

Texas Supreme Court Revises New Rules for Expedited Trials and Dismissal of Baseless Claims Following End of Public Comment Period

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Introduction

Following considerable public comment, the Texas Supreme Court revised and issued final approval of new rules providing for expedited trials and dismissal of baseless claims. Despite pleas from various factions, however, the new rules maintain their mandatory nature. The revisions do, however, contain material changes to the Alternative Dispute Resolution provision of new Rule 169 of the Texas Rules of Civil Procedure.

By its order of November 13, 2012, the Texas Supreme Court promulgated: (1) new Rule 91a of the Texas Rules of Civil Procedure providing for early dismissal of meritless cases, and (2) new Rule 169 of the Texas Rules of Civil Procedure providing an expedited litigation path for cases involving less than \$100,000 in controversy. New Rule 169 is further augmented by amendments to Rules 47 and 190 of the Texas Rules of Civil Procedure and Rule 902(c) of the Texas Rules of Evidence.

These new rules were the subject of a mid-February Cozen O'Connor Global Insurance Alert. As noted in that [Alert](#), the new rules were subject to change following a public comment period that closed on February 1, 2013. Following the public comment, the court incorporated certain revisions to the rules which are now final, effective March 1, 2013.

New Texas Rule 91a of the Texas Rules of Civil Procedure, targeting dismissal of baseless causes of action, and Amended Rule 902(c) of the Texas Rules of Evidence *apply to all cases, including those pending on March 1, 2013*. New Texas Rule 169, providing for expedited trials, and Amended Rules 47 and 190 of the Texas Rules of Civil Procedure *apply to cases filed on or after March 1, 2013, except for those cases filed in justice court*.

Changes to New Rules for Expedited Actions

Amended Texas Rule 47 of Civil Procedure, titled "Claims for Relief," was revised from its original version in two major respects. First, the text of the amended rule was revised to remove cases governed by the Texas Family Code. Second, Subpart 47(c)(3) and (4) now require plaintiffs to state in their petitions whether they seek: "(3) monetary relief over \$100,000 but not more than \$200,000," or "(4) monetary relief over \$200,000 but not more than \$1,000,000," whereas the November 2012 version had specified ranges between "\$100,000 but not more than \$500,000," or "(4) monetary relief over \$500,000 but not more than \$1,000,000."

New Texas Rule 169 of Civil Procedure, titled "Expedited Actions," applies to actions in which "all claimants" affirmatively plead "they seek only monetary relief aggregating \$100,000 or less" (including penalties, costs, expenses and attorney fees). The expedited action process does not, however, apply to suits "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 and Remedies Code (healthcare liability claims)." A claimant who makes this affirmative allegation may not recover more than \$100,000. Cases *must* be removed from the expedited process for "good cause shown or if any claimant files a pleading, amended pleading or supplemental pleading seeking non-monetary relief." The comments to New Rule 169 were revised to offer more guidance on whether good cause exists for removal of a case from the expedited process, including: (1) whether the damages sought by multiple claimants against the same defendant total more than \$100,000, (2) whether a defendant has filed a compulsory counterclaim in good faith that exceeds \$100,000, and (3) the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

Most significantly, New Rule 169(d), titled “Expedited Actions Process,” has been revised with respect to the ADR procedures. The November 2012 version of New Rule 169 provided that neither the parties *nor the court* could force mediation absent a contractual obligation to mediate. As revised, however, *unless the parties have agreed not to engage in ADR*, a court may refer the case to an ADR procedure: (1) not to exceed a half-day in length, (2) not to exceed a total cost of twice the amount of the applicable civil filing fees, and (3) to be completed no later than 60 days before the initial trial setting. Further, a court must consider objections to ADR unless prohibited by statute. Finally, the parties may agree to engage in a form of ADR other than as provided in (1)-(3) above.

Additionally, as revised, courts may now “continue a case twice, not to exceed a total of 60 days.” Further, the revisions increase the time each side has for trial to eight hours, up from five in the November 2012 version. The court may further extend the time limit to “no more than twelve hours per side” by motion, for good cause.

Changes to New Dismissal Rule

Following public comment, New Rule 91a of the Texas Rules of Civil Procedure was altered in two main ways. First, Subpart 91a.5, titled “Effect of Nonsuit or Amendment; Withdrawal of Motion,” was revised to allow a respondent to nonsuit a challenged cause of action within just three days, instead of seven, prior to a hearing (thus preventing a court from ruling on a motion and awarding costs and attorneys’ fees to the movant). Similarly, the revisions permit the respondent to amend within at least three day, down from seven, before the hearing. Second,

Subpart 91a.6, titled “Hearing; No Evidence Considered,” was revised to make it clear that a court *may consider evidence as to costs and attorney fees* as provided by Subpart 91a.7.

Except for allowing the respondent slightly more time to non-suit or amend, the recent revisions do not materially change new Rule 91 from the version published in November of 2012.

Conclusion

Following the revisions made after public comment, unless all parties agree *not* to mediate, under the February 2013 revisions, a court may refer a case to a half-day ADR for not more than twice the cost of the related civil filing fees; provided, the parties may agree to a different format for the ADR. Further, as provided by the Texas Supreme Court’s February order finally adopting the new rules, cases filed in justice court are exempt from the rules for expedited actions found in New Rule 169 and amended Rules 47 and 190 of the Texas Rules of Civil Procedure. Additionally, each side now has eight hours for trial, up to a maximum 12 hours for good cause shown. Finally, under the February revisions, a court may grant up to two continuances not to exceed 60 days. Perhaps most importantly, despite the number and intensity of comments requesting otherwise, the new rules maintain their mandatory nature.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:

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