

TEXAS RULES OF CIVIL PROCEDURE

PART I - GENERAL RULES

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or any other probate proceedings in the county court differing from these Rules, and not included in the "List of Repealed Statutes," such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the "List of Repealed Statutes," prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply.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 3. CONSTRUCTION OF RULES

Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

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 such courts, provided:

- (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;
- (2) no time period provided by these rules may be altered by local rules;
- (3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;
- (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;
- (5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to members of the bar;
- (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.

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 5. ENLARGEMENT OF TIME

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.

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 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 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.

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.

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.

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 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 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 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.

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 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 13. EFFECT OF SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS

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 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 of this rule.

RULE 14. AFFIDAVIT BY AGENT

Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or his attorney.

RULE 14b. RETURN OR OTHER DISPOSITION OF EXHIBITS

The clerk of the court in which the exhibits are filed shall retain and dispose of the same as directed by the Supreme Court.

Supreme Court Order Relating to Retention and Disposition of Exhibits

In compliance with the provisions of Texas Rule of Civil Procedure 14b, the Supreme Court hereby directs that exhibits offered or admitted into evidence shall be retained and disposed of by the clerk of the court in which the exhibits are filed upon the following basis.

The order shall 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 years after judgment was signed; and (2) all other cases in which judgment has been signed for one 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.

The party who offered an exhibit may withdraw it from the clerk's office within thirty days of the later of (1) a case becoming subject to this order, or (2) the effective date of this order. The clerk, unless otherwise directed by the court, may dispose of any exhibits remaining after such time period.

RULE 14c. DEPOSIT IN LIEU OF SURETY BOND

Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash or other negotiable obligation of the government of the United States of America or any agency thereof, or with leave of court, deposit a negotiable obligation of any bank or savings and

loan association chartered by the government of the United States of America or any state thereof that is insured by the government of the United States of America or any agency thereof, in the amount fixed for the surety bond, conditioned in the same manner as would be a surety bond for the protection of other parties. Any interest thereon shall constitute a part of the deposit.