STATE BAR OF TEXAS

COURT RULES COMMITTEE

REQUEST FOR NEW RULES OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording existing Rule:

Rule 167. Discovery and Production of Documents and Things for Inspection, Copying or Photographing

1. No Change.
   a. No change.
   b. No change.
   c. No change.
   d. The party upon whom the REQUEST is served shall serve a written RESPONSE which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and he shall thereafter comply with the REQUEST, except only to the extent that he makes objections in writing to particular items, or categories of items, stating specific reasons why such discovery should not be allowed .
   e. No change.
   f. No change.
   g. No change.
2. No Change.
3. No Change.
4. No Change.

II. Proposed Rule: The proposed new rule would change Rule 167 paragraph 1d as follows:

"d. The party upon whom the REQUEST is served shall serve a written RESPONSE which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and ~~he~~ the party shall thereafter comply with the REQUEST, ~~except only to the extent that he~~ unless the party ~~makes objections in writing~~ objects in the RESPONSE to particular items, or categories of items, stating specific reasons why such discovery should not be allowed together with

a statement that based upon the specific reason(s) stated, some document(s) or thing (s) is being withheld."

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

Under current rules many parties responding to request for production make prophylactic objections to the requests and then respond that subject to such objections, documents will provided. Such response is ambiguous and does not tell the requesting party whether all documents are being provided or some documents are being withheld based upon the objections made. The purpose of the change in this rule is to require the requested party to state if documents or things are being withheld based upon an objection. The requested party does not by this rule have to list the documents being withheld but only state that documents or things are being withheld. It is assumed that in most instances where objections are filed and documents are withheld the party requesting the documents will ask for a hearing before the court and a ruling on the objections. The parties would then follow the procedure set out in Rule 166(b)(4). Other changes in the rule are drafting changes to make the rule clearer.