

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98- 9224

TECHNICAL CORRECTIONS TO THE REVISIONS TO THE TEXAS RULES OF CIVIL PROCEDURE

ORDERED that:

1. The revisions to the Texas Rules of Civil Procedure promulgated by Order in Misc. Docket No. 98-9196, dated November 9, 1998, published in 61 Tex. Bar J. 1140 (Dec. 1998) ("the Order"), are corrected as follows, effective January 1, 1999. The Clerk is directed to file a certified copy 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 by publication in the *Texas Bar Journal*.
2. The format and style of the revisions are part of the official promulgation.
3. In cases filed prior to January 1, 1999, the "discovery period" ends the date the case is set for trial unless otherwise ordered by the court.
4. The rules repealed by the Order continue to govern procedures and limitations in cases filed prior to January 1, 1999, in which the revisions are not applied in accordance with paragraphs 4 or 5 of the Order. Thus, for example, the limitations on interrogatories in former Rule 168(5) would apply in cases not subject to new Rule 190, unless otherwise ordered by the trial court.
5. In paragraph 5 of the Order, the reference to "paragraph 3" is changed to "paragraph 4".

6. To the extent a local rule is irreconcilable with the revisions, the revisions govern, except Rule 191.4.

7. In Rule 801(e)(3) of the Texas Rules of Evidence, the reference to Rule of Civil Procedure 207 is changed to 203.6(b).

8. Rule 190.3(b)(1)(B)(i) is modified as follows: "30 days before the date set for trial".

9. Comment 1 to Rule 190 is modified as follows: "This rule establishes three tiers of discovery plans and requires that every case be in one at all times. A case is in Level 1 if it is pleaded by the plaintiff so as to invoke application of Level 1, as provided by Rule 190.2(a). If a plaintiff does not or cannot plead the case in compliance with Rule 190.2(a) so as to invoke the application of Level 1, the case is automatically in Level 2. A case remains in Level 1 or Level 2, as determined by the pleadings, unless and until it is moved to Level 3. To be in Level 3, the court must order a specific plan for the case, either on a party's motion or on the court's own initiative. The plan may be one agreed to by the parties and submitted as an agreed order. A Level 3 plan may simply adopt Level 1 or Level 2 restrictions. Separate Level 3 plans for phases of the case may be appropriate. The initial pleading required by Rule 190.1 is merely to notify the court and other parties of the plaintiff's intention; it does not determine the applicable discovery level or bind the court or other parties. Thus, a plaintiff's failure to state in the initial pleading that the case should be in Level 1, as provided in Rule 190.1, does not alone make the case subject to Level 2 because the discovery level is determined by Rule 190.2. Likewise, a plaintiff's statement in the initial paragraph of the petition that the case is to be governed by Level 3 does not make Level 3 applicable, as a case can be in Level 3 only by court order. A plaintiff's failure to plead as required by Rule 190.1 is subject to special exception."

10. The last two sentences of comment 2 to Rule 190 are modified as follows: "In a suit to which Rule 190.2 applies, the relief awarded cannot exceed the limitations of Level 1 because the purpose of the rule, unlike Rule 47, is to bind the pleader to a maximum claim. To this extent, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply."

11. The heading to Rule 192.5(c), "Exceptions", is italicized.

12. In the first sentence of Rule 193.3(b), the word "to" is deleted.

13. The following sentence is added to the end of Rule 193.4(b): "A party need not request a ruling on that party's own objection or assertion of privilege to preserve the objection or privilege."

14. Rule 193.4(c) is modified as follows: "*Use of material or information withheld under claim of privilege.* A party may not use — at any hearing or trial — material or information withheld from discovery under a claim of privilege, including a claim sustained by the court, without timely amending or supplementing the party's response to that discovery."

15. In comment 5 to Rule 193, the reference to Rule 195.6(b) is changed to Rule 195.6.

16. Rule 194.2(g) is modified as follows: "any indemnity and insuring agreements described in Rule 192.3(f)".

17. Rule 194.2(h) is modified as follows: "any settlement agreements described in Rule 192.3(g)".

18. Rule 194.2(i) is modified as follows: "any witness statements described in Rule 192.3(h)".

19. The penultimate sentence in comment 1 to Rule 194 is modified as follows: "A party may assert any applicable privileges other than work product using the procedures of Rule 193.3 applicable to other written discovery."

20. The second sentence of Rule 195.6 is modified as follows: "If an expert witness is retained by, employed by, or otherwise under the control of a party, that party must also amend or supplement any deposition testimony or written report by the expert, but only with regard to the expert's mental impressions or opinions and the basis for them."

21. Rule 196.7(a) is modified as follows: "*Request or motion.* A party may gain entry on designated land or other property to inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon by serving — no later than 30 days before the end of any applicable discovery period —".

22. Rule 197.2(d) is modified as follows: "*Verification required; exceptions.* A responding party — not an agent or attorney as otherwise permitted by Rule 14 — must sign the answers under oath except that:".

23. The first sentence of Rule 200.4 is modified as follows: "The deposition officer must: take the deposition on written questions at the time and place designated; record the testimony of the witness under oath in response to the questions; and prepare, certify, and deliver the deposition transcript in accordance with Rule 203."

24. Rule 205.1(d) is modified as follows: “a request for production of documents and tangible things under this rule.”

25. Rule 205.2 is modified as follows: “**Notice.** A party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery. A notice of oral or written deposition must be served before or at the same time that a subpoena compelling attendance or production under the notice is served. A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served.”

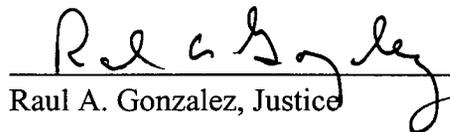
26. The title of Rule 205.3 is modified as follows: “**Production of Documents and Tangible Things Without Deposition.**”

27. Rule 205.3(a) is modified as follows: “**Notice; subpoena.** A party may compel production of documents and tangible things from a nonparty by serving — a reasonable time before the response is due but no later than 30 days before the end of any applicable discovery period — the notice required in Rule 205.2 and a subpoena compelling production or inspection of documents or tangible things.”

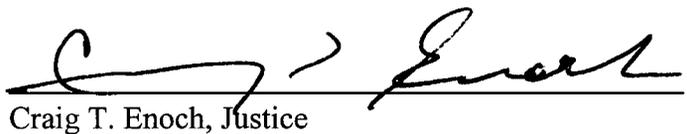
28. The first word in the comment to Rule 215 is changed to “The”.

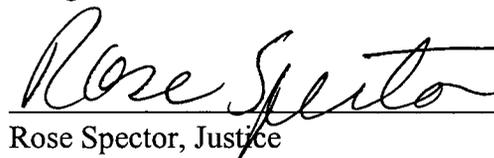
SIGNED AND ENTERED this 31st day of December, 1998.


Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

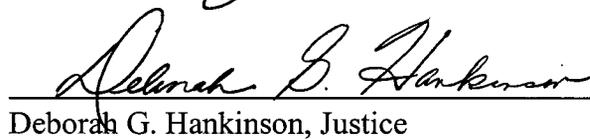

Craig T. Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
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NADINE SCHNEIDER

January 5, 1999

Ms. Kelley King, Editor
The Texas Bar Journal
State Bar of Texas
1515 Colorado Street
Austin, Texas 78701

RE: Order of the Supreme Court of Texas Correcting Revisions to
the Texas Rules of Civil Procedure (my letter November 13, 1998).

Dear Ms. King,

Please find enclosed, a copy of Misc. Docket No. 98-9224 which
provides technical corrections to Misc. Docket No. 98-9196
previously forwarded to you. Please ensure that this new order is
published in the Texas Bar Journal as soon as possible.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.



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of State
Statutory Filings Division
1019 Brazos Street
Austin, Texas 78701

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