

# The Texas Procedural Advantage: How Texas Specific Mechanics Shape Litigation Risk, Timing, Spend, and Settlement

*A practical guide to Business Court strategy, the “completely rewritten” Rule 166a, and other Texas procedural considerations*

*Leslie McCombs Roussev, Shelby Saxon, Ryan Ward*

*March 5, 2026*

# Table of Contents

**I.**

**Part I – Texas Business Court**

**IV.**

**Discovery + Disclosures**

**II.**

**Part II – Rule 166a (Summary Judgment)**

**V.**

**Wrap-up & Q&A**

**III.**

**Part III – EARLY DISMISSAL + SPECIAL EXCEPTIONS**

# PART I —

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## **TEXAS BUSINESS COURT**

FORUM CHOICE, SPEED, AND EARLY TRENDS

# Business Court: The Basics

## Jurisdiction and Cases

- Statewide specialized trial court for certain complex business disputes, including corporate governance and fiduciary breaches.

## Court Structure and Divisions

- 11 divisions; 5 currently operational (Dallas, Austin, San Antonio, Fort Worth, Houston)
- One statewide clerk's office (Austin).

## Procedural Features

- Follows Texas Rules of Civil Procedure, but written opinions are required unlike in Texas District and County courts and has the option for jury trials unlike Delaware Chancery Court.

## Appeals Process

- Appeals go exclusively to the Fifteenth Court of Appeals with statewide jurisdiction.

# Business Court: Jurisdiction

**Any matter where one of the parties is a publicly-traded company**

# Business Court: Jurisdiction

The amount in controversy is over \$5 million and is:

- i. a derivative proceeding;
- ii. a corporate-governance action;
- iii. certain actions involving state or federal securities laws or regulations asserted against;
- iv. Certain actions brought by an organization or its owner against an owner, controlling person, senior officer, or managerial official of the organization;
- v. an action alleging that an owner, controlling person, or managerial official breached a duty to the organization;
- vi. an action seeking to hold an owner or governing person liable to the organization;
- vii. an action arising out of the Business Organizations Code.

# Business Court: Jurisdiction

The amount in controversy is over \$5 million and is:

- viii. an action arising out of a “qualified transaction,” which is a transaction in which the consideration at issue is at least \$5 million (other than a loan or advance of money or credit by a bank or other financial institution);
- ix. an action involving a contract where the parties agreed that the Business Court would have jurisdiction;
- x. an action concerning a violation of the Finance or Business and Commerce codes by an organization or officer acting on the organization’s behalf (excluding banks and other similar financial institutions);
- xi. an action arising out of or relating to the ownership, use, licensing, lease, installation, or performance of intellectual property; or
- xii. an action arising out of The Texas Uniform Trade Secrets Act

# Business Court: Jurisdiction

## Arbitration Agreements, DJ Actions, and Injunctions:

- an action to enforce an arbitration agreement, appoint an arbitrator, or review an arbitral award, or in other judicial actions authorized by an arbitration agreement if a claim included in the controversy in arbitration is otherwise within the court's jurisdiction
- an action seeking injunctive relief or a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, involving a dispute otherwise within the court's jurisdiction

## Supplemental Jurisdiction:

- over any other claim so related to the action that the claim forms part of the same case or controversy.
- A claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties to the claim and a judge of the division of the court before which the action is pending

# Getting Into Business Court

**1**

**Original filing in  
Business Court**

**2**

**Removal from  
district/county  
court**

**3**

**Transfer by  
request of  
district of  
county court**

**Practical takeaway: early jurisdictional scrutiny**

# Snapshot: Year One (FY 2025)

**185**

**CASES FILED**

(Sep. 1, 2024–Aug. 31, 2025)



**57%**

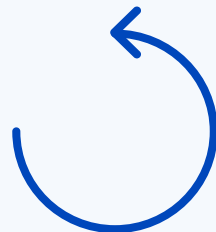
**Original Petitions**

43% notices of removal



**19**

**Remands**



**60**

**Dispositions**



# Detailed breakdown on cases

## Divisions:

- Houston 45%
- Dallas 28%
- Fort Worth 13%
- Austin 8%
- San Antonio 6%

## Case Types:

- Breach of Contract 57%
- Shareholder & Partnership Disputes 17%
- Securities 4%
- IP Conflicts 3%
- Antitrust 1%
- Other 18%

# Judicial Competency



Subject Matter Expertise

Utilization of Written Opinions

Intentional Development  
of Jurisprudence

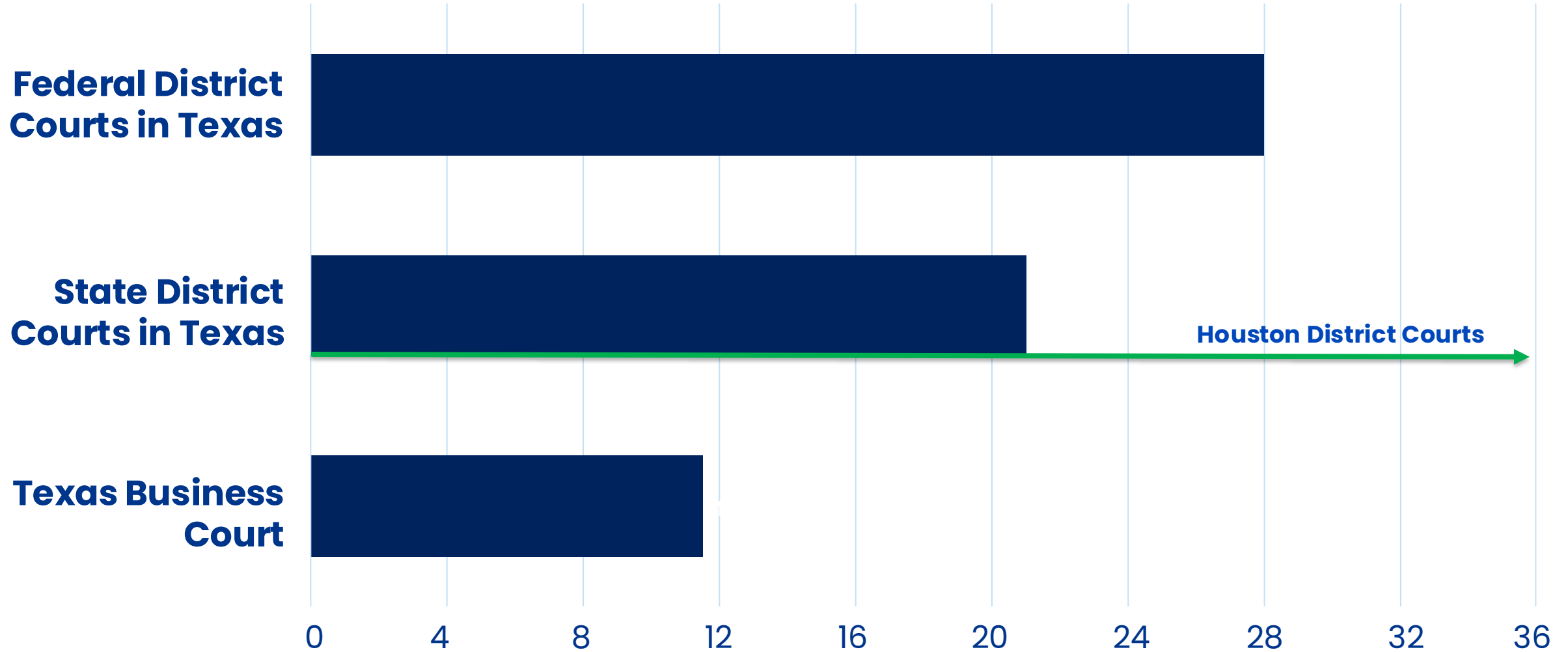


# Faster Resolutions

A \$26 million commercial dispute was resolved—from petition to trial and final judgment—in **eight months** in the Texas Business Court.

# Average Time to Trial

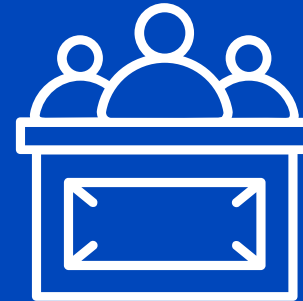
Civil Cases



# Trials: Bench and Jury



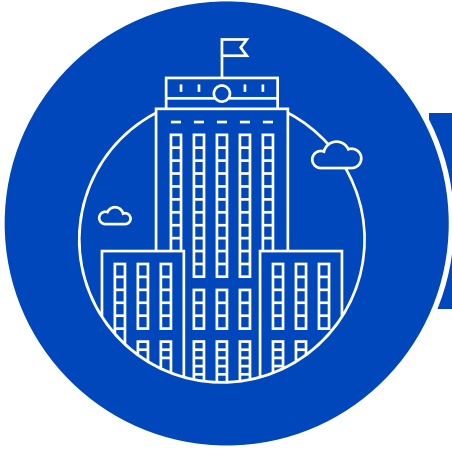
**Business Court cases  
can proceed to trial**  
(bench or jury depending on the claims)



**First jury trials took  
place  
in February 2026**

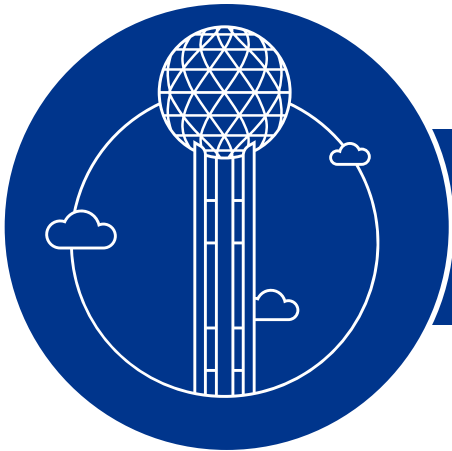
**Practical takeaway: Both bench and jury trials**

# The First Two Jury Trials



## **Houston jury trial:**

Verdict in favor of the plaintiff after ten-day trial.



## **Dallas jury trial:**

Directed verdict in favor for of the defense after just one day.

# The Business Court Difference

**Active case management – Speed and Efficiency**

**Docket equalization (reassignments) to balance workload**

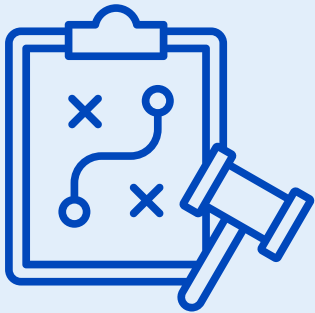
**More written opinions to build business-law guidance**

**Facilities are still developing**

# Business Court In-House Takeaways

## **Forum strategy:**

decide early whether Business Court's pace helps your objectives



## **Contracting:**

evaluate forum-selection options where permitted



## **Budgeting:**

faster schedules may shift spend earlier



## **Institutional learning:**

track written opinions for recurring issues



# PART II

## RULE 166A (SUMMARY JUDGMENT)

### Supreme Court of Texas

Misc. Docket No. 25-9106

#### Preliminary Approval of Amendments to Rule 166a of the Texas Rules of Civil Procedure

**ORDERED** that:

1. In accordance with the Act of June 2, 2025, 89th Leg., R.S., ch. 1130 (S.B. 293) and the Act of August 26, 2025, 89th Leg., 2d C.S., ch. 7 (H.B. 16), the Court invites public comments on proposed amendments to Texas Rule of Civil Procedure 166a. Rule 166a has been **completely rewritten**. Therefore, this order includes only a clean version of the rule.

# Background: Summary Judgment in Texas

**Traditional motion: seeks to establish that no genuine issue of material fact exists as to a claim or defense and that the movant is entitled to judgment as a matter of law**

**No-evidence motion: seeks to establish that there is no evidence of an essential element of a claim or defense on which the nonmovant would have the burden of proof at trial**

**Combined motion: Both traditional and no-evidence together**

# Summary Judgment Rewrite

**SCOTX: Rule 166a 'has been completely rewritten'**

**Comment: rewrite implements Gov't Code § 23.303 and modernizes the rule**

**Comment: other than deadline changes,  
rewrite not intended to change substantive law**

## 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.~~
- ~~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.~~

- ~~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.~~
- ~~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 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 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.~~

### Notes and Comments

Comment to 1990 change: This amendment provides a mechanism for using previously non-filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).

Comment to 1997 change: This comment is intended to inform the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period but not before. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (Tex Civ. Prac. & Rem. Code §§ 9.001-10.006) and rule (Tex R. Civ. P. 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (c).

## RULE 166a. SUMMARY JUDGMENT

### (a) Definitions.

(1) A “traditional” motion for summary judgment is a motion that seeks to establish that no genuine issue of any material fact exists as to a claim or defense and that the movant is entitled to judgment as a matter of law.

(2) A “no-evidence” motion for summary judgment is a motion that seeks to establish that there is no evidence of an essential element of a claim or defense on which the nonmovant would have the burden of proof at trial.

### (b) Motion.

(1) In General. A party may move for summary judgment on a claim or defense. A motion may combine both traditional and no-evidence motions.

### (2) Contents.

(A) Title. A motion for summary judgment must be titled “Traditional Motion for Summary Judgment,” “No-Evidence Motion for Summary Judgment,” or “Combined Motion for Traditional and No-Evidence Summary Judgment.” An absent or incorrect title is not grounds for denying the motion.

(B) Hearing Request. If a movant requests an oral hearing on the motion, the request must appear in the title of the motion.

(C) Traditional Motion. A traditional motion must state the specific grounds in support of the motion and produce any evidence in support.

(D) No-Evidence Motion. A no-evidence motion must state the elements of the claim or defense as to which there is no evidence.

### (3) Time to File.

(A) Traditional Motion. Unless a deadline for filing is set by court order, a party may file a traditional motion at any time after the nonmovant has appeared or answered.

(B) No-Evidence Motion. A party may file a no-evidence motion after adequate time for discovery.

(c) Clerk and Court Duties Upon Filing. Upon the motion’s filing, the clerk must immediately call the motion to the court’s attention. The court must set the motion for an oral hearing or submission without an oral hearing according to the deadlines in this rule. The clerk must send notice to the parties of the submission or hearing date.

### (d) Response.

(1) Time to File. Except on leave of court or agreement of the parties, the nonmovant must file a response within 21 days after the motion is filed.

(2) Contents. The nonmovant must produce any evidence in support of the response. If the nonmovant requests a hearing on the motion, the request must appear in the title of the response.

(3) When Evidence Unavailable. If the nonmovant needs additional time to secure evidence in support of the response, the nonmovant must file an affidavit or declaration specifying the reasons why the nonmovant cannot present facts essential to justify its opposition. The court may extend the time to file the response, deny the motion without prejudice to permit additional discovery, or issue another appropriate order.

### (e) Reply.

(1) Time to File. The movant may file a reply. Except on leave of court or agreement of the parties, the movant must file the reply within 7 days after the response is filed.

(2) Contents. A reply must not raise new or independent summary judgment grounds but may address a new or amended pleading filed after the motion if a ground initially asserted in the motion negates an element that is common to a claim or defense asserted in the new or amended pleading.

(f) Withdrawal. Any withdrawal of the motion must be filed and must identify the date the motion was filed.

### (g) Hearing or Submission.

(1) Timing. A hearing or submission date must not be set within 35 days after the motion’s filing. Unless the motion is withdrawn, the court must set the motion for a hearing or submission within:

(A) 60 days after the motion’s filing; or

(B) 90 days after the motion’s filing;

(i) if the court’s docket so requires;

(ii) on a showing of good cause; or

(iii) if the movant agrees.

(2) Reset Permitted. The court may reset a hearing or submission date within the time frames specified in this rule.

(3) Proposed Order. The parties must each submit a proposed order before the hearing or submission date.

(4) No Oral Testimony. No oral testimony will be received at a hearing on a summary judgment motion.

(5) Docket. The court must record in the docket the date the motion was heard or submitted.

### (h) Standards.

(1) Grounds. No judgment will be granted except on the grounds stated under (b)(2)(C) and (b)(2)(D).

(2) Traditional Motion. The court must grant a traditional motion for summary judgment if the movant shows that, except as to the amount of damages, there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law on the issues expressly set out in the motion.

(3) No-Evidence Motion. The court must grant a no-evidence motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

(4) Requested Relief Not Granted. If the court does not grant the relief requested by the motion, the court may ascertain what material fact issues exist, issue an order specifying the facts that are established as a matter of law, and direct any other appropriate proceedings.

(i) Ruling. The court must sign a written ruling on the motion, file it with the clerk, and provide the ruling to the parties within 90 days after the hearing or written submission date.

### (j) Evidence Produced.

(1) Types of Evidence. Evidence may include:

(A) deposition transcripts;

(B) an opposing party’s pleadings, interrogatory answers, admissions, and other discovery responses;

(C) affidavits and declarations;

(D) stipulations; and

(E) other authenticated evidence.

- (2) Evidence Produced by Reference. Evidence may be produced by making a specific reference to it and where it may be found in the court's file.
- (3) Use of Discovery Not Otherwise on File. Discovery not on file 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 with a statement of intent to use the specified discovery as summary judgment evidence.
- (A) at the time the motion is filed, if the evidence is to be used to support the summary judgment; or
- (B) at the time the response is filed, if the evidence is to be used to oppose the summary judgment.
- (4) ~~(4) Form of Affidavits~~ Affidavit or Declaration; Further Testimony. Supporting and opposing affidavits shall ~~An affidavit or declaration used to support or oppose a motion must~~ be made on personal knowledge, ~~shall set forth such~~ facts as that would be admissible in evidence, and ~~shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof. A document~~ referred to in an affidavit ~~shall or declaration must~~ be attached ~~thereto or served therewith~~ and either sworn or certified. The court may permit ~~affidavits~~ an affidavit or declaration to be supplemented or opposed by ~~depositions or by further affidavits~~ deposition or by another affidavit or declaration. Defects in the form of ~~affidavits or an affidavit or declaration or its attachments~~ will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, ~~to~~ or amend.
- (5) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subject to other appropriate sanctions.
- (6) Late-Filed Evidence. The court may consider late-filed evidence if the court indicates its consideration in the record.

### Notes and Comments

Comment to 1990 change: This amendment provides a mechanism for using previously non-filed discovery in summary judgment practice. Such proofs must all be filed in advance of the hearing in accordance with Rule 166a. Paragraphs (d) through (g) are renumbered (e) through (h).

Comment to 1997 change: This comment is intended to inform the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted after the period but not before. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (Tex Civ. Prac. & Rem. Code §§ 9.001-10.006) and rule (Tex R. Civ. P. 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (c).

Comment to 2026 change: Rule 166a is rewritten to implement section 23.303 of the Texas Government Code and to modernize the rule. Other than the deadline changes, Rule 166a's rewrite is not intended to substantively change the law.

# Summary of Changes

## □ Time to File:

- **Unless a deadline for filing is set by court order, a party may file a traditional motion at any time after the nonmovant has appeared or answered**
- **A party may file a no-evidence motion after adequate time for discovery**

## □ Contents of Motion:

- **Specific Title Required**
- **Hearing request must be requested in the title**
- **State specific grounds and produce evidence that support motion (traditional) or state elements of the claim or defense as to which there is no evidence (no-evidence)**

# Summary of Changes

- ❑ **Response due 21 days after motion is filed; reply due 7 days after response (absent leave or agreement of the parties)**
- ❑ **The parties must each submit a proposed order before hearing or submission date**
- ❑ **A hearing or submission date must be set between 35 and 60 days after motion filed, unless motion is withdrawn (90 days if “court’s docket so requires”/good cause/consent by movant)**
- ❑ **Written ruling due within 90 days of hearing/submission; court must docket the date of hearing or submission**

# Summary of Changes

- ❑ Evidence may include:
  - deposition transcripts;
  - an opposing party's pleadings, interrogatory answers, admissions, and other discovery responses;
  - affidavits and declarations;
  - stipulations; and
  - other authenticated evidence.
- ❑ Evidence may be produced by making a specific reference to it and where it may be found in the court's file.
- ❑ The court may consider late-filed evidence if the court indicates its consideration in the record

# High Level Timeline

## Day 0:

motion filed → clocks start

## Day 21:

response due  
(evidence + objections)  
unless leave

## Day 28:

reply due (optional; no new  
grounds) unless leave

## Day 35-60

Hearing  
not before day 35; must  
be within 60 days (or 90  
for limited reasons)

Day 0

Day 21

Day 28

Day 35-60

# Court/Clerk Duties



**Clerk must immediately call the motion to the court's attention and send notice to parties of submission/hearing date**



**Court must set motion for oral hearing or submission without hearing and docket the date**



**Court must provide a written ruling within 90 days after hearing/submission**

# Evidentiary Mechanics

**Response must include evidence and objections**

**Discovery not on file:** file/identify with specific references;

**Affidavits/declarations:** form requirements; bad-faith fee shifting; defects

**No oral testimony at hearing**

# PART III

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## EARLY DISMISSAL + SPECIAL EXCEPTIONS

# Motions to Dismiss – The Texas Difference

## Federal Rule 12(b)(6)

**Legal insufficiency:** failure to state a claim upon which relief can be granted

**Factual insufficiency:** facts accepted as true must satisfy plausibility standard

**Attorneys' fees:** N/A

**Answer:** typically not due until motion resolved

**Court deadline:** N/A

**Evidence:** court may consider documents referenced in complaint

**Appellate review:** trial court denial of leave to amend is reviewed for abuse of discretion

## Texas Rule 91(a)

**Legal insufficiency:** allegations do not entitle the claimant to the relief sought

**Factual insufficiency:** much higher standard—no reasonable person could believe the facts pleaded

**Attorneys' fees:** possibly assessed against loser

**Answer:** deadline not impacted

**Court deadline:** must rule within 45 days of filing

**Evidence:** court may only consider documents attached to petition

**Appellate review:** trial court denial of leave to amend is reversible legal error

# Timing for Litigants and the Court

Texas Rule of Civil Procedure 91(a)

## Pleading

**Timing depends on the first filed pleading containing the challenged action**

## Motion

**Due within 60 days of first pleading at issue is served  
+  
21 days before hearing**

## Ruling

**Court must grant or deny within 45 days of motion filing**

# Utility of 91(a) Motions to Dismiss

Texas Rule of Civil Procedure 91(a)

## **Frivolous lawsuits:**

the case has no legal support or factual foundation

## **Claims barred:**

\*\*statute of limitations, immunity, clear contractual disclaimer, etc.

## **Improper causes of action:**

plaintiff attempts to stretch the law beyond its scope or files multiple overlapping claims

## **Cost-control:**

may prevent a case from moving into expensive discovery, depositions, and expert testimony

# Practical Considerations

Texas Rule of Civil Procedure 91(a)

**Defendant can narrow claims from the outset and streamline the litigation**



**The Court may award attorney's fees (no longer mandatory)**



**Other dismissal procedures may be more effective**



# Special Exceptions

Texas Rule of Civil Procedure 91

## Procedural Mechanism

- Special Exceptions are motions used, primarily by the defendant, to challenge the sufficiency of the plaintiff's petition

## Purpose

- To compel plaintiff to provide more detailed and specific information if the original pleadings are vague or lacking in necessary details
- To point out whether the pleadings fail to establish a valid legal cause of action

## Role

- Not intended for factual disputes but to ensure claims are presented clearly and precisely
- Allows defendant to prepare an adequate response and ensures the court understands the issues

# Rule 91(a) Dismissal v. Special Exceptions

Issue	Rule 91(a)	Special Exceptions
<b>Purpose</b>	Dismiss claims	Clarify pleadings
<b>Scope</b>	Legal (and sometimes factual) sufficiency	Notice and form
<b>Fee Shifting</b>	Yes	No
<b>Amendments</b>	Automatic	Court-ordered
<b>Risk</b>	Higher	Lower

# PART IV

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## DISCOVERY + DISCLOSURES

# The 2021 TRCP Revolution

## Amendments to the Texas Rules of Civil Procedure

### From "Requests" to "Required"

Shift from former "Requests for Disclosure" to mandatory "Required Disclosures"

### The Federal Influence

These rules are modeled after FRCP 26(a) but contain unique procedural traps

### Active Oversight

Understanding these differences is essential when relying on outside counsel to ensure compliance and protect fee recoveries.

### The Core Change

Discovery is now *automatic and mandatory*; you must provide information without waiting for a formal request

# Timing of Initial Disclosures

**Texas Rules:**  
due 30 days  
after the first  
answer is filed

**Texas Rules:**  
discovery does  
not begin until  
disclosures are  
due (level 1 and  
2 cases)

**Federal Rules:**  
due within 14  
days of the  
Rule 26(f)  
conference

**Federal Rules:**  
discovery  
begins after  
the Rule 26(f)  
conference is  
held

Discovery pause accelerates early decision-making and requires faster internal coordination by in-house counsel before discovery opens.

# Rule 11

## TRCP 11 Interplay: Modifying Disclosure Duties

What?	How?
Authority to Modify	TRCP 191.1 allows parties to modify discovery procedures (including abating or waiving disclosures) by agreement or court order
Enforceability	Under TRCP 11, the agreement must be in writing, signed, and filed with the papers as part of the record (or made in open court)*
Court Approval	Generally, Rule 11 agreements are self-executing. However, you must seek a court order if the agreement conflicts with an existing docket control order or trial setting*
Safe Harbor	A valid Rule 11 agreement provides "good cause" under TRCP 193.6 to avoid the automatic exclusion of evidence due to late disclosure.

# PART V

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# Q&A

AUSTIN  
BRUSSELS  
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