A copy of any instrument filed pursuant to Rule 86 shall be served in accordance with Rule 21a.

Rule 87. Determination of Motion to Transfer.

1. Consideration of Motion. The determination of a motion to transfer venue shall be made promptly by the court and such determination must be made in a reasonable time prior to commencement of the trial on the merits. The movant has the duty to request a setting on the motion to transfer. Except on leave of court each party is entitled to at least 45 days notice of a hearing on the motion to transfer.

Except on leave of court, any response or opposing affidavits shall be filed at least 30 days prior to the hearing of the motion to transfer. The movant is not required to file a reply to the response but any reply and any additional affidavits supporting the motion to transfer must, except on leave of court, be filed not later than 7 days prior to the hearing date.

2. Burden of Establishing Venue.
(a) IN GENERAL. A party who seeks to maintain venue of the action in a particular county in reliance upon Section 15.001 (General Rule), Sections 15.011-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county of suit. A

Rule 25. Presentation of Defenses; Motion Practice (5) Burden of Proof for Plaintiffs or Intervenors. [continued]	Rule 87. Determination of Motion to Transfer. [Subpart 2] [continued]
and Remedies Code. In order to satisfy the requirements of subsections (1) through (4) of § 15.003(a) of the Civil Practice and Remedies Code an original or an intervening plaintiff must present proof relevant to the statutory requirements. The movant may present opposing proof. The judge must review all of the evidence and determine by the preponderance of the evidence whether to grant or deny the motion. **(6) Proof of Venue Requirements.** Proof is made by filing and serving an affidavit and any duly proved attachments that fully and specifically set forth facts. Affidavits must be made on personal knowledge, set forth specific facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify. Deposition transcripts, responses to requests for admission, answers to interrogatories and other discovery products may be considered by the trial court when they are attached to, or incorporated by reference in, an affidavit of a person who has knowledge of such discovery. **(7) Hearings.** The court must determine the motion to transfer on the basis of the pleadings, any stipulations made by the parties, and the proof filed by the parties. No oral testimony shall be received at the hearing. If the party seeking to maintain venue in the county of suit has established that the county of suit is proper venue, the case shall not be transferred unless the party seeking transfer has established a mandatory venue in another county or the court finds, after reviewing all of the evidence filed in support of and opposing the transfer, that transfer to another proper	party who seeks to transfer venue of the action to another specified county under Section 15.001 (General Rule), Sections 15.011-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought. A party who seeks to transfer venue of the action to another specified county under Sections 15.011-15.017, Civil Practice and Remedies Code on the basis that a mandatory venue provision is applicable and controlling has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought by virtue of one or more mandatory venue exceptions. (b) CAUSE OF ACTION. It shall not be necessary for a claimant to prove the merits of a cause of action, but the existence of a cause of action, when pleaded properly, shall be taken as established as alleged by the pleadings. When the defendant specifically denies the venue allegations, the claimant is required, by prima facie proof as provided in paragraph 3 of this rule, to support such pleading that the cause of action taken as established by the pleadings, or a part of such cause of action, accrued in the county of suit. If a defendant seeks transfer to a county where the cause of action or a part thereof accrued, it shall be sufficient for the defendant to plead that if a cause of action exists, then the cause of action or part thereof accrued in the specific county to which transfer is sought, and such allegation shall not constitute an admission that a cause of action in fact exists. But the defendant shall be required

Rule 25. Presentation of Defenses; Motion Practice
(7) Hearings [continued]

venue for the convenience of the parties and witnesses and in the interest of justice is warranted pursuant to § 15.002(b) of the Civil Practice and Remedies Code. If the party seeking to maintain venue in the county of suit fails to establish proper venue in the county of suit, the case shall be transferred to the county to which transfer is sought if the movant has established proper venue in that county, unless a plaintiff or an intervenor has established the requirements of subsections (1) through (4) of § 15.033(a) of the Civil Practice and Remedies Code. If no county of proper venue is established, the court may direct the parties to make further proof.

(8) Transfer if Motion Granted. If a motion to transfer venue or a motion challenging a plaintiff's intervention is granted, the cause shall not be dismissed, but the court shall transfer the case to a proper court; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred will be taxed against the plaintiff.

(9) Subsequently Joined Defendants. If a court has ruled on a motion to transfer venue in the case, no further motions to transfer venue shall be considered except that if the prior motion was overruled, the court must consider a motion to transfer venue filed by a defendant whose appearance date was subsequent to the venue ruling based upon grounds not asserted in the earlier motion or seeking transfer for the convenience of parties and witnesses and in the interest of justice pursuant to § 15.002(b) of the Civil Practice and Remedies Code. Timely filed motions not considered by the court will preserve the movant's objection to venue for purposes of appeal.

Rule 87. Determination of Motion to Transfer.
[Subpart 2(b)] [continued]

to support his pleading by prima facie proof as provided in paragraph 3 of this rule, that, if a cause of action exists, it or a part thereof accrued in the county to which transfer is sought.

(c) OTHER RULES. A motion to transfer venue based on the written consent of the parties shall be determined in accordance with Rule 255. A motion to transfer venue on the basis that an impartial trial cannot be had in the courts where the action is pending shall be determined in accordance with Rules 258 and 259.

3. Proof.

(a) AFFIDAVITS AND ATTACHMENTS. All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party. When a venue fact is specifically denied, the party pleading the venue fact must make prima facie proof of that venue fact; provided, however, that no party shall ever be required for venue purposes to support prima facie proof the existence of a cause of action or part thereof, and at the hearing the pleadings of the parties shall be taken as conclusive on the issues of existence of a cause of action. Prima facie proof is made when the venue facts are properly pleaded and an affidavit, and any duly proved attachments to the affidavit, are filed fully and specifically setting forth the facts supporting such pleading. Affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

Rule 25. Presentation of Defenses; Motion Practice **[continued]** **(10) Discovery Practice.** Discovery shall not be abated or otherwise affected by pendency of a motion to transfer. Issuing process for witnesses and taking depositions shall not constitute a waiver of a motion to transfer venue, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject matter in like manner as if taken in such subsequent suit.	**Rule 87. Determination of Motion to Transfer.** **3. Proof** **[continued]** (b) THE HEARING. The court shall determine the motion to transfer venue on the basis of the pleadings, any stipulations made by and between the parties and such affidavits and attachments as may be filed by the parties in accordance with the preceding subdivision of this paragraph 3 or of Rule 88. (c) If a claimant has adequately pleaded and made prima facie proof that venue is proper in the county of suit as provided in subdivision (a) of paragraph 3, then the cause shall not be transferred but shall be retained in the county of suit, unless the motion to transfer is based on the grounds that an impartial trial cannot be had in the county where the action is pending as provided in Rules 257-259 or on an established ground of mandatory venue. A ground of mandatory venue is established when the party relying upon a mandatory exception to the general rule makes prima facie proof as provided in subdivision (a) of paragraph 3 of this rule. (d) In the event that the parties shall fail to make prima facie proof that the county of suit or the specific county to which transfer is sought is a county of proper venue, then the court may direct the parties to make further proof. 4. No Jury. All venue challenges shall be determined by the court without the aid of a jury. 5. Motion for Rehearing. If venue has been sustained as against a motion to transfer, or if an action has been transferred to a proper county in response to a motion to transfer, then no further motions to transfer shall be.

	Rule 87. Determination of Motion to Transfer. **[Subpart 5]** **[continued]** considered regardless of whether the movant was a party to the prior proceedings or was added as a party subsequent to the venue proceedings, unless the motion to transfer is based on the grounds that an impartial trial cannot be had under Rules 257-259 or on the ground of mandatory venue, provided that such claim was not available to the other movant or movants. Parties who are added subsequently to an action and are precluded by this rule from having a motion to transfer considered may raise the propriety of venue on appeal, provided that the party has timely filed a motion to transfer. 6. There shall be no interlocutory appeals from such determination. **Rule 89. Transferred If Motion Is Sustained.** If a motion to transfer venue is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the proper court; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed. Provided, however, if the cause be severable as to parties defendant and shall be ordered transferred as to one or more defendants but not as to all, the clerk, instead of sending the original papers, shall make certified copies of such filed papers as directed by the court and forward the same to the clerk of the court to

	Rule 89. Transferred If Motion Is Sustained. [continued] which the venue has been changed. After the cause has been transferred, as above provided for the clerk of the court to which the cause has been transferred shall mail notification to the plaintiff or his attorney that transfer of the cause has been completed, that the filing fee in the proper court is due and payable within thirty days from the mailing of such notification, and that the case may be dismissed if the filing fee is not timely paid; and if such filing fee is timely paid, the cause will be subject to trial at the expiration of thirty days after the mailing of notification to the parties or their attorneys by the clerk that the papers have been filed in the court to which the cause has been transferred; and if the filing fee is not timely paid, any court of the transferee county to which the case might have been assigned, upon its own motion or the motion of a party, may dismiss the cause without prejudice to the refiling of same.

Rule 25. Presentation of Defenses; Motion Practice [continued] **(e) Change of Venue; Unfair Trial; Consent** **(1) Unfair Trial Grounds.** A change of venue may be granted in civil cases upon motion of either party, supported by the movant's affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any of the following cause: **(A)** That there exists in the county where the suit is pending so great a prejudice against the movant that a fair and impartial trial cannot be obtained there. **(B)** That there is a combination against the movant instigated by influential persons, by reason of which the movant cannot expect a fair and impartial trial. **(C)** That an impartial trial cannot be had in the county where the action is pending. **(D)** For other sufficient cause to be determined by the court. **(2) Procedure.** Where a motion to change venue is duly made, it shall be granted, unless the credibility of those making the motion, or their means of knowledge or the truth of the facts set out in the motion are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge; and the application either granted or refused. Reasonable discovery in support of, or in opposition to, the application shall be permitted, and such discovery as is relevant, including deposition testimony on file, may be attached to, or incorporated by reference in, the	**Rule 257. Granted on Motion.** A change of venue may be granted in civil causes upon motion of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any following cause: (a) That there exists in the county where the suit is pending so great a prejudice against him that he cannot obtain a fair and impartial trial. (b) That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial. (c) That an impartial trial cannot be had in the county where the action is pending. (d) For other sufficient cause to be determined by the court. **Rule 258. Shall Be Granted.** Where such motion to transfer venue is duly made, it shall be granted, unless the credibility of those making such application, or their means of knowledge or the truth of the facts set out in said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge; and the application either granted or refused. Reasonable discovery in support of, or in opposition to, the application shall be permitted, and such discovery as is relevant, including deposition testimony on file, may be attached to, or incorporated by reference in, the affidavit of a party, a witness, or an attorney who has knowledge of such discovery. **Rule 259. To What County.** If the motion under Rule 257 is granted, the cause shall be removed:

Rule 25. Presentation of Defenses; Motion Practice **(e) Change of Venue; Unfair Trial; Consent [Subpart (2) Procedure] [continued]** affidavit of a party, a witness, or an attorney who has knowledge of such discovery. **(3) Transferred To What County.** If the motion to transfer is granted, the cause shall be removed: **(A)** If from a district court, to any county of proper venue in the same or an adjoining district; **(B)** If from a county court, to any adjoining county of proper venue; **(C)** If (A) or (B) are not applicable, to any county of proper venue; **(D)** If a county of proper venue (other than the county of suit) cannot be found, then if from **(i)** A district court, to any county in the same or an adjoining district or to any district where an impartial trial can be had; **(ii)** A county court, to any adjoining county or to any district where an impartial trial can be had; but the parties may agree that venue shall be changed to some other county, and the order of the court shall conform to such agreement.	**Rule 259. To What County. [continued]** (a) If from a district court, to any county of proper venue in the same or an adjoining district; (b) If from a county court, to any adjoining county of proper venue; (c) If (a) or (b) are not applicable, to any county of proper venue; (d) If a county of proper venue (other than the county of suit) cannot be found, then if from (1) A district court, to any county in the same or an adjoining district or to any district where an impartial trial can be had; (2) A county court, to any adjoining county or to any district where an impartial trial can be had; but the parties may agree that venue shall be changed to some other county, and the order of the court shall conform to such agreement.
(4) Consent. At any time the parties may file written consent to transfer the case to any other county and the court must order the transfer.	**Rule 255. Change of Venue by Consent.** Upon the written consent of the parties filed with the papers of the cause, the court, by an order entered on the minutes, may transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit.

Rule 26. Counterclaim and Cross-claim	Rule 97. Counterclaim and Cross-Claim.
(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim within the jurisdiction of the court, not the subject of a pending action, which at the time of the filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; provided, however, that a judgment based upon a settlement or compromise of a claim of one party to the transaction or occurrence prior to a disposition on the merits shall not operate as a bar to the continuance or assertion of the claims of any other party to the transaction or occurrence unless the latter has consented in writing that said judgment shall operate as a bar.	(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim within the jurisdiction of the court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; provided, however, that a judgment based upon a settlement or compromise of a claim of one party to the transaction or occurrence prior to a disposition on the merits shall not operate as a bar to the continuation or assertion of the claims of any other party to the transaction or occurrence unless the latter has consented in writing that said judgment shall operate as a bar.
(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against a opposing party whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.	(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.
(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount of different in kind from that sought in the pleading of the opposing party, so long as the subject matter is within the jurisdiction of the court.	(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, so long as the subject matter is within the jurisdiction of the court.
(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing his pleading may be presented as a counterclaim by amended pleading.	(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing his pleading may be presented as a counterclaim by amended pleading.

Rule 26. Counterclaim and Cross-claim [continued]	Rule 97. Counterclaim and Cross-Claim. [continued]
(e) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.	(e) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.
(f) Additional Parties. Persons other than those made parties to the original action may be made parties to a third party action, counterclaim or cross-claim in accordance with the provisions of Rules _____ (currently Rules 38, 39 and 40).	(f) Additional Parties. Persons other than those made parties to the original action may be made parties to a third party action, counterclaim or cross-claim in accordance with the provisions of Rules 38, 39 and 40.
(g) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule ____ (currently Rule 174), judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.	(g) Tort shall not be the subject of set-off or counterclaim against a contractual demand nor a contractual demand against tort unless it arises out of or is incident to or is connected with same. (h) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 174, judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 27. Third-Party Practice.	Rule 38. Third-Party Practice.
(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a citation and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff or to the plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ninety (90) days after the appearance day of the third-party plaintiff, as a defending party. But if a new plaintiff is added by amendment or intervention, the third-party plaintiff need not obtain leave to make the service of a third-party complaint if it is filed not later than sixty (60 days after the amended complaint or intervention is served Otherwise, the third-plaintiff must obtain leave on motion upon notice to all parties to the action. The person served, hereinafter called the third-party defendant shall make any defenses to the third-party plaintiff's claim under the rules applicable to the defendant, and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule ____ (currently Rule 97). The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-	(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a citation and petition to be served upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party petition not later than thirty (30) days after he serves his original answer. Otherwise, he must obtain leave on motion upon notice to all parties to the action. The person served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim under the rules applicable to the defendant, and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 97. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses and his counterclaims and cross-claims. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or who may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

Rule 27. Third-Party Practice. **(a) When Defendant May Bring in Third Party.** **[continued]** party defendant thereupon shall assert any defenses and any counterclaims and cross-claims. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or who may be liable to the third-party defendant or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant. **(b) When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so. **(c) Liability Insurers.** This rule does not permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged.	**Rule 38. Third-Party Practice.** **[continued]** (b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so. (c) This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract liable to the person injured or damaged. (d) This rule shall not be applied so as to violate any venue statute, as venue would exist absent this rule.
Rule 28. Amended Pleadings **(a) Amendment Defined.** The object of an amendment is to add something to, or withdraw something from, that which has been previously pleaded so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to plead new matter, additional to that formerly pleaded by the amending party, which constitutes an additional claim or defense permissible to the suit.	**Rule 62. Amendment Defined.** The object of an amendment, as contra-distinguished from a supplemental petition or answer, is to add something to, or withdraw something from, that which has been previously pleaded so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to plead new matter, additional to that formerly pleaded by the amending party, which constitutes an additional claim or defense permissible to the suit

Rule 28. Amended Pleadings **(a) Amendment Defined.** **[continued]** Unless the substituted instrument is set aside on exceptions, the instrument for which it is substituted shall no longer be regarded as a part of the pleading in the record of the cause, unless some error of the court in deciding upon the necessity of the amendment, or otherwise in superseding it, complained of, and an exception is taken to the action of the court, or unless it be necessary to look to the superseded pleading upon a question of limitations.	**Rule 65. Substituted Instrument Takes Place of Original.** Unless the substituted instrument shall be set aside on exceptions, the instrument for which it is substituted shall no longer be regarded as a part of the pleading in the record of the cause, unless some error of the court in deciding upon the necessity of the amendment, or otherwise in superseding it, be complained of, and exception be taken to the action of the court, or unless it be necessary to look to the superseded pleading upon a question of limitation.
Rule 28. Amended Pleadings **[continued]** **(b) When to Amend; Amended Instrument.** Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to another party; provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule ____ (currently Rule 166), will be filed only after leave of the judge is obtained, which leave must be granted by the judge unless there is a showing that such filing will operate as a surprise to the complaining party.	**Rule 63. Amendments and Responsive Pleadings.** Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party.

Rule 28. Amended Pleadings **(b) When to Amend; Amended Instrument. [continued]** The party amending must file a substitute pleading or motion that is entire and complete in itself and that contains a title that identifies the pleading or motion that is amended such as "first amended complaint, " "first amended answer," or "second amended motion for severance."	**Rule 64. Amended Instrument.** The party amending shall point out the instrument amended, as "original petition," or "plaintiff's first supplemental petition," or as "original answer," or "defendant's first supplemental answer" or other instrument file by the party and shall amend by filing a substitute therefor, entire and complete in itself, indorsed "amended original petition," or "amended first supplemental petition," or "amended original answer," or "amended first supplemental answer," accordingly as said instruments of pleading are designated.
(c) Trial Amendments. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading, or if during the trial any defect, fault or omission in a pleading, either of form or substance, is called to the attention of the court, the court may allow the pleadings to be amended and must do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice the objecting party in maintaining his action or defense upon the merits. The court may grant a postponement to enable the objecting party to meet such evidence.	**Rule 66. Trial Amendment.** If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading, or if during the trial any defect, fault or omission in a pleading, either of form or substance, is called to the attention of the court, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice him in maintaining his action or defense upon the merits. The court may grant a postponement to enable the objecting party to meet such evidence

Rule 28. Amended Pleadings [continued]	Rule 67. Amendments to Conform to Issues Tried Without Objection.
(d) Trial by Consent. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. In such case such amendment of pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by leave of court upon motion of any party at any time up to the submission of the case to the Court or jury, but failure so to amend must not affect the result of the trial of these issues; provided that written pleadings, before the time of submission, will be necessary to the submission of questions, as is provided in Rules ____ and ____ (currently Rules 277 and 279).	When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. In such case such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by leave of court upon motion of any party at any time up to the submission of the case to the Court or jury, but failure so to amend shall not affect the result of the trial of these issues; provided that written pleadings, before the time of submission, shall be necessary to the submission of questions, as is provided in Rules 277 and 279.

SECTION 3

DRAFT -- 7/10/97 2:50 PM
Including all changes under cover letter dated 5/23/97

Rule 30. Parties	Rule 28. Suits in Assumed Name
(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest, except as provided by law. An executor, administrator, guardian, bailee, trustee of an express trust, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is sought. An assignee or subrogee may prosecute an action in the name of an assignor or subrogor provided that the identity of the real party in interest and the basis for the interest is set forth in the party's pleadings. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution will have the same effect as if the action had been commenced in the name of the real party in interest. **(b) Capacity to Sue or Be Sued in Assumed Name.** Any partnership, unincorporated association, private corporation, other legal entity or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.	Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.

Rule 30. Parties [continued] **(c) Next Friends and Guardians Ad Litem.** **(1) Next Friends.** A minor or incompetent person who does not have a legal guardian may sue and be represented by a "next friend" who shall have the same rights as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required. A next friend may not compromise a claim brought in behalf of a minor or incompetent person without court approval. Any money or property obtained by a next friend must be managed or invested in accordance with Chapter 142 of the Property Code or as otherwise provided by law. **(2) Guardians Ad Litem.** The court must appoint a guardian ad litem to represent a minor or incompetent person who has no guardian or next friend or who is represented by a guardian or next friend who appears to the court to have an interest potentially adverse to the minor or incompetent person. The court must allow the guardian ad litem a reasonable fee for services to be taxed as a part of the costs.	**Rule 44. May Appear by Next Friend** Minors, lunatics, idiots, or persons non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules: **(1)** Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required. **(2)** Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit. **Rule 173. Guardian Ad Litem** When a minor, lunatic, idiot or a non-compos mentis may be a defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as a part of the costs.

Rule 31. Joinder of Claims	Rule 51. Joinder of Claims and Remedies
(a) Joinder of Claims. A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or alternative claims, as many claims as the party has against an opposing party. **(b) Joinder of Contingent Claims.** If a claim is contingent on the determination of another claim, the claims may be joined in the same action. This rule does not permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the claimant.	**(a) Joinder of Claims.** The plaintiff in his petition or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 39, 40, and 43 are satisfied. There may be a like joinder of cross claims or third-party claims if the requirements of Rules 38 and 97, respectively, are satisfied. **(b) Joinder of Remedies.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged.

Rule 32. Permissive Joinder of Parties	Rule 40. Permissive Joinder of Parties
(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities. Permissive joinder of additional parties in accordance with this rule may be disallowed by the court if joinder will unduly delay or prejudice the adjudication of the rights of another party.	**(a) Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities. **(b) Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. **Rule 37. Additional Parties** Before a case is called for trial, additional parties, necessary or proper parties to the suit, may be brought in, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but not at a time nor in a manner to unreasonably delay the trial of the case.

Rule 32. Permissive Joinder of Parties [continued]	Rule 41. Misjoinder and Non-Joinder of Parties
(b) Misjoinder of Parties. Misjoinder of parties is not grounds for dismissal of an action. Any claim against a party who has been improperly joined may be severed and proceeded with separately.	Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added, or suits filed separately may be consolidated, or actions which have been improperly joined may be severed and each ground of recovery improperly joined may be docketed as a separate suit between the same parties, by order of the court on motion of any party or on its own initiative at any stage of the action, before the time of submission to the jury or to the court if trial is without a jury, on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 33. Joinder of Persons Needed for Just Adjudication	Rule 39. Joinder of Persons Needed for Just Adjudication
(a) Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as party in the action if **(1)** in the person's absence complete relief cannot be accorded among those already parties; or **(2)** the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may **(A)** as a practical matter impair or impede the person's ability to protect that interest or **(B)** leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.	**(a) Persons to be Joined if Feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (I) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.
(b) Determination by Court Whenever Joinder Not Feasible. If a person described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent party being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.	**(b) Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

Rule 33. Joinder of Persons Needed for Just Adjudication [continued] **(c) Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined. **(d) Exception of Class Actions.** This rule is subject to the provisions of Rule 36.	**Rule 39. Joinder of Persons Needed for Just Adjudication [continued]** **(c) Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined. **(d) Exception of Class Actions.** This rule is subject to the provisions of Rule 42.
Rule 34. Actions Against Accommodation Makers and Endorsers; Official Bonds. **(a) In General.** An action may not be maintained against a secondary obligor unless the primary obligor is joined as a party or a judgment has previously been rendered against the primary obligor, except as otherwise provided by law or these rules. **(b) Official Bonds.** **(1) State officers.** In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the complaint that both of such officers are liable for the money sued for.	**Rule 36. Different Officials and Bondsmen** In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for.

(2) **Sheriffs and Constables.** Whenever a sheriff, constable, or a deputy or either has been sued for damages for any official act and has taken an indemnifying bond for the acts upon which the suit is based, the officer may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties.	**Rule 34. Against Sheriff, Etc.** Whenever a sheriff, constable, or a deputy or either has been sued for damages for any act done in his official character, and has taken an indemnifying bond for the acts upon which the suit is based, he may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties.
Rule 34. Actions Against Accommodation Makers and Endorsers; Official Bonds. [continued] (3) **Multiple Bonds**. In suits brought by the State or any county, city, independent school district, irrigation district, or other political subdivision of the State, against any officer who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given more than one official bond, the sureties on each and all such bonds may be joined as defendants in the same suit whenever it is difficult to determine when the default sued for occurred and which set of sureties on such bonds is liable therefor.	**Rule 36. Different Officials and Bondsmen** In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for.

Rule 35. Consolidation, Separate Trials and Severance [continued] **(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order the actions consolidated; and it may make such orders concerning proceedings as may tend to avoid unnecessary costs or delay. **(b) Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. **(c) Severance.** The court may order a severance **(1)** if the controversy involves more than one claim, **(2)** the severed claim is one that would be the proper subject of a lawsuit if independently asserted, and **(3)** the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. A severance divides the lawsuit into two or more separate and independent cases.	**Rule 40(b). Permissive Joinder of Parties** **Rule 174(a). Consolidation; Separate Trials** **(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. **(b) Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. **Rule 174(b). Consolidation; Separate Trials** **(b) Separate Trials.** The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues. **Source [of subpart (c) Severance]: State Dept. of Highways v. Cotner, 845 S.W.2d 818, 819 (Tex. 1993); Hall v. City of Austin, 450 S.W.2d 836, 837-38 (Tex. 1970).**

Rule 36. Interpleader	Rule 43. Interpleader
Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which the claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in any other rules.	Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in any other rules.

Rule 37. Class Actions	Rule 42. Class Actions [without Derivative Suit paragraph]
(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if **(1)** the class is so numerous that joinder of all members is impracticable, **(2)** there are questions of law or fact common to the class, **(3)** the claims or defenses of the representative parties are typical of the claims and defenses of the class, and **(4)** the representative parties will fairly and adequately protect the interests of the class.	**(a) Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
(b) Class Action Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:	**(b) Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
(1) the prosecution of separate actions by or against individual members of the class would create a risk of **(A)** inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or **(B)** adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; or	**(1)** the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole; or	(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.	(3) where the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

Rule 37. Class Actions [continued]	Rule 42. Class Actions [continued]
The matters pertinent to the findings include: **(A)** the interest of members of the class in individually controlling the prosecution or defense of separate actions; **(B)** the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; **(C)** the desirability or undesirability of concentrating the litigation of the claims in the particular forum; **(D)** the difficulty likely to be encountered in the management of a class action.	(4) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.
(c) Determination by Order Whether Class Action to be Maintained: Notice; Judgment; Actions Conducted Partially as Class Actions.	**(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.**
(1) As soon as practicable after the commencement of an action brought as a class action, the court shall, after hearing, determine by order whether it is to be so maintained. This determination may be altered, amended, or withdrawn at any time before final judgment. The court may order the naming of additional parties in order to insure the adequacy of representation.	(1) As soon as practicable after the commencement of an action brought as a class action, the court shall, after hearing, determine by order whether it is to be so maintained. This determination may be altered, amended, or withdrawn at any time before final judgment. The court may order the naming of additional parties in order to insure the adequacy of representation.
(2) After the court has determined that a class action may be maintained it shall order the party claiming the class action to direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort. In all class actions maintained under subdivision (b)(1), and (b)(2), this notice shall advise the members of the class **(A)** the nature of the suit, **(B)** the binding effect of the judgment, whether favorable or not, and **(C)** the right of any member to appear before the court and challenge the court's determinations as to the class and its representatives. In all class actions maintained	(2) After the court has determined that a class action may be maintained it shall order the party claiming the class action to direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort. In all class actions maintained under subdivisions (b)(1), (b)(2), and (b)(3), this notice shall advise the members of the suit (A) the nature of the suit,

Rule 37. Class Actions [continued]	Rule 42. Class Actions [continued]
under subdivision (b)(3) this notice shall advise each member of the class **(A)** the nature of the suit; **(B)** that the court will exclude him from the class if he so requests by a specified date; **(C)** that the judgment, whether favorable or not, will include and bind all members who do not request exclusion by the specified date; that the judgment, whether favorable or not, will include and bind all members who do not request exclusion by the specified date; and **(D)** that any member who does not request exclusion may if he desires, enter an appearance through his counsel.	(B) the binding effect of the judgment, whether favorable or not, and (C) the right of any member to appear before the court and challenge the court's determinations as to the class and its representatives. In all class actions maintained under subdivision (b)(4) this notice shall advise each member of the class (A) the nature of the suit; (B) that the court will exclude him from the class if he so requests by a specified date; (C) that the judgment, whether favorable or not, will include and bind all members who do not request exclusion by the specified date; and (D) that any member who does not request exclusion may if he desires, enter an appearance through his counsel.
(3) The judgment in an action maintained as a class action under subdivisions (b)(1), and (b)(2), whether or not favorable to the class, shall include, describe, and be binding upon all those whom the court finds to be members of the class and who received notice as provided in subdivision (c)(2). The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, must include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.	(3) The judgment in an action maintained as a class action under subdivisions (b)(1), (b)(2), and (b)(3), whether or not favorable to the class, shall include, describe, and be binding upon all those whom the court finds to be members of the class and who received notice as provided in subdivision (c)(2). The judgment in an action maintained as a class action under subdivision (b)(4), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.
(d) Actions Conducted Partially as Class Actions. When appropriate **(1)** an action may be brought or maintained as a class action with respect to particular issues, or **(2)** a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall be construed and applied accordingly.	**(d) Actions Conducted Partially as Class Actions.** When appropriate (1) an action may be brought or maintained as a class action with respect to particular issues, or (2) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

Rule 37. Class Actions [continued] **(e) Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court, and notice shall be given to all members of the class in such manner as the court directs. **(f) Discovery.** Unnamed members of a class action are not to be considered as parties for purposes of discovery.	**Rule 42. Class Actions [continued]** **(e) Dismissal or Compromise.** A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. **(f) Discovery.** Unnamed members of a class action are not to be considered as parties for purposes of discovery. **(g) Effective Date.** This rule shall be effective only with respect to actions commenced on or after September 1, 1977.
Rule 38. Derivative Suits In a derivative suit brought pursuant to article 5.14 of the Texas Business Corporation Act, the complaint shall contain the allegations (1) that the plaintiff was a record or beneficial owner of shares, or of an interest in a voting trust for shares at the time of the transaction of which he complains, or his shares or interest thereafter devolved upon him by operation of law from a person who was the owner at that time, and (2) with particularity, the efforts of the plaintiff to have suit brought for the corporation by the board of directors, or the reasons for not making any such efforts. The derivative suit may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders similarly situated in enforcing the right of the corporation. The suit shall not be dismissed or compromised without the approval of the court, and notice in the manner directed by the court of the proposed dismissal or compromise must be given to shareholders.	**Rule 42(a). Class Actions (Derivative Suit paragraph only)** *Derivative Suit.* In a derivative suit brought pursuant to Article 5.14 of the Texas Business Corporation Act, the petition shall contain the allegations (1) that the plaintiff was a record or beneficial owner of shares, or of an interest in a voting trust for shares at the time of the transaction of which he complains, or his shares or interest thereafter devolved upon him by operation of law from a person who was the owner at that time, and (2) with particularity, the efforts of the plaintiff to have suit brought for the corporation by the board of directors, or the reasons for not making any such efforts. The derivative suit may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders similarly situated in enforcing the right of the corporation. The suit shall not be dismissed or compromised without the approval of the court, and notice in the manner directed by the court of the proposed dismissal or compromise shall be given to shareholders.

Rule 39. Intervention **(a) Procedure.** Any person subject to permissive joinder as provided in Rule 32 or compulsory joinder as a person needed for just adjudication in accordance with Rule 33 may intervene by filing a pleading subject to being stricken or severed on motion of any party for sufficient cause. **(b) Sufficient Cause** **(1) Proper Parties.** In deciding if there is sufficient cause to strike or to sever an intervention of a person qualifying for permissive joinder under the requirements of Rule 32, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties, including the rights of the intervenor. **(2) Persons Needed for Adjudication.** In deciding if there is sufficient cause to strike or to sever an intervention of a person described in subdivision (a) (1)-(2) of Rule 33, the court must determine whether denying the intervention on the basis of delay or for other reasons will unduly prejudice the adjudication of the rights of the parties including the intervenor in consideration of the following factors: first, to what extent a judgment rendered in the intervenor's absence might be prejudicial to the intervenor or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the intervenor's absence will be adequate; fourth, whether the intervenor purposely bypassed the proceeding before deciding to intervene.	**Rule 60. Intervenor's Pleadings** Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party. **Rule 61. Trial: Intervenors: Rules Apply to All Parties** These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately.

Rule 40. Voluntary Dismissals and Nonsuits.	Rule 161. Where Some Defendants Not Served
(a) In General. At any time before the plaintiff has introduced all of the plaintiff's evidence other than rebuttal evidence, the plaintiff may dismiss or nonsuit an entire case or dismiss or nonsuit the action as to one or more of several parties. But if the trial is bifurcated or a court has ordered separate trials, the plaintiff may not dismiss or nonsuit any bifurcated or separate claim or issue upon which the plaintiff has introduced all of the plaintiff's evidence other than rebuttal evidence, in the first phase of a bifurcated case or in any separate trial. **(b) Procedure.** The dismissal or nonsuit may be obtained by: **(1)** filing a motion to dismiss with the clerk of the court; **(2)** announcing a present intent to nonsuit in open court; **(3)** filing a notice of nonsuit or dismissal; or **(4)** filing an amended complaint that omits any defendant that the plaintiff no longer wishes to sue. The dismissal or nonsuit by any one of these methods is immediately effective without the necessity of court order. Notice of the dismissal or nonsuit must be served on any party who has answered or has been served with process. **(c) Relation Back.** If a voluntary dismissal or nonsuit has been obtained by the inadvertent omission of a defendant from an amended complaint, the plaintiff may name the defendant in a subsequent complaint that relates back to the date of the complaint that was filed before the inadvertent omission, if the other parties including any omitted defendant whose name is added to the amended complaint are not harmed or prejudiced by the correction of the inadvertent omission. **(d) Abandonment of Claims.** A party may abandon a claim or defense contained in the party's pleadings by amending the pleadings or by announcement in open court during a hearing or trial, without amending the party's pleadings or obtaining leave of court.	When some of the several defendants in a suit are served with process in due time and others are not so served, the plaintiff may either dismiss as to those not so served and proceed against those who are, or he may take new process against those not served, or may obtain severance of the case as between those served and those not served, but no dismissal shall be allowed as to a principal obligor without also dismissing the parties secondarily liable except in cases provided by statute. No defendant against whom any suit may be so dismissed shall be thereby exonerated from any liability, but may at any time be proceeded against as if no such suit had been brought and no such dismissal ordered.

Rule 40. Voluntary Dismissals and Nonsuits. [continued]	Rule 161. Where Some Defendants Not Served
(e) Defendants Not Served. When some of the several defendants in a suit are served with process and others are not so served, the plaintiff may either dismiss as to those not so served and proceed against those who are, or the plaintiff may take new process serve against those not served, or may obtain severance of the case as between those served and those not served, but no dismissal shall be allowed as to a principal obligor without also dismissing the parties secondarily liable except in cases provided by law. No defendant against whom any suit may be so dismissed shall be thereby exonerated from any liability, but may at any time be proceeded against as if no such suit had been brought and no such dismissal ordered.	When some of the several defendants in a suit are served with process in due time and others are not so served, the plaintiff may either dismiss as to those not so served and proceed against those who are, or he may take new process against those not served, or may obtain severance of the case as between those served and those not served, but no dismissal shall be allowed as to a principal obligor without also dismissing the parties secondarily liable except in cases provided by statute. No defendant against whom any suit may be so dismissed shall be thereby exonerated from any liability, but may at any time be proceeded against as if no such suit had been brought and no such dismissal ordered.

Rule 40. Voluntary Dismissals and Nonsuits. [continued]	Rule 162. Dismissal or Non-Suit
(f) Avoidance of Prejudice. Any dismissal or nonsuit taken pursuant to this rule will not prejudice the right of another party to be heard on a pending claim for affirmative relief, excuse the payment of costs taxed by the clerk or authorize a party to prosecute an action without the joinder of a principal obligor, except as provided by law and these rules. **(g) Effect on Sanctions' Motions.** A dismissal or nonsuit under this rule has no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court. **(h) Taxation of Costs.** Any dismissal pursuant to this rule which terminates the case authorizes the clerk to tax court costs against the dismissing party unless otherwise ordered by the court.	At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes. Notice of the dismissal or non-suit shall be served in accordance with Rule 21a on any party who has answered or has been served with process without necessity of court order. Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk. A dismissal under this rule shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court. Any dismissal pursuant to this rule which terminates the case shall authorize the clerk to tax court costs against dismissing party unless otherwise ordered by the court. **Rule 163. Dismissal as to Parties Served, Etc.** When it will not prejudice another party, the plaintiff may dismiss his suit as to one or more of several parties who were served with process, or who have answered, but no such dismissal shall in any case, be allowed as to a principal obligor, except in the cases provided for by statute. **Rule 165. Abandonment** A party who abandons any part of his claim or defense, as contained in the pleadings, may have that fact entered of record, so as to show that the matters therein were not tried.

Rule 41. Substitution of Parties **(a) Death.** **(1) Death of Party Before Verdict or Decision.** If the claim is one that survives, no suit will abate because of the death of any party before the verdict or decision of the court is rendered, but the case may continue as provided in this rule. Upon death of a party, the personal representative of the decedent's estate, or the heirs may appear and, upon notice of death in open court, may continue to prosecute or defend the action. Absent a timely appearance and suggestion, upon request by another party, the clerk must issue a citation requiring the personal representative of the decedent's estate or the heirs to appear and prosecute or defend the action. A defending party may have a claim dismissed for want of prosecution upon failure of the personal representative or the heirs to respond to the citation in a timely manner.	**Rule 150. Death of Party** Where the cause of action is one which survives, no suit shall abate because of the death of any party thereto before the verdict or decision of the court is rendered, but such suit may proceed to judgment as hereinafter provided. **Rule 151. Death of Plaintiff** If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name. If no such appearance and suggestion be made within a reasonable time after the death of the plaintiff, the clerk upon the application of defendant, his agent or attorney, shall issue a scire facias for the heirs or the administrator or executor of such decedent, requiring him to appear and prosecute such suit. After service of such scire facias, should such heir or administrator or executor fail to enter appearance within the time provided, the defendant may have the suit dismissed. **Rule 152. Death of Defendant** Where the defendant shall die, upon the suggestion of death being entered of record in open court, or upon petition of the plaintiff, the clerk shall issue a scire facias for the administrator or executor or heir requiring him to appear and defend the suit and upon the return of such service, the suit shall proceed against such administrator or executor or heir. **Rule 153. When Executor, Etc., Dies** When an executor or administor shall be a party to any suit, whether as plaintiff or as defendant, and shall die or cease to be such executor or administrator, the suit may be continued by or

(2) Requisites of Citation. The citation and return of service must conform to the requisites of citations and returns under these rules, except that a citation requiring the personal representative of the decedent's estate or the heirs to appear and prosecute the action must provide notice that the action may be dismissed for want of prosecution if a timely response is not made.	**Rule 153. When Executor, Etc., Dies [Continue]** against the person succeeding him in the administration, or by or against the heirs, upon like proceedings being had as provided in the two preceding rules, or the suit may be dismissed, as provided in Rule 151. **Rule 154. Requisites of Scire Facias** The scire facias and returns thereon, provided for in this section, shall conform to the requisites of citations and the returns thereon, under the provisions of these rules.
(3) Surviving Parties. Where there are two or more plaintiffs or defendants, and one or more of them die, upon notice of death being entered upon the record, the suit will at the instance of either party proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be.	**Rule 155. Surviving Parties** Where there are two or more plaintiffs or defendants, and one or more of them die, upon suggestion of such death being entered upon the record, the suit shall at the instance of either party proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be.
(4) Death After Verdict or Close of Evidence. Unless otherwise provided by law, if a party in a jury case dies between verdict and judgment, or a party in a non-jury case dies after the evidence is closed and before judgment is pronounced, judgment must be rendered and entered as if all parties were living.	**Rule 156. Death After Verdict or Close of Evidence** When a party in a jury case dies between verdict and judgment, or a party in a non-jury case dies after the evidence is closed and before judgment is pronounced, judgment shall be rendered and entered as if all parties were living.
Rule 41. Substitution of Parties **(a) Death.** **[continued]** **(5) Suit for the Use of Another.** When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit and will be responsible for costs.	**Rule 158. Suit for the Use of Another** When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be as responsible for costs as if he brought the suit.

(6) Suit for Injuries Resulting in Death. In cases arising under the provisions of Chapter 71 of the Civil Practice and Remedies Code, the suit will not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the person entitled; if the defendant dies, his personal representative or heirs, may be joined as provided in paragraph (a) and the case prosecuted to judgment.	**Rule 159. Suit for Injuries Resulting in Death** In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the person entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment.
(b) Suit Against Dissolved Corporation. The dissolution of a corporation will not operate to abate any pending suit in which such corporation is a defendant, but such suit will continue as provided in the Business Corporation Act.	**Rule 160. Dissolution of Corporation** The dissolution of a corporation shall not operate to abate any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved.

Rule 41. Substitution of Parties [continued] **(c) Public Officers: Death or Separation From Office.** (1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties must be disregarded. An order of substitution may be made at any time, but the omission to enter such an order shall not affect the substitution. (2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.	**None**
(d) Substitution for Other Reasons. If substitution of a party in the trial court is necessary for a reason other than death or separation from public office, the court may order substitution on any party's motion at any time.	**None**

SECTION4.WPD

DRAFT -- 7/10/97 2:32 PM
Including all changes under cover letter dated 5/23/97

SECTION 6
Scheduling and Pretrial Conferences

PROPOSED RULE	CURRENT RULE
Rule 60. Scheduling and Pretrial Conferences In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider: **(a)** All pending dilatory pleas, motions and exceptions; **(b)** The necessity or desirability of amendments to the pleadings; **(c)** A discovery schedule; **(d)** Requiring written statements of the parties' contentions; **(e)** Contested issues of fact and the simplification of the issues; **(f)** The possibility of obtaining stipulations of fact; **(g)** The identification of legal matters to be ruled on or decided by the court; **(h)** The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness;	**Rule 166. Pretrial Conference.** In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider: **(a)** All pending dilatory pleas, motions and exceptions; **(b)** The necessity or desirability of amendments to the pleadings; **(c)** A discovery schedule; **(d)** Requiring written statements of the parties' contentions; **(e)** Contested issues of fact and the simplification of the issues; **(f)** The possibility of obtaining stipulations of fact; **(g)** The identification of legal matters to be ruled on or decided by the court; **(h)** The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness;

Rule 60. Scheduling and Pretrial Conferences [continued]	Rule 166. Pretrial Conference. [Continued]
(i) The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness;	**(i)** The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness;
(j) Agreed applicable propositions of law and contested issues of law;	**(j)** Agreed applicable propositions of law and contested issues of law;
(k) Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a non-jury case;	**(k)** Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a nonjury case;
(l) The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial;	**(l)** The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial;
(m) Written trial objections to the opposite party's exhibits, stating the basis for each objection;	**(m)** Written trial objections to the opposite party's exhibits, stating the basis for each objection;
(n) The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;	**(n)** The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;
(o) The settlement of the case, and to aid such consideration, the court may encourage settlement;	**(o)** The settlement of the case, and to aid such consideration, the court may encourage settlement;
(p) Such other matters as may aid in the disposition of the action;	**(p)** Such other matters as may aid in the disposition of the action.
The court must make an order which recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues	The court shall make an order which recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions,

Rule 60. Scheduling and Pretrial Conferences [Continued] for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued will control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.	**Rule 166. Pretrial Conference. [Continued]** agreements of counsel, or rulings of the court;and such order when issued shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.
Rule 61. Dismissal for Want of Prosecution **(a) Failure to Appear.** A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice. Notice of the court's intention to dismiss and the date and place of the dismissal hearing must be sent by the clerk to each attorney of record, and to each party not represented by an attorney and whose address is shown on the docket or in the papers on file, by posting same in the United States Postal Service. At the dismissal hearing, the court must dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket. If the court maintains the case on the docket, it must render a pretrial order assigning a trial date and setting deadlines for joinder of parties, discovery, filing of pleadings, and all other pretrial matters. The case may be continued thereafter only for valid and compelling reasons specifically determined by court order. Notice of the signing of the order of dismissal must be given as provided in Rule ____ (currently Rule 306a). Failure to mail notices as required by this rule will not affect any of the periods mentioned in Rule ____	**Rule 165a. Dismissal for Want of Prosecution.** 1. Failure to Appear. A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice. Notice of the court's intention to dismiss and the date and place of the dismissal hearing shall be sent by the clerk to each attorney of record, and to each party not represented by an attorney and whose address is shown on the docket or in the papers on file, by posting same in the United States Postal Service. At the dismissal hearing, the court shall dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket. If the court determines to maintain the case on the docket, it shall render a pretrial order assigning a trial date for the case and setting deadlines for the joining of new parties, all discovery, filing of all pleadings, the making of a response or supplemental responses to discovery and other pretrial matters. The case may be continued thereafter only for valid and compelling reasons specifically determined by court order. Notice of the signing of the order of dismissal shall be given as provided in Rule 306a. Failure to mail notices as required by this rule shall not affect

Rule 61. Dismissal for Want of Prosecution (a) Failure to Appear [Continued]	Rule 165a. Dismissal for Want of Prosecution.
(currently Rule 306a) except as provided in that rule. **(b) Non-Compliance with Time Standards.** Any case not disposed of within time standards promulgated by the Supreme Court under its Administrative Rules may be placed on a dismissal docket. **(c) Reinstatement.** A motion to reinstate must set forth the grounds therefor and be verified by the movant or the movant's attorney. It must be filed with the clerk within 30 days after the order of dismissal is signed or within the period provided by Rule ____ (currently Rule 306a). A copy of the motion to reinstate must be served on each attorney of record and each party not represented by an attorney whose address is shown on the docket or in the papers on file. The clerk must deliver a copy of the motion to the judge, who must set a hearing on the motion as soon as practicable. The court must notify all parties or their attorneys of record of the date, time, and place of the hearing. The court must reinstate the case upon finding after a hearing that the failure of the party or the party's attorney was not intentional or the result of conscious indifference but was due to accident or mistake or that the failure has been otherwise reasonably explained. In the event for any reason a motion for reinstatement is not decided by signed written order within seventy-five days after the judgment is signed, or, within such other time as may be allowed by Rule ____ (currently Rule 306a), the motion will be deemed overruled by operation of law. If a motion to reinstate is timely filed by any party, the trial court, regardless of whether an	any of the periods mentioned in Rule 306a except as provided in that rule. 2. Non-Compliance With Time Standards. Any case not disposed of within time standards promulgated by the Supreme Court under its Administrative Rules may be placed on a dismissal docket. 3. Reinstatement. A motion to reinstate shall set forth the grounds therefor and be verified by the movant or his attorney. It shall be filed with the clerk within 30 days after the order of dismissal is signed or within the period provided by Rule 306a. A copy of the motion to reinstate shall be served on each attorney of record and each party not represented by an attorney whose address is shown on the docket or in the papers on file. The clerk shall deliver a copy of the motion to the judge, who shall set a hearing on the motion as soon as practicable. The court shall notify all parties or their attorneys of record of the date, time and place of the hearing. The court shall reinstate the case upon finding after a hearing that the failure of the party or his attorney was not intentional or the result of conscious indifference but was due to an accident or mistake or that the failure has been otherwise reasonably explained. In the event for any reason a motion for reinstatement is not decided by signed written order within seventy-five days after the judgment is signed, or, within such other time as may be allowed by Rule 306a, the motion shall be deemed overruled by operation of law. If a motion to reinstate is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to reinstate the case until 30 days after all such timely filed motions are overruled, either by a written and signed order or

Rule 61. Dismissal for Want of Prosecution **(c) Reinstatement** **[Continued]** appeal has been perfected, has plenary power to reinstate the case until 30 days after all such timely filed motions are overruled, either by written and signed order or by operation of law, whichever occurs first. **(d) Cumulative Remedies.** This dismissal and reinstatement procedure will be cumulative of the rules and laws governing any other procedures available to the parties in such cases. The same reinstatement procedures and timetable are applicable to all dismissals for want of prosecution including cases which are dismissed pursuant to the court's inherent power, whether or not a motion to dismiss has been filed.	**Rule 165a. Dismissal for Want of Prosecution.** **3. Reinstatement** **[Continued]** by operation of law, whichever occurs first. **4. Cumulative Remedies.** This dismissal and reinstatement procedure shall be cumulative of the rules and laws governing any other procedures available to the parties in such cases. The same reinstatement procedures and timetable are applicable to all dismissals for want of prosecution including cases which are dismissed pursuant to the court's inherent power, whether or not a motion to dismiss has been filed.
Rule 62. Masters and Auditors **(a) Masters in Chancery.** The court may, in exceptional cases, for good cause appoint a master in chancery, who must be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who must perform all of the duties required of him by the court, and will be under orders of the court, and have such power as the master of chancery has in a court of equity. The order of reference to the master may specify or limit the master's powers, and may direct the master to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only and may fix the time and place for beginning and closing the hearings, and for the filing of the master's report. Subject to the limitations and specifications stated in the order, the master has and must exercise the power to regulate all proceedings in every hearing before the master	**Rule 171. Master in Chancery.** The court may, in exceptional cases, for good cause appoint a master in chancery, who shall be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as the master of chancery has in a court of equity. The order of references to the master may specify or limit his powers, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only and may fix the time and place for beginning and closing the hearings, and for the filing of the master's report. Subject to the limitations and specifications stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for

Rule 62. Masters and Auditors (a) Masters in Chancery [Continued]	Rule 171. Master in Chancery. [Continued]
and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the court's order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents and other relevant writings. The master may rule upon the admissibility of evidence, unless otherwise directed by the order of reference and has the authority to put witnesses on oath, examine them, and may call the parties to the action and examine them under oath. When a party so requests, the master must make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case. The clerk of the court must forthwith furnish the master with a copy of the order of reference. The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law and these rules. The court may confirm, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case. The court must award reasonable compensation to such master to be taxed as costs of suit.	the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents and other writings applicable thereto. He may rule upon the admissibility of evidence, unless otherwise directed by the order of reference and has the authority to put witnesses on oath, and may, himself, examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case. The clerk of the court shall forthwith furnish the master with a copy of the order of reference. The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law and these rules. The court may confirm, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case. The court shall award reasonable compensation to such master to be taxed as costs of suit.

Rule 62. Masters & Auditers [Continued] **(b) Audit.** When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties to any suit, the court must appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor must verify his or her report by affidavit stating that the auditor has carefully examined the state of the account between the parties, and that the auditor's report contains a true statement thereof, so far as the same has come within the auditor's knowledge. Exceptions to such report or of any item thereof must be filed within 30 days of the filing of such report. The court must award reasonable compensation to such auditor to be taxed as costs of suit.	**Rule 172. Audit.** When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties to any suit, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. Exceptions to such report or of any item thereof must be filed within 30 days of the filing of such report. The court shall award reasonable compensation to such auditor to be taxed as costs of suit.
Rule 63. Summary Judgment. **(a) For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages. **(b) For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.	**Rule 166a. Summary Judgment.** **(a) For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages. **(b) For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

Rule 63. Summary Judgment. [Continued]	Rule 166a. Summary Judgment. [Continued]
(c) Motion and Proceedings Thereon. The motion for summary judgment must state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits must be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony will be received at the hearing. The judgment sought must be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response must not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.	**(c) Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

Rule 63. Summary Judgment. [Continued]	Rule 166a. Summary Judgment. [Continued]
(d) Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.	**(d) Appendices, References and Other Use of Discovery Not Otherwise on File.** Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.
(e) Case Not Fully Adjudicated on Motion. If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.	**(e) Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.
(f) Form of Affidavits; Further Testimony. Supporting and opposing affidavits must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit must be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.	

Rule 63. Summary Judgment. (f) Form of Affidavits; Further Testimony. [Continued]	Rule 166a. Summary Judgment. [Continued]
Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.	**(f) Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.
(g) When Affidavits Are Unavailable. Should it appear from the affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.	**(g) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court must forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the nonoffending party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.	**(h) Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.
(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.	

Rule 64. Default Judgment **(a) When Available.** At any time after a defendant is required to answer, appear, or otherwise defend as provided by these rules, but fails to do so, the plaintiff may take judgment by default; provided that the citation with the officer's return has been on file with the clerk for the length of time required by Rule ____ (currently Rule 107). No default judgment may be rendered against a defendant in a removed action remanded from federal court if the defendant filed an answer in federal court during removal.	**Rule 237a. Cases Remanded From Federal Court.** When any cause is removed to the Federal Court and is afterwards remanded to the state court, the plaintiff shall file a certified copy of the order of remand with the clerk of the state court and shall forthwith give written notice of such filing to the attorneys of record for all adverse parties. All such adverse parties shall have fifteen days from the receipt of such notice within which to file an answer. No default judgment shall be rendered against a party in a removed action remanded from federal court if that party filed an answer in federal court during removal. **Rule 239. Judgment by Default.** Upon such call of the docket, or at any time after a defendant is required to answer, the plaintiff may in term time take judgment by default against such defendant if he has not previously filed an answer, and provided that the citation with the officer's return thereon shall have been on file with the clerk for the length of time required by Rule 107.
(b) Interlocutory Judgment. An interlocutory judgment by default may be rendered as follows: **(1)** As to a defendant's liability pending a determination of unliquidated damages; or, **(2)** As to a certain defendant in an action who is in default under subdivision (a) in a case having more than one defendant in the action, not all of whom are in default.	**Rule 240. Where Only Some Answer.** Where there are several defendants, some of whom have answered or have not been duly served and some of whom have been duly served and have made default, an interlocutory judgment by default may be entered against those who have made default, and the cause may proceed or be postponed as to the others.

Rule 64. Default Judgment [Continued] **(c) Damages.** **(1) Liquidated Demands.** Damages must be assessed by the court against a defendant if the claim is liquidated and proved by a written instrument,unless the defendant demands and is entitled to a trial by jury. **(2) Unliquidated Demands.** If the claim is unliquidated or not proved by a written instrument, unless the defendant is entitled to and demands a jury trial, the plaintiff must prove the damages caused by the event by presenting evidence on the record or by presenting an affidavit of a competent witness based on personal knowledge of the facts stated in the affidavit. Notice of a hearing as to damages must be given to a defendant who has either answered or appeared as provided for in these rules.	**Rule 241. Assessing Damages on Liquidated Demands.** When a judgment by default is rendered against the defendant, or all of several defendants, if the claim is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and final judgment shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury. **Rule 243. Unliquidated Demands.** If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket.
(d) Notice of the Judgment. At or immediately prior to the time an interlocutory or final default judgment is rendered, the party taking the same or the party's attorney must certify to the clerk in writing the last known mailing address of the party against whom the judgment is taken, which certficate must be filed among the papers in the cause. Immediately upon the signing of the judgment, the clerk must mail written notice thereof to the party against whom the judgment was rendered at the address shown in the certificate, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule will not affect the finality of the judgment.	**Rule 239a. Notice of Default Judgment.** At or immediately prior to the time an interlocutory or final default judgment is rendered, the party taking the same or his attorney shall certify to the clerk in writing the last known mailing address of the party against whom the judgment is taken, which certificate shall be filed among the papers in the cause. Immediately upon the signing of the judgment, the clerk shall mail written notice thereof to the party against whom the judgment was rendered at the address shown in the certificate, and note the fact of such mailing on the docket. The notice shall state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule shall not affect the finality of the judgment.

Rule 64. Default Judgment [Continued] **(e) After Service by Publication.** Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court must appoint an attorney to defend the suit in behalf of the defendant, and judgment must be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, must be filed with the papers of the cause as a part of the record. The court must allow such attorney a reasonable fee for his services, to be taxed as part of the costs.	**Rule 244. On Service by Publication.** Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs.
(f) Setting Aside Default Judgment. The court may set aside an interlocutory or final default judgment for good cause at any time before the court's plenary power expires under Rule ____ (currently Rule 329b (d) and (e)). A final default judgment also may be set aside in accordance with Rule ___ (currently Rule 320).	

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SECTION 7
A. SCHEDULING CASES FOR TRIAL; GENERAL TRIAL RULES

PROPOSED RULE	CURRENT RULE
Rule 70. Assignment of Cases for Trial **(a) Assignment for Trial.** The court may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than forty-five (45) days to the parties of a first setting for trial, or by agreement of the parties; provided, however, that when a case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties. Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time. A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pretrial proceedings or of current readiness for trial will be required in order to obtain a trial setting in a contested case.	**Rule 245. Assignment of Cases for Trial.** The court may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties; provided, however, that when a case previously has been set for trial, the Court may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties. Noncontested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time. A request for trial setting constitutes a representation that the requesting party reasonably and in good faith expects to be ready for trial by the date requested, but no additional representation concerning the completion of pretrial proceedings or of current readiness for trial shall be required in order to obtain a trial setting in a contested case.
(b) Notice. Any party setting a case for trial must immediately notify all other parties of the trial setting by written notice and must file a copy of such notice with the clerk of the court. If the court on its own initiative sets the case for trial, the clerk of the court must notify all parties of the setting by first class mail. Failure to furnish notice will be sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented a party from preparing or presenting its claim or defense.	**Rule 246. Clerk to Give Notice of Settings.** The clerk shall keep a record in his office of all cases set for trial, and it shall be his duty to inform any non-resident attorney of the date of setting of any case upon request by mail from such attorney, accompanied by a return envelope properly addressed and stamped. Failure of the clerk to furnish such information on proper request shall be sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented the attorney from preparing or presenting his claim or defense.

Rule 70. Assignment of Cases for Trial [Continued] **(c) Agreed Method of Trial.** Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment must be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon will constitute the record of the cause. By agreement of the parties, the trial court may allow that all testimony and such other evidence as may be appropriate be presented at trial by videotape. The expenses of such videotape recordings will be taxed as costs. If any party withdraws agreement to a videotape trial, the videotape costs that have accrued will be taxed against the party withdrawing from the agreement.	**Rule 263. Agreed Case.** Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause. **Rule 264. Videotape Trial.** By agreement of the parties, the trial court may allow that all testimony and such other evidence as may be appropriate be presented at trial by videotape. The expenses of such videotape recordings shall be taxed as costs. If any party withdraws agreement to a videotape trial, the videotape costs that have accrued will be taxed against the party withdrawing from the agreement.
Rule 71. Continuance **(a) Availability; Good Cause Standard.** A continuance will granted only for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law. **(b) Specific Circumstances; Additional Requirements.** (1) *Want of Testimony.* A motion for continuance based on want of testimony must include an affidavit that such testimony is material, stating the materiality thereof. The affidavit must also state the diligence used to procure the testimony; the cause of failure, if known; the reason the testimony cannot be procured from any other source; and if it because of the absence of a witness, the name and residence of the witness, and what is expected to be proven by the witness. On a party's first request for a continuance, it is not necessary to	**Rule 251. Continuance.** No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law. **Rule 252. Application for Continuance.** If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, it if be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and also state

Rule 71. Continuance [Continued]	Rule 252. Application for Continuance. [Continued]
aver that the absent testimony cannot be procured from any other source The motion must also state that the continuance is not sought for delay only, but that justice may be done. (2) *Absence of Counsel.* Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, unless it is allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record. (3) *Attendance on Legislature.* A continuance on the basis of absence of a party or attorney who is a member of the legislature is mandatory if sought during, or within thirty (30) days before a legislative session, or when the legislature sits as a Constitutional Convention, if the party or attorney is a member of either branch of the legislature, and will be or is in actual attendance on a legislative session. The right to a continuance is mandatory, except that a denial of a continuance is within the court's discretion when the attorney for whom continuance is sought was employed in the case within ten (10) days of the trial date. The affidavit accompanying the motion for continuance must show that either the party or the party's attorney is a member of the legislature and that he or she will be or is in	that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source. The failure to obtain the deposition of any witness residing within 100 miles of the courthouse or the county in which the suit is pending shall not be regarded as want of diligence when diligence has been used to secure the personal attendance of such witness under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left, the State or county in which the suit is pending and will not probably be present at the trial. **Rule 253. Absence of Counsel as Ground for Continuance.** Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record. **Rule 254. Attendance on Legislature.** In all civil actions, including matters of probate, and in all matters ancillary to such suits which require action by or the attendance of an attorney, including appeals but excluding temporary restraining orders, at any time within thirty days of a date when the legislature

Rule 71. Continuance **[Continued]** actual attendance on a legislative session. If the member if the legislature is an attorney for a party, the attorney's affidavit must contain a statement that the legislator intends to participate actively in the preparation or presentation of the case. If a party to any cause, or an attorney for any party to a cause, is a member of the legislature, his or her affidavit need not be corroborated. If the motion for continuance is granted, the cause will be continued until thirty (30) days after adjournment of the legislative session, and the continuance must not be charged against the moving party.	**Rule 254. Attendance on Legislature. [Continued]** is to be in session, or at any time the legislature is in session, or when the legislature sits as a Constitutional Convention, it shall be mandatory that the court continue the cause if it shall appear to the court, by affidavit, that any party applying for continuance, or any attorney for any party to the cause, is a member of either branch of the legislature, and will be or is in actual attendance on a session of the same. If the member of the legislature is an attorney for a party to the cause, his affidavit shall contain a declaration that it is his intention to participate actively in the preparation and/or presentation of the case. Where a party to any cause, or an attorney for any party to a cause, is a member of the legislature, his affidavit need not be corroborated. On the filing of such affidavit, the court shall continue the cause until thirty days after adjournment of the legislature and the affidavit shall be proof of the necessity for the continuance, and the continuance shall be deemed one of right and shall not be charged against the movant upon any subsequent application for continuance. The right to a continuance shall be mandatory, except only where the attorney was employed within ten days of the date the suit is set for trial, the right to continuance shall be discretionary.
Rule 72. Order of Trial **(a) Order of Proceedings.** The trial of cases before a jury must proceed in the following order unless the court should, for good cause stated in the record, otherwise direct: (1) The party upon whom rests the burden of proof on the whole case must state to the jury briefly the nature of the party's claim	**Rule 265. Order of Proceedings on Trial by Jury.** The trial of cases before a jury shall proceed in the following order unless the court should, for good cause stated in the record, otherwise direct: (a) The party upon whom rests the burden of proof on the whole case shall state to the jury,

Rule 72. Order of Trial **(a) Order of Proceedings.** **Subpart (1)** **[Continued]** or defense and what said party expects to prove and the relief sought. Immediately thereafter, the adverse party may make a similar statement, and intervenors and other parties will be accorded similar rights in the order determined by the court. (2) The party upon whom rests the burden of proof on the whole case must then introduce the party's evidence. (3) The adverse party must briefly state the nature of the party's claim or defense and what said party expects to prove and the relief sought unless he or she has already done so. (4) The adverse party must then introduce his or her evidence. (5) The intervenor and other parties must make their statement, unless they have already done so, and must introduce their evidence. (6) The parties will then be confined to rebutting testimony on each side. (7) But one counsel on each side must examine and cross-examine the same witness, except on leave granted.	**Rule 265. Order of Proceedings on Trial by Jury.** **Subpart (a)** **[Continued]** briefly the nature of his claim or defense and what said party expects to prove and the relief sought. Immediately thereafter, the adverse party may make a similar statement, and intervenors and other parties will be accorded similar rights in the order determined by the court. (b) The party upon whom rests the burden of proof on the whole case shall then introduce his evidence. (c) The adverse party shall briefly state the nature of his claim or defense and what said party expects to prove and the relief sought unless he has already done so. (d) He shall then introduce his evidence. (e) The intervenor and other parties shall make their statement, unless they have already done so, and shall introduce their evidence. (f) The parties shall then be confined to rebutting testimony on each side. (g) But one counsel on each side shall examine and cross-examine the same witness, except on leave granted.
(b) Open and Close -- Admission. Except as provided in Rule ___ (currently Rule 269) the plaintiff will have the right to open and conclude both in adducing the plaintiff's evidence and in the argument, unless the burden of proof on the whole case under the pleadings rests upon the defendant, or unless the defendant or all of the defendants, if there should be more than one, before the	**Rule 266. Open and Close-Admission.** Except as provided in Rule 269 the plaintiff shall have the right to open and conclude both in adducing his evidence and in the argument, unless the burden of proof on the whole case under the pleadings rests upon the defendant, or unless the defendant or all of the defendants, if there should be more than one, shall, after

Rule 72. Order of Trial **(b) Open and Close -- Admission.** **[Continued]** trial commences, admit that the plaintiff is entitled to recover as set forth in the petition, except so far as the plaintiff may be defeated, in whole or in part, by the allegations of the answer constituting a good defense, which may be established on the trial; which admission must be entered of record, whereupon the defendant, or the defendants, if more than one, will have the right to open and conclude in adducing the evidence and in the argument of the cause. The admission must not serve to admit any allegation which is inconsistent with such defense, which defense must be one that defendant has the burden of establishing, as for example, and without excluding other defenses: accord and satisfaction, adverse possession, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, release, res judicata, statute of frauds, statute of limitations, waiver, and the like.	**Rule 266. Open and Close-Admission.** **[Continued]** the issues of fact are settled and before the trial commences, admit that the plaintiff is entitled to recover as set forth in the petition, except so far as he may be defeated, in whole or in part, by the allegations of the answer constituting a good defense, which may be established on the trial; which admission shall be entered of record, whereupon the defendant, or the defendants, if more than one, shall have the right to open and conclude in adducing the evidence and in the argument of the cause. The admission shall not serve to admit any allegation which is inconsistent with such defense, which defense shall be one that defendant has the burden of establishing, as for example, and without excluding other defenses: accord and satisfaction, adverse possession, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, release, res judicata, statute of frauds, statute of limitations, waiver, and the like.
(c) Order of Argument. **(1)** After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case, or on all matters which are submitted by the charge, will be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court must prescribe the order of argument between them. **(2)** In all arguments, and especially in arguments on the trial of the case, the counsel opening must present his or her whole case as he or she relies on it, both of law and facts, and must be heard in the concluding argument only	**Rule 269. Argument.** (a) After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case, or on all matters which are submitted by the charge, shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them. (b) In all arguments, and especially in arguments on the trial of the case, the counsel opening shall present his whole case as he relies on it, both of law and facts, and shall be

Rule 72. Order of Trial (c) Order of Argument.	Rule 269. Argument. [Continued]
in reply to the counsel on the other side. (3) Counsel for an intervenor must occupy the position in the argument assigned by the court according to the nature of the claim.	heard in the concluding argument only in reply to the counsel on the other side. (c) Counsel for an intervenor shall occupy the position in the argument assigned by the court according to the nature of the claim. (d) Arguments on questions of law shall be addressed to the court, and counsel should state the substance of the authorities referred to without reading more from books than may be necessary to verify the statement. On a question on motions, exceptions to the evidence, and other incidental matters, the counsel will be allowed only such argument as may be necessary to present clearly the question raised, and refer to authorities on it, unless further discussion is invited by the court. (e) Arguments on the facts should be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the court. Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel. Mere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a contempt of court. (f) Side-bar remarks, and remarks by counsel of one side, not addressed to the court, while the counsel on the other side is examining a witness or arguing any question to the court, or addressing the jury, will be rigidly repressed by the court. (g) The court will not be required to wait for objections to be made when the rules as to arguments are violated; but should they not be

	Rule 269. Argument. **Subpart (g)** **[Continued]** noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds. (h) It shall be the duty of every counsel to address the court from his place at the bar, and in addressing the court to rise to his feet; and while engaged in the trial of a case he shall remain at his place in the bar.
(d) Additional Testimony. When it clearly appears to be necessary to the due administration of justice, the court may permit additional evidence to be offered at any time; provided that in a jury case no evidence on a controversial matter will be received after the verdict of the jury.	**Rule 270. Additional Testimony.** When it clearly appears to be necessary to the due administration of justice, the court may permit additional evidence to be offered at any time; provided that in a jury case no evidence on a controversial matter shall be received after the verdict of the jury.
Rule 73. Subpoenas **(a) Witnesses Subpoenaed.** The clerk of the district or county court, at the request of any party to a case pending in his or her court, or of any agent or attorney, must issue a subpoena for any witness or witnesses who are represented to reside within one hundred and fifty miles of the county in which the suit is pending or who may be found within such distance at the time of trial; provided that any clerk of the court, pursuant to the provisions of this rule, or of any other rule or statute, must issue a separate subpoena, together with a copy, for each witness subpoenaed.	**Rule 176. Witnesses Subpoenaed.** The clerk of the district or county court, or justice of the peace, as the case may be, at the request of any party to a suit pending in his court, or of any agent or attorney, shall issue a subpoena for any witness or witnesses who may be represented to reside within one hundred miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial; provided that any clerk, justice of the peace or other officer issuing a subpoena pursuant to the provisions of this rule, or of any other rule or statute, shall issue a separate subpoena, together with a copy thereof, for each witness subpoenaed.

Rule 73. Subpoenas [Continued] **(b) Form of Subpoena.** The style of the subpoena must be "The State of Texas." It must state the style of the case, the court in which the case is pending, the time and place at which the witness is required to appear, and the party at whose instance the witness is summoned. It must be dated and attested by the clerk of the court, but need not be under the seal of the court, and the date of its issuance must be noted thereon. It may be made returnable forthwith, or on any date for which trial of the cause may be set. It must be addressed to any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided by these rules.	**Rule 177. Form of Subpoena.** The style of the subpoena shall be "The State of Texas." It shall state the style of the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance the witness is summoned. It shall be dated and attested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which trial of the cause may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Rule 178.
(c) Production of Documentary Evidence. A subpoena may command the person to whom it is directed to produce designated books, papers, documents or tangible things; but the court, on motion made seasonably and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion to quash or modify upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable costs of producing the books, papers, documents or tangible things.	**Rule 177a. Subpoena for Production of Documentary Evidence.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; but the court, on motion made seasonably and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion to quash or modify upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable costs of producing the books, papers, documents or tangible things.
(d) Service of Subpoenas. Subpoenas may be executed and returned at any time by the sheriff or constable, or by any other person who is not a party and is not less than eighteen years of age, and must be served by delivering a copy of the subpoena to the witness; and service thereof may be accepted by any witness by a written memorandum,	**Rule 178. Service of Subpoenas.** Subpoenas may be executed and returned at any time by the sheriff or constable, or by any other person who is not a party and is not less than eighteen years of age, and shall be served by delivering a copy of such subpoena to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

Rule 73. Subpoenas [Continued] signed by such witness, attached to the subpoena. **(e) Witness Must Attend.** Every witness summoned in any suit must attend the court from day to day, until discharged by the court or party summoning such witness. If any witness, after being duly summoned, fails to attend, such witness may be fined by the court as for contempt of court, and an attachment may issue against the body of such witness to compel attendance; but no such fine may be imposed, or attachment issued until it is shown to the court, by affidavit of the party, the party's agent or attorney, that all lawful fees have been paid or tendered to the witness.	**Rule 179. Witness Shall Attend.** Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning such witness. If any witness, after being duly summoned, shall fail to attend, such witness may be fined by the court as for contempt of court, and an attachment may issue against the body of such witness to compel the attendance of such witness; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that all lawful fees have been paid or tendered to such witness.
(f) Application for Continuance. The failure to obtain the deposition of any witness residing within 100 miles of the courthouse of the county in which the suit is pending will not be regarded as want of diligence when diligence has been used to secure the personal attendance of such witness under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left, the State or county in which the suit is pending and will not probably be present at the trial.	**Rule 252. Application for Continuance.** The failure to obtain the deposition of any witness residing within 100 miles of the courthouse or the county in which the suit is pending shall not be regarded as want of diligence when diligence has been used to secure the personal attendance of such witness under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left, the State or county in which the suit is pending and will not probably be present at the trial.

B. JURY TRIAL; JURY SELECTION

Rule 74. Preserving Right to Jury Trial **(a) Request.** No jury trial will be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause, but not less than thirty days in advance.	**Rule 216. Request and Fee for Jury Trial.** a. Request. No jury trial shall be had in any civil suit, unless a written request for a jury trial is filed with the clerk of the court a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than thirty days in advance.
Rule 74. Preserving Right to Jury Trial [Continued] **(b) Jury Fee.** The fee required by statute must be deposited with the clerk of the court within the time for making a written request for a jury trial.	**Rule 216. Request and Fee for Jury Trial. [Continued]** b. Jury Fee. Unless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet.
(c) Affidavit of Inability to Pay. The deposit for a jury fee will not be required when the party, within the time for making such deposit, files an affidavit with the clerk stating that the party is unable to make such deposit, and that the party cannot, by the pledge of property or otherwise, obtain the money necessary for the deposit. The court must then order the clerk to enter the suit on the jury docket.	**Rule 217. Oath of Inability.** The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket.
(d) Withdrawing Cause from Jury Docket. When any party has paid the fee for a jury trial, the party must not be permitted to withdraw the cause from the jury docket over the objection of the opposing parties. If there is no objection, the court in its discretion may permit the party to withdraw the party's cause from the jury docket. The court in its discretion may also permit a party to withdraw the jury fee. Failure to appear for trial will be deemed a waiver of the right to a jury trial.	**Rule 220. Withdrawing Cause From Jury Docket.** When any party has paid the fee for a jury trial, he shall not be permitted to withdraw the cause from the jury docket over the objection of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. Failure of a party to appear for trial shall be deemed a waiver by him of the right to trial by jury.

Rule 75. Challenge to the Array When the jurors summoned have not been selected, as provided by law, any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court must hear evidence and decide without delay whether or not the challenge must be sustained.	**Rule 221. Challenge to the Array** When the jurors summoned have not been selected by jury commissioners or by drawing the names from a jury wheel, any party to a suit which is to be tried by a jury may, before the jury is drawn challenge the array upon the ground that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained.
Rule 76. Jury Shuffle The names of the jurors must be placed upon the general panel in the order in which they are randomly selected, and jurors must be assigned for service from the top thereof, in the order in which they will be needed, and jurors returned to the general panel after service in any of such courts must be enrolled at the bottom of the list in the order of their respective return; provided, however, after such assignment to a particular court, the trial judge of such court, upon the demand prior to voir dire examination by any party or attorney in the case reached for trial in such court, must cause the names of all members of such assigned jury panel in such case to be placed in a receptacle, shuffled, and drawn, and such names must be transcribed in the order drawn on the jury list from which the jury is to be selected to try such case. There must be only one shuffle and drawing by the trial judge in each case.	**Rule 224. Preparing Jury List.** In counties not governed as to juries by the laws providing for interchangeable juries, when the parties have announced ready for trial the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. the clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney.

Rule 77. Oath and Instructions to Jury	Rule 226. Oath to Jury Panel
(a) Oath. Before the parties or their attorneys begin examination of the jury panel, the jurors must be given by the court or under its direction the following oath: "Do you solemnly swear or affirm that you will give true answers to all questions asked you concerning your qualifications as a juror, so help you God?"	Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court or under its direction, as follows: "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."
(b) Affirmation in Lieu of Oath. If any juror refuses to take the oath as given, the court may use such other oath, affirmation or statement as is calculated to awaken the juror's conscience and impress the juror's mind with the duty to speak the truth, and which causes the juror to acknowledge that a false statement is subject to the penalties for perjury.	
(c) Instructions to Jury Panel and Jury. The court must give such instructions to the jury panel and to the jury as may be prescribed by the Supreme Court in an order or orders entered for that purpose.	**Rule 226a. Admonitory Instructions to Jury Panel and Jury.** The court shall give such admonitory instruction to the jury panel and to the jury as may be prescribed by the Supreme Court in an order or orders entered for that purpose.
Approved Instructions The court must give the following instructions to the jury panel and to the jury. If the case is tried to a six-person jury, the references to ten or eleven jurors must be changed to read "five." PART 1 - JURY PANEL After the members of the panel have been sworn as provided in Rule 226 and before the voir dire examination, the court must read to the jury panel the following instructions, with such modifications as the circumstances of the particular case may require:	

Rule 77. Oath and Instructions to Jury **PART 1 - JURY PANEL** **[Continued]** Members of the Jury Panel: The case that is now on trial is _____ v. _____. This is a civil lawsuit that will be tried before a jury. If you are selected to serve on the jury, your duty as jurors will be to decide the disputed facts. It is my duty as judge to see that the case is tried in accordance with the rules of law. In this case, as in all cases, the actions of the judge, parties, witnesses, attorneys and jurors must be according to law. Texas law permits proof of violations of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about certain acts of jury misconduct. It is very important that you follow carefully all instructions that I give you now and later during the trial. If you do not obey these instructions, it may become necessary for another jury to retry this case with all the resulting waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. Your instructions are as follows: 1. Do not mingle or talk with the parties, the lawyers, the witnesses, or any other person who might be connected with or interested in this case, except for casual greetings. You may not even have casual conversations about things completely unrelated to this lawsuit with any of these people. They have to follow these same instructions, and you will understand it when they do. 2. Do not accept any favors from these people, and do not give them any favors. You must avoid even slight favors, such as rides, food, or refreshments.	

Rule 77. Oath and Instructions to Jury **PART 1 - JURY PANEL** **[Continued]** 3. Do not discuss this case with anyone, including your spouse. Do not let anyone discuss the case in your hearing. If anyone tries to talk about the case with you or in your hearing, tell me or the bailiff immediately. 4. The attorneys will now have an opportunity to talk with you about the case and the people involved, and to ask you some questions about your backgrounds, experiences, attitudes, and opinions. In questioning you, they are not meddling in your personal affairs, but are trying to select a fair and impartial jury in this case. Listen to the questions and give true and complete answers. Do not conceal information. If you cannot hear or understand the questions, please let me know. 5. If a question is asked of some part or all of the panel that requires a response from you, please raise your hand and keep it raised until you have responded to the question or the person asking it has indicated that you may put your hand down. Whether you are selected as a juror for this case or not, you are performing a significant service which only free people can perform. We must try the case as quickly as possible consistent with justice, which requires a careful and correct trial. If selected on the jury, unless I instruct you differently, you will be permitted to separate at recesses and for meals, and at night. The attorneys will now proceed with their examination.	

Rule 77. Oath and Instructions to Jury [Continued] PART 2 - JURY Immediately after the jurors have been sworn as provided in Rule 236, the court must give each juror a copy of the following written instructions and then read them to the jury. Ladies and Gentlemen of the Jury: By your oath, you are now officials of this court, and active participants in the administration of justice. I now give you further instructions that you must obey throughout this trial. It is essential to the administration of fair and impartial justice that you follow these instructions: 1. You must continue to obey the instructions I gave you earlier. I will remind you of some of them again. 2. Do not talk about the case with anyone, including your spouse, and do not have any contact of any kind, no matter how brief, with the parties, attorneys, witnesses, or other interested persons outside the courtroom. Do not accept any favors from these people, and do not give them any favors. You must avoid even slight favors, such as rides, food or refreshments. 3. Do not even discuss the case among yourselves until you have heard all the evidence, the court's charge, the attorneys' arguments, and I have sent you to the jury room to begin your deliberations. 4. Do not let anyone discuss the case in your hearing. If anyone tries to talk about the case with you or in your hearing, tell me or the bailiff immediately.	

Rule 77. Oath and Instructions to Jury **PART 2 - JURY** **[Continued]** 5. You are the judges of the facts of this case. It is your duty to listen to and consider carefully the evidence admitted under my rulings, and to answer the specific questions about the facts that I will submit to you in writing at the end of the trial. Therefore, you must do your best to pay careful attention to the evidence and remain alert throughout the trial so that you will be able to answer the questions I will ask you at the end. 6. In answering these questions, you can consider only the evidence admitted during the trial. Do not make any investigation about the facts of the case. Do not seek out any information contained in documents, books, or records that are not in evidence. Do not make personal inspections or observations outside the courtroom. Do not let anyone else do any of these things for you. This avoids a trial based upon secret evidence. 7. Do not tell other jurors your own personal experiences or those of other persons, or relate any special information. A juror may have special knowledge of matters such as business, technical or professional matters, or the juror may have expert knowledge or opinions, or the juror may know what happened in this or some other lawsuit. To tell the other jurors any of this information is a violation of these instructions. 8. Do not consider, discuss, or speculate whether any party is or is not protected in whole or in part by insurance of any kind. [Omit when insurance is admissible.]	

Rule 77. Oath and Instructions to Jury **PART 2 - JURY** **[Continued]** 9. The law is determined by the legislature and courts of this state. You are obligated to follow my instructions about the law, regardless of whether you think the law is right or wrong. 10. During the presentation of evidence, the attorneys may make legal objections. If an objection to a question is sustained, disregard the question, and do not speculate about why it was asked or what the answer might have been. If an objection to a witness's answer is sustained, disregard that answer. It is not in evidence, and must not be considered. Do not speculate about or consider for any reason the objections or my rulings on them. I stress again that it is imperative that you follow these instructions, as well as any others that I may give you later. If you do not obey these instructions, then it may become necessary for another jury to retry this case with all the resulting waste of your time here and the expense to the litigants and the taxpayers of this county for another trial. Texas law permits proof of violations of the rules of proper jury conduct. By this I mean that jurors and others may be called upon to testify in open court about certain acts of jury misconduct. Keep your copy of these instructions, and refer to them if any question arises about the rules that govern your conduct during this trial. A violation of any instruction must be reported to me or the bailiff as soon as possible.	

Rule 77. Oath and Instructions to Jury [Continued] PART 3 - COURT'S CHARGE Before closing arguments begin, the court must give to each member of the jury a copy of the charge, which must include the following written instructions with such modifications as the circumstances of the particular case may require: Ladies and Gentlemen of the Jury: 1. This case is submitted to you by asking question about the facts. Your answers must be based only upon the evidence, including exhibits, admitted during the trial. 2. In considering the evidence, you must follow the law set forth in this charge, as well as all instructions concerning jurors' conduct that I have given you. 3. You are the sole judges of the credibility of witnesses and the weight to be given their testimony. 4. Do not let bias, prejudice, or sympathy play any part in your deliberations. 5. Do not become a secret witness by telling other jurors about other incidents, experiences, or lawsuits. Do not tell other jurors about any special knowledge, information, or expertise you may have. You must confine your deliberations to the evidence presented in the courtroom. This avoids a trial based on secret evidence. 6. Do not discuss or consider attorneys' fees [Omit when attorneys' fees are in issue.]	

Rule 77. Oath and Instructions to Jury **PART 3 - COURT'S CHARGE** **[Continued]** 7. Do not discuss or consider whether any party has insurance. [Omit when insurance is admissible.] 8. This charge includes the legal instructions and definitions that you must use in reaching your verdict. If no definition is given, the normal meaning of words applies. Do not look up any information in law books or dictionaries. 9. Every answer required by the charge is important. 10. Do not decide who you think should win and then try to answer the questions accordingly. Simply answer the questions; and do not concern yourselves with the effect of your answers. 11. Do not decide a question by any method of chance. 12. If a question calls for a numerical answer, the figure must be one agreed to by the jurors, not one reached by adding together each juror's figure and then dividing by the number of jurors to get an average. 13. Do not do any trading on your answers. That is, one juror must not agree to answer one question a certain way if other jurors will agree to answer another question a certain way. 14. After you retire to the jury room, you will select a presiding juror. You will then deliberate upon your answers.	

Rule 77. Oath and Instructions to Jury **PART 3 - COURT'S CHARGE** **[Continued]** 15. It is the duty of that presiding juror: a. to preside during the deliberations to maintain order and compliance with all instructions given you; b. to write, sign, and deliver to the bailiff any communication to me; c. to conduct the vote; and d. to write your answers in the spaces provided. 16. You may render your verdict on the vote of ten or more members of the jury. The same ten or more must agree upon each and every answer made. 17. If the verdict is reached by unanimous agreement, the presiding juror must sign the verdict on the certificate page for the entire jury. 18. If the verdict is less than unanimous, the ten or eleven jurors who agree to each and every answer must sign the verdict on the certificate page. 19. If you observe a violation of my instructions outside the jury room, by either a juror or any other person, you must report that to me or the bailiff immediately. 20. During your deliberations, any juror who observes a violation of my instructions must point out the violation to the offending juror and caution that juror not to violate the instruction again.	

Rule 77. Oath and Instructions to Jury **PART 3 - COURT'S CHARGE** **[Continued]** 21. You must not discuss the case with anyone, not even with other members of the jury, unless all of the jurors are in the jury room. If anyone other than a juror tries to talk to you about the case before you reach a verdict, tell me or the bailiff immediately. 22. When you have answered all applicable questions and signed the verdict, you must inform the bailiff before returning to the courtroom with your verdict. [Instructions, definitions, and questions to be placed here.] Certificate We, the jury, have answered the questions as shown and return these answers to court as our verdict. Signature of presiding juror if unanimous. _____ Signatures of jurors voting for the verdict, if not unanimous. _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____	

Rule 77. Oath and Instructions to Jury PART 4 - JURY RELEASE The court must give the jury the following oral instructions after accepting the verdict and then release them: Ladies and Gentlemen of the Jury: I earlier instructed you to observe strict secrecy during the trial, and not to discuss this case with anyone except other jurors while you were deliberating. I am now about to discharge you. Once I have discharged you, you are released from secrecy and from all the other orders that I gave you. You will be completely free to discuss anything about this case with anyone. You will be just as free to decline to talk about the case if that is your decision. [Court's commendation of jurors and the importance of service they have performed may be added here.]	
Rule 78. Challenges for Cause Any party may orally challenge a panel member for cause alleging some fact that by law disqualifies that juror to serve as a juror, or that in the opinion of the court renders that juror unfit to sit on the jury. In deciding the challenge, the court may consider the juror's answers to questions asked as well as other evidence. If the challenge is sustained, the juror must be discharged from the case. If successful challenges reduce the number of prospective jurors to less than twenty-four in the district court or twelve in the county court, additional jurors must be summoned.	**[WVD Comment: This proposed rule combines current Rules 227, 228, 229 and 231. Rule 230 has been omitted.]** **Rule 227. Challenge to Juror.** A Challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case. **Rule 228. "Challenge for Cause" Defined.** A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

	Rule 229. Challenge for Cause. When twenty-four or more jurors, if in the district court, or twelve or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall then be made. The name of the juror challenged and set aside for cause shall be erased from such lists. **Rule 230. Certain Questions Not to Be Asked.** In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by some legal accusation with theft or any felony. **Rule 231. Number Reduced by Challenges.** If the challenges reduce the number of jurors to less than twenty-four, if in the district court, or to less than twelve, if in the county court, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.

Rule 79. Peremptory Challenges **(a) Number and Apportionment.** Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case tried in the district court, and to three in the county court. In multiple party cases, it will be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges. The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interests on the matters with which the jury is concerned. In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it will be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges will be allocated the court must consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.	**Rule 233. Number of Peremptory Challenges.** Except as provided below, each party to a civil action is entitled to six peremptory challenges in a case tried in the district court, and to three in the county court. **Alignment of the Parties.** In multiple party cases, it shall be the duty of the trial judge to decide whether any of the litigants aligned on the same side of the docket are antagonistic with respect to any issue to be submitted to the jury, before the exercise of peremptory challenges. **Definition of Side.** The term "side" as used in this rule is not synonymous with "party," "litigant," or "person." Rather, "side" means one or more litigants who have common interest on the matters with which the jury is concerned. **Motion to Equalize.** In multiple party cases, upon motion of any litigant made prior to the exercise of peremptory challenges, it shall be the duty of the trial judge to equalize the number of peremptory challenges so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the award of peremptory challenges to each litigant or side. In determining how the challenges should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.
(b) Prohibited Challenges. After the clerk has announced to the parties the composition of the jury, but before the remainder of the jury panel has been dismissed and the jury is sworn, any party may object to any other party's peremptory challenges on the ground that they were made on the basis of	**Subdivision (c) Codifies the Batson/Edmonson procedure. There are two issues addressed in the proposed rule: (1) when error must be preserved; and (2) the standard of review on appeal. the proposal requires the objection be made before the panel is dismissed, so that it gives the trial judge the choice of reinstating the**

Rule 79. Peremptory Challenges. **[Continued]** race or gender. The party making the objection must present prima facie evidence of facts tending to show that the challenges were made on the basis of race. If the objecting party satisfies its burden of prima facie proof, the party that exercised the challenges may present evidence of a neutral explanation for the challenges. The party objecting to the peremptory challenges has the burden of proving by a preponderance of the evidence that the challenges were made on an improper basis. The court must use its discretion in sustaining or overruling the challenge. Upon sustaining the challenge, the court within its discretion may reinstate the juror who was improperly stricken or call a new jury panel.	**Subdivision (c) Codifies the Batson/Edmonson procedure.** **[Continued]** **stricken juror or calling a new panel. See Henry v. State, 729 S.W.2d 732 (Tex. Cr. App. 1987) (coming to the opposite decision before the Code was amended). The Code of Criminal Procedure requires the judge to call a new panel, and thus allows the objection to be made anytime before the jury is sworn. The proposal contains an abuse of discretion standard of review. See Goode v. Shoukfeh, 943 S.W.2d 441, 446 (Tex. 1997).**
(c) Lists Returned to the Clerk. When the parties have made or declined to make their peremptory challenges, they must deliver their lists to the clerk. The clerk must, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and if the case be in the county court, the clerk must call off the first six names on the lists that have not been erased; those whose names are called will be the jury.	**Rule 234. Lists Returned to the Clerk.** When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and if the case be in the county court, he shall call of the first six names on the lists that have not been erased; those whose names are called shall be the jury.

Rule 80. Oath to Jury	Rule 236. Oath to Jury.
(a) Oath. Before opening statements are given, the jurors must be given by the court or under its direction the following oath: "Do you solemnly swear or affirm that you will return a true verdict, according to the law stated in the court's charge and to the evidence submitted to you under the rulings of this court, so help you God?" **(b) Affirmation in Lieu of Oath.** If any juror refuses to take the oath as given, the court may use such other oath, affirmation or statement as is calculated to awaken the juror's conscience and impress the juror's mind with the duty to speak the truth, and which causes the juror to acknowledge that a false statement is subject to the penalties for perjury.	The jury shall be sworn by the court or under its direction, in substance as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

C. THE JURY CHARGE

PROPOSED RULE	CURRENT RULE
Rule 81. Charge to the Jury The court must prepare a written charge to the jury. The court must provide the parties written copies of the proposed charge and a reasonable opportunity to prepare their requests and objections and to present them on the record outside the presence of the jury after the conclusion of the evidence and before the charge is read to the jury. After requests and objections are made and ruled upon and any modifications to the charge are made, and before argument, the judge must read the charge to the jury in open court precisely as written. The court must deliver a copy of the written charge to each member of the jury. The charge must be signed by the judge and filed with the clerk.	**Rule 271. Charge to the Jury.** Unless expressly waived by the parties, the trial court shall prepare and in open court deliver a written charge to the jury. **Rule 272. Requisites.** The charge shall be in writing, signed by the court, and filed with the clerk, and shall be a part of the record of the cause. It shall be submitted to the respective parties or their attorneys for their inspection, and a reasonable time given them in which to examine and present objections thereto outside the presence of the jury, which objections shall in every instance be presented to the court in writing, or be dictated to the court reporter in the presence of the court and opposing counsel, before the charge is read to the jury. All objections not so presented shall be considered as waived. The court shall announce its rulings thereon before reading the charge to the jury and shall endorse the rulings on the objections if written or dictate same to the court reporter in the presence of counsel. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a sufficient bill of exception to the rulings of the court thereon. It shall be presumed, unless otherwise noted in the record, that the party making such objections presented the same at the proper time and excepted to the ruling thereon. **Rule 275. Charge Read Before Argument.** Before the argument is begun, the trial court shall read the charge to the jury in the precise words in which it was written, including all questions, definitions, and instructions which the court may give.

Rule 82. Standards for the Jury Charge	Rule 273. Jury Submissions.
(a) General Standards. A party is not entitled to the submission of a question, instruction or definition regarding a matter that is not affirmatively raised by the written pleadings and raised by the evidence. The court must not directly comment on the weight of the evidence or advise the jury of the effect of its answers, but an otherwise proper question, instruction or definition will not be objectionable on the ground that it incidentally comments on the weight of the evidence or advises the jury of the effect of its answers. **(b) Questions.** The court must submit questions about the disputed material factual issues raised by the pleadings and the evidence. The court must, whenever feasible, submit the case by broad form questions. The court may predicate the jury's consideration of one or more questions upon specified answers to another question or questions on which the materiality of the predicated question or questions depends. The court may submit a question disjunctively when the evidence shows that only one of the matters inquired about necessarily exists. A proper disjunctive question that submits a defensive theory as an alternative to a claimant's theory is not an impermissible inferential rebuttal submission. However, inferential rebuttal questions must not be submitted. **(c) Instructions and Definitions.** The court must submit such instructions and definitions as are proper to enable the jury to render a verdict. The placing of the burden of proof may be accomplished by instructions or by inclusion in the questions.	Either party may present to the court and request written questions, definitions, and instructions to be given to the jury; and the court may give them or a part thereof, or may refuse to give them, as may be proper. Such requests shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. A request by either party for any questions, definitions, or instructions shall be made separate and apart from such party's objections to the court's charge. **Rule 277. Submission to the Jury.** In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict. Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question. In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

	Rule 277. Submission to the Jury. [Continued] The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists. The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.
Rule 83. Preservation of Appellate Complaints **(a) Requests.** After the close of the evidence and before or at the time of objecting, or at such earlier time as the court may require, a party must submit to the court in writing the questions, definitions and instructions requested to be included in the charge on any contention that party was required to plead. The requests must be sufficient to provide the court reasonable guidance in fashioning the charge. Failure to comply with this paragraph will not preclude the party from assigning error in the charge if an objection which gives the court reasonable guidance is made pursuant to subdivision (b). **(b) Objections.** A party may not complain of any error in the charge unless that party objects thereto before the charge is read to the jury, stating distinctly the matter objected to and the grounds of the objection. An objection must identify that portion of the charge to which complaint is made and be specific enough to enable the trial court to make an informed ruling on the objection. Objections must be in	**Rule 274. Objections and Requests.** A party objecting to a charge must point out distinctly the objectionable matter and the grounds of the objection. Any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading, is waived unless specifically included in the objections. When the complaining party's objection, or requested question, definition, or instruction is, in the opinion of the appellate court, obscured or concealed by voluminous unfounded objections, minute differentiations or numerous unnecessary requests, such objection or request shall be untenable. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only. **Rule 276. Refusal or Modification.** When an instruction, question, or definition is requested and the provisions of the law have been complied with and the trial judge refuses the same, the judge shall endorse thereon "Refused," and sign the same officially. If the trial judge modifies the same the judge shall

Rule 83. Preservation of Appellate Complaints
(b) Objections.
[Continued]

writing or must be made orally in the presence of the court, the court reporter, and opposing counsel. It will be presumed, unless otherwise noted in the record, that a party making objections did so at the proper time.

(c) Obscured or Concealed Objections or Requests. When an objection or request is obscured or concealed by voluminous unfounded objections or requests, minute differentiations or numerous unnecessary objections or requests, such objection or request will not preserve appellate complaint. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only. A judgment must not be reversed because of the failure of the court to submit different shades of the same question, definition, or instruction.

(d) Rulings. The court must announce its rulings on objections on the record before reading the charge to the jury. In the absence of an express ruling, any objection not cured by the charge is deemed overruled.

(e) Evidentiary Sufficiency Complaints. A claim that there is no evidence to support the submission of a question, or that the answer to the question is established as a matter of law, may be made for the first time after the verdict. A claim that there is factually insufficient evidence to support the jury's answer to a question, or that the answer to a question is against the great weight and preponderance of the evidence, may be made only after the verdict. Such claims may be made regardless of whether the submission of the question was requested by the complainant.

Rule 276. Refusal or Modification.
[Continued]

endorse thereon "Modified as follows: (stating in what particular the judge has modified the same) and given, and exception allowed" and sign the same officially. Such refused or modified instruction, question, or definition, when so endorsed shall constitute a bill of exceptions, and it shall be conclusively presumed that the party asking the same presented it at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and such procedure shall entitle the party requesting the same to have the action of the trial judge thereon reviewed without preparing a formal bill of exceptions.

Rule 278. Submission of Questions, Definitions, and Instructions.

The court shall submit the questions, instructions and definitions in the form provided by Rule 277, which are raised by the written pleadings and the evidence. Except in trespass to try title, statutory partition proceedings, and other special proceedings in which the pleadings are specially defined by statutes or procedural rules, a party shall not be entitled to any submission of any question raised only by a general denial and not raised by affirmative written pleading by that party. Nothing herein shall change the burden of proof from what it would have been under a general denial. A judgment shall not be reversed because of the failure to submit other and various phases or different shades of the same question. Failure to submit a question shall not be deemed a ground for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment; provided,

	Rule 278. Submission of Questions, Definitions, and Instructions. [Continued] however, that objection to such failure shall suffice in such respect if the question is one relied upon by the opposing party. Failure to submit a definition or instruction shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or instruction has been requested in writing and tendered by the party complaining of the judgment.
Rule 84. Omissions from the Charge **(a) Omission of Entire Ground.** Any independent ground of recovery or defense which is not conclusively established under the evidence and all elements of which are omitted from the charge without preservation of appellate complaint by the party relying thereon is waived. **(b) Omission of One or More Elements.** When an independent ground of recovery or defense consists of more than one element, and one or more of the elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, is submitted to and found by the jury, and one or more of such elements is omitted from the charge, the court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements, if the party aggrieved by the findings has failed to preserve appellate complaint with respect to the omitted elements. If no such written findings are made, the omitted elements must be deemed found by the court in such manner as to support the judgment if such deemed findings are supported by legally and factually sufficient evidence. The legal and factual sufficiency of the evidence to support express findings made under this rule may be challenged in the same manner as challenges to express findings in nonjury cases.	**Rule 279. Omissions From the Charge.** Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived. When a ground of recovery or defense consists of more than one element, if one or more of such elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, are submitted to and found by the jury, and one or more of such elements are omitted from the charge, without request or objection, and there is factually sufficient evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements in support of the judgment. If no such written findings are made, such omitted element or elements shall be deemed found by the court in such manner as to support the judgment. A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after verdict, regardless of whether the submission of such question was requested by the complainant.

D. JURY DELIBERATIONS

Rule 85. Deliberations **(a) Presiding Juror.** Each jury must appoint one of their body presiding juror.	**Rule 280. Presiding Juror of Jury.** Each jury shall appoint one of their body presiding juror.
(b) Separation. The jury may either decide a case in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.	**Rule 282. Jury Kept Together.** The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.
(c) Duty of Officer Attending Jury. The officer in charge of the jury must not make nor permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and the officer must not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.	**Rule 283. Duty of Officer Attending Jury.** The officer in charge of the jury shall not make not permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and he shall not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.
(d) Jury Charge and Exhibits. The jury may, and on request must, take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but must not take with them any special charges which have been refused. Where only part of a paper has been read in evidence, the jury must not take the same with them, unless the part so read to them is detached from that which was excluded.	**Rule 281. Papers Taken to Jury Room.** The jury may, and on request shall, take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

Rule 86. Communications of Jury with Court. **(a) In General.** The jury may communicate with the court by making their own wish known to the officer in charge, who must inform the court, and they may then in open court, and through their presiding juror, communicate with the court, either verbally or in writing. **(b) Additional Instructions.** After having retired, the jury may receive further instructions from the court touching any matter of law, either at their request or upon the court's own motion. For this purpose they must appear before the judge in open court in a body, and if the instruction is being given at their request, they must through their presiding juror state to the court, in writing, the particular question of law upon which they desire further instruction. The court must give such instruction in writing, but no instruction will be given except in conformity with the rules relating to the charge. Additional argument may be allowed in the discretion of the court.	**Rule 285. Jury May Communicate With Court.** The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their presiding juror, communicate with the court, either verbally or in writing. If the communication is to request further instructions, Rule 286 shall be followed. **Rule 286. Jury May Receive Further Instructions.** After having retired, the jury may receive further instructions from the court touching any matter of law, either at their request or upon the court's own motion. For this purpose they shall appear before the judge in open court in a body, and if the instruction is being given at their request, they shall through their presiding juror state to the court, in writing, the particular question of law upon which they desire further instruction. The court shall give such instruction in writing, but no instruction shall be given except in conformity with the rules relating to the charge. Additional argument may be allowed in the discretion of the court.
(c) Disagreements About Evidence. **(1) Testimony.** If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute; but, if there is no such reporter, or if the reporter's notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge must direct the witness to repeat the witness' testimony as to the point in dispute,	**Rule 287. Disagreement as to Evidence.** If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute; but, if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial; and on their notifying the court that they disagree

Rule 86. Communication **(b) Disagreements.** **[Continued]** and no other, as nearly as the witness can in the language used on the trial. **(2) Depositions.** If the jury disagree about part of a deposition, upon their notifying to the court that they disagree as to any portion of a deposition or other paper not permitted to be carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.	**Rule 287. Disagreement as to Evidence.** **[Continued]** as to any portion of a deposition or other paper not permitted to be carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.
Rule 87. Verdict **(a) Definitions: General and Special Verdicts.** A verdict is a written declaration by a jury of its decision, comprehending the whole or all the issues submitted to the jury, and must be either a general or special verdict, as directed, which must be signed by the presiding juror of the jury. **(i) General Verdict.** A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court. **(ii) Special Verdict.** A special verdict must, as between parties, be conclusive as to the facts found.	**Rule 290. Definition and Substance.** A verdict is a written declaration by a jury of its decision, comprehending the whole or all the issues submitted to the jury, and shall be either a general or special verdict, as directed, which shall be signed by the presiding juror of the jury. A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court. A special verdict shall, as between the parties, be conclusive as to the facts found.
(b) Form of Verdicts. No special form of verdict is required, and the judgment must not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict.	**Rule 291. Form of Verdict.** No special form of verdict is required, and the judgment shall not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict.

Rule 87. Verdict [Continued] **(c) Verdict by Portion of Original Jury.** A verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten members of a jury of twelve, including any alternate jurors sworn as replacements, or of the same five members of a jury of six, including any alternate jurors sworn as replacements. However, where as many as three jurors die or become disabled or disqualified from sitting and there are only nine of the jurors remaining of a jury of twelve, including any alternate jurors sworn as replacements, those remaining may render and return a verdict. If fewer than twelve or six jurors render a verdict, the verdict must be signed by each juror concurring therein. The trial court may determine that a juror is disabled because of the death or severe illness of a near relative. **(d) Receipt of Verdict.** When the jury agree upon a verdict, they must be brought into court by the proper officer, and they must deliver their verdict to the clerk; and if they state that they have agreed, the verdict must be read aloud by the clerk. If the verdict is in proper form, no juror objects to its accuracy, no juror represented as agreeing thereto dissents therefrom, and neither party requests a poll of the jury, the verdict must be entered upon the minutes of the court.	**Rule 292. Verdict by Portion of Original Jury.** A verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten members of an original jury of twelve or of the same five members of an original jury of six. However, where as many as three jurors die or disabled from sitting and there are only nine of the jurors remaining of an original twelve, those remaining may render and return a verdict. If less than the original twelve or six jurors render a verdict the verdict must be signed by each juror concurring therein. **Rule 293. When the Jury Agree.** When the jury agree upon a verdict, they shall be brought into the court by the proper officer, and they shall deliver their verdict to the clerk; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If the verdict is in proper form, no juror objects to its accuracy, no juror represented as agreeing thereto dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.
(e) Polling the Jury. **(1) Polling Procedure.** Any party will have the right to have the jury polled. A jury is polled by reading once to the jury collectively the general verdict, or the questions and answers thereto consecutively, and then calling the name of each juror separately and asking the juror if it is the juror's verdict.	**Rule 294. Polling the Jury.** Any party shall have the right to have the jury polled. A jury is polled by reading once to the jury collectively the general verdict, or the questions and answers thereto consecutively, and then calling the name of each juror separately and asking the juror if it is the juror's verdict. If any juror answers in the negative when the verdict is returned signed

Rule 87. Verdict **(e) Polling.** **[Continued]** **(2) Effect of Disagreement.** If any juror answers in the negative when the verdict is returned signed only by the presiding juror as a unanimous verdict, or if any juror shown by the juror's signature to agree to the verdict answers in the negative, the jury must be retired for further deliberation.	**Rule 294. Polling the Jury.** **[Continued]** only by the presiding juror as a unanimous verdict, or if any juror shown by the juror's signature to agree to the verdict should answer in the negative, the jury shall be retired for further deliberation.
(f) Defective Verdicts. If the purported verdict is defective, the court may direct it to be reformed. If it is incomplete, or not responsive to the questions contained in the court's charge, or the answers to the questions are in conflict, the court must in writing instruct the jury in open court of the nature of the incompleteness, unresponsiveness, or conflict, provide the jury such additional instructions as may be proper, and retire the jury for further deliberations.	**Rule 295. Correction of Verdict.** If the purported verdict is defective, the court may direct it to be reformed. If it is incomplete, or not responsive to the questions contained in the court's charge, or the answers to the questions are in conflict, the court shall in writing instruct the jury in open court of the nature of the incompleteness, unresponsiveness, or conflict, provide the jury such additional instructions as may be proper, and retire the jury for further deliberations.
(g) Discharge of Jury. The jury to whom a case has been submitted may be discharged by the court when they cannot agree and the parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree, or when any calamity or accident may, in the opinion of the court, require it, or when by sickness or other cause their number is reduced below the number constituting the jury in such court. The cause must again be placed on the jury docket and must again be set for trial as the court directs.	**Rule 289. Discharge of Jury.** The jury to whom a case has been submitted may be discharged by the court when they cannot agree and the parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree, or when any calamity or accident may, in the opinion of the court, require it, or when by sickness or other cause their number is reduced below the number constituting the jury in such court.

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SECTION 7
TRIAL
PART E. NONJURY TRIALS

PROPOSED RULES	CURRENT RULES
Rule 90. Requests for Findings of Fact and Conclusions of Law **(a) Entitlement.** In any case: (a) tried to the court without a jury; (b) tried to a jury in which one or more ultimate issues are tried to the court by agreement; or (c) tried to a jury in which one or more ultimate issues must be tried to the court, a party may request the judge to state in writing findings of fact and conclusions of law. Trial of an issue of fact to a jury in the same case does not excuse the judge from making findings of fact on an ultimate issue tried to the judge unless the ground to which the issue is referable has been waived or an omitted element is deemed found as provided in Rule 84. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after the final judgment is signed, with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. A request for findings of fact and conclusions of law is not proper, and has no effect, with respect to an appeal of a summary judgment. **(b) Premature Requests.** A request for findings of fact and conclusions of law is effective although prematurely filed. A premature request for findings of fact and conclusions of law is deemed to have been filed on the date of, but subsequent to, the signing of the judgment.	**Rule 296. Requests for Findings of Fact and Conclusions of Law** In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule 21a.

Rule 91. Filing Findings of Fact and Conclusions of Law	Rule 297. Time to File Findings of Fact and Conclusions of Law
(a) Time to File. The judge shall file findings of fact and conclusions of law within twenty days after a timely request is filed. The judge shall cause a copy of the findings and conclusions to be mailed to each party in the suit. **(b) Late Filing.** If the judge fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the judge by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the judge to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed. **(c) Form.** The judge shall state the findings of fact on each ground of recovery or defense raised by the pleadings and evidence in broad form, whenever feasible, in the same manner as questions are submitted to the jury in a jury trial. The judge should make conclusions of law on each ground of recovery or defense necessary to support the judgment, but the failure to do so shall not be error. Each finding of fact and each conclusion of law should be stated by a separate numbered paragraph.	The court shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit. If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on al other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

Rule 297. Additional or Amended Findings of Fact and Conclusions of Law **(a) Time for Request.** After the judge files original findings of fact and conclusions of law, any party may file a request for specified additional or amended findings or conclusions with the clerk within twenty days after the filing of the original findings and conclusions. **(b) Time for Judge's Response.** The judge shall file any additional or amended findings and conclusions that are appropriate within ten days after the request is filed. **(c) Appellate Review.** Refusal of the judge to make a finding requested shall be reviewable on appeal.	**Rule 298. Additional or Amended Findings of Fact and Conclusions of Law]** After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with Rule 21a. The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.
Rule 93. Omitted Grounds and Presumed Findings **(a) Omitted Grounds.** When findings of fact are filed by the trial judge they shall form the basis of the judgment upon all grounds of recovery or defense. Upon appeal, a ground or defense not conclusively established under the evidence, no element of which have been requested or found, is waived. **(b) Presumed Findings.** When an element of a ground of recovery or defense has been found by the trial judge, a finding is presumed in support of the judgment on an omitted element of the ground to which the element found is necessarily referable, when supported by factually sufficient evidence. No finding, however, shall be presumed on an omitted element for which an additional finding has been requested.	**Rule 299. Omitted Findings** When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

Rule 94. Findings Must Be Filed Separately; Effect of Judgment Recitals.	Rule 299a. Findings of Fact to Be Separately Filed and Not Recited in a Judgment.
Unless otherwise provided by law, findings of fact and conclusions of law shall be requested, prepared and filed with the clerk of the court as a document separate from the judgment. If findings of fact are recited in a judgment in violation of this rule, and if there is a conflict between the findings recited in the judgment and the findings made pursuant to Rules ____ and ____, the latter findings will control for appellate purposes.	Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in judgment in violation of this rule and findings of fact made pursuant to rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

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SECTION 8
JUDGMENTS; MOTIONS FOR JUDGMENT; NEW TRIALS

PROPOSED RULES	CURRENT RULES
Rule 100. Judgments, Decrees and Orders **(a) Rendition, Signing and Filing.** A judge shall render judgment on the facts found, either by the jury or the judge, unless a new trial is granted or a judgment is rendered as a matter of law. A judgment is rendered when the judge announces it in open court, or if it is not so announced, when it is signed by the judge. A judgment orally announced shall be promptly reduced to writing and signed by the judge. A signed judgment shall be promptly filed with the clerk of the court.	**Rule 300. Court to Render Judgment.** Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

(b) Final Judgment. **(1) Definition.** A final judgment for purposes of post-trial and appellate procedure in the same case is a signed order disposing of all parties and claims, either expressly or by implication. **(2) Disposition by Implication.** A claim is disposed of by implication if a judgment is rendered on the merits after a conventional trial and no severance or separate trial of the claim has been ordered. **(3) Separate Orders, Conflicts.** When different parties or separate claims are disposed of by separate orders, no one of which by its terms disposes of all parties and all claims, none of the orders is final until a judgment is signed that disposes of all parties and claims. A final judgment may incorporate by reference the provisions of an earlier signed interlocutory order, but if any provision of the earlier order conflicts with the final judgment, the final judgment controls, except that no relief previously granted may be nullified by a general provision in the final judgment that all relief not previously granted is denied.	**[New/no existing rule]**

Rule 100. Judgments, Decrees and Orders [continued] **(c) Form and Substance: General. A judgment shall:** (1) contain the names of the parties; (2) conform to the pleadings, the facts proved, and the verdict, if any, unless a judgment is rendered as a matter of law; (3) state the relief, either in law or in equity, granted or denied, to or against, each party; and (4) if appropriate, direct the issuance of process and such writs as may be necessary to enforce the judgment.	**Rule 301. Judgments.** The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. **Rule 306. Recitation of Judgment.** The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered.
(d) Form and Substance: Specific. **(1) Personal Property.** A judgment for personal property may provide for a writ for seizure and delivery of such property.	**Rule 308. Court Shall Enforce Its Decrees.** The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment.

Rule 100. Judgments, Decrees and Orders **(d) Form and Substance: Specific.** **[continued]** **(2) Foreclosure Proceedings.** A judgment for foreclosure of a mortgage and or other lien shall provide for: (1) recovery of the debt, damages and costs; (ii) foreclosure of the lien on the property subject to the lien; (iii) an order to sell the property as under execution, except in judgments against personal representatives; and (iv) if the property cannot be found or if the proceeds of the sale are insufficient to satisfy the judgment, then execution on other property of the judgment debtor for the balance remaining unpaid. The judgment foreclosing a lien on real estate has the force and effect of a writ of possession as between the parties and any person claiming under the judgment debtor by right acquired pending suit and the judgment shall so provide. The judgment shall also direct the sheriff or other officer to place the purchaser of the property in possession within thirty days after the date of the foreclosure sale.	**Rule 309. In Foreclosure Proceedings.** Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions. **Rule 310. Writ of Possession.** When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale.

Rule 100. Judgments, Decrees and Orders **(d) Form and Substance: Specific. [continued]** **(3) Personal Representative.** A judgment for the recovery of money against a personal representative, whether an executor, administrator or guardian shall state that it is to be paid in the due course of administration. No enforcement shall be attempted on a judgment against a personal representative, but it shall be certified to the court, sitting in probate, to be enforced under the law, except that a judgment against an independent executor may be enforced against the property of the testator in the hands of the independent executor.	**Rule 313. Against Executors, Etc.** A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgment against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.
Rule 101. Motions Before and After Judgment **(a) Motion for Judgment on the Verdict.** A party may move for judgment on the verdict of the jury.	**[New/no existing rule indicated]**

Rule 101. Motions Before and After Judgment [continued] **(b) Motion for Judgment as a Matter of Law.** A party may move for judgment as a matter of law, and include a request to disregard a jury finding as a matter of law, on a claim or defense: **(1)** if the evidence, after the adverse party rests its evidence, or at the close of all of the evidence, or after the verdict in a jury case and before judgment, (i) is legally insufficient for a reasonable jury to find against the movant on a particular issue of fact or if the evidence conclusively establishes the issue in the movant's favor, and (ii) if, under the controlling law, a judgment cannot properly be rendered against the movant on that claim or defense without a finding adverse to the movant on an issue that has been disregarded, and a judgment as a matter of law should be rendered for movant as to that claim or defense; or **(2)** if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge affirmatively misstates controlling law.	**Rule 268. Motion for Instructed Verdict.** A motion for directed verdict shall state the specific grounds therefor. **Rule 301. Judgments.** Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Rule 101. Motions Before and After Judgment [continued] **(c) Motion to Modify Judgment.** A party may move to modify a judgment as a matter of law, including a request to disregard a jury finding as a matter of law, after a judgment has been rendered: **(1)** if the evidence is legally insufficient for a reasonable jury to find against the movant on a particular issue of fact or if the evidence conclusively establishes the issue in the movant's favor; **(2)** if the application of controlling law to a claim or defense otherwise determines a claim or defense as a matter of law, unless the movant waived application of controlling law by failing to preserve a complaint that the court's charge affirmatively misstates controlling law; or **(3)** if the judgment should be vacated, modified, reformed, or corrected in any respect for any reason. A motion for judgment as a matter of law is not a prerequisite to a motion to modify a judgment.	**Rule 329b. Time for Filing Motions.** (g) A motion to modify, correct, or reform a judgment (as distinguished from motion to correct the record of a judgment under Rule 316), if filed, shall be filed and determined within the time prescribed by this rule for a motion for new trial and shall extend the trial court's plenary power and the time for perfecting an appeal in the same manner as a motion for new trial. Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected, or reformed. The overruling of such a motion shall not preclude the filing of a motion for new trial, nor shall the overruling of a motion for new trial preclude the filing of a motion to modify, correct, or reform.
Rule 101. Motions Before and After Judgment [continued] **(d) Motion for New Trial.** A party may move to set aside a judgment and seek a new trial pursuant to Rule 302.	**Rule 320. Motion and Action of Court Thereon.** New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct.

Rule 101. Motions Before and After Judgment [continued] **(e) Motion for Judgment Record Correction.** A party may move, with notice to all parties interested in a judgment, for correction or reformation of clerical mistakes made in reducing to writing the judgment rendered by the judge.	**Rule 316. Correction of Clerical Mistakes in Judgment Record.** Clerical mistakes in the record of any judgment may be corrected by the judge in open court according to the truth or justice of the case after notice of the motion therefor has been given to the parties interested in such judgment, as provided in Rule 21a, and thereafter the execution shall conform to the judgment as amended.
(f) Motion Practice. A motion identified in this rule must state the specific complaint or request for relief in such a way that the matter can be understood by the judge. A party may file one or more motions identified in this rule and may renew or refile an additional motion of the same type containing additional complaints and requests for relief despite the denial of any previous motion. A party may also submit a proposed judgment or order with the motion.	**Rule 321. Form.** Each point relied upon in a motion for new trial or in arrest of judgment shall briefly refer to that part of the ruling of the court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of, in such a way that the objection can be clearly identified and understood by the court.

Rule 102. Motions for New Trial	Rule 324. Prerequisites of Appeal.
(a) **Grounds.** For good cause, a new trial, or partial new trial under paragraph (f), may be granted and a judgment may be set aside on motion of a party or on the judge's own motion, in the following instances, among others: **(1)** when the evidence is factually insufficient to support a jury finding; **(2)** when a jury finding is against the overwhelming preponderance of the evidence; **(3)** when the damages awarded by the jury are manifestly too small or too large because of the factual insufficiency or overwhelming preponderance of the evidence; **(4)** when the trial judge has made an error of law that probably caused rendition of an improper judgment; **(5)** when injury to the movant has probably resulted from: (i) misconduct of the jury; or (ii) misconduct of the officer in charge of the jury; or (iii) improper communication to the jury; or (iv) a juror's erroneous or incorrect answer on voir dire examination; **(6)** when new, non-cumulative evidence has been discovered that was not available at the trial by the movant's use of reasonable diligence and its unavailability probably caused the rendition of an improper judgment; **(7)** when a default judgment should be set aside upon either legal or equitable grounds;	(a) Motion for New Trial Not Required. A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b). (b) Motion for New Trial Required. A point in a motion for new trial is a prerequisite to the following complaints on appeal: (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default; (2) A complaint of factual insufficiency of the evidence to support a jury finding; (3) A complaint that a jury finding is against the overwhelming weight of the evidence; (4) A complaint of inadequacy or excessiveness of the damages found by the jury; or (5) Incurable jury argument if not otherwise ruled on by the trial court. (c) Judgment Notwithstanding Findings; Cross-Points. When judgment is rendered non obstante verdicto or notwithstanding the findings of a jury on one or more questions, the appellee may bring forward by cross-point contained in his brief filed in the Court of Appeals any ground which would have vitiated the verdict or would have prevented an affirmance of the judgment had one been rendered by the trial court in harmony with the verdict, including although not limited to the ground that one or more of the jury's findings have insufficient support in the evidence or are

Rule 102. Motions for New Trial **(a) Grounds.** **[continued]** **(8)** when a judgment has been rendered on citation by publication, the defendant did not appear in person or by an attorney selected by the defendant and good cause for a new trial exists; **(9)** when there is a material and irreconcilable conflict in jury findings; **(10)** when any improperly admitted evidence, error in the court's charge, argument of counsel, or other trial court occurrence or ruling probably caused rendition of an improper judgment; **(11)** when any other ground warrants a new trial in the interest of justice	**Rule 324. Prerequisites of Appeal.** **Subpart (c)** **[continued]** against the overwhelming preponderance of the evidence as a matter of fact, and the ground that the verdict and judgment based thereon should be set aside because of improper argument of counsel. The failure to bring forward by cross-points such grounds as would vitiate the verdict shall be deemed a waiver thereof; provided, however, that if a cross-point is upon a ground which requires the taking of evidence in addition to that adduced upon the trial of the cause, it is not necessary that the evidentiary hearing be held until after the appellate court determines that the cause be remanded to consider such a cross-point.
(b) Form. Complaints in general terms shall not be considered. Each complaint in a motion for new trial shall identify the matter of which complaint is made in such a way that the complaint can be understood by the judge.	**Rule 322. Generality to Be Avoided.** Grounds of objections couched in general terms-as that the court erred in its charge, in sustaining or overruling exceptions to the pleadings, and in excluding or admitting evidence, the verdict of the jury is contrary to law, and the like-shall not be considered by the court.
(c) Affidavits. Supporting affidavits are required for complaints based on facts not otherwise in the record, such as: **(1)** jury misconduct; **(2)** newly discovered evidence; **(3)** equitable grounds to set aside a default judgment; or **(4)** good cause to set aside a judgment after citation by publication.	**[New/no existing rule]**

Rule 102. Motions for New Trial [continued]	Rule 327. For Jury Misconduct.
(d) Procedure For Jury Misconduct. **(1) Hearing.** When the ground of the motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of the jury, or improper communication made to the jury, or a juror's erroneous or incorrect answer on voir dire examination, the judge shall hear evidence from members of the jury or others in open court and may grant a new trial if it reasonably appears from the evidence both on the hearing of the motion and from the record as a whole on the trial of the case that injury probably resulted to the complaining party.	a. When the ground of a motion for new trial, supported by affidavit, is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury, or that a juror gave an erroneous or incorrect answer on voir dire examination, the court shall hear evidence thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the communication made, or the erroneous or incorrect answer on voir dire examination, be material, and if it reasonably appears from the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party.
(2) Testimony Of Jurors. A juror may not testify as to any matter or statement occurring during the jury's deliberations, or on any juror's mind or emotions or mental processes, as influencing any juror's assent to or dissent from the verdict. Nor may a juror's affidavit or any statement by a juror concerning any matter about which the juror would be precluded from testifying be admitted in evidence for any of these purposes. However, a juror may testify whether: (i) any outside influence was improperly brought to bear upon any juror; or (ii) the juror was qualified to serve.	b. A juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict concerning his mental processes in connection therewith, except that a juror may testify whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Rule 102. Motions for New Trial [continued] **(e) Excessive Damages; Remittitur** **(1) Excessive Damages.** If the judge is of the opinion that the damages found by the jury are not supported by factually sufficient evidence, the judge may determine the greatest amount of damages supported by the evidence and may, as a condition of overruling a motion for new trial, suggest that the party claiming such damages file a remittitur of the excess within a specified period.	**Rule 320. Motion and Action of Court Thereon.** New trials may be granted when the damages are manifestly too small or too large.
(2) Remittitur By Party. Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution may issue only for the balance of such judgment.	**Rule 315. Remittitur.** Any party in whose favor a judgment has been rendered may remit any part thereof in open court, or by executing and filing with the clerk a written remittitur signed by the party or the party's attorney of record, and duly acknowledged by the party or the party's attorney. Such remittitur shall be a part of the record of the cause. Execution shall issue for the balance only of such judgment.
(f) Partial New Trial. If the judge is of the opinion that a new trial should be granted on a point or points that affect only a part of the matters in controversy that is clearly separable without unfairness to the parties, the judge may grant a new trial as to that part only, but a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.	**Rule 320. Motion and Action of Court Thereon.** When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested. Each motion for new trial shall be in writing and signed by the party or his attorney.

Rule 103. Preservation of Complaints **(a) General Preservation Rule.** As a prerequisite to the presentation of a complaint for appellate review, a timely request, objection, or motion must appear of record, stating the specific grounds for the ruling that the complaining party desired the trial court to make if the specific grounds were not apparent from the context. No complaint shall be considered waived if the ground stated is sufficiently specific to make the judge aware of the complaint. The judge's ruling upon the complaining party's request, objection or motion must also appear of record provided that the overruling by operation of law of a motion for new trial or a motion to modify the judgment is sufficient to preserve for appellate review the complaints properly made in the motion, unless the taking of evidence is necessary for proper presentation of the complaint in the trial court. A ruling may be shown in the judgment, in a signed separate order, in the statement of facts, or in a formal bill of exceptions. If the trial judge refuses to rule, an objection to the judge's refusal to rule is sufficient to preserve the complaint. Formal exceptions to rulings or orders of the trial court are not required.	**[New/no existing rule]**

Rule 103. Preservation of Complaints	Rule 324. Prerequisites of Appeal.
(b) When a Motion for New Trial is Required. As a prerequisite to appellate review, the following complaints shall be made in a motion for new trial: **(1)** jury misconduct, newly discovered evidence, equitable grounds to set aside a judgment, or any other complaint on which evidence must be heard; **(2)** the evidence is factually insufficient to support a jury finding; **(3)** a jury finding is against the overwhelming preponderance of the evidence; **(4)** the damages awarded by the jury are manifestly too large or too small because of the factual insufficiency or overwhelming preponderance of the evidence; **(5)** an incurable jury argument, if not otherwise ruled on by the trial court; **(6)** good cause to set aside a judgment after citation by publication; or **(7)** a jury verdict that will not support any judgment.	(a) Motion for New Trial Not Required. A point in a motion for new trial is not a prerequisite to a complaint on appeal in either a jury or a nonjury case, except as provided in subdivision (b). (b) Motion for New Trial Required. A point in a motion for new trial is a prerequisite to the following complaints on appeal: (1) A complaint on which evidence must be heard such as one of jury misconduct or newly discovered evidence or failure to set aside a judgment by default; (2) A complaint of factual insufficiency of the evidence to support a jury finding; (3) A complaint that a jury finding is against the overwhelming weight of the evidence; (4) A complaint of inadequacy or excessiveness of the damages found by the jury; or (5) Incurable jury argument if not otherwise ruled on by the trial court.

	Rule 324. Prerequisites of Appeal. [continued] (c) Judgment Notwithstanding Findings; Cross-Points. When judgment is rendered non obstante verdicto or notwithstanding the findings of a jury on one or more questions, the appellee may bring forward by cross-point contained in his brief filed in the Court of Appeals any ground which would have vitiated the verdict or would have prevented an affirmance of the judgment had one been rendered by the trial court in harmony with the verdict, including although not limited to the ground that one or more of the jury's findings have insufficient support in the evidence or are against the overwhelming preponderance of the evidence as a matter of fact, and the ground that the verdict and judgment based thereon should be set aside because of improper argument of counsel. The failure to bring forward by cross-points such grounds as would vitiate the verdict shall be deemed a waiver thereof; provided, however, that if a cross-point is upon a ground which requires the taking of evidence in addition to that adduced upon the trial of the cause, it is not necessary that the evidentiary hearing be held until after the appellate court determines that the cause be remanded to consider such a cross-point.
(c) Nonjury Cases: Legal and Factual Sufficiency of Evidence. In a nonjury case, a complaint regarding the legal or factual insufficiency of the evidence, including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a request that the judge amend a fact finding or make additional finding of fact, may be made for the first time on appeal in the complaining party's brief.	**[New/no existing rule]**

Rule 103. Preservation of Complaints [continued] **(d) Informal Bills Of Exception And Offers Of Proof.** When evidence is excluded, the offering party shall as soon as practicable, but before the charge is read to the jury or before the judgment is signed in a nonjury case, be allowed to make, in the absence of the jury, an offer of proof in the form of a concise statement. The judge may, or at the request of a party shall, direct the making of the offer in question and answer form. A transcription of the reporter's notes or of the electronic tape recording showing the offer, whether by concise statement or question and answer, showing the objections made, and showing the ruling, when included in the statement of facts certified by the reporter or recorder, shall establish the nature of the evidence, the objections and the ruling. The judge may add any other or further statement showing the character of the evidence, the form in which offered, the objection made and the ruling. No further offer need be made. No formal bills of exception are needed to authorize appellate review of exclusion of evidence. When the judge hears objections to offered evidence out of the presence of the jury and rules that the evidence be admitted, the objections are deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating them.	**[New/no existing rule]**

Rule 103. Preservation of Complaints [continued] **(e) Formal Bills of Exception.** The preparation and filing of formal bills of exception shall be governed by the following rules: **(1)** No particular form of words shall be required in a bill of exception, but the objection to the ruling or action of the judge and the ruling complained of shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible. **(2)** When the statement of facts contains all the evidence requisite to explain the bill of exception, evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts. **(3)** The ruling of the judge in giving or qualifying instructions to the jury shall be regarded as approved unless a proper and timely objection is made. **(4)** Formal bills of exception shall be presented to the judge for his allowance and signature. **(5)** The judge shall submit the bill to the adverse party or the adverse party's counsel, if in attendance at the court, and if the adverse party finds it to be correct, the judge shall sign it without delay and file it with the clerk. **(6)** If the judge finds the bill incorrect, the judge shall suggest to the parties or their counsel such corrections as the judge deems necessary, and if they are agreed to the judge shall make such corrections, sign the bill and file it with the clerk.	**[New/no existing rule]**

Rule 103. Preservation of Complaints **(e) Formal Bills of Exception** **[continued]** **(7)** Should the complaining party not agree to the judge's suggested corrections, the judge shall return the bill to the complaining party with the judge's refusal endorsed on it, and shall prepare, sign and file with the clerk such a bill of exception as will, in the judge's opinion, present the ruling of the court as it actually occurred. **(8)** Should the complaining party be dissatisfied with the bill filed by the judge, the complaining party may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as originally presented, have it filed as part of the record of the cause. The truth of the matter may be controverted and maintained by affidavits, not exceeding five in number on each side, filed with the papers of the cause, within ten days after the filing of the bill. On appeal the truth of the bill shall be determined from the affidavits so filed. **(9)** In the event of conflict between a formal bill and the statement of facts, the bill shall control. **(10)** Anything occurring in open court or in chambers that is reported or recorded and so certified by the court reporter or recorder may be included in the statement of facts rather than in a formal bill of exception. A party requesting that all or part of the jury arguments or the voir dire examination of the jury panel be included in the statement of facts shall pay the cost thereof, which shall be separately listed in the certified bill of costs, and may be taxed in whole or in part by the appellate court against any party to the appeal.	**[New/no existing rule]**

Rule 103. Preservation of Complaints **(e) Formal Bills of Exception [continued]** **(11)** Formal bills of exception shall be filed in the trial court within sixty days after the judgment is signed or if a timely motion for new trial, motion to modify, request for findings, or motion to reinstate pursuant to Rule ____ has been filed, formal bills of exception shall be filed within ninety days after the judgment is signed. When a formal bill of exception is filed, it may be included in the transcript or in a supplemental transcript.	**[New/no existing rule]**
Rule 104. Timetables **(a) Motion for Judgment on Jury Verdict.** A motion for judgment on the jury verdict may be presented at any time before a final judgment has been signed. A motion for judgment on the jury verdict is overruled by operation of law when a final judgment is signed that does not grant the motion.	**[New/no existing rule]**
(b) Motion for Judgment as a Matter of Law. A motion for judgment as a matter of law may be presented after the adverse party rests its evidence, or at the close of all the evidence, or after the verdict in a jury case and before judgment, and shall not be considered waived if not presented earlier. A motion for judgment as a matter of law shall not be presented after a final judgment has been signed. A ground in a motion for judgment as a matter of law is overruled by operation of law when a final judgment is signed that does not grant that ground.	**[New/no existing rule]**

Rule 104. Timetables [continued] **(c) Motion to Modify a Judgment and Motion for New Trial.** **(1) Time to File.** A motion to modify a judgment and a motion for new trial shall be filed within thirty days after the final judgment is signed. One or more amended or additional motions may be filed without leave of court within thirty days after the final judgment is signed regardless of whether a prior motion containing requests for the same relief has been overruled. **(2) When Motion Overruled.** If a motion to modify a judgment or a motion for new trial is not determined by order signed within seventy-five days after the final judgment was signed, any such motion shall be considered overruled by operation of law on expiration of that period. **(3) Special Deadline: Publication.** In a case when judgment has been rendered on citation by publication and the defendant did not appear in person or by an attorney selected by the defendant, a motion for new trial shall be filed within two years after the final judgment was signed, unless a motion has been previously filed by such defendant or attorney pursuant to paragraph (c)(1).	**Rule 329b. Time for Filing Motions.** The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts: (a) A motion for new trial, if filed, shall be filed prior to or within thirty days after the judgment or other order complained of is signed. (b) One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial filed by the movant is overruled and within thirty days after the judgment or other order complained of is signed. (c) In the event an original or amended motion for new trial or a motion to modify, correct or reform a judgment is not determined by written order signed within seventy-five days after the judgment was signed, it shall be considered overruled by operation of law on expiration of that period.
(d) Motion to Correct Judgment Record. A motion to correct the judgment record may be filed at any time after a final judgment is signed, but if the motion is filed within thirty days after the final judgment is signed, the motion shall be considered a motion to modify a judgment filed within thirty days pursuant to paragraph (c) (1).	**Rule 329b. Time for Filing Motions.** (h) If a judgment is modified, corrected or reformed in any respect, the time for appeal shall run from the time the modified, corrected, or reformed judgment is signed, but if a correction is made pursuant to Rule 316 after expiration of the period of plenary power provided by this rule, no complaint shall be heard on appeal that could have been presented in an appeal from the original judgment.

Rule 104. Timetables [continued]	Rule 306a. Periods to Run From Signing of Judgment.
(e) Effective Dates and Beginning of Periods **(1) Beginning of Periods.** The date a final judgment or appealable order is signed as shown of record determines the beginning of the period during which (i) the court may exercise plenary power to grant a motion to modify, a motion for new trial or a motion to correct the judgment record, a motion to reinstate a case dismissed for want of prosecution and a request for findings of fact and conclusions of law or to vacate a judgment, and (ii) a party may timely file any post-judgment document necessary to preserve the rights of the party on appeal. **(2) Date to be Shown.** All judgments, decisions, and orders of any kind shall be reduced to writing and signed by the trial judge with the date of signing expressly stated in it. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; the absence of a showing of the date in the record does not invalidate a judgment or an order. **(3) Notice of Judgment.** When the final judgment or appealable order is signed, the clerk of the court shall immediately give notice of the signing to each party or the party's attorney by first-class mail. Failure to comply with this rule shall not affect the periods mentioned in paragraph (e)(1), except under paragraph (e) (4).	1. Beginning of Periods. The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose. 2. Date to Be Shown. Judges, attorneys and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order. 3. Notice of Judgment. When the final judgment or other appealable order is signed, the clerk of the court shall immediately give notice to the parties or their attorneys of record by first-class mail advising that the judgment or order was signed. Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

Rule 104. Timetables (e) Effective Dates and Beginning of Periods [continued]	Rule 306a. Periods to Run From Signing of Judgment. [continued]
(4) No Notice of Judgment: Additional Time. If a party affected by a final judgment or appealable order, or the party's attorney, has not within twenty days after the final judgment or appealable order was signed, received the notice required by paragraph (e)(3) and has not acquired actual knowledge of the signing of the final judgment or appealable order, then all periods provided in these rules that run from the date the final judgment or appealable order is signed shall begin for that party on the date that party, or the party's attorney, received notice or acquired actual knowledge of the signing of the final judgment or appealable order, whichever occurred first; provided, however, that in no event shall the periods begin more than ninety days after the final judgment or appealable order was signed.	4. No Notice of Judgment. If within twenty days after the judgment or other appealable order is signed, a party adversely affected by it or his attorney has neither received the notice required by paragraph (3) of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in paragraph (1) shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.
(5) Procedure to Gain Additional Time. To establish the application of paragraph (e)(4), the party adversely affected must file a motion in the trial court stating the date on which the party or the party's attorney first either received a notice of the final judgment or appealable order or acquired actual knowledge of the signing of the final judgment or appealable order and that this date was more than twenty days after the final judgment or appealable order was signed. The trial judge shall promptly set the motion for hearing, and after conducting a hearing on the motion, shall find the date the party or the party's attorney first either received a notice of the final judgment or appealable order or acquired actual knowledge of the signing of the final judgment or appealable order and include this finding in a written order.	5. Motion, Notice and Hearing. In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.

Rule 104. Timetables **(e) Effective Dates and Beginning of Periods [continued]** **(6) Periods Affected by Modified Judgment.** If a judgment is modified in any respect during the period of the trial court's plenary power, all periods provided in these rules that run from the date the final judgment is signed shall run from the time the modified judgment is signed. If a correction to a judgment is made pursuant to Rule 101(e) after expiration of the trial court's plenary power, all periods provided in these rules which run from the date the judgment is signed shall run from the date of the signing of the corrected judgment for any complaint that would not apply to the original judgment.	**Rule 306a. Periods to Run From Signing of Judgment.** **[continued]** 6. Nunc Pro Tunc Order. When a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316, the periods mentioned in paragraph (1) of this rule shall run from the date of signing the corrected judgment with respect of any complaint that would not be applicable to the original document.
(7) Citation by Publication. For a motion for new trial filed more than thirty days but within two years after the final judgment was signed under paragraph (c)(3) when citation was served by publication; the periods shall be computed as if the judgment were signed on the date of filing the motion.	7. When Process Served by Publication. With respect to a motion for new trial filed more than thirty days after the judgment was signed pursuant to Rule 329 when process has been served by publication, the periods provided by paragraph (1) shall be computed as if the judgment were signed on the date of filing the motion.
(8) Premature Filing. A prematurely filed motion to modify a judgment or a motion for new trial is effective to preserve the complaints made in the motion and is deemed to have been overruled by operation of law on the date of, but subsequent to, the signing of the judgment the motion attacks. No motion to modify a judgment or a motion for new trial filed prior to the signing of the final judgment extends the trial court's plenary power provided in Rule 105 or any timetable prescribed in the Texas Rules of Appellate Procedure. A motion filed on the same day as the judgment is signed is not prematurely filed.	**Rule 306c. Prematurely Filed Documents.** No motion for new trial or request for findings of fact and conclusions of law shall be held ineffective because prematurely filed; but every such motion shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment the motion assails, and every such request for findings of fact and conclusions of law shall be deemed to have been filed on the date of but subsequent to the time of signing of the judgment.

Rule 105. Plenary Power of the Trial Court	Rule 329b. Time for Filing Motions.
(a) Definition. Plenary power is the complete power of the court to act, within its jurisdiction, according to law or equity, on any issue of procedure or substance as to any party before the court. After the expiration of plenary power, a court may exercise only such power as is expressly authorized by rule or statute. **(b) Duration.** Regardless of whether an appeal has been perfected, the trial court has plenary power to modify or vacate a judgment or grant a new trial: **(1)** within thirty days after the judgment is signed, or **(2)** if any party has timely filed a (i) motion for new trial, (ii) motion to modify the judgment, (iii) motion to reinstate a judgment after dismissal for want of prosecution, or (iv) request for findings of fact and conclusions of law, one hundred and five days after the judgment is signed.	(d) The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed. (e) If a motion for new trial is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.

Rule 105. Plenary Power of the Trial Court [continued]	Rule 329b. Time for Filing Motions.
(c) After Expiration. After expiration of the time prescribed by subdivision (b), the trial court cannot modify or vacate the judgment or grant a new trial, but the court may, after expiration of that time: **(1)** correct a clerical error in the record of the judgment and; **(2)** sign an order declaring a previous judgment or order to be void because signed after the court's power as prescribed in subdivision (b) had expired; **(3)** issue any order or process or entertain any proceeding for enforcement of the judgment within the time allowed for execution; **(4)** file findings of fact and conclusions of law if a timely request for such findings and conclusions has been filed; **(5)** entertain and act for sufficient cause on any bill of review filed within the time allowed by law; **(6)** grant a new trial for good cause on a motion filed within the time allowed by Rule 104(e)(7) if citation was served by publication; **(7)** grant a new trial or modify the judgment within the time allowed by Rule 104(e)(4) when the moving party did not have timely notice or knowledge of the judgment.	(f) On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; provided that the court may at any time correct a clerical error in the record of a judgment and render judgment nunc pro tunc under Rule 316, and may also sign an order declaring a previous judgment or order to be void because signed after the court's plenary power had expired.

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SECTION 11
COUNSEL, COURTS, CLERKS, COURT REPORTERS, COURT RECORDS AND COURT COSTS

A. COUNSEL

PROPOSED RULE	CURRENT RULE
Rule 130. May Appear by Attorney; Lead Counsel; Number of Counsel Heard; Attorney to Show Authority **(a) May Appear by Attorney.** Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.	**Rule 7. May Appear by Attorney.** Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.
(b) Lead Counsel. On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party will be the lead counsel, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule ___ (currently Rule 21a), said lead counsel will be responsible for the suit as to such party. All communications from the court or other counsel with respect to a suit must be sent to the lead counsel.	**Rule 8. Attorney in Charge.** On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party shall be the attorney in charge, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as to such party. All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.
(c) Number of Counsel Heard. Not more than two counsel on each side will be heard on any question or on the trial, except in important cases, and upon special leave of the court.	**Rule 9. Number of Counsel Heard.** Not more than two counsel on each side shall be heard on any question or on the trial, except in important cases, and upon special leave of the court.
(d) Attorney to Show Authority. A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that the party believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show the	**Rule 12. Attorney to Show Authority.** A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited

Rule 130. May Appear by Attorney; Lead Counsel; Number of Counsel Heard; Attorney to Show Authority **(d) Attorney to Show Authority. [Continued]** attorney's authority to act. The notice of the motion must be served upon the challenged attorney at least ten days before the hearing on the motion. At the hearing on the motion, the burden of proof will be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon the attorney's failure to show such authority, the court must refuse to permit the attorney to appear in the cause, and must strike the pleadings if no person who is authorized to prosecute or defend appears. The motion may be heard and determined at any time before the parties have announced ready for trial, but the trial will not be unnecessarily continued or delayed for the hearing.	**Rule 12. Attorney to Show Authority. [Continued]** to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least ten days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause, and shall strike the pleadings if no person who is authorized to prosecute or defend appears. The motion may be heard and determined at any time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing.
Rule 131. Attorney Conduct During Argument **(a) Questions of Law; Questions on Motions; Exceptions to Evidence.** Arguments on questions of law must be addressed to the court, and counsel must state the substance of the authorities referred to without reading more from books than is necessary to verify the statement. On a question on motions, exceptions to the evidence, and other incidental matters, the counsel will be allowed only such argument as is necessary to present clearly the question raised, and refer to authorities on it, unless further discussion is invited by the court. **(b) Arguments on the Facts.** Arguments on the facts must be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the	**Rule 269. Argument.** (d) Arguments on questions of law shall be addressed to the court, and counsel should state the substance of the authorities referred to without reading more from books than may be necessary to verify the statement. On a question on motions, exceptions to the evidence, and other incidental matters, the counsel will be allowed only such argument as may be necessary to present clearly the question raised, and refer to authorities on it, unless further discussion is invited by the court. (e) Arguments on the facts should be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the court. Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel.

Rule 131. Attorney Conduct During Argument (b) Arguments on the Facts. [Continued]	Rule 269. Argument. [Continued]
court. Counsel will be required to confine the argument strictly to the evidence and to the arguments of opposing counsel.	
(c) Side-Bar Remarks; Personal Attacks on Opposing Counsel. Side-bar remarks, and remarks by counsel of one side, not addressed to the court, while the counsel on the other side is examining a witness or arguing any question to the court, or addressing the jury, will be rigidly repressed by the court. Mere personal criticism by counsel upon each other must be avoided, and when indulged in will be promptly corrected as a contempt of court.	Mere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a contempt of court. (f) Side-bar remarks, and remarks by counsel of one side, not addressed to the court, while the counsel on the other side is examining a witness or arguing any question to the court, or addressing the jury, will be rigidly repressed by the court.
(d) Objections. The court will not be required to wait for objections to be made when the rules as to arguments are violated, but should such violations not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present opposing counsel's point of objection. However the court must protect counsel from any unnecessary interruption made on frivolous and unimportant grounds.	(g) The court will not be required to wait for objections to be made when the rules as to arguments are violated; but should they not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds.
(e) Addressing the Court. It will be the duty of every counsel to address the court from counsel's place at the bar, to rise to counsel's feet when addressing the court, and to remain at counsel's place at the bar while engaged in the trial of a case.	(g) It shall be the duty of every counsel to address the court from his place at the bar, and in addressing the court to rise to his feet; and while engaged in the trial of a case he shall remain at his place in the bar.

Rule 132. Withdrawal of Attorney	Rule 10. Withdrawal of Attorney.
An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the party, the motion must state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as attorney for the party, the motion must state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of the party's right to object to the motion; whether the party consents to the motion; the party's last known address; and all pending settings and deadlines. If the motion is granted, the withdrawing attorney must immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The withdrawing attorney must file a copy of that notice with the court clerk. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party must be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the lead counsel withdraws and another attorney remains or becomes substituted, another lead counsel must be designated of record with notice to all other parties in accordance with Rule ___.	An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the party, the motion shall state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion; the party's last known address and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the attorney in charge withdraws and another attorney remains or becomes substituted, another attorney in charge must be designated of record with notice to all other parties in accordance with Rule 21a.

Rule 133. Agreements to be in Writing	Rule 11. Agreements to Be in Writing.
Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it is in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.	Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.

B. COURTS

Rule 134. Effect of Vacant Judgship on Proceedings	Rule 18. When Judge Dies During Term, Resigns or Is Disabled.
If the office of a judge becomes vacant, all pleadings, motions and proceedings will be continued until another judge is appointed or transferred to hold court.	If the judge dies, resigns, or becomes unable to hold court during the session of court duly convened for the term, and the time provided by law for the holding of said court has not expired, such death, resignation, or inability on the part of the judge shall not operate to adjourn said court for the term, but such court shall be deemed to continue in session. If a successor to such judge shall qualify and assume office during the term, or if a judge be transferred to said district from some other judicial district, he may continue to hold said court for the term provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expires before a successor shall qualify, and before a judge can be transferred to said district from some other judicial district, then all motions pending, including those for new trial, shall stand as continued in force until such successor has qualified and assumed office, or a judge has been transferred to said district who can hold said court, and thereupon such judge shall have power to act thereon at the succeeding term, or on an earlier day in vacation, on notice to all parties to the motion, and such orders shall

	Rule 18. When Judge Dies During Term, Resigns or Is Disabled. [Continued] have the same effect as if rendered in term time. The time for allowing statement of facts and bills of exception from such orders shall date from the time the motion was decided.
Rule 135. Grounds For Disqualification and Recusal of Judges **(a) Grounds for Disqualification.** A judge is disqualified in the following circumstances: (1) the judge formerly acted as counsel in the matter, or practiced law with someone while they acted as counsel in the matter; (2) the judge has an interest in the matter, either individually or as a fiduciary; or (3) the judge is related to any party by consanguinity or affinity within the third degree. **(b) Grounds for Recusal.** A judge must recuse in the following circumstances: (1) the judge's impartiality might reasonably be questioned; (2) the judge has a personal bias or prejudice concerning the subject matter or a party; (3) the judge is a material witness, formerly practiced law with a material witness, or is related to a material witness or such witness's spouse by consanguinity or affinity within the third degree; (4) the judge has personal knowledge of material evidentiary facts relating to the dispute between the parties;	**Rule 18b. Grounds for Disqualification and Recusal of Judges.** (1) Disqualification. Judges shall disqualify themselves in all proceedings in which: (a) they have served as a lawyer in the matter in controversy, or a lawyer with whom they previously practiced law served during such association as a lawyer concerning the matter; or (b) they know that, individually or as a fiduciary, they have an interest in the subject matter in controversy; or (c) either of the parties may be related to them by affinity or consanguinity within the third degree. (2) Recusal. A judge shall recuse himself in any proceeding in which: (a) his impartiality might reasonably be questioned; (b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (c) he or a lawyer with whom he previously practiced law has been a material witness concerning it;

Rule 135. Grounds For Disqualification and Recusal of Judges [Continued]	Rule 18b. Grounds for Disqualification and Recusal of Judges. [Continued]
(5) the judge expressed an opinion concerning the matter while acting as an attorney in government service;	(d) he participated as counsel, adviser or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;
(6) the judge or the judge's spouse is related by consanguinity or affinity within the third degree to a party or an officer, director, or trustee of a party;	(e) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
(7) the judge or the judge's spouse is related by consanguinity or affinity within the third degree to anyone with a financial interest in the matter or a party, or any other interest that could be substantially affected by the outcome of the matter;	(f) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
(8) the judge or the judge's spouse is related by consanguinity or affinity within the third degree to a lawyer in the proceeding or a member of such lawyer's firm.	(i) is a party to the proceeding or an officer, director, or trustee of a party;
(c)Waiver. Disqualification cannot be waived or cured. A ground for recusal may be waived by the parties after it is fully disclosed on the record.	(ii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
(d)Procedure.	(iii) is to the judge's knowledge likely to be a material witness in the proceeding.
(1) *Motion.* A motion to disqualify or recuse a judge may be filed at any time. The motion must state in detail the grounds asserted, and must be made on personal knowledge or upon information and belief if the grounds of such belief are stated specifically. A judge's rulings may not be used as the grounds for the motion, but may be used as evidence supporting the motion. A motion to recuse must be verified; an unverified motion may be ignored.	(g) he or his spouse, or a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding. (3) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

Rule 135. Grounds For Disqualification and Recusal of Judges (d)Procedure. [Continued]	Rule 18b. Grounds for Disqualification and Recusal of Judges. [Continued]
(2) *Referral.* The judge must sign an order ruling on the motion promptly, and prior to taking any other action on the case. If the judge refuses to recuse or disqualify, the judge must refer the motion to the presiding judge of the administrative region for assignment of a judge to hear the motion.	(4) In this rule: (a) "proceeding" includes pretrial, trial, or other stages of litigation;
(3) *Interim Proceedings.* A judge who refuses to recuse may proceed with the case if a motion to recuse alleges only grounds listed in subparagraph (b)(1), (b)(2) or (b)(3). If the motion alleges other grounds for recusal or disqualification, the judge must take no further action on the case until the motion is disposed.	(b) the degree of relationship is calculated according to the civil law system;
(4) *Hearing.* The presiding judge of the region must immediately hear or assign another judge to hear the motion, and must set a hearing to commence before such judge within ten (10) days of the referral. The presiding judge must send notice of the hearing to all parties, and may make such other orders including interim or ancillary relief as justice may require. The hearing on motion may be conducted by telephone, and facsimile copies of documents filed in the case may be used in the hearing. The assigned judge must rule within twenty (20) days of referral or the motion is deemed granted.	(c) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(5) *Disposition.* If a District Court judge is disqualified, either by the original judge or the assigned judge, the parties may by consent appoint a proper person to try the case. Failing such consent, and in all other instances of disqualification or recusal, the presiding judge of the region must assign another judge to preside over the case.	(d) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that: (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund; (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization; (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

Rule 135. Grounds For Disqualification and Recusal of Judges **(d) Procedure.** **[Continued]** (6) *Appeal.* If the motion is denied, the order may be reviewed on appeal from the final judgment. If the motion is granted, the order may not be reviewed. (7) The Chief Justice of the Supreme Court may also appoint and assign judges in conformity with this rule and pursuant to statute. **(e) Financial Interest.** As used in this rule, "financial interest" means "economic interest" as defined in Canon 8 of the Code of Judicial Conduct. Financial interest does not include an interest as a taxpayer, utility ratepayer, or any similar interest unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to the judge within the third degree more than other judges.	**Rule 18b. Grounds for Disqualification and Recusal of Judges.** **[Continued]** (v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a "financial interest" unless the outcome of the proceeding could substantially affect the liability of the judge or a person related to him within the third degree more than other judges. (5) The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record. (6) If a judge does not discover that he is recused under subparagraphs (2)(e) or (2)(f)(iii) until after he has devoted substantial time to the matter, he is not required to recuse himself if he or the person related to him divests himself of the interest that would otherwise require recusal.
Rule 136. Interpreters The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation will be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.	**Rule 183. Interpreters.** The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.
Rule 137. Recording and Broadcasting of Court Proceedings A trial court may permit broadcasting, televising, recording, or photographing of proceedings in the courtroom only in the following circumstances: **(a)** in accordance with guidelines promulgated by the Supreme Court for civil cases, or	**Rule 18c. Recording and Broadcasting of Court Proceedings.** A trial court may permit broadcasting, televising, recording, or photographing of proceedings in the courtroom only in the following circumstances: (a) in accordance with guidelines promulgated by the Supreme Court for civil cases, or

Rule 137. Recording and Broadcasting of Court Proceedings [Continued]	**Rule 18c. Recording and Broadcasting of Court Proceedings. [Continued]**
(b) when broadcasting, televising, recording, or photographing will not unduly distract participants or impair the dignity of the proceedings and the parties have consented, and consent to being depicted or recorded is obtained from each witness whose testimony will be broadcast, televised, or photographed, or	(b) when broadcasting, televising, recording, or photographing will not unduly distract participants or impair the dignity of the proceedings and the parties have consented, and consent to being depicted or recorded is obtained from each witness whose testimony will be broadcast, televised, or photographed, or
(c) the broadcasting, televising, recording, or photographing of investiture, or ceremonial proceedings.	(c) the broadcasting, televising, recording, or photographing of investiture, or ceremonial proceedings.

C. CLERKS

Rule 138. Duties of Clerk	
(a) Custodian of Record. The clerk of the court will have custody of and must carefully maintain, arrange and preserve the records relating to or lawfully deposited in the clerk's office.	
(b) Assignment of Case Numbers. Upon the commencement of a case, the clerk of the court must assign the case a number which will be known as the case number. Case numbers will be assigned in consecutive order. Each document filed in every case must bear the case number. Upon an order for severance, the clerk of the court must assign to the severed case an entirely new case number. Unless otherwise directed by the court, upon the signing of an order to consolidate, all matters must be consolidated under the oldest pending case number.	
(c) Filing. The clerk of the court must affix the date and time of filing and clerk's name to each document received for filing.	

Rule 138. Duties of Clerk [Continued] **(d) Clerk's Record.** A record must be kept by the clerk of the court for each case. The record must include the case number, the names of the parties and their attorneys, and in brief form including date, a chronological listing of all proceedings had in the case, including but not limited to all appearances, pleadings, motions, writs and process issued and returns made thereon, orders, verdicts, judgments, notices and taxable court costs paid or reported to the clerk of the court, stating the party or attorney paying the costs and the date of payment. Upon order of the court, the clerk must modify the clerk's record to reflect redesignation of a plea or pleading. **(e) Index.** The clerk of the court must keep an index of the parties to all cases, including any persons who may be added in writs of execution. The index must list the parties alphabetically using their full names and must be cross-referenced to the other parties to the case. **(f) Permanent Record.** The clerk of the court must permanently preserve a record for each case reflecting the case number, the names of the parties and their attorneys, the final judgment or other court order disposing of any party, claim or case, and any writs of execution and the returns thereon. The clerk of the court also must permanently maintain the index described in subdivision (e). **(g) Issuance.** The clerk of the court must issue all writs and process authorized by statute and these rules. The writ or process must be dated and include the signature and seal of the clerk of the court. If a party is excused from paying costs pursuant to these rules or statute, the clerk of the court issuing the writ or process	

Rule 138. Duties of Clerk [Continued] must endorse thereon the words "affidavit of inability filed." **(h) Transfer or Venue Change.** Upon order of the court to transfer or change venue, or upon filing a written consent, the clerk of the court must send to the clerk of the court to which the venue has been changed, all original papers in the case along with certified copies of all orders entered in the case. If the order transferring or changing venue is not to all parties, instead of the original papers, the clerk of the court must send certified copes of such papers as directed by the court. The clerk of the court receiving a transfer or change of venue, must notify the plaintiff or his attorney that the transfer has been received and the amount of filing fees due. The notice must also state that the fees are payable within thirty days from the mailing of the notice and that the case may be dismissed if the filing fee is not timely paid. **(i) Exhibits.** All filed exhibits admitted in evidence or tendered on bill of exception must, until returned or otherwise disposed as authorized by Rule ___ (currently Rule 14b), remain in the custody of the clerk of the court except as provided in Rule ___ (currently Rule 75b). **(j) Disposition of Exhibits, Depositions and Discovery.** The clerk of the court in which the exhibits, offered or admitted into evidence, deposition transcripts, depositions upon written questions and other discovery are filed must retain and dispose of such upon the following basis.	

Rule 138. Duties of Clerk [Continued] This rule will apply only to: (1) those cases in which judgment has been rendered on service of process by publication and in which no motion for new trial was filed within two (2) years after judgment was signed; and (2) all other cases in which judgment has been signed for one (1) year and in which no appeal was perfected or in which a perfected appeal was dismissed or concluded by a final judgment as to all parties and the issuance of the appellate court's mandate such that the case is no longer pending on appeal or in the trial court. Unless otherwise directed by the court, the clerk of the court may, with notice to the parties or their attorneys, dispose of the exhibits, deposition transcripts, depositions upon written questions or other discovery after the required time periods stated in this rule. If a party requests any exhibit, deposition or other discovery, the clerk of the court may, without court order, release such to the party after the required time periods stated in this rule. If the party that offered the exhibit or filed the deposition or other discovery does not want such, the clerk of the court may release it to any party upon request. If the court has ordered or any party has requested release of any exhibit, deposition or other discovery and such is desired by more than one party, the clerk must make the necessary copies and prorate the cost among all the parties desiring same. If the exhibit is not a document or otherwise capable of reproduction, the party who offered the exhibit will be entitled to claim the same; provided, however, that the party claiming the exhibit must provide a photograph of said exhibit to any other party upon request and	

Rule 138. Duties of Clerk [Continued] payment of the reasonable cost thereof by the other party. **(k) Copy of Decree.** The clerk of the court must forthwith mail a copy of the final divorce decree to the party signing a memorandum waiving issuance of service of process. Such divorce decree must be mailed to the signer of the memorandum at the address stated in such memorandum or to the office of the signer's attorney of record. **(l) Notices.** (1) *Default Judgment.* At or before the time an interlocutory or final judgment is signed, the party taking the judgment must file a written certificate containing the last known mailing address of the party against whom the judgment is taken. Immediately upon the signing of the judgment, the clerk of the court must give written notice by first-class mail to the party against whom the judgment was rendered. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, the date of the signing of the judgment and must be mailed to the address in the certificate. Failure to comply with the provisions of this rule will not affect the finality of the judgment. (2) *Appealable Order.* When a final judgment or appealable order is signed, the clerk of the court must immediately give notice of the signing to the parties by first-class mail. (3) *Settings.* If the court on its own initiative sets a case for trial or for dismissal for want of	

Rule 138. Duties of Clerk **Notices.** **[Continued]** prosecution, the clerk of the court must notify all parties of the setting by first-class mail. (4) *Findings of Fact and Conclusions of Law.* Upon the filing of a request for findings of fact and conclusions of law or notice of past due findings of fact and conclusions of law, the clerk of the court must immediately call such to the attention of the judge who tried the case. (5) *Disposition Notice.* The clerk of the court may include in the default judgment notice or the appealable order notice, a disposition notice that all exhibits and discovery will be disposed of by the clerk of the court according to the procedures and time periods in these rules.	
Rule 119. Electronically Transmitted Court Documents. The clerk of the court may elect to receive and file electronically transmitted court documents according to the following procedures: **(a) Receipt.** The clerk of the court is authorized to accept for filing via electronic transmission any document which might be filed in a court action except (1) returns of service on issuances; (2) bonds; (3) signed orders or judgments; and (4) wills. **(b) Paper Quality.** Documents electronically transmitted for filing must be clear and dark enough to transmit legibly. The documents must be received by the clerk of the court on a plain paper facsimile and printed by a laser printer, thereby rendering the copy of archival quality. **(c) Fee and Payment.** Court costs and fees must be paid by a payment method authorized by the clerk of the court.	

Rule 139. Electronically Transmitted Court Documents. **[Continued]** **(e) Original Signature.** The sender must maintain the original of the document with the original signature affixed as required by Section 51.806, Texas Government Code. **(f) Cover Sheet.** A cover sheet must accompany every transmission which must: (1) clearly identify the sender, the documents being transmitted and the number of pages; (2) have clear and concise instructions concerning issuance of other requests; and (3) have complete payment information on the payment authorization for court costs and fees; and (4) include the sender's telephone and telecopier numbers.	

Rule 139. Electronically Transmitted Court Documents. **[Continued]** **(g) Seals.** No citation or writ bearing the official seal of the court may be transmitted electronically. **(h) Filing.** Each page of any document received by the clerk of the court will be automatically imprinted with the date and time of the receipt. The date and time imprinted on the first page of the document will determine the time of filing if received during a normal business day before 5:00 p.m. Transmissions completed after 5:00 p.m. on weekends or holidays must be deemed filed on the first day the clerk's office is open for business following receipt of transmission. The sender is responsible for determining if there are any changes in normal business hours.	

D. COURT REPORTERS

Rule 140. Duties. **(a) General Duties.** The duties of official court reporters must be performed under supervision of the presiding judge of the court and must include, but not be limited to:	**[Current Rule: Tex. R. App. P. 11]**

Rule 140. Duties. **[Continued]** (1) attending all sessions of court and making a full record of the evidence when requested by the judge or any party to a case, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon; (2) making a full record of jury arguments and voir dire examinations when requested by the judge or any party to a case, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon; (3) filing all exhibits with the clerk; (4) preparing official transcripts of all such evidence or other proceedings, or any portion thereof, subject to the laws of this state, these rules and the instructions of the presiding judge of the court; and (5) performing such other duties relating to the reporter's official duties as may be directed by the judge presiding. **(b) Exhibits and Materials.** Exhibits and materials used in the trial of a case and all of the records in a case are subject to such orders as the court may enter thereon. **(c) Inability to Fulfill Duties.** In case of illness, press of official work, or unavoidable absence or disability of the official court reporter to perform the duties in (a) above, the presiding judge of the court may, in his discretion, authorize a deputy reporter to act in place of and perform the duties of the official reporter.	

Rule 140. Duties. **[Continued]** **(d) Retention of Notes.** When a defendant is convicted and sentenced to a term of more than two years and no appeal is taken, the court reporter must file the nontranscribed notes of the proceeding with the district clerk within twenty (20) days following the expiration of the time for perfecting appeal. The district clerk will not be required to retain the notes beyond fifteen (15) years from the date of their filing.	
Rule 141. Work **(a) Timeliness.** It will be the joint responsibility of the trial and appellate courts to insure that the work of the court reporter is accomplished timely. **(b) Setting Priorities.** The presiding judge of the trial court must insure that the work of the court reporter is timely accomplished by setting priorities on the various elements of the reporter's workload to be observed by the reporter in the conduct of business of the court reporter's office. Duties relating to proceedings before the court must take preference over other work. To aid the judge in setting the priorities in (b) above, each court reporter must report in writing to the judge on a monthly basis the amount and nature of the business pending in the court reporter's office. A copy of this report must be filed with the Clerk of the Court of Appeals of each district in which the court sits.	**[Current Rule: Tex. R. App. P. 12]**

Rule 142. Filing of Exhibits by Reporter or Stenographer for Court The court reporter, recorder or stenographer for the court must file with the clerk of the court all exhibits which were admitted in evidence or tendered on bill of exception during the course of any hearing, proceeding or trial.	**Rule 75a. Filing Exhibits: Court Reporter to File With Clerk.** The court reporter or stenographer shall file with the clerk of the court all exhibits which were admitted in evidence or tendered on bill of exception during the course of any hearing, proceeding, or trial.

E. COURT RECORDS

Rule 143. Withdrawal, Return, Disposal and Copying of Exhibits **(a) Withdrawal of Exhibits by Parties.** The court may by order allow a filed exhibit to be withdrawn by any party only upon such party's leaving on file a certified photo, or other reproduced copy of such exhibit. The party withdrawing such exhibit must pay the costs of such order and copy.	**Rule 75b. Filed Exhibits: Withdrawal.** (a) The court may by order entered on the minutes allow a filed exhibit to be withdrawn by any party only upon such party's leaving on file a certified, photo, or other reproduced copy of such exhibit. The party withdrawing such exhibit shall pay the costs of such order and copy.
(b) Withdrawal of Exhibits for Appellate Purposes. The court reporter, recorder or stenographer of the court conducting the hearing, proceedings, or trial in which exhibits are admitted or offered in evidence, will have the right to withdraw filed exhibits, upon giving the clerk proper receipt therefor, whenever necessary for the court reporter, recorder or stenographer to transmit such original exhibits to an appellate court under the provisions of Rule 53, Texas Rules of Appellate Procedure or to otherwise discharge the duties imposed by law upon said court reporter, recorder or stenographer.	**Rule 75b. Filed Exhibits: Withdrawal.** (b) The court reporter or stenographer of the court conducting the hearing, proceedings, or trial in which exhibits are admitted or offered in evidence, shall have the right to withdraw filed exhibits, upon giving the clerk proper receipt therefor, whenever necessary for the court reporter or stenographer to transmit such original exhibits to an appellate court under the provisions of Rule 379 or to otherwise discharge the duties imposed by law upon said court reporter or stenographer.
Rule 144. Inspection of Court Records and Papers An attorney of record will be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which the attorney is the attorney of record.	**Rule 76. May Inspect Papers.** Each attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested.

Rule 145. Sealing Court Records	Rule 76a. Sealing Court Records.
(a) Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all the following: **(1)** a specific, serious and substantial interest which clearly outweighs: **(A)** this presumption of openness; **(B)** any probable adverse effect that sealing will have upon the general public health or safety; **(2)** no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. **(b) Court Records.** For purposes of this rule, court records means: **(1)** all documents of any nature filed in connection with any matter before any civil court, except: **(A)** documents of any nature filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; **(B)** documents in court files to which access is otherwise restricted by law; **(C)** documents filed in an action originally arising under the Family Code.	1. Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following: (a) a specific, serious and substantial interest which clearly outweighs: (1) this presumption of openness; (2) any probable adverse effect that sealing will have upon the general public health or safety; (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. 2. Court Records. For purposes of this rule, court records means: (a) all documents of any nature filed in connection with any matter before any civil court, except: (1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; (2) documents in court files to which access is otherwise restricted by law; (3) documents filed in an action originally arising under the Family Code.

Rule 145. Sealing Court Records [Continued]	Rule 76a. Sealing Court Records. [Continued]
(2) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.	(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.
(3) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.	(c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.
(c) Notice. Court records may be sealed only upon a party's written motion, which will be open to public inspection. The movant must post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant must file a verified copy of the posted notice with the clerk of the court in which the case in pending and with the Clerk of the Supreme Court of Texas.	3. Notice. Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

Rule 145. Sealing Court Records [Continued]	Rule 76a. Sealing Court Records. [Continued]
(d) **Hearing.** A hearing, open to the public, on a motion to seal court records must be held in open court as soon as is practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed for special appearances.	4. Hearing. A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.
(e) **Temporary Sealing Order.** A temporary sealing order may be issued upon motion and notice to any parties who have answered in the case, upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order must set the time for the hearing required by section (d) of this rule and must direct that the movant immediately give the public notice required in section (c) of this rule. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as is practicable. Issuance of a temporary order will not reduce in any way the burden of proof of a party requesting sealing at the hearing.	5. Temporary Sealing Order. A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.

Rule 145. Sealing Court Records [Continued]	Rule 76a. Sealing Court Records. [Continued]
(f) Order on Motion to Seal Court Records. A motion relating to sealing or unsealing court records must be decided by written order, open to the public, which must state: the style and number of the case; the specific reasons for finding whether the showing required by section (a) of this rule has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order will not be included in any judgment or other order but will be a separate document in the case; however, the failure to comply with this requirement will not affect its appealability.	6. Order on Motion to Seal Court Records. A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1 has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.
(g) Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records will not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by section (a) will always be on the party seeking to seal records.	7. Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1 shall always be on the party seeking to seal records. 8. Appeal. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate

Rule 145. Sealing Court Records [Continued] **(h) Appeal.** Any order (or portion of an order of judgment) relating to sealing or unsealing court records will be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings. **(i) Application.** Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to: **(1)** all court records filed or exchanged after the effective date; **(2)** any motion to alter or vacate an order restricting access to court records, issued before the effective date.	**Rule 76a. Sealing Court Records. Subpart 8 [Continued]** the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings. 9. Application. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to: (a) all court records filed or exchanged after the effective date; (b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.
Rule 146. Lost Records and Papers When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows: **(a)** After three days' notice to the adverse party or his attorney, make written sworn motion	**Rule 77. Lost Records and Papers.** When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows: a. After three days' notice to the adverse party or his attorney, make written sworn motion before the court stating the loss or destruction

Rule 146. Lost Records and Papers [Continued] before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof. **(b)** If, upon hearing, the court is satisfied that there are substantial copies of the original, an order must be made substituting such copies or brief statement for the originals. **(c)** Such substituted copies or brief statement must be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals.	**Rule 77. Lost Records and Papers. [Continued]** of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof. b. If, upon hearing, the court be satisfied that they are substantial copies of the original, an order shall be made substituting such copies or brief statement for the originals. c. Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals.

F. COURT COSTS

Rule 147. Parties Liable for Costs. **(a) In General.** The rules of this section will apply to any party who seeks a judgment against any other party.	**Rule 147. Applies to Any Party.** The foregoing rules as to security and rule for costs shall apply to any party who seeks a judgment against any other party.
(b) Other Costs. Each party will be liable for all of its costs. If costs cannot be collected from the party against whom they have been judged, execution may be issued against any other party for the uncollected amount.	**Rule 127. Parties Liable for Other Costs.** Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been judged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.
(c) New Trial. The costs of new trial may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when it grants a new trial.	**Rule 138. Cost of New Trials.** The costs of new trials may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when he grants such new trial.
Rule 148. Fee for Execution of Process, Demand. No sheriff or constable will be compelled to execute any process in civil cases, unless the fees allowed such officer by law for the service of such	**Rule 126. Fee for Execution of Process, Demand.** No sheriff or constable shall be compelled to execute any process in civil cases coming from any

Rule 148. Fee for Execution of Process, Demand. **[Continued]** process are paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process must endorse thereon the words, "affidavit of inability filed;" and the officer in whose hands such process is placed for service must serve the same. The fee will be taxed as costs in the case. The clerk of the court may collect the service fee at the time of the request for issuance.	**Rule 126. Fee for Execution of Process, Demand.** **[Continued]** county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words "pauper oath filed," and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same.
Rule 149. Collection **(a) How Costs are Collected.** After judgment, if a responsible party fails or refuses to pay costs within ten days after demand, the clerk may certify a copy of the bill of costs, and provide the same to an officer for collection. The certified bill has the force and effect of an execution. Removal by appeal has no effect on this rule.	**Rule 129. How Costs Collected.** If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs.
(b) Officer to Levy. The officer may levy upon a party's property to satisfy the costs due; the officer may sell such property as under execution. When the party is a nonresident of the county in which the suit is pending, payment of costs maybe demanded of the party's attorney of record. Unless compelled to levy, the clerk will not be allowed to charge a fee for certifying a copy of the bill of costs.	**Rule 130. Officer to Levy.** The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property as under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy.
(c) Execution for Costs. On demand of any party to whom costs are due,	

Rule 149. Collection [Continued] the officer must issue an execution for costs at once. This rule does not apply to executors, administrators, or guardians in cases in which costs are adjudged against the estate of a deceased person or ward.	**Rule 149. Execution for Costs.** When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This rule shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered therefor by the court.
Rule 150. Party's Recovery of Its Costs **(a) In General.** The successful party must recover from its adversaries, jointly and severally, all costs incurred. The court may, for good cause, stated on the record, adjudge the costs otherwise than as provided by law or in these rules. This rule includes costs of motions and costs of new trials.	**Rule 131. Successful Party to Recover.** The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided. **Rule 141. Court May Otherwise Adjudge Costs.** The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules.
(b) Reduction on Demand. When the plaintiff's demand is reduced by payment to an amount not within the court's jurisdiction, the defendant must recover its costs.	**Rule 136. Demand Reduced by Payments.** Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs.
(c) Assault, Battery or Defamation Claims. In suits for assault, battery, or defamation, if the verdict awards the plaintiff less than twenty dollars, each party must pay its own costs.	**Rule 137. In Assault and Battery, Etc.** In civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for less than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit.

Rule 151. Taxable Costs **(a)** Taxable costs include, but are not limited to: **(1)** Filing fees; **(2)** Expenses for blood tests required by statute; **(3)** Guardian ad litem fees; **(4)** Receiver fees. **(b)** Costs not taxable include: **(1)** Photocopies not required by law; **(2)** Attorney fees; **(3)** Expert fees; **(4)** Inspection and medical examination expenses; **(5)** Deposition expenses	**[Task Force Comment: This is a new rule and needs to be expanded].**
Rule 152. Security for Costs **(a) Rule for Costs.** Upon motion of a party, interested court officer, or the Court itself, a party seeking affirmative relief may be ordered to give security for costs at any time before final judgment. If so ordered, the party has twenty days after receiving notice of the order's entry to comply, or its claim will be dismissed.	**Rule 143. Rule for Costs.** A party seeking affirmative relief may be ruled to give security for costs at any time before final judgment, upon motion of any party, or any officer of the court interested in the costs accruing in such suit, or by the court upon its own motion. If such rule be entered against any party and he failed to comply therewith on or before twenty (20) days after notice that such rule has been entered, the claim for affirmative relief of such party shall be dismissed.
(b) Cost Bonds. All cost bonds will authorize judgment against all obligors for the costs entered in the final judgment. No further security will be required if the costs are	**Rule 144. Judgment on Cost Bond.** All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause.

Rule 131. Taxable Costs secured by a bond filed by the party required to give security for costs.	**Rule 148. Secured by Other Bond.** No further security shall be required if the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs.
(c) Deposit for Costs. In lieu of a cost bond, a party may deposit with the clerk a sum as the Court from time to time may designate as sufficient to pay accrued costs.	**Rule 146. Deposit for Costs.** In lieu of a bond for costs, the party required to give the same may deposit with the clerk of court or the justice of the peace such sum as the court or justice from time to time may designate as sufficient to pay the accrued costs.
(d) Deposit in Lieu of Surety Bond. Instead of filing a surety bond, a party may deposit with the trial court clerk: (1) cash; (2) a cashier's check payable to the clerk, drawn on any federally insured and federally or state chartered bank or savings and loan association; or (3) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state chartered bank or savings and loan association.	
Rule 153. Affidavit of Indigency **(a) Affidavit.** In lieu of paying costs of an original action, a party who is unable to afford costs must file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. Upon the filing of the affidavit, the clerk must docket the action, issue citation and provide other customary services as are provided any party.	**Rule 145. Affidavit of Inability.** In lieu of filing security for costs of an original action, a party who is unable to afford said costs shall file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. Said affidavit, and the party's action, shall be processed by the clerk in the manner prescribed by this rule.

Rule 153. Affidavit of Indigency [Continued]	Rule 145. Affidavit of Inability. [Continued]
(b) Contents of Affidavit. The affidavit must contain complete information as to the party's identity, nature and amount of governmental entitlement, nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit must contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit must be sworn before a notary public or other officer authorized to administer oaths. If the party is represented by an attorney who is providing free legal services, without contingency, due to the party's indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party. **(c) IOLTA Certificate.** If the party is represented by an attorney who is providing free legal services, without contingency, due to the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate. The certificate must confirm that the party has been screened for income eligibility under the IOLTA income guidelines by the IOLTA-funded program or that the party has been referred to the attorney from an IOLTA-funded program and the program represented that it has screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.	1. Procedure. Upon the filing of the affidavit, the clerk shall docket the action, issue citation and provide such other customary services as are provided any party. After service of citation, the defendant may contest the affidavit by filing a written contest giving notice to all parties, provided that temporary hearings will not be continued pending the filing of the contest. If the court shall find at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement) is able to afford costs, the party shall pay the costs of the action. Reasons for such a finding shall be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party shall pay the costs of the action. If the court finds that another party to the suit can pay the costs of the action, the other party shall pay the costs of the action. 2. Affidavit. The affidavit shall contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn before a Notary Public.

Rule 153. Affidavit of Indigency [Continued]	Rule 145. Affidavit of Inability. [Continued]
(d) Contest. After service of citation, the defendant or the clerk may contest an affidavit that is not accompanied by an IOLTA certificate by filing a written contest giving notice to all parties, provided that temporary hearings will not be continued pending the filing of the contest. If the court finds at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement based on indigency) is able to afford costs, the party must pay the costs of the action. Reasons for such a finding must be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party must pay the costs of the action. If the court finds that another party to the suit can pay the costs of the action, the other party must pay the costs of the action. **(e) Attorney's Fees and Costs.** Nothing herein will preclude any existing right to recover attorney's fees, expenses or costs from any other party.	3. Attorney's Certification. If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency, said attorney may file an affidavit to that effect to assist the court in understanding the financial condition of the party.

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