

MORRIS ATLAS  
ROBERT L. SCHWARZ  
GARY GURWITZ  
CHARLES C. MURRAY  
A. KIRBY CAVIN  
MIKE MILLS  
MOLLY THORNBERRY  
FREDERICK J. BIEL  
REX N. LEACH  
LISA POWELL  
STEPHEN L. CRAIN  
O.C. HAMILTON, JR.  
VICKI M. SKAGGS  
DAN K. WORTHINGTON  
VALORIE C. GLASS  
SOFIA A. RAMÓN  
DANIEL G. GURWITZ  
HECTOR J. TORRES  
VELMA G. ANDERSON  
JOSÉ CANO  
ADRIANA H. CÁRDENAS  
GREGORY S. KAZEN  
ROLAND QUINTANA  
MICHAEL D. TUTTLE

ATLAS & HALL, L.L.P.  
ATTORNEYS AT LAW  
PROFESSIONAL ARTS BUILDING • 818 PECAN  
P.O. BOX 3725  
McALLEN, TEXAS 78502-3725  
(956) 682-5501  
FAX (956) 686-6109

November 6, 2003

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 Rule 21a

Dear Justice Phillips:

Enclosed is a proposed rule change to Rule 21a 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 Justice Hecht, Chris Griesel, and to Charles Babcock, Chairman of the Supreme Court Advisory Committee.

Sincerely,

ATLAS & HALL, L.L.P.

By:



O. C. Hamilton, Jr.

OCH:PGB  
Supreme Court.Rule 21a.1162003

cc w/enclosures:

The Honorable Nathan Hecht  
Justice, Supreme Court of Texas  
Supreme Court Building  
P. O. Box 12248, Capitol Station

The Honorable Thomas R. Phillips  
Chief Justice, Supreme Court  
Page 2

November 6, 2003

Charles Babcock  
901 Main Street Suite 6000  
Dallas, Texas 75202-3748

Chris Griesel  
Supreme Court Building  
P. O. Box 12248, Capitol Station  
Austin, Texas 78711

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 existing Rule:

**Rule 21a. Methods of Service**

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail or by telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

II. Proposed Rule:

**Rule 21a. Methods of Service**

Every notice required by these rules, and every pleading, plea, motion, **discovery materials**, or other form of request required to be served under Rule 21 or **Rule 191.5**, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail or by telephonic document transfer, three days shall be added to the prescribed period. Notice may be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. **A certificate of compliance is not necessary unless discovery materials are filed pursuant to Rule 191.4(b)(1).** A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

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

Some practitioners use certificates of service on discovery materials which are not required by the rules, and some lawyers are filing certificates of service with the clerk's office, which adds to the volume of paper in the file. There is a question about whether the three-day provision of Rule 21a applies when the discovery is mailed or faxed and there is no certificate of service on the discovery. The Committee believes that the three-day rule should apply, and recommends the foregoing changes to clarify that it does, and to make it clear that a certificate of compliance need not be filed with the clerk unless the discovery materials are filed pursuant to Rule 191.4(b)(1).