

IN THE SUPREME COURT OF TEXAS

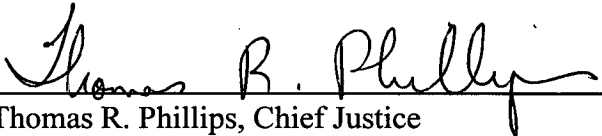
Misc. Docket No. 97- 9067

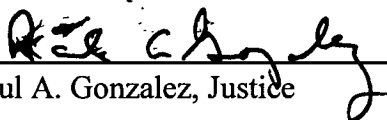
APPROVAL OF REVISIONS TO THE TEXAS RULES OF CIVIL PROCEDURE

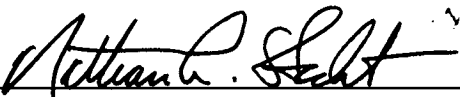
ORDERED that:

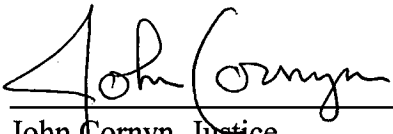
1. Rule 166a of the Texas Rules of Civil Procedure is amended as follows;
2. These amendments, with any changes made after public comments are received, take effect September 1, 1997;
3. The notes and comments appended to these changes are incomplete, are included only for the convenience of the bench and bar, and are not a part of the rules; and
4. The Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*.

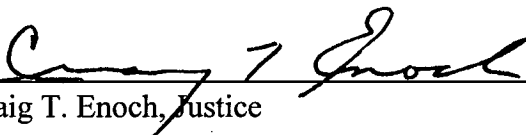
SIGNED AND ENTERED this 16th day of April, 1997.

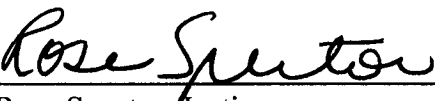

Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

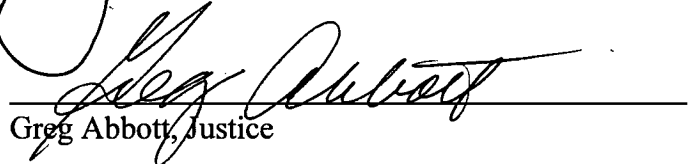

John Cornyn, Justice


Craig T. Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice

RULE 166a. SUMMARY JUDGMENT

(a) For Claimant. [No change.]

(b) For Defending Party. [No change.]

(c) Motion and Proceedings Thereon. [No change.]

(d) Appendices, References and Other Use of Discovery Not Otherwise on File. [No change.]

(e) Case Not Fully Adjudicated on Motion. If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

(f) Form of Affidavits; Further Testimony. [No change.]

(g) When Affidavits Are Unavailable. [No change.]

(h) Affidavits Made in Bad Faith. [No change.]

(i) No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

Notes and Comments

Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements of an adverse party's claim or defense. The motion must be specific in challenging the evidentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case.

Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove it is entitled to judgment by establishing each element of its own claim or defense as a matter of law or by negating an element of the respondent's claim or defense as a matter of law.

To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point out evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

TEL: (512) 463-1312

FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

April 16, 1997

Office of the Secretary of State
Statutory Filings Section
Room 214 Rudder Building
1019 Brazos Street
Austin, Texas 78701

By order of the Supreme Court of Texas, the enclosed order is forwarded for appropriate filing. Please contact this office if you have questions in this matter.

Sincerely,

SIGNED
John T. Adams
Clerk

Encl.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

April 16, 1997

Mr. Antonio Alvarado
Executive Director
State Bar of Texas
1414 Colorado Street
Austin, Texas 78701

Dear Mr. Alvarado,

Please find attached, a copy of the order of the Supreme Court of Texas of this date. Per this order, a copy is to be published as soon as possible in the Texas Bar Journal. You may contact the undersigned if there are any questions in this matter.

Sincerely,

SIGNED

John T. Adams
Clerk

Atch.

cc: Ms. Kelley Jones