January 25, 2012

The Task Force for Rules in Expedited Actions

Final Report to the Supreme Court of Texas

The Task Force for Rules in Expedited Actions submits this Final Report to the Supreme Court of Texas, setting forth suggested changes and additions to the Texas Rules of Civil Procedure to satisfy the Legislature's directive in House Bill 274, enacted by the 82nd Legislature, Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §2.01 [Exhibit A].

The relevant portion of that bill added Section § 22.004(h) to the Texas Government Code, directing the Supreme Court to promulgate rules to promote the prompt, efficient and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. These rules are to address the need for lowering discovery costs in these cases and ensuring that these actions will be expedited in the civil justice system.

To aid in implementing the directive in this legislation, the Court appointed this Task Force by Order of September 26, 2011, as amended October 5, 2011, in Misc. Docket Nos. 11-9193 and 11-9201 [Exhibit B]. The Court directed this Task Force to advise the Supreme Court regarding rules to be adopted or revised pursuant to Section 2.01 of House Bill 274 and to make final recommendations to the Court by February 1, 2012. The members of the Task Force were:

David Chamberlain, Esq.	Austin
Lamont Jefferson, Esq.	San Antonio
Denis Dennis, Esq.	Odessa
Martha S. Dickie, Esq.	Austin
Wayne Fisher, Esq.	Houston
Jeffrey J. Hobbs, Esq.	Austin
Hon. Scott Jenkins	Austin
Bradley Parker, Esq.	Fort Worth
Hon. Thomas R. Phillips	Austin
Ricardo Reyna, Esq.	San Antonio
Hon. Alan Waldrop	Austin
Kennon Wooten, Esq.	Austin

Supreme Court Liaison: Justice Nathan Hecht
Supreme Court Rules Attorney: Marisa Secco

The Task Force relied on prior initiatives in other states with similar objectives, and on the studies conducted both during and after the past legislative session by those interested in civil justice improvement. After House Bill 274 was passed, representatives of the American Board of Trial Advocates, the Texas Trial Lawyers Association and the Texas Association of Defense Counsel met to consider the expedited trial effort and to draft a proposed rule for the Court's consideration [Exhibit C]. One leader of that initiative, David Chamberlain, also served on the Task Force.

The Task Force met four times in Austin to discuss the issues raised by the statute and the Supreme Court's order. The principal issues on which the members of the Task Force focused their attention were:

Scope of Discovery. The members agreed that pre-trial discovery was responsible for most of the cost and delay in civil litigation. Every member agreed that the restrictions imposed in current Level 1 discovery should be reduced even further in the new expedited actions procedure, but opinions varied on what the precise parameters of these restrictions should be. In the end, the limitations on discovery set forth in the proposed draft rules represented a compromise. The Task Force recommended revising Rule 190.2 [Exhibit D] to eliminate the current Level 1 discovery limits and implement the new expedited actions discovery limits. The reasoning behind this revision is twofold: (1) the current Level 1 discovery limits, which apply to cases with damages under $ 50,000, would impose conflicting restrictions on cases in the expedited actions process and (2) the discovery provisions of the expedited actions process should be in the discovery section of the Rules of Civil Procedure, rather than the general pre-trial section, where the remainder of the expedited actions process is laid out.

Disclosure. The members generally agreed that the disclosure practice in Federal Rule of Civil Procedure 26 helped save time and reduce costs. Thus, the practice of requiring disclosure of all documents that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses was incorporated into the proposed draft rules without dissent.

Proof of Medical Expenses. Most members believed that that the Supreme Court's decision in *Haygood v. Escabedo*, —S.W.3d—, 2011 WL 2601363 (Tex. 2011), which held that amounts "actually paid or incurred " under § 41.0105 of the Texas Civil Practice and Remedies Code are only those medical expenses that are actually paid or to which the provider has a legal right to be paid, could impede the efficient resolution of expedited actions when medical expenses are recoverable. The affidavit currently provided for in § 18.001 of the Texas Civil Practice and Remedies Code is insufficient to prove up medical expenses in light of *Haygood*. Thus, the task force drafted an affidavit -- addressing the additional *Haygood* requirement -- to allow medical expenses to be proven up without live testimony. The Task Force suggests that this new medical records affidavit be placed not in in the Rules of Civil Procedure, but in Texas Rules of Evidence Rule 902 [Exhibit E], which sets forth the general business records affidavit.

Time Limits. The members generally agreed that time limits should be imposed on oral depositions and, in the voluntary rule, on trials. The times suggested in the proposed rules are derived from Level 1 Discovery (depositions) and the ABOTA/TTLA/TADC suggested rule (trials).

Expedited resolution. The members were of several minds about whether a trial court should expedite the trial of small cases that were within the scope of the new rule, or, if so, how that should be accomplished. In the end, the members agreed that the statute required that some sort of preference for these cases, and most concluded that the preference was desirable as a trade-off for the reduced discovery and trial time imposed elsewhere in the suggested rules. The proposed rules thus provide for a mandatory time frame for setting an expedited action for trial after the close of discovery.

Monetary limits. Most members were concerned that by including attorneys' fees, pre-judgment interest, and costs in the $100,000 cap, the statute makes it difficult for parties to know at the beginning of a case whether or not their action will be appropriate for disposition under the new rules. Some members felt that these problems could be alleviated by allowing parties to amend their pleadings if a jury were to return a verdict in excess of the $100,000 cap, but a majority of the Task Force rejected this approach as both prohibited by statute and unwise as a policy matter. Thus, the Task Force has recommended that rules that impose a cap include all of the items listed in House Bill 274 and disallow recovery of a judgment against a party greater than $100,000.

Alternative dispute resolution. The members of the Task Force unanimously adopted the recommendation of the ABOTA/TTLA/TADC suggested rule prohibiting judges from ordering those cases in the expedited process to mandatory ADR. The members carefully considered various communications from ADR practitioners extolling the efficiencies of ADR procedures and emphasizing the State's longstanding public policy in favor of ADR initiatives. In the end, however, the members concluded that the expedited action procedures would provide the same cost benefits associated with pre-trial ADR resolution, and that parties should not be forced to participate in and pay for ADR proceedings if they were already proceeding under the new rules.

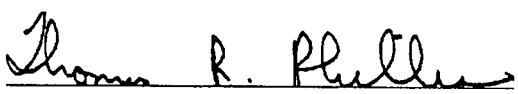
Mandatory or voluntary. The most heavily debated issue in all the task force deliberations was whether the process should be mandatory for cases under $100,000 or merely voluntary, in the sense that all parties would have to agree to the procedure before it would apply to a case. This issue dominated all of the discussions, and was never resolved by the Task Force. As a result, the Chair appointed two committees to draft separate voluntary and mandatory rules, and the Task Force then devoted a meeting to harmonizing the rules insofar as possible. Certain issues, however, such as restrictions on the size of the jury and the right of appeal, were constitutionally permissible only with regard to the voluntary rule. The members were also sharply split as to whether the voluntary rule should be subject to the $100,000 cap, but ultimately a majority of those who favored a voluntary rule alone concluded that the statute required the cap. Those members that favored both a mandatory and a voluntary rule as a package concluded that a cap was not required in the proposed voluntary portion of the rule.

In the end, six members of the Task Force voted to recommend a mandatory rule with an uncapped voluntary alternative, while five members voted to recommend only a voluntary rule. One member of the Task Force was unable to participate in any of the deliberations due to other professional commitments, neither approach garnered the support of a majority of the members. Hence, the Task Force submits both approaches, a mandatory and voluntary rule package and a stand-alone voluntary rule, without an accompanying recommendation.

Rule 168 and Rule 169 [package version] encompass one alternative (the "package option") [Exhibit F]. The package option provides for (1) a mandatory rule that applies only to

cases in which the amount in controversy is less than $100,000 and does not require the consent of all parties and (2) a voluntary rule that is applicable to any case in which the parties consent to the expedited actions process regardless of the amount in controversy. The voluntary rule in the package option provides additional restrictions on juries and post-judgment remedies. The alternative to the package option is Rule 169 [stand-alone version] [Exhibit G]. This stand-alone voluntary rule applies only to cases in which the both the amount in controversy is less than $100,000 and all parties have consented to be governed by the expedited actions process.

On behalf of all the members of the Task Force, let me close by saying that we appreciate the Court's confidence in asking us to participate in this important initiative. Each of us stands ready to discuss these issues further with any justice or designated representative of the Court or with any member of the Supreme Court Rules Advisory Committee.



Hon. Thomas R. Phillips

Chair, Task Force for Rules in Expedited Actions

AN ACT

relating to the reform of certain remedies and procedures in civil actions and family law matters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. EARLY DISMISSAL OF ACTIONS

SECTION 1.01. Section 22.004, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The supreme court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. The rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. The rules shall not apply to actions under the Family Code.

SECTION 1.02. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.021 to read as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party. This section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.

ARTICLE 2. EXPEDITED CIVIL ACTIONS

SECTION 2.01. Section 22.004, Government Code, is amended by adding Subsection (h) to read as follows:

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:

(1) Chapter 74, Civil Practice and Remedies Code;

(2) the Family Code;

(3) the Property Code; or

(4) the Tax Code.

ARTICLE 3. APPEAL OF CONTROLLING QUESTION OF LAW

SECTION 3.01. Section 51.014, Civil Practice and Remedies Code, is amended by amending Subsections (d) and (e) and adding Subsections (d-1) and (f) to read as follows:

(d) On a party's motion or on its own initiative, a trial court in a civil action [~~A district court, county court at law, or county court~~] may, by [~~issue a~~] written order, permit an appeal from an order that is [~~for interlocutory appeal in a civil action~~] not

otherwise appealable [~~under this section~~] if:

(1) [~~the parties agree that~~] the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation[~~, and~~

[~~(3) the parties agree to the order~~].

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) [~~and~~] the trial or appellate court[~~, the court of appeals, or a judge of the court of appeals~~] orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

SECTION 3.02. Section 22.225(d), Government Code, is

amended to read as follows:

(d) A petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies Code.

ARTICLE 4. ALLOCATION OF LITIGATION COSTS

SECTION 4.01. Sections 42.001(5) and (6), Civil Practice and Remedies Code, are amended to read as follows:

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the action [~~case~~] in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable deposition costs;

(C) reasonable fees for not more than two testifying expert witnesses; and

(D) [~~(C)~~] reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with Section 42.003 [~~this chapter~~].

SECTION 4.02. Sections 42.002(b), (d), and (e), Civil Practice and Remedies Code, are amended to read as follows:

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court or a small claims court.

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with Section 42.003 [~~this chapter~~]; or

(2) offer to settle or compromise a claim in an action to which this chapter does not apply.

(e) An offer to settle or compromise that does not comply with Section 42.003 [~~is not made under this chapter~~] or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle any [~~the offering~~] party to recover litigation costs under this chapter.

SECTION 4.03. Section 42.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 42.003. MAKING SETTLEMENT OFFER. (a) A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

(b) The parties are not required to file a settlement offer

with the court.

SECTION 4.04. Section 42.004(d), Civil Practice and Remedies Code, is amended to read as follows:

(d) The litigation costs that may be awarded under this chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant [~~an amount computed by:~~

[~~(1) determining the sum of:~~

[~~(A) 50 percent of the economic damages to be awarded to the claimant in the judgment;~~

[~~(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and~~

[~~(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and~~

[~~(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim~~].

ARTICLE 5. DESIGNATION OF RESPONSIBLE THIRD PARTIES

SECTION 5.01. Section 33.004, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has

failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

SECTION 5.02. Section 33.004(e), Civil Practice and Remedies Code, is repealed.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

SECTION 6.02. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 274 was passed by the House on May 9, 2011, by the following vote: Yeas 96, Nays 49, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 274 on May 25, 2011, by the following vote: Yeas 130, Nays 13, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 274 was passed by the Senate, with amendments, on May 24, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9193

APPOINTMENT OF TASK FORCE FOR RULES IN EXPEDITED ACTIONS

ORDERED that:

1. A task force is appointed to advise the Supreme Court regarding rules to be adopted or revised pursuant to Section 2.01 of House Bill 274 enacted by the 82nd Legislature (Act of May 25, 2011, 82nd Leg., R.S., ch. 203, § 2.01). Section 2.01 of House Bill 274 adds Government Code § 22.004(h), which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions in which the amount in controversy does not exceed $100,000. The legislation directs that the rules address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system.

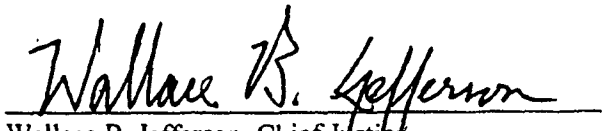
2. The task force is directed to make final recommendations to the Court by February 1, 2012. The Court will refer the recommendations to the Supreme Court Advisory Committee and publish them for public comment before final adoption.

3. The members of the task force are:

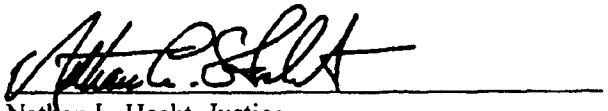
Hon. R. Jack Cagle	Houston	Lamont Jefferson	San Antonio
David Chamberlain	Austin	Hon. Scott Jenkins	Austin
Denis Dennis	Odessa	Kennon Peterson	Austin
Martha S. Dickie	Austin	Hon. Thomas R. Phillips	Austin
Wayne Fisher	Houston	Bradley Parker	Fort Worth
Jeffrey J. Hobbs	Austin	Ricardo Reyna	San Antonio

4. Hon. Thomas R. Phillips is chair of the task force. Justice Nathan L. Hecht is the Supreme Court's liaison to the task force.

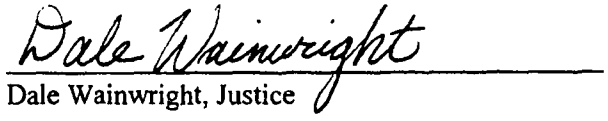
Dated: September 26, 2011.



Wallace B. Jefferson, Chief Justice

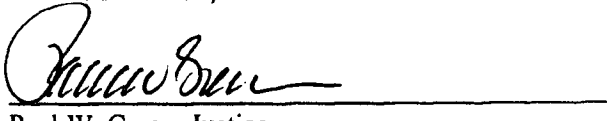


Nathan L. Hecht, Justice

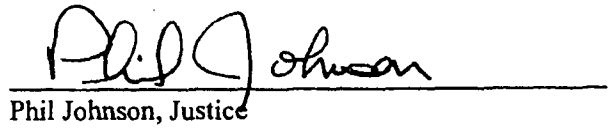


Dale Wainwright, Justice

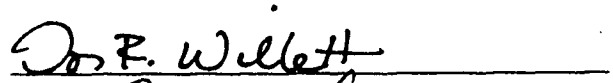
David M. Medina, Justice



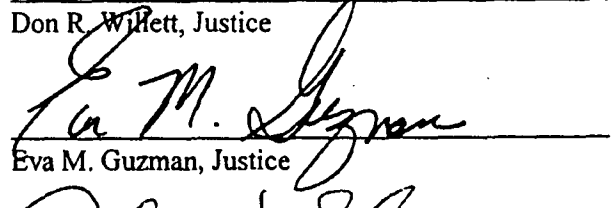
Paul W. Green, Justice



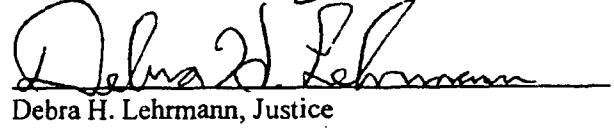
Phil Johnson, Justice



Don R. Willett, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11- 9201

AMENDED APPOINTMENT OF TASK FORCE FOR RULES IN EXPEDITED ACTIONS

ORDERED that:

1. This Order vacates and supersedes the Order dated September 26, 2011, in Misc. Docket No. 11-9193.

2. A task force is appointed to advise the Supreme Court regarding rules to be adopted or revised pursuant to Section 2.01 of House Bill 274 enacted by the 82nd Legislature (Act of May 25, 2011, 82nd Leg., R.S., ch. 203, § 2.01). Section 2.01 of House Bill 274 adds Government Code § 22.004(h), which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions in which the amount in controversy does not exceed $100,000. The legislation directs that the rules address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system.

2. The task force is directed to make final recommendations to the Court by February 1, 2012. The Court will refer the recommendations to the Supreme Court Advisory Committee and publish them for public comment before final adoption.

3. The members of the task force are:

David Chamberlain	Austin	Hon. Scott Jenkins	Austin
Denis Dennis	Odessa	Kennon Peterson	Austin
Martha S. Dickie	Austin	Hon. Thomas R. Phillips	Austin
Wayne Fisher	Houston	Bradley Parker	Fort Worth
Jeffrey J. Hobbs	Austin	Ricardo Reyna	San Antonio
Lamont Jefferson	San Antonio	Alan Waldrop	Austin

4. Hon. Thomas R. Phillips is chair of the task force. Justice Nathan L. Hecht is the Supreme Court's liaison to the task force.

Dated: October 5, 2011.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Rule 262.4. Submission to the Expedited Jury Trial Process

(a) Except as provided in (f), a court must submit a civil action to the Expedited Jury Trial Process, as defined in Rule 262.5, if:

(1) the aggregate monetary claims of all parties to the civil action do not exceed the sum of $100,000.00, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind; and

(2) all parties to the civil action have consented, in writing, to submit the civil action to the Expedited Jury Trial Process prior to the court considering the submission.

(b) If a party is being defended or is entitled to a defense or indemnity under an insurance policy or other contract for indemnity, the consent required under (a)(2) must include a certification that the entity or individual providing the defense or owing the defense or indemnity has also consented to submit the civil action to the Expedited Jury Trial Process.

(c) Written consent to submit to the Expedited Jury Trial Process is void if it is made prior to the occurrence of the claim that is the subject of the civil action for which the Expedited Jury Trial process is sought.

(d) Once a civil action is submitted to the Expedited Jury Trial Process, the civil action must remain governed by Rule 262.5, unless the civil action is removed by the court from the Expedited Jury Trial Process. Removal is warranted only:

(1) on motion and a showing of good cause by any party who consented previously to the submission; or

(2) if any party who joined the civil action after the matter was submitted to the Expedited Jury Trial Process fails to consent to the submission in accordance with (a)(2) within 60 days after the party's initial appearance in the civil action.

(e) If a civil action is removed from the Expedited Jury Trial Process, the court must continue the trial date and reopen discovery under Rule 190.2(d).

(f) In the event of a conflict between Chapter 74 of the Civil Practice & Remedies Code, the Family Code, the Property Code or the Tax Code and Rule 262.4 or Rule 262.5, Chapter 74 of the Civil Practice & Remedies Code, the Family Code, the Property Code, or the Tax Code control.

Rule 262.5. Procedure for the Expedited Jury Trial Process

(a) *Discovery.*

(1) Discovery must be conducted in accordance with Rule 190.2(c).

(2) Expert witness disclosures must be made in accordance with Rule 195.2.

(b) *Jury.*

(1) The jury must be composed of six jurors, as provided by the Texas Government Code Section 62.201, with no alternates.

(2) Each side must be limited to three peremptory challenges. If there are more than two parties in a case, each party may request one additional peremptory challenge, and the court must determine the requests under Rule 233.

(3) Except as provided by Rule 292(b), a verdict may be rendered in any expedited jury trial by the concurrence, as to each and all answers made, of the same five or more jurors.

(c) *Alternative Dispute Resolution, Motions, and Judgment.*

(1) The court must not order the parties to a civil action submitted to the Expedited Jury Trial Process to participate in alternative dispute resolution.

(2) The court must not entertain or grant any motion for directed verdict.

(3) The court must not set aside any verdict or judgment, except on one or more of the following grounds:

(A) judicial misconduct that materially affected the substantial rights of a party;

(B) jury misconduct; or

(C) corruption, fraud, or other undue means employed in the civil action by the court, jury, or adverse party that prevented a party from having a fair trial.

(4) In addition to all other limitations provided by law, the court shall not render a judgment in a civil action submitted to the Expedited Jury Trial Process in excess of an aggregate of $100,000.00, inclusive of all recoverable damages and taxable court costs.

(d) *Trial.* Each side must be afforded five hours to complete jury selection, opening statements, the presentation of evidence, and closing arguments.

(1) The term "side" shall have the same definition as set out in Rule 233.

(2) Time spent on objections, bench conferences, and a challenge to a member of the jury panel under Rule 228 must not be included in the time limitation in (d)(1).

(e) *Appeal.*

(1) An appeal of a judgment entered in a civil action submitted to the Expedited Jury Trial Process is limited to the following grounds:

(A) judicial misconduct that materially affected the substantial rights of a party;

(B) jury misconduct; or

(C) corruption, fraud, or other undue means employed in the proceedings by the court, jury, or adverse party that prevented a party from having a fair trial.

(2) Subdivision (e) does not apply to an appeal of that portion of a judgment rendered under Rule 166a.

Rule 190. Discovery Limitations

190.1 Discovery Control Plan Required.

Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

190.2 Discovery Control Plan - ~~Suits Involving $50,000 or Less~~ Expedited Actions (Level 1)

(a) *Application.* This subdivision applies to~~:~~ any suit that is governed by the expedited actions process in Rule [168 and/or 169].

~~(1) any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $ 50,000 or less, excluding costs, pre-judgment interest and attorneys' fees, and~~

~~(2) any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $ 50,000.~~

~~(b) *Exceptions.* This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~

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

(1) Discovery period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial.~~ 180 days after the date the first request for discovery of any kind is served on a party.

(2) Total time for oral depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by

court order. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than ~~25~~ 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

~~(d)~~(c) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable~~ If a suit is removed from the expedited actions process, then the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

190.3 Discovery Control Plan - By Rule (Level 2)

(a) *Application.* Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.

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

(1) Discovery period. All discovery must be conducted during the discovery period, which begins when suit is filed and continues until:

(A) 30 days before the date set for trial, in cases under the Family Code; or

(B) in other cases, the earlier of

(i) 30 days before the date set for trial, or

(ii) nine months after the earlier of the date of the first oral deposition or the due date of the first response to written discovery.

(2) Total time for oral depositions. Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

190.4 Discovery Control Plan - By Order (Level 3)

(a) *Application.* The court must, on a party's motion, and may, on its own initiative, order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of the specific suit. The parties may submit an agreed order to the court for its consideration. The court should act on a party's motion or agreed order under this subdivision as promptly as reasonably possible.

(b) *Limitations.* The discovery control plan ordered by the court may address any issue

(1) a date for trial or for a conference to determine a trial setting;

(2) a discovery period during which either all discovery must be conducted or all discovery requests must be sent, for the entire case or an appropriate phase of it;

(3) appropriate limits on the amount of discovery; and

(4) deadlines for joining additional parties, amending or supplementing pleadings, and designating expert witnesses.

190.5 Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by a discovery control plan under Rules 190.2, ~~T~~the court must allow additional discovery:

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

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

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

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

190.6 Certain Types of Discovery Excepted

This rule's limitations on discovery do not apply to or include discovery conducted under Rule 202 ("Depositions Before Suit or to Investigate Claims"), or Rule 621a ("Discovery and Enforcement of Judgment"). But Rule 202 cannot be used to circumvent the limitations of this rule.

Rule 902. SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

. . .

(10) Business Records Accompanied by Affidavit.

(a) *Records or photocopies; admissibility; affidavit; filing.* Any record or set of records or photographically reproduced copies of such records, which would be admissible under Rule 803(6) or (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), that such records attached to such affidavit were in fact so kept as required by Rule 803(6) or (7), provided further, that such record or records along with such affidavit are filed with the clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties or persons who desire copies and not by the party or parties who file the records and serve notice of said filing, in compliance with this rule. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule of Civil Procedure 21a fourteen days prior to commencement of trial in said cause.

(b) *Form of affidavit.* A form for the affidavit of such person as shall make such affidavit as is permitted in paragraph (a) above shall be sufficient if it follows this form though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this rule shall suffice, to-wit:

No _____

John Doe (Name of Plaintiff)

§

IN THE _____

§

v.

§

COURT IN AND FOR

§
§

John Roe (Name of Defendant)

§

_____ COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of _____. Attached hereto are _____ pages of records from _____. These said ____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

_____

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 19 ____.

_____

Notary Public, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §
_____ §
_____ §
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business. The information contained in the records was transmitted to _____ in the regular course of business by _____ or an employee or representative of _____ who had personal knowledge of the information. The records were made in the regular course of business at or near the time or reasonably soon after the time that the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services were reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____, and the amount currently unpaid but which _____ has a right to be paid is $_____.

_____

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20 ____.

Notary Public, State of Texas

Notary's printed name:

My commission expires:

Rule 168. Expedited Actions [Mandatory]

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, attorney's fees, or any other type of monetary relief. Notwithstanding Rule 47, on a party's written request or the court's own initiative, a party must affirmatively plead whether the party's claim seeks only monetary relief aggregating $100,000 or less.

(2) In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(3) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any party files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(1).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).

(c) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.

(3) Alternative Dispute Resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract, the court must not—by order or local rule—require the parties to engage in alternative dispute resolution.

(4) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

(5) Proof of Medical Expenses. A party may make prima facie proof of medical expenses by affidavit. The affidavit will be admissible if it substantially complies with the form in Rule 902(10)(c) of the Rules of Evidence.

Rule 169. Expedited Actions [Voluntary]

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all parties have consented in writing to be governed by the process. The consent is void if it is made before the occurrence of the claim that is the subject of the suit.

(2) If a party is being defended or is entitled to a defense or indemnity under an insurance policy or other contract for indemnity, the consent required under (a)(1) must include a certification that the entity or individual providing the defense or owing the defense or indemnity has also consented to be governed by the expedited actions process.

(3) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any party who joins the suit fails to consent to the expedited actions process within 60 days after the party's initial appearance in the suit.

(2) If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).

(c) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.

(3) Alternative Dispute Resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract, the court must not—by order or local rule—require the parties to engage in alternative dispute resolution.

(4) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

(5) Proof of Medical Expenses. A party may make prima facie proof of medical expenses by affidavit. The affidavit will be admissible if it substantially complies with the form in Rule 902(10)(c) of the Rules of Evidence.

(6) Trial Procedures.

(A) The term "side," as used in this paragraph, is defined as in Rule 233.

(B) Jury.

(i) A jury, if requested, must be composed of six jurors, as provided by section 62.201 of the Government Code, with no alternates.

(ii) Each side is limited to three peremptory challenges; however, if there are more than two parties in a suit, the court may allocate one additional challenge per side under Rule 233.

(iii) Except as provided by Rule 292(b), a verdict may be rendered by the concurrence, as to each and all answers made, of the same five or more jurors.

(C) Time Limit. Excluding objections, bench conferences, and jury challenges under Rule 228, each side is limited to five hours to complete jury selection, opening statements, the presentation of evidence, and closing arguments.

(7) Setting Aside Verdict or Judgment. The Court must not set aside any verdict or judgment, except on one or more of the following grounds:

(A) judicial misconduct that materially affected the substantial rights of a party;

(B) jury misconduct; or

(C) corruption, fraud, or other undue means employed in the suit by the court, jury, or adverse party that prevented a party from having a fair trial.

(8) Appeal. An appeal of a judgment, except a directed verdict or a judgment rendered under Rule 166a, is limited to the grounds in (c)(7). An appeal may be made on grounds other than those in (c)(7) by agreement of the parties.

Rule 169. Expedited Actions [Voluntary -- Stand-Alone Rule]

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which:

(A) all parties have consented in writing to be governed by the process; and

(B) all claimants affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, attorney's fees, or any other type of monetary relief.

(2) In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(3) The consent in (a)(1)(A) is void if it is made before the occurrence of the claim that is the subject of the suit.

(4) If a party is being defended or is entitled to a defense or indemnity under an insurance policy or other contract for indemnity, the consent required under (a)(1) must include a certification that the entity or individual providing the defense or owing the defense or indemnity has also consented to be governed by the expedited actions process.

(5) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party;

(B) if any party who joins the suit fails to consent to the expedited actions process within 60 days after the party's initial appearance in the suit; or

(C) if any party files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(1)(B).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).

(c) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.

(3) Alternative Dispute Resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract, the court must not—by order or local rule—require the parties to engage in alternative dispute resolution.

(4) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation

(5) Proof of Medical Expenses. A party may make prima facie proof of medical expenses by affidavit. The affidavit will be admissible if it substantially complies with the form in Rule 902(10)(c) of the Rules of Evidence.

(6) Trial Procedures.

(A) The term "side," as used in this paragraph, is defined as in Rule 233.

(B) Jury.

(i) A jury, if requested, must be composed of six jurors, as provided by section 62.201 of the Government Code, with no alternates.

(ii) Each side is limited to three peremptory challenges; however, if there are more than two parties in a suit, the court may allocate one additional challenge per side under Rule 233.

(iii) Except as provided by Rule 292(b), a verdict may be rendered by the concurrence, as to each and all answers made, of the same five or more jurors.

(C) Time Limit. Excluding objections, bench conferences, and jury challenges under Rule 228, each side is limited to five hours to complete jury selection, opening statements, the presentation of evidence, and closing arguments.

(7) Setting Aside Verdict or Judgment. The Court must not set aside any verdict or judgment, except on one or more of the following grounds:

(A) judicial misconduct that materially affected the substantial rights of a party;

(B) jury misconduct; or

(C) corruption, fraud, or other undue means employed in the suit by the court, jury, or adverse party that prevented a party from having a fair trial.

(8) Appeal. An appeal of a judgment, except a directed verdict or a judgment rendered under Rule 166a, is limited to the grounds in (c)(7). An appeal may be made on grounds other than those in (c)(7) by agreement of the parties.