

**STATE BAR OF TEXAS**  
**COURT RULES COMMITTEE**  
**REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE**  
**TEXAS RULES OF CIVIL PROCEDURE**

- I. Existing Rule:        There is no existing Rule.
- II. Exact wording of proposed Rule:

**Rule 166d. DISCLOSURE UPON WRITTEN REQUEST**

**(A) Disclosure to be Made**

Upon written request by any party to any other party, the following must be disclosed and produced, where appropriate, if in the possession , custody, or control of the Requested Party or that party's attorney, agent, servant, or employee.

**(1) PERSONS WITH KNOWLEDGE OF RELEVANT FACTS<sup>1</sup>**

Identification of each person believed to have knowledge or discoverable information relevant to the events, transactions, or occurrences that gave rise to the claims or damages and defenses to the claims or damages and the general subject matter about which each named person is likely to have knowledge or discoverable information.

**(2) EXPERTS**

As to any expert whom the Requested Party may call to testify at the time of trial and as to any expert whose mental impressions or opinions have been provided to or reviewed by an expert whom the Requested Party may call to testify at the time of trial:

- (a) Identification of each expert and a statement whether such person is a testifying or consulting expert;
- (b) The subject matter about which each expert may testify or has been consulted;
- (c) The mental impressions or opinions which each expert is expected to state in testimony or about which the expert was consulted;
- (d) A general summary of the basis for the mental impressions or opinions in "(c)" above; and
- (e) Identification of documents and tangible things prepared by, provided to, or reviewed by each named expert.

**(3) WITNESSES**

In addition to any expert identified, identify all other witnesses to be called at trial.

**(4) INSURANCE OR INDEMNITY AGREEMENTS**

Production of a copy of any insurance or indemnity agreement which may cause or require another person:

- (a) to be liable to satisfy part or all of a judgment which may be rendered in the action against the Requested Party or
- (b) to indemnify or reimburse payments made by the Requested Party to satisfy all or part of a judgment which may be rendered in the action against the Requested Party.

**(5) SETTLEMENT AGREEMENTS**

Production of a copy of, or where no written agreement exists, a statement of the terms of<sup>2</sup>, any settlement agreement entered into by the Requested Party and any person or entity relating to the subject of any claims or defenses arising from the events, transactions, or occurrences which are the subject matter of the suit.

**(6) CLAIMS, DEFENSES, ESSENTIAL FACTS**

Each claim or defense and the essential facts which, if proven at trial, would establish each claim or defense of the Requested Party. However, a party is not required to recite all evidence which may be offered at trial in support of a claim or defense, but only such essential facts which give requesting party fair notice to prepare for trial<sup>3</sup>.

**(7) LEGAL THEORY**

The legal theory(ies) upon which each claim or defense is based. Such legal theory(ies) shall be set forth with sufficient specificity to give the Requesting Party fair notice to prepare for trial<sup>3</sup> with respect to such legal theory(ies) and, when necessary for a reasonable understanding of the theory(ies), citations of pertinent legal or case authorities<sup>4</sup>.

**(8) WRITTEN OBLIGATION**

When the suit is based upon a written obligation(s), production of copies of any documents upon which the suit is based.

**(9) DAMAGES**

Each element of damages claimed is to be listed, and

(a) When the amount is capable of being determined by some calculation, show the calculation of such, and the total amount claimed;

(b) When the amount is within the discretion of the trier of facts, (such as, for example, pain and suffering) the total amount claimed for each element; and

(c) Production of any documents or tangible things upon which the Requested Party's damage computation is based, including those which bear on the nature and extent of injuries suffered.

**(10) HEALTH CARE PROVIDERS AND AUTHORIZATIONS**

When the Requested Party seeks to recover damages for physical or mental injury:

(a) Identification of each health care provider who has provided treatment to the Requested Party for the ten (10) years preceding the events or occurrences giving rise to the suit; and

(b) Production of a written authorization signed by the Requested Party authorizing the Requesting Party, its attorneys, agents, servants, or employees to view and obtain copies of medical records relevant to the physical, mental or emotional condition of Requested Party from any health care provider named in the preceding paragraph 10(a).

**(11) HEALTH CARE PROVIDER SUITS<sup>5</sup>**

When the suit is against a health care provider and

(a) When the Requested Party is a Plaintiff:

(i) A description of each act or omission which the Requested Party claims was below the relevant standard of health care for the person committing such act or omission;

(ii) The name of each person(s) who committed the act or omission;

(iii) the date or dates of each act or omission;

(iv) A description of the injury or impairment which the Requested Party claims was a result of the act or omission;  
and

(v) A statement of the date and time of last treatment from this Requesting Party for the condition complained of by the Requested Party; and

(b) When the Requested Party is a defendant and has listed in response to Paragraph "(A)(1)" above, any person who provided health care to the Requesting Party, state to the extent known:

(i) places and dates when such person received formal education;

(ii) date(s) of graduation;

(iii) degree(s) obtained and specialty(ies), if any;

(iv) places and dates of any internship, residences, or fellowships;

(v) identification and dates of any board certification; and

(vi) dates and places of all jobs including a brief description of the duties in each job; and

**(B) Form, Contents, Time, and Service of Request**

**(1) FORM**

Any request under this rule must be in writing and is restricted to the items listed in **Paragraph (A)** above.

**(2) CONTENTS**

The request need only state that the Requesting Party requests the information described by stating the particular paragraph of this rule by number and title. For example, "Defendant requests that Plaintiff provide the information described in Rule 166d, subparagraphs **(1) PERSONS WITH KNOWLEDGE OF RELEVANT FACTS, (2) EXPERTS, (4) SETTLEMENT AGREEMENTS, AND (5) CLAIMS OR DEFENSES.**"

**(3) TIME TO REQUEST DISCLOSURE**

(a) **GENERAL RULE.** A request served under these rules may be served by a party on any other party (Requested Party) any time after forty-five (45) days from the day said Requested Party has appeared in the case; provided, however, that a Defendant may serve a request on the Plaintiff suing said Defendant contemporaneously with said Defendant's answer being filed or any time thereafter<sup>6</sup>.

(b) **FAMILY CODE CASES.** This time requirement is not applicable to cases filed under the Texas Family Code in which cases the request may be served by Petitioner on Respondent at any time after or with service of

citation and by Respondent on Petitioner at any time after the suit has commenced.

(c) **DISCLOSURE WITH CITATION.** Notwithstanding the provisions of paragraph (B)(3)(a) above, a plaintiff may serve upon a defendant, contemporaneously with the service of citation, disclosures and documents required by paragraph (A)(1) through paragraph (A)(11) as limited by paragraph (C)(3) of this rule, together with a request on said defendant to disclose information and documents requested by plaintiff pursuant to this rule.

**(4) SERVICE**

The request must be served upon the Requested Party pursuant to Rule 21a except in the case where a request is served with the citation as provided in paragraph 3(a) above. Copies are to be delivered to all other parties and a copy is to be filed with the clerk of the court.

**(C) RESPONSE TO REQUEST FOR DISCLOSURE**

**(1) Time to Serve Response**

A response to and production of copies responsive to any request pursuant to paragraph (B)(3)(a) and (B)(3)(b) above must be served within forty-five (45) days of the date of service for the request. A defendant shall respond to a request made pursuant to paragraph (B)(3)(c) of this rule within forty-five (45) days of the date defendant is required to answer the citation. Copies of the response and production of copies are to be served pursuant to Rule 21a on all parties, and a copy of the response only must be filed with the clerk of the court. The time for responding may be shortened or extended by agreement of the parties in writing

or by order of the court on motion and notice of either party and for good cause shown.

**(2) Form and Signature**

Each separate response is to be preceded by the subsection number, title, and full written request and the general response is to be signed by the Requested Party's attorney or by the Requested Party when unrepresented. The response need not be verified, but the signature of an attorney or party constitutes a certification that to the best of his or her knowledge, information, and belief, after an inquiry that is reasonable under the circumstances, the disclosure or supplementation is correct and complete as of the time it is made.

**(3) Inapplicable Requests**

No response shall be required where a particular request is clearly inapplicable under the circumstances of the case. The Requested Party shall state briefly why the information requested is not applicable to the suit<sup>7</sup>.

**(D) SUPPLEMENTATION**

A party who has responded to a request for disclosure of information of production of documents pursuant to this Rule is required to supplement the responses as required by Rule 166b(6) of these rules.

**(E) OBJECTIONS AND PRIVILEGED MATTER**

Under this rule an objection grounded upon irrelevance is improper; objections upon any other grounds are rebuttably presumed improper when made, however, objections are to be made within the same time as the time required for responses. Any request made pursuant to this rule is not intended to require

disclosure of privileged documents, but any document(s) or thing(s) requested and not produced because of an alleged privilege must be identified, prepared for an *in camera* inspection, and the specific privilege(s) asserted, together with a statement that some document(s) or thing(s) is being withheld based upon such privilege. Requested information, however, is not privileged.

A Requested Party who claims a privilege under Section 509 of the Texas Rules of Civil Evidence on the grounds that production of a medical authorization would authorize the Requesting Party to obtain privileged medical records which are not relevant to the issue of the physical, mental or emotional condition of the Requested Party shall produce the medical authorization requested, but shall state on such medical authorization that a privilege is claimed under Section 509 of the Texas Rules of Civil Evidence and shall identify the medical records claimed to be privileged which the medical provider is not authorized to produce. The Requested Party asserting such privilege shall within thirty (30) days of the request for the medical authorization submit the medical records to which the privilege is claimed to the Court for an *in camera* inspection and ruling by the Court as to whether the records are privileged. At the time of submission to the Court, the Requested Party shall give written notice to all other parties that the records have been submitted to the Court.

**(F) ADMISSIBILITY**

Answers supplied to the disclosure requests are admissible to the same extent as answers to Interrogatories pursuant to Rule 168. The response and

supplementation to disclosure requests **(5) CLAIMS OR DEFENSES, FACTUAL BASIS, (8) DAMAGES** of Subparagraph **(A)** of this rule shall be deemed to be a supplement to pleadings and shall be treated as pleadings in all respects, including admissibility.

**(G) OTHER DISCOVERY**

Nothing in this rule shall preclude any party from taking additional non-duplicative discovery of any other party. The disclosures requested in this rule shall not constitute a set of interrogatories under Rule 168 of these rules and either party may serve additional non-duplicative interrogatories as authorized by Rule 168.

**(H) SANCTIONS**

Failure to serve full and complete responses and supplementation to the requests for information and production of documents or the making of groundless objections shall, on the motion of any party, be grounds for sanctions by the Court pursuant to Rule 215 of these rules.

**(I) NEW PARTIES**

Upon the written request by a new party to the suit to any existing party, true copies of any written disclosure requests and responses, including production of documents, under this rule must be supplied to the new party by the existing party within thirty (30) days of the request. All reasonable expenses incurred in supplying such requests, responses and documents (if any) shall be paid by the new party requesting such.

**III. BRIEF STATEMENT OF REASONS FOR AND ADVANTAGES OF PROPOSAL**

The seventy-third legislature of Texas enacted Article 459i, §§ 13.01 and 13.02, V.A.T.S. which authorized the Supreme Court of Texas to create a set of standard interrogatories and requests for production in health care cases. The Federal Rules also require mandatory disclosures of certain information where the option to opt out has not been exercised. Other jurisdictions are mandating similar disclosure provisions. All of these efforts on the part of legislatures and court rules committees are designed to try to cut down on the time spent on discovery and satellite litigation which erupts from discovery disputes. This Proposed Rule will require the Requested Party to provide certain basic information and documents that are generally needed in most litigation and will give the Requesting Party a better ability to evaluate the case early in the litigation for potential settlement and, in the event no settlement is reached at this early point, to set the stage for a scheduling conference and agreement or order which will provide for needed and avoid unneeded discovery in preparation for trial. The implementation of this Proposed Rule is triggered, however, not by the filing of a lawsuit but by the written request of a party. Further, the Requesting Party can tailor the requests to the particular case.

This Proposed Rule, with the disclosure early in the proceeding of the legal theories and essential facts of the case, will help accomplish several purposes: (1) see that justice is done with fairness to all sides of the lawsuit; (2) see that critical disclosures are made quickly and at the least possible expense to litigants; and (3) reduce the time of litigation and the acrimony between litigants or their lawyers. The Proposed Rule also has the flexibility afforded by not being mandatory but

driven by request. This means that routine cases can avoid the expense of disclosure if the parties wish to avoid it; or, in cases where disclosure could increase acrimony (such as divorces or other family law cases where there is a public policy of a cooling down period and a preference for an intact family unit), delay such disclosure until there is certainty about proceeding in the lawsuit. Further, since each "request" cannot be tailored, as with interrogatories, the potential for objection is vastly reduced.

Another purpose of the Proposed Rule is to require the Requested Party to state with particularity the factual and legal basis for the claims or defenses. This should help to narrow the scope of the lawsuit and, hence, narrow the scope of discovery and cut down on litigation costs.

Most of the information and discovery which may be requested is peculiarly within the knowledge of the attorneys, and a response need not be verified or signed by a party when represented by an attorney. An attempt has been made to incorporate the spirit and provisions of Article 4590i, §§ 13.01 and 13.02, V.A.T.S.

Definitions of key terms are given in the proposed Rule 166g.

Section "B(3)" recognizes the fact that both sides in a family law case have relatively equal access to information and hence no need for a defendant to have a grace period before making disclosure.

Since this Proposed Rule is entirely new, some end notes are provided in an effort to explain the purpose of certain provision.

## COMMENTS

1. Titles are added to the numbers for the sake of simplicity and clarification. Without them, one must read almost the entire subsection to know what generally is included.
2. "Verbal agreements" as well as those which are in writing should be disclosed.
3. One of the purposes of requiring the party to state claim, defenses and legal theories is to avoid the necessity of special exceptions and hearings on special exceptions. These requests seek to require what a pleading would have to be amended to state if there had been a special exception to that pleading that was granted. Hence, the wording "fair notice to prepare for trial."
4. An example would be if a party was alleged to have violated a particular statute, the statute should be disclosed. Also, if the claimant or defendant has some unusual or new legal theory created under common law, case authority ought to be cited.
5. See Article 4590i § 13.02 V.A.T.S.
6. This recognizes that plaintiff's attorneys are in a better position to answer requests for information early on. The concept is consistent with the intent of the legislature in Article 4590i, § 1302(a) and (b) V.A.T.S.
7. This should be rare, but it can happen that a requesting party request information or documents which have no bearing on the type of suit.