

Recent Changes to the TRCP

The computers have come for us, and Mountains into Mole
Hills.

An Overview of the Major Changes

- Rule 21 – Yes you must electronically file and 30 days probably means 30 days, not 33 days;
- Rule 47 – You must be more specific about the relief sought;
- Rule 190.2 – Limits discovery in case where less than \$100,000 is sought; and
- Rule 91a – We now have motions to dismiss in Texas'

Rule 21 and Related Changes

Does 30 days = 33 days?

Not much any more.

TRCP 4. Computation of time. If it was mailed add three days, but not otherwise. Interestingly, commercial carrier is not mentioned.

How do you serve it if I electronically filed?

- If the document is electronically filed and opposing attorney's email is on file with the electronic filing manager, it **MUST** be served electronically.
- Otherwise, you file it as you would any other document that is not electronically filed.

Rule 21a(a)(1).

How do we serve discovery and other documents not efiled?

- Mail (the rule no longer specifies certified);
- By commercial delivery service (yes common sense has prevailed);
- By fax;
- By email; or
- However the court tells you to.

Rule 21a(a)(2).

When is service complete?

- By mail or commercial carrier, when you deposit it if delivery is paid for (postage) and it is correctly addressed.
- By fax, when it is received (after 5:00 p.m. service is deemed made on following day).
- Electronic service is complete on filing with electronic file service manager (EFSM). You should get a confirmation of service from EFSM.
- What about email when not through EFSM? I'm not sure.

What if I miss a deadline because the EFSM was down?

If the deadline was imposed by the TRCP, you must be given a reasonable time to amend, but you probably have to file a motion to ask for the extension.

**What if there was a deadline to file under
the Texas Civil Practice and Remedies
Code or other rule?**

You'll have to look to those rules, but probably this will constitute "good cause" for the failure to file, which is the most common standard in such situations.

Private information needs special attention.

This is new Rule 21c.

Sensitive data like Driver's licenses numbers, banks accounts, birth date should all be redacted.

The methods of redaction for the protected information are spelled out.

Don't forget...

Documents electronically filed that contain sensitive information must contain a notice on the upper left hand side of first page.

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATE

The clerk can't refuse a docket filed in violation of this rule, but they can tell you to fix and give you a deadline to submit a corrected filing.

And...

All pleadings must include the email address of the attorney filing the document.

Speaking of changes to pleadings, Rule 47 now requires that a pleading be assigned to one of five monetary categories.

1. Only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest and attorney's fees
2. Monetary relief of \$100,000 or less and non-monetary relief
3. Monetary relief of more than \$100,000, but not more than \$500,000
4. Monetary relief of more than \$500,000 but not more than \$1,000,000
5. Monetary relief of more than \$1,000,000.

And if you don't, so what?

A party that fails to comply with the above-referenced requirement **may not conduct discovery** until the party's pleading is amended to state one of these categories.

Also of importance, this new requirement should also help reduce the uncertainty about whether a lawsuit seeks more than \$75,000 for federal removal purposes.

Why has this been added to the pleading requirement?

New Expedited Actions; otherwise known as “mountains into mole hills.”

The Texas Supreme Court mandated that actions seeking less than \$100,000 in strictly monetary relief be automatically categorized as “expedited actions.” Parties may ask to be excused from the required categorization for good cause or by pleading more than \$100,000 in monetary relief.

How expedited is expedited?

These are lawyers we're talking about?

Expedited actions are governed by newly modified Rule 190.2, under which the discovery period begins when the suit is filed and continues until **180 days** after the date the first request of discovery of any kind is served on a party.

If you haven't already, may I suggest you bookmark <http://www.timeanddate.com/date/duration.html>. Or in Outlook you can go to the date from which you need to calculate deadline, highlight, add amount of time (30 days, etc.) then hit enter and it will tell you the date the response is due.

The Lucky Number is?

15

Parties are limited to serving no more than

15 written interrogatories,

15 requests for production, and

15 requests for admissions.

Trial time is strictly limited.

At trial, each side is allowed **Eight hours** to present their entire case, from jury selection to closing arguments, excluding time spent on objections, bench conferences and challenges for cause to a juror.

Mediation Procedures are also effected.

Highlights:

- Can only be required to mediate 1/2 a day.
- Mediation can't be more than twice the filing fee.
- Must be completed 60 days before trial setting.
- Court must consider objections to mediation unless statute require it.
- Parties can agree to do more or less if they want.

Three key takeaways from expedited actions initiative are:

- (1) expedited actions will reach the finish line in 11 months or less;
- (2) early assessment, preparedness and organization are key; and
- (3) streamlined discovery procedures coupled with more robust disclosures present opportunities for cost savings and early resolutions.

Molehills into Mountains, Part 2

New Rule 91a for the first time allows for you to seek dismissal of baseless actions before discovery is conducted.

What are the grounds for the motion?

One or more of the causes of action pled have no basis in law or fact.

A cause of action has not basis in law or fact if the allegations pled, if true, together with reasonable inferences, would not entitle the party to the relief requested.

When can you file a motion to dismiss?

Within 60 days of first pleading containing baseless causes of action.

How soon can I ask the Court to set this brilliant motion for hearing?

You must give the opposing party 21 days notice of the hearing.

**But Judge _____ never rules on
dispositive motions!**

A motion to dismiss must be granted or denied within 45 days after the motion is filed. That's right. Filed not heard...

When should I calendar the due date for the response?

The response must be filed 7 days before the hearing on the motion to dismiss.

They can also non-suit or amend their pleadings 7 days before the hearing. This makes the motion moot.

If they non-suit, then what?

The motion is moot.

How can we respond to that amended pleading that adds all new facts?

At any time before the day of the hearing, the motion to dismiss can be withdrawn.

Do we need an evidence notebook for the hearing?

NO.

No evidence is permitted except those exhibits that may be submitted with the pleading under Rule 59.

In fact, hearing is not required to be in person. Can be by submission.

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[T]he court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court.

TRCP 91a.7

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Why would I ask my attorney to consider withdrawing her brilliant motion?

WHAT DOES THIS ALL MEAN?

- E-filing must be embraced and once you've mastered it, please teach your lawyer the basics.
- Calendaring systems and checklists need to be updated and referred to often until new habits are formed.
- Email can be service now, so systematic checking of email is now a must.
- Small cases are going to need extra calendaring attention.
- In small cases and in big ones, because of changes to rules, early case evaluation is more important than ever, assisting in developing procedures to make sure that is done could be a huge benefit to your offices' practice.