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May 4, 2001

The Honorable Thomas R. Phillips
Chief Justice, Supreme Court
Supreme Court Building
P. O. Box 12248
Capitol Station
Austin, Texas 78711

RE: Proposed Change to Comment 2 to Rule 194

Dear Justice Phillips:

Enclosed is a proposed rule change to Comment 2 to Rule 194 which has been approved for submission to the Supreme Court by the Court Rules Committee.

By copy of this letter, I am forwarding copies of this proposed rule change to Charles Babcock, Chairman of the Supreme Court Advisory Committee, Justice Hecht and to Chris Griesel.

Sincerely,

ATLAS & HALL, L.L.P.

By:


O. C. Hamilton, Jr.

OCH/mmp
enclosures

cc: The Honorable Nathan Hecht (w/enclos.)
Justice, Supreme Court of Texas
Supreme Court Building
P. O. Box 12248
Capitol Station
Austin, Texas 78711

Charles Babcock (w/enclos.)
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STATE BAR OF TEXAS

COMMITTEE ON COURT RULES

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording of existing comment 2 to Rule 194:

Rule 194(c) and (d) permit a party further inquiry into another's legal theories and factual claims than is often provided in notice pleadings. So-called "contention interrogatories" are used for the same purpose. Such interrogatories are not properly used to require a party to marshal evidence or brief legal issues. Paragraphs (c) and (d) are intended to require disclosure of a party's basic assertions, whether in prosecution of claims or in defense. Thus, for example, a plaintiff would be required to disclose that he or she claimed damages suffered in a car wreck caused by defendant's negligence in speeding, and would be required to state how loss of past earnings and future earning capacity was calculated, but would not be required to state the speed at which defendant was allegedly driving. Paragraph (d) does not require a party, either a plaintiff or a defendant, to state a method of calculating non-economic damages, such as for mental anguish. In the same example, defendant would be required to disclose his or her denial of the speeding allegation and any basis for contesting the damage calculations.

II. Proposed change to comment 2 to Rule 194:

Rule 194.2(c) and (d) permit a party further inquiry into another's legal theories and factual claims than is often provided in notice pleadings. So-called "contention interrogatories" are used for the same purpose. Such interrogatories are not properly used to require a party to marshal evidence or brief legal issues. Paragraphs (c) and (d) are intended to require disclosure of a party's basic assertions, whether in prosecution of claims or in defense. Thus, for example, a plaintiff would be required to disclose that he or she claimed damages suffered in a car wreck caused by defendant's negligence in speeding, and would be required to state how loss of past earnings and future earning capacity was calculated, but would not be required to state the speed at which defendant was allegedly driving. Paragraph (d) does not require a party, either a plaintiff or defendant, to state a method of calculating non-economic damages, such as for mental anguish. In the same example, defendant would be required to disclose his or her denial of the speeding allegation and **any basis for contesting any other party's damage calculation. The failure of a party to respond to a request for disclosure may be grounds for excluding evidence (see Rule 193.6(a); see also Rule 191.3; Rule 215.2(4),) offered by such party which should have been disclosed. However, such failure does not deprive the party of the right to cross-examine witnesses on any matter.**

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

To clarify the scope of a defendants' response to a request for disclosure regarding calculation of damages. The proposed change makes it clear when a party fails to respond to a request for disclosure, the party may be precluded from offering evidence which should have been disclosed, however, the party's failure to respond to a request for disclosure does not deprive the party from the right to cross-examine on any matter. At least one judge in Hidalgo County would not allow a defendant to cross-examine a plaintiffs' expert on damages because defendant had not responded to the plaintiffs' request for disclosure regarding damage calculations.