

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 Rule:

Rule 193.3(b) *Description of Withheld Material or Information.* After receiving a response indicating that material or information has been withheld from production, the party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of service of that request, the withholding party must serve a response that:

- (1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and
- (2) asserts a specific privilege for each item or group of items withheld.

Rule 193.4 Hearing and Ruling on Objections and Assertions of Privilege.

(a) Hearing. Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an in camera review of some or all of the requested discovery is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

(b) Ruling. To the extent the court sustains the objection or claim or privilege, the responding party has no further duty to respond to that request. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested material or information within 30 days after the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.

Rule 193.5 Amending or Supplementing Responses to Written Discovery.

(b) *Time and Form of Amended or Supplemental Responses.* An amended or supplemental response must be made reasonable promptly after the party discovers the necessity for such a response. Except as otherwise provided by these rules, it is presumed that an amended or supplemental response made less than 30 days before trial was not made reasonably promptly. An amended or supplemental response must be in the same form as the initial response and must be verified by the party if the original response was required to be verified by the party, but the failure to comply with this requirement does not make the amended or supplemental response untimely unless the party making the response refuses to correct the defect within a reasonable time after it is pointed out.

Rule 193.7 Production of Documents Self-Authenticating. A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless—within ten days or a longer or shorter time ordered by the court, after the producing party has actual notice that the document will be used—the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the record or in writing and must have a good faith factual or legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.

II. Proposed Rule:

Rule 193.3(b) Description of Withheld Material or Information. After receiving a response indicating that material or information has been withheld from production, the party seeking discovery may serve a written request that the withholding party identify the information and material withheld. ~~Within 15 days~~ **Not later than the 15th day after the date** of service of that request, the withholding party must serve a response that:

- (1) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and
- (2) asserts a specific privilege for each item or group of items withheld.

Rule 193.4 Hearing and Ruling on Objections and Assertions of Privilege.

(a) *Hearing.* Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served ~~at least seven days~~ **not later than the seventh day** before the ~~date of the~~ hearing or at such other reasonable time as the court permits. If the court determines that an in camera review of some or all of the requested discovery is necessary, that material or information must be segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

(b) *Ruling.* To the extent the court sustains the objection or claim or privilege, the responding party has no further duty to respond to that request. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested material or information ~~within 30 days~~ **not later than the 30th day** after ~~the date of~~ the court's ruling or at such time as the court orders. A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege.

Rule 193.5 Amending or Supplementing Responses to Written Discovery.

(b) *Time and Form of Amended or Supplemental Responses.* An amended or supplemental response must be made reasonable promptly after the party discovers the necessity for such a response. Except as otherwise provided by these rules, it is presumed that an amended or supplemental response made ~~less than 30 days later than the 30th day~~ before ~~the date of the~~ trial was not made reasonably promptly. An amended or supplemental response must be in the same form as the initial response and must be verified by the party if the original response was required to be verified by the party, but the failure to comply with this requirement does not make the amended or supplemental response untimely unless the party making the response refuses to correct the defect within a reasonable time after it is pointed out.

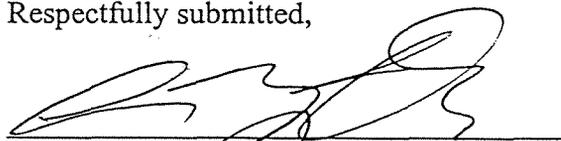
Rule 193.7 Production of Documents Self-Authenticating. A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless—~~within ten days or a longer~~ **not later than the 10th day**, or ~~shorter~~ **the** time ordered by the court, after the producing party has actual notice that the document will be used—the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the

record or in writing and must have a good faith factual or legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.

III. Brief statement of reasons for requested changes and advantages to be served by them:

The proposed change is intended to promote greater clarity and consistency in the expression of time, time periods and deadlines by (1) referring to the "date" or "day" on which an event occurs, as opposed to "time" which may be construed to mean a time of day, (2) describing a time period in a way that makes the first and last days clear, and (3) leaving no doubt about which is the last day on which action may be taken, in accordance with §7.28 of the Texas Legislative Counsel Drafting Manual.

Respectfully submitted,



L. Hayes Fuller, III #07522500
SHEEHY, LOVELACE & MAYFIELD, P.C.
510 N. Valley Mills Dr., Suite 500
Waco, Texas 76710
(254) 772-8022
FAX (254) 772-9297