REQUEST FOR NEW RULE OR CHANGE FOR EXISTING RULES

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of Existing Rule:

RULE 90. WAIVER OF DEFECTS IN PLEADING

General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the judgment is signed, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

II. Proposed Rule: The proposed new wording has been underlined.

RULE 90. WAIVER OF DEFECTS IN PLEADING

General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court ~~before the instruction or charge to the jury or, in a non jury case, before the judgment is signed,~~ <u>a reasonable time and not less than thirty (30) days before the commencement of a jury or non-jury trial</u> shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

III. Brief statement of reasons for requested change and advantages to be served by the proposed new Rule:

Historically, special exceptions were presented at the time of trial. Under our present day practice where "trial by ambush" has been abolished and liberal discovery is encouraged, a party's final version of the pleadings should be required within a reasonable time before trial commences. This includes special exceptions. Special exceptions should be dealt with at the pretrial stage of the proceedings so that final pleadings can be filed by each party within a sufficient time to allow each party to deal with any changes in the pleadings.

Rule90.och/mt