

**PREPARING PLEADINGS AND
ASSISTING WITH MOTION PRACTICE**

EMILY T. ROSS

Law Office of Emily T. Ross, PLLC

33300 Egypt Lane, Suite J100

Magnolia, TX 77354

Telephone: (281) 305-2775

Fax: (281) 825-5227

emily@emilyrosslaw.com

www.emilyrosslaw.com

Texas Family Law Practice for Paralegals

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Live, Interactive Webinar

I. INTRODUCTION

Effective processes and procedures are critical when it comes to initial engagement of the client, preparing initial pleadings, and seeking and prosecuting or defending a request for temporary orders. Every office has a different method of handling these tasks; some work better for large firms, others are ideal for small firms. The processes, procedures, and tips in this paper are the systems that work for my solo practice and may prove useful in whole or in part to your office. Regardless of the size of the office, any practice can benefit from the resources published by the Family Law Section of the State Bar of Texas and other resources from private vendors that are updated regularly for family law and civil practitioners. These resources contain helpful forms and checklists for preparing initial pleadings and seeking and obtaining temporary relief.

II. INITIAL INTAKE

The initial call from the Potential New Client (PNC) is the first opportunity to make a good impression and set the tone for the relationship during the case. Care should be taken to be compassionate and polite, but also to navigate the conversation toward getting the information you need to set up the initial consultation. Advise the PNC

what to expect from the consultation and the consultation fee, if any. Once scheduled, a folder should be created with the notes from the initial call that will go into the file if/when the PNC eventually becomes a client. You should also get the following information:

1. PNC's full name and name of opposing party to run conflict check before scheduling;
2. Names, ages, and residence of children;
3. Phone number and private email that opposing party doesn't have access to;
4. State and county of residence, and for how long PNC has lived in the state/county;
5. Type of case (Divorce, SAPCR, etc.);
6. If the case is active, county of filing, cause number, service date, and any known upcoming deadlines/settings;
7. Whether opposing party knows that PNC is meeting with an attorney;
8. Take down PNC's specific questions that should be answered for consultation; and
9. Take consultation fee payment or send link for payment. After the initial call, calendar the consultation and send a confirmation email

with the address of the office, date and time of the appointment, payment link, and instructions on what documents to bring to the consultation, such as the prior order or documents they were served with. We attach to the email a consultation agreement and basic information questionnaire. Our office also calls to confirm the consultation a day ahead of time.

While our office generally prefers to meet PNCs in person, like most businesses during the COVID-19 pandemic, we rely heavily on the use of Zoom and other video conferencing software for initial consultations, and have found it to be nearly as effective as engaging with the PNC in person. We now ask PNCs if they prefer to meet over Zoom, and if so, set up a meeting and send the meeting link in our confirmation email.

III. CONSULTATION AND ENGAGEMENT

The consultation is critical to understanding the case and in developing the relationship with the PNC. It is our opportunity to evaluate them and the case as well as their opportunity to evaluate us and our office. A clean and professional presentation of office staff and space

is crucial. Ensure the office space (or Zoom space) where the PNC will enter and stay during the consultation is clean and free of clutter or information that could disclose confidential information. If your office maintains casual dress throughout the week, dress neatly and in business professional attire. Greet the PNC in a friendly and polite manner, offer them a seat and beverage, and promptly deliver them to the attorney for the consultation. Ensure the paperwork you sent when scheduling the consultation is complete and delivered to the attorney for review and discussion during the consultation. If possible, sit in with the attorney during the consultation and take extensive notes. If you are unable to be present during the consultation, you will need to debrief with the attorney and review their notes before your first contact with the new client following the consultation.

If meeting with a PNC over Zoom, I recommend using a desktop computer with a hard-wired internet connection and a separate camera. A desktop's internet connection tends to be more stable than a laptop computer and a separate camera provides better picture than the computer's built-in camera. I use the AUSDOM AW615 1080 HD PC WebCam 12MP with Built-in Mic and find that it works very well.

The objective of the consultation is to gain a working understanding of the facts of the case, the PNC's goals, and the opposing party's goals, if known. The information obtained from the consultation will be used to develop the initial case strategy, prepare the petition and/or other pleadings and motions, determine the need for and substance of temporary orders, and assess the need for other action, such as engaging in formal discovery or hiring experts. At the interview, considerable time will be spent discussing and clarifying the issues in the case and why the PNC believes the court should decide those issues in their favor. Managing expectations is also critical; the PNC should be made aware of the various options and if known, the probable outcomes and what to expect from the opposing party and the court. The PNC should also be made aware of what to expect from your office, what will be expected of them, and how the case is expected to progress given the county and court where it will be heard.

A non-exhaustive list of what to include in your notes typically are:

1. Status of case, if active;
2. History of the relationship with the opposing party;
3. Reason for the break-up;
4. Relationship with children and history of care/allocation of parental rights and responsibilities;
5. Whether a child has disabilities or special needs and associated costs for care;
6. Current employment status and work schedules;
7. Allocation of financial responsibilities within the marriage (where are paychecks deposited, who pays the bills, etc.);
8. Current and general historical data on employment and earnings;
9. Availability and cost of health and dental insurance, including whether either party or the child receives government assistance;
10. General identification and estimated values of primary assets and debts, if known;
11. PNC's expectations and goals on a temporary and final basis;
12. Issues requiring experts (e.g. business valuation, tracing, etc.);
13. Unique issues, such as marital agreements or potential torts;
14. Names of potential witnesses and relationship to PNC and opposing party;
15. Options PNC was advised of and agreed to;
16. Any initial case strategy discussed;

17. Retainer quoted and discussion about fees; and
18. Whether representation is being declined and reason given for declination.

The PNC may be in the information gathering process or may want to retain your office's services immediately. If a PNC chooses to engage our firm, we will promptly send our Engagement and Fee Agreement and a copy of the Texas Lawyer's Creed. Once the agreement is signed and retainer is paid, I countersign the agreement and the office will send the client a countersigned copy. My office prepares a hard file and electronic file on our shared server and online law practice management system. We include folders for pleadings, correspondence, discovery, documents received by the client, drafts and copies, attorney's notes and research, and attorney's fees. We create additional folders and further segregate documents as the case progresses depending on the need for it in the file (e.g. inventory folder with separate subfolders for bank statements, retirement statements, etc.).

If your office has been retained on an active case, you must be fully aware of the case history and have every document that has been filed with the court or received by the client from the opposing party.

Several courts keep their case history and documents online, but if not, go to the courthouse to view and copy the hard file. You must also calendar any pending settings or pretrial and discovery or expert deadlines if there is already a trial date and/or docket control order. Check the local rules for additional deadlines and filing requirements. For example, Harris County requires that certain documents are exchanged within 30 days after the earlier of the date that Respondent files its first pleading or makes an appearance in the case, and that a notice be promptly filed with the court stating that the disclosure took place. HARRIS (TEX.) CIV. FAM. DIST. CT. LOC. R. 4.4. Determine whether to request from the opposing counsel an extension of pending discovery or other deadlines and whether a Motion for Continuance should be filed. If so, contact opposing counsel to see if there will be an agreement on any extensions and/or Motions, and if not, have the attorney conduct a follow up to discuss the merits of the opposing counsel's refusal.

At the time this paper is being submitted, Rules 169, 190, 192, 193, 194, and 195 of the Texas Rules of Civil Procedure are being overhauled and we are in the middle of the public comment period. The final amendments to these rules will take effect following the comment period on January 1, 2021 and will apply to cases filed on or after January 1, 2021. I encourage you to read the new

rules and be aware that there will be some major changes. For example, under the proposed rules, Rule 194 Disclosures will be replaced by Required Disclosures that are required to be made at or within 30 days after the filing of the first Answer. The required disclosures include specific documents that must be exchanged without a request. The proposed rules are attached to this paper; note that they are subject to change following the comment period and prior to taking effect.

IV. PREPARING THE INITIAL PLEADINGS

The information obtained at the consultation will determine the type and substance of the initial pleadings to be filed. While many cases we encounter will necessitate the filing of an Original Petition or an Original Answer and/or Counterpetition (and these cases are the subject of this paper), this is not always so. For example, cases involving the Texas Department of Family & Protective Services will likely have different pleading requirements and may progress differently than other family law cases.

A. Where to File

Separate papers have been written entirely on issues of jurisdiction and venue, and those issues will not be delved into much detail here; however, it is important to remember that the court should only

decide issues when it has jurisdiction. TEX. FAM. CODE §§6.308, 102.012.

For a divorce, one of the parties must be domiciled in Texas for 6 months prior to the filing of the petition and a resident of the county where the case is filed for the preceding 90 days. TEX. FAM. CODE §6.301. To file a Suit Affecting the Parent-Child Relationship (SAPCR), a party must satisfy one of the standing requirements identified in the Texas Family Code (TFC). *See* TEX. FAM. CODE §§102.003-102.007. With limited exceptions, to make a child custody determination or decide issues related to legal and physical custody and visitation, Texas must be the home state of the child or satisfy one of the other provisions under the Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA). TEX. FAM. CODE §§152.102(3), 152.201. If a party lives outside Texas, an affidavit that complies with the UCCJEA must be attached to the petition. TEX. FAM. CODE §152.209(a). Personal jurisdiction is required if your client is seeking to impose upon the opposing party a personal obligation, such as the payment of child support. *In re S.A.V.*, 837 S.W.2d 80, 83 (Tex.1992). The TFC identifies ways to acquire personal jurisdiction over a nonresident respondent in a divorce or SAPCR. TEX. FAM. CODE §§6.305, 102.011.

A suit for divorce involving children must include a SAPCR. TEX. FAM. CODE §6.406(b). If a SAPCR is filed before the divorce, the SAPCR must be transferred to the divorce court. TEX. FAM. CODE §6.407(a). An original SAPCR must be filed in the county where the child resides unless another court has continuing exclusive jurisdiction (CEJ) or the venue is fixed in a suit for divorce. TEX. FAM. CODE §103.001. The TFC provides for how to determine where a child resides in an original suit. *Id.*

A modification suit needs to be filed in the court of CEJ; however, a change of facts since the last order could cause the court to lose CEJ. A common example is when the child has resided in another county for 6 months. TEX. FAM. CODE §155.201(b). If a child has resided in another county for 6 months, transferring venue to the other county is mandatory and a Motion to Transfer Venue should be filed at the same time as the petition. TEX. FAM. CODE §155.204(b). A court may, but is not required to, transfer venue if the child has lived in another county for less than 6 months or if the transfer is for the convenience of the parties and witnesses and in the interest of justice. TEX. FAM. CODE §155.202. The transferring court retains jurisdiction to enter temporary orders pending transfer and until the receiving court enters the case on its docket. TEX. FAM. CODE §155.005.

B. Drafting the Petition

Before drafting the petition, check the local rules for pleading requirements. For example, Dallas County requires that each page of all documents filed with the court be numbered and descriptively titled, and that orders be separate from the motion. DALLAS CTY. FAM. DIST. LOC. R. 11.01. The petition should accurately and completely reflect the relief the client is requesting on both a temporary and final basis. If the relief is not plead, the client risks not having that issue heard. The petition should be specific enough to give fair notice of the claims and relief sought. *See* TEX. R. CIV. P. 45.

Review the petition with the client before filing to confirm they fully understand and authorize the claims sought and relief requested. Some of the issues that should be addressed within the petition are:

1. Proper jurisdiction (including standing) and venue to support suit and relief requested;
2. Existence of other persons with legal rights with respect to the child;
3. AOPs or legal adjudications of paternity if the child was not born during a marriage;
4. Existence of marriage, including date of marriage and separation;
5. Whether there is a protective order in effect;

6. Grounds for divorce, including fault;
7. Whether there is community property and separate property, and any grounds for a disproportionate division;
8. Whether the child owns property;
9. Type of conservatorship sought and allocation of legal rights and duties;
10. Geographic restrictions;
11. Possession and access schedules;
12. Child and medical support;
13. Name change request;
14. Attorney's fees request;
15. Existence of standing orders;
16. Temporary relief requested (TROs, Temporary Injunctions, and Temporary Orders); and
17. Other issues (existence of common law marriage or marital agreements, tort claims, claims for reimbursement, spousal maintenance, etc.).

Form manuals are extremely useful when preparing initial pleadings. Avoid the desire to copy and paste in its entirety a petition in another case. Begin with a complete form each time you draft so you can use the items therein as a checklist as you go along.

1. Grounds for Divorce

It is sufficient to track the language of the referencing statute when stating the grounds for divorce in the petition. TEX. FAM. CODE §6.402(a). Texas permits no fault divorce; if pleading no fault, use insupportability as the reason for the divorce. You may plead other or additional grounds such as adultery or cruelty, if supported, as pleading will be helpful to develop the theme of the case and presenting evidence at the temporary orders hearing and at final trial.

2. Community and Separate Property

The court is required to divide the community estate in a just and right manner. *See* TEX. FAM. CODE §7.001. What is just and right depends on the circumstances of the parties and facts of the case; it could mean a 50/50 division or an award of a disproportionate share to one party. Some of the factors that the court considers in awarding a disproportionate share include, but are not limited to, fault in the breakup of the marriage, the education and employment history of each spouse, the spouse to whom conservatorship is granted, fraud on the community, the nature of the property involved in the division, and the size of each party's separate estate. Plead whether the client is seeking a

disproportionate share and the factors that support the request. The court is required to confirm that separate property is the property of a spouse; if the client owns separate property, the request for confirmation of that property must also be included in the pleadings.

3. Children

The TFC identifies what items and statements are required for a SAPCR petition. TEX. FAM. CODE §102.008. The client must understand the presumptions and corresponding burdens in SAPCRs such as joint managing conservatorship (JMC), the standard possession order and available elections (SPO/ESPO), and child and medical support.

a. Conservatorship

Plead whether the client is seeking JMC or sole managing conservatorship (SMC). Texas law presumes JMC unless the court finds the appointment would not be in the child's best interest because it would significantly impair the child's physical health or emotional development. TEX. FAM. CODE §153.131. Credible evidence of child neglect, physical or sexual abuse, or family violence before or during the suit will likely result in having to plead for SMC. Therefore, if seeking SMC, include a statement that the appointment of both parents as JMCs

would significantly impair the child's physical health or emotional development. *See* TEX. FAM. CODE §§153.004, 153.005, 153.131(b).

The client should understand the rights and duties identified in the TFC and have a preference as to how they should be allocated. *See* TEX. FAM. CODE §§153.073, 153.074, 153.076, 153.132. If both parents are appointed conservators, the court is required to specify whether the rights and duties, specifically those identified in §153.132, should be exercised by each parent individually, by joint agreement, or exclusively by one parent. TEX. FAM. CODE §153.071. Plead whether the client is seeking the right to designate the primary residence. You may also want to plead other rights the client wants to have allocated exclusively to them, such as the right to make decisions regarding non-emergency invasive medical treatment, psychiatric and psychological decisions, and educational decisions.

b. Possession/Access and Support Provisions

An SPO for the noncustodial parent is presumed to be in the best interest of a child over the age of three. *See* TEX. FAM. CODE §§153.311-153.317; TEX. FAM. CODE §§153.251-153.252. A party who is awarded an SPO is entitled to

exercise all available elections for alternative beginning and ending possession times unless doing so is not in the best interest of the child. §153.317(a). The burden is on the custodial/primary parent to show why exercising an expanded schedule is not in the child's best interest. *Id.* For children under the age of three, the TFC identifies factors for the court to consider when ordering a possession and schedule. TEX. FAM. CODE §153.254.

If the client is seeking SMC, identify whether the other parent should be appointed a possessory conservator. If not, plead that such an appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child. TEX. FAM. CODE §153.191. If it is shown that a party has committed family violence within the two years preceding the filing of the suit or during the suit, the court may order no access or render a specific possession order designed to protect the safety and well-being of the child and victim. *See* §153.004. Track the specific language of the statute when pleading under this provision. *See Id.* Identify whether the client wants the opposing party to have no possession or access and, if possession and access are ordered, the conditions that should be placed on that access (e.g. whether visits should be supervised

and who should supervise them). You may also plead for electronic access. TEX. FAM. CODE §153.015.

Practically, an SPO may also not be workable if a party works on the weekends or has an unpredictable schedule. If the client is the noncustodial parent, you may plead an alternative schedule or plead generically that the court should order a schedule that is in the child's best interest. In cases where an SPO is not workable, either party should have the desired specific parenting plan drafted for the Court prior to the Court rendering a possession and access order.

c. Child and Medical Support

The client's request for support will likely depend on the substance of the requests regarding conservatorship and possession and access. Plead who should be ordered to pay child support, whether the client is seeking support that deviates from the guidelines, and the reasons for the requested deviation. If your client is seeking child support that deviates from the guidelines, but is still under the statutory guideline cap (e.g. \$1,840.00 for one child, \$2,300.00 for two children, etc.), look to the factors identified in TEX. FAM. CODE §154.123. The Court can only order support over the statutory guidelines cap based on the income of

the parties and the proven (both historical and future) needs of the child. TEX. FAM. CODE §154.126; *See Zajac v. Penkova*, 924 S.W.2d 405, 409 (Tex. App.—San Antonio 1996, no writ). While §154.123 doesn't control in this scenario, the factors are instructive and can be helpful in articulating reasons in the petition. Plead who should be ordered to provide medical (health and dental) support and how uninsured medical expenses should be allocated. A disclosure regarding health and dental insurance availability should be attached or included in the petition. *See* TEX. FAM. CODE §§154.181, 154.1815.

4. Requesting Temporary Relief

Temporary relief seeks to maintain the status quo, preserve property, and protect the parties and safety and welfare of the children while a case is pending. Temporary orders address issues such as conservatorship, possession and access, child and medical support, and temporary allocation of assets and debts. Temporary relief is available at any stage of the case, and while many cases present an immediate need for relief, depending on the client's circumstances and the current status quo, it may be beneficial to wait to seek temporary orders. Just as in determining the initial pleadings needed, careful consideration should be given as to

the substance and timing of the request. A clear benefit of getting temporary orders early on is that it sets a status quo, forces an early investigation into the strengths and weaknesses of the client's case, and if a hearing is held, provides insight as to how the court will address certain issues. Temporary orders can also lead to early settlement if a central issue is temporarily resolved, such as primary conservatorship.

Unlike temporary relief in other civil cases, a temporary restraining order (TRO) or temporary injunction in a divorce or SAPCR is not required to define the injury or state why it is irreparable, state why the order is being granted without notice, or include an order setting the case for trial. TEX. FAM. CODE §§6.503(a), 105.001(b). However, if you are also seeking injunctive relief against a third party, your petition will need to meet the requirements for obtaining injunctive relief in civil cases. *See* TEX. R. CIV. P. 680-689.

a. Requesting Extraordinary Relief

Unlike TROs in family law cases generally, if the client is requesting extraordinary relief, the pleadings must be verified or supported by affidavit alleging specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can

be served and a hearing can be held. §105.001(b).

Extraordinary relief is relief seeking to:

1. Attach the body of the child;
2. Take the child into the possession of the court or a person designated by the court; or
3. Exclude a parent from possession of or access to the child. §105.001(c).

The court can waive the requirement of a bond in a temporary order in a divorce or made on behalf of a child. §§6.503(b), 105.001(d).

A violation of a TRO, temporary injunction, or other temporary order is enforceable by contempt. TEX. FAM. CODE §§6.506, 105.001(f). The relief identified should be specific enough to be enforceable. Be careful about copying verbatim from the TFC; one court has found that relief tracking the language of what is now TEX. FAM. CODE §6.501(a)(6) was not specific enough to be enforceable by contempt. *Ex Parte Higginbotham*, 768 S.W.2d 4, 5 (Tex. App—Fort Worth 1989, orig. proceeding). Temporary orders are generally not subject to interlocutory appeal and can be reviewed by mandamus. *See* TEX. FAM. CODE §§6.507, 105.001(e).

b. Temporary Restraining Orders

The request for a TRO and the relief requested as part thereof should be identified in the petition, and a separate TRO containing notice and a hearing date should be filed and served at the same time as the petition. A TRO is valid for the earlier of 14 days or the date the court enters temporary orders. TEX. R. CIV. P. 680. The TRO can be extended once by 14 days on a showing of good cause and can be extended longer than 14 days or more than one time by agreement. *Id.* Always check for a standing order in the county of filing prior to drafting the petition as you may be required to attach the order and serve it with the petition.

The TFC provides a list of relief that can be requested in a TRO during a divorce and SAPCR. Check with the court beforehand if it requires that the TRO be mutual. Regardless, it is generally good practice to make the TRO mutual. Not every request that can be included necessarily should be included. It also may be necessary to request that a party be restrained from certain conduct that is specifically tailored to the facts of the case, although depending on the court, it may not be granted ex parte. Examples include refraining from the use of alcohol around children or prohibiting overnight guests.

The TFC provides that a party may be enjoined from engaging in the following acts without notice and a hearing:

1. Intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;
2. Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;
3. Placing a telephone call, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;
4. Intentionally, knowingly or recklessly causing bodily

- injury to the other party or to a child of either party;
5. Threatening the other party or a child of either party with imminent bodily injury;
6. Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children in the marriage;
7. Intentionally falsifying any writing or record, including an electronic record, relating to the property of either party;
8. Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of one or both of the parties, including electronically stored or recorded information;
9. Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

10. Intentionally or knowingly tampering with the tangible or intellectual property of one or both of the parties, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, regardless of whether the property is personal property, real property, or intellectual property, and whether separate or community property, except as specifically authorized by the court;
12. Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage, except as specifically authorized by the court;
13. Withdrawing money from any checking or savings account in any financial institution for any purpose, except as specifically authorized by the court;
14. Spending any money in either party's possession or subject to either party's control for any purpose, except as specifically authorized by the court;
15. Withdrawing or borrowing money in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan, individual retirement account, or Keogh account, except as specifically authorized the court;
16. Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties, except as specifically authorized by the court;
17. Entering any safe-deposit box in the name of or subject to the control of either party, whether individually or jointly with others;
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or a child of the party;
19. Canceling, altering, failing to renew or pay premiums, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;
20. Opening or diverting mail or e-mail or any other electronic

communication addressed to the other party;

21. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;
23. Taking any action to terminate or limit credit or charge cards in the name of the other party;
24. Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;
25. Destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;
26. Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage or in another electronic storage medium;
27. Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;
28. Deleting any data or content from any social network profile used or created by either party or a child of the parties;
29. Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;
30. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance, at the residence of either party, or in any manner attempting to withdraw any deposit paid in

connection with any of those services;

31. Excluding the other party from the use and enjoyment of a specifically identified residence of the other party;
32. Entering, operating, or exercising control over a motor vehicle in the possession of the other party;
33. Disturbing the peace of the child or of another party; and
34. Removing the child beyond a geographical area identified by the court. TEX. FAM. CODE §§6.501(a), 105.001(a) (3,5).

c. Relief that Cannot be Requested in a TRO

Any relief that requires notice and a hearing cannot be granted in an ex parte TRO. Specifically, a TRO cannot include a provision that:

1. Requires, appoints, awards, or provides for relief identified in §64.104 of the Texas Civil Practice and Remedies Code entitled “Expenditures by Receiver”;
2. Excludes a spouse from occupancy of the residence where the spouse is living, except as provided in a protective order made pursuant to Title 4 of the TFC;
3. Prohibits a party from spending funds for reasonable

and necessary living expenses;

4. Prohibits a party from engaging in acts reasonable and necessary to conduct that party’s usual business and occupation;
5. Provides for the temporary conservatorship of the child, unless requesting extraordinary relief;
6. Provides for the temporary support of the child; or
7. Orders for the payment of reasonable attorney’s fees and expenses. §§6.501(b), 105.001 (a) (1,2,5).

d. Temporary Injunctions and Temporary Orders

After notice and a hearing, a court has the power to grant injunctive relief and make temporary orders. TEX. FAM. CODE §§6.502(a), 105.001(b). Plead for the court turn the temporary restraining order into a temporary injunction and make any temporary orders deemed necessary and equitable for the preservation of the property and protection of the parties and for the safety and welfare of the children. *See* §§6.502(a), 105.001(a). The court is specifically authorized to make the following orders:

1. Requiring a sworn inventory and appraisal of real and personal property owned or claimed by the parties and specifying the form, manner, and substance of the inventory and appraisal and list of debts and liabilities;
2. Ordering payment for temporary spousal support;
3. Ordering production of documents and other tangible things;
4. Ordering payment of reasonable attorney's fees and expenses;
5. Appointing a receiver;
6. Awarding one spouse exclusive use of the residence;
7. Prohibiting one or both parties from spending funds beyond an amount determined by the court to be for reasonable and necessary living expenses;
8. Awarding one spouse exclusive control of a party's usual business or occupation;
9. Awarding control and management over specific property;
10. Temporary conservatorship of the child;
11. Temporary support of the child; and
12. Determining geographic restrictions. §§6.501, 6.502, 105.001(a).

Plead for any additional relief the client will be requesting at the temporary orders hearing (appointment of an amicus attorney, child custody evaluation, production of HIPAA releases, etc.). Include the catchall statement that the court "should make any other orders as deemed necessary and equitable for preservation of the property and protection of the parties and for the safety, welfare, and best interest of the child."

5. Initial Pleadings in a Modification

When petitioning for a modification of a prior order, the order sought to be modified and grounds for modification should be specifically identified in the petition. SAPCR modifications also have additional pleading requirements depending on the relief sought on a temporary and final basis.

a. Modification of Conservatorship and Possession and Access on Final Hearing

If seeking to modify conservatorship or possession and access on a final hearing, plead one of the following:

1. The circumstances of the child, conservator, or other party affected by the order

have materially and substantially changed since the earlier of the date of the rendition of the order or the signing of a settlement agreement on which the order is based;

2. The child is at least 12 years old and has expressed to the court in chambers pursuant to §153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or
3. The conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months. TEX. FAM. CODE §156.101(a).

A conviction or order for deferred adjudication for child abuse or family violence is a sufficient ground to justify a temporary order and modification of a prior order. TEX. FAM. CODE §§156.104, 156.1045.

If seeking to modify the designation of the person having the exclusive right to designate the primary residence within one year of the earlier of the settlement

agreement or the rendition of the prior order, a supporting affidavit must be attached to the petition alleging at least one of the following; if an affidavit is not filed or is inadequate, the court must deny relief and refuse to schedule a hearing:

1. The child's present environment may endanger the child's physical health or significantly impair the child's emotional development;
2. The person with the present exclusive right to designate the primary residence is the person seeking or consenting to the modification and the modification is in the best interest of the child; or
3. The person with the present exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for at least 6 months and the modification is in the best interest of the child. TEX. FAM. CODE §156.102.

b. Temporary Orders
in a Modification
Changing the
Primary
Conservator

The court is generally not permitted to render a temporary order on a modification that has the effect of creating or changing the designation of primary conservator or creating, changing, or removing the geographic restriction within which primary conservator must reside. *See* TEX. FAM. CODE §156.006. If seeking on temporary orders to take such action, there must be a showing that the order is in the child's best interest and:

1. The order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development;
2. The person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than 6 months; or
3. The child is 12 years old or older and has expressed to the court in chambers pursuant to §153.009 the name of the person who is the child's preference to have the exclusive right to designate

the primary residence of the child. §156.006(b).

If pleading the impairment ground, there must be an affidavit attached to the request that is based on the affiant's personal knowledge or belief based on representations made to the affiant by a person with personal knowledge and contain facts supporting the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development. If the affidavit is not attached or is determined to be inadequate, the court is not required to set a temporary orders hearing. §156.006(b-1).

c. Modification of
Child and Medical
Support

To modify a prior order that provides for child support or medical support, including health insurance and dental insurance coverage, a party must plead one of the following:

1. A material and substantial change in circumstances of the child or a person affected by the order since the earlier of the date the order was rendered or the signing of a settlement agreement; or
2. 3 years have passed since the last order was rendered or

modified, and the monthly amount of child support differs by either 20% or \$100 from the amount that would be awarded under the current guidelines. TEX. FAM. CODE §156.401(a).

Plead that the child support award should retroactively apply to obligations accruing after the earlier of the date of service of citation or an appearance in the suit. §156.401(b).

If the parties agree to a child support order that is different than what would be ordered as guideline child support, the order can only be modified on a finding of a material and substantial change in circumstances. §156.401(a-1). In a IV-D case, a child support order that doesn't include a provision for health care or dental care coverage can be modified at any time without meeting the statute's pleading requirements. §156.401(a-2). Release of an obligor from incarceration is also considered a material and substantial change if the child support obligation was abated, reduced, or suspended during incarceration. §156.401(d).

C. The Client is the Respondent

If the client is the Respondent, you will need to obtain all pleadings and other documents on file with the court or that the client has received

from the opposing party to evaluate the type and substance of the responsive pleadings. While many cases simply require the filing of an Original Answer and counterpetition, other cases are going to need to be more scrutinized more carefully. This paper provides some common examples of the different types of responsive pleadings that may be filed.

Consider issues of jurisdiction and venue before filing any substantive pleadings. Procedural issues should be addressed before substantive issues to save the client time and money, and in some instances to avoid waiver. A Special Appearance contesting personal jurisdiction as to the case or a particular claim follows the "due order of pleadings" requirement and must be filed first before any Motion to Transfer Venue, answer, or other pleading. TEX. R. CIV. P. 120a. A Motion to Transfer Venue based on mandatory grounds must be filed on or before the first Monday after the 20th day after the date of service of citation or notice of the suit or before the hearing starts, whichever is sooner. §155.204(b). If contesting a motion to transfer, a controverting affidavit must be filed on or before the first Monday after the 20th day after notice of the motion is served. §155.204(d). A plea to the jurisdiction challenges subject matter

jurisdiction (e.g. a party lacks standing to proceed with the case) and a plea in abatement should be filed if the domicile or residency requirements have not been met.

Answers must be filed by 10:00 a.m. on the Monday following the expiration of 20 days after service of citation. TEX. R. CIV. P. 99. The answer should contain any verified denials or affirmative defenses. TEX. R. CIV. P. 93, 94. Prepare a counterpetition in addition to an answer. The court may decide not to consider the client's requests for relief without a request for affirmative relief on file, even if the opposing party has put them at issue in their petition. File and serve the answer and counterpetition before the temporary orders hearing to put the opposing party on notice of the requested relief. Set a temporary orders hearing for the same date and time as the Petitioner's hearing.

There may not be enough time to adequately prepare for the hearing, and thus it may be necessary to file a Motion for Continuance. Before any continuance is filed, opposing counsel should be contacted to discuss an agreed reset or whether band aid orders can be put in place in the interim.

D. Certificates, Notice, Filing, Setting Hearings, and Service

Local rules often have specific requirements that reiterate or expand upon the rules pertaining to certificates, notice and setting hearings. For example, Tarrant County requires that a party include language in a request for an ex parte TRO certifying that there is no attorney for the opposing party; or that there is an attorney for the opposing party and that attorney was notified of the request for ex parte relief, and either no attorney wishes to be heard before presentment; the parties were unable to reach an agreement and the attorney was notified of the date and time of the hearing; or they were unable to reach the attorney. TARRANT CTY. FAM. DIST. LOC. R. 4.01 (13.2). Dallas County has a very similar rule. *See* DALLAS CTY. FAM. DIST. LOC. R. 2.02.

Review the county fee schedule so you can inform the client of the filing and service costs beforehand. Many counties have their fee schedules online. As of December 11, 2018, the Texas Supreme Court no longer requires that a Civil Case Information Sheet be filed with a new filing. Some counties still prefer the sheet be filed, and your county may have other specific ancillary documents that are required to be

filed, so contact the clerk's office or check online beforehand. You should check prior to the filing of any new suit because a county's requirements are always subject to change. Check whether the county clerk requires that ancillary documents be filed as lead documents or as attachments as e-filing requirements differ from county to county. Find out the procedures are for getting a TRO signed and picked up for service. Depending on the county and court, the TRO may need to be electronically filed and signed or walked through the court. In Harris County, you may contact the court once the petition and TRO have been accepted and request that the TRO be signed.

Once the petition and proposed TRO are filed and signed, the court may set its own hearing date or you may need to contact the court to get a date. A party must be given 3 days notice of the temporary orders hearing, and 6 days notice if serving by mail. TEX. R. CIV. P. 21(b), 21a(c). Tarrant County also requires 3 days notice of any hearing requesting temporary relief and prohibits a temporary or final hearing in a modification suit to occur prior to the answer deadline unless an affidavit is attached to the petition setting forth special circumstances. TARRANT CTY. FAM. DIST. LOC. R. 4.01(5). Dallas County requires that a party

use specific form language when notifying the other side of a hearing. DALLAS CTY. FAM. DIST. LOC. R. 3.03.

Service of the petition and TRO is conducted in the same manner as service generally in civil cases. TEX. FAM. CODE §102.009(c), *see* TEX. R. CIV. P.106, 686-689. In addition to the parties, anyone affected by the petition or TRO needs to be served. Once served, the return of service must be filed with the court and be on file for 10 days, exclusive of the day of filing and judgment, before a default judgment can be taken. TEX. R. CIV. P.107(h).

The opposing party may execute a waiver of service in lieu of being formally served, and the waiver, once completed, must be filed with the court. A waiver of service in a divorce and SAPCR are governed by the TFC, and must be sworn, acknowledge receipt of a copy of the filed petition, and contain the mailing address of the waiving party. TEX. FAM. CODE §§6.4035, 102.0091. It is good practice to wait at least a day after the petition is filed to get the waiver signed so it is clear to the court that the waiver was signed after the petition was filed.

III. PREPARING FOR THE TEMPORARY ORDERS HEARING

Like all aspects of preparation up to this point, you must first understand the local rules and rules of the county and specific court where the hearing will be held for the case to be presented efficiently and effectively. These rules will dictate matters such as time limits, what documents are required for the hearing, whether the court requires the parties to attend mediation beforehand, and whether the court will have a court reporter on hand or whether you need to make arrangements to have someone present. A lot of this information can be found online in the local rules or on the court's website. If you cannot find the information online, call the court or a colleague. Review a complete copy of the temporary orders form from the form manual and the relief requested in the petition beforehand to determine if there are other issues that need to be addressed at the hearing or if the petition should be amended to reflect different or additional relief due to changed facts since the filing.

Your role in preparing the case for a temporary orders hearing is critical; the more thorough and complete your preparation, the more effective and impressive the

attorney's presentation will be at the hearing.

A. Know The Client's Story

By the time you are at the hearing preparation stage, you should have a thorough knowledge of the client's history, the relief sought, and the reasons for requesting such relief. While some courts simply do not provide the time necessary at a hearing to allow the attorney to develop the client's story and motivations in as detailed a manner as preferred, that doesn't mean you should not have all of that information at the ready just in case. Depending on the type of case and contested issues, the following information regarding the client should be known and included in the file. Much of this information should have been discussed at the consultation, although in some respects, in a more general context:

1. Individual history of client, opposing party, and their extended family's involvement in the nuclear family;
2. History of the client's relationship with opposing party;
3. Reason for the breakup or the filing of the petition;
4. Parties' educational backgrounds;

5. Parties' employment history and work schedules;
6. Parties' earnings history;
7. Details regarding children's education (name of schools and teachers, subjects, grades, etc.) and extracurricular activities (type of activity, name of coaches, practice and game schedule, etc.);
8. Daily schedule for parties and children ("day in the life");
9. Child care plans;
10. Division of responsibility for children, home, and finances;
11. Information regarding treating care providers for parties and children, and medications;
12. Proposal for temporary use of the marital residence and possession of other property;
13. Proposal for temporary allocation of financial and credit card accounts;
14. Monthly income and expenses, how the bills are paid, and who should pay what bills;
15. "Bad facts" on either side (drugs, domestic violence, etc.);
16. Information regarding witnesses and their possible testimony;
17. What the opposing party will say about the client;
18. Who should have the primary right to designate the residence of the children and why;
19. How other rights and duties should be allocated;
20. Proposed visitation schedules; and
21. Proposed child support and medical support allocation and amounts.

B. Develop a Theme

The client's case should have an overarching theme that started developing at the consultation, forms the basis of the substance of the initial pleadings, and continues at the temporary orders hearing. The theme should be reinforced through exhibits and direct and cross examination points. Perhaps the client has been the stay at home spouse and primary caretaker of the children throughout the marriage and seeks to maintain the status quo. She/he may want to remain in the marital residence with the children and be provided with child, medical, and temporary spousal support. If the client is advocating to change the status quo, the evidence presented should reflect why it should change and why the change protects the parties, preserves property, and/or is in the safety and welfare and best interest of the child. Perhaps the client has simply shown themselves to be

the parent who exercises better judgment with respect to the child.

C. Frame the Issues

A review of the pleadings, documents previously exchanged, if any, and any information gathered from the client and opposing side should provide insight into the contested issues at the hearing. It is critical that time is spent focusing on the issues; therefore, it is just as important to know what is not going to be contested. The issues should be framed in a clear and concise manner for the court. The exhibits and direct and cross examination points should help frame and support the issues, and seemingly irrelevant evidence, while documented in the file to use if/when needed, should be disregarded for the purpose of the hearing.

D. Know how to Prove the Client's Requests

The prevailing legal standards and presumptions discussed in this paper along with public policy will serve as the foundation for the theme of the case, provide supporting grounds for the client's requests, and be used for examination points for the hearing. Keep such factors in mind when you're communicating with the client about the documentation and information needed for the hearing, and importantly, when asking the

client follow up questions about the relief they are seeking.

The best interest of the child will be the court's primary consideration. The public policy of Texas is to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, provide them with a safe, stable, and nonviolent environment, and encourage parents to share in the rights and duties. TEX. FAM. CODE §153.001. Recall the reasons for temporary orders are to maintain the status quo, preserve property, and to protect the parties and safety and welfare of the child. Discuss with the client reasons that would skew the best interest factors in your client's favor and away from the opposing party. The best interest factors are:

1. The desires of the child;
2. The emotional and physical needs of the child now and in the future;
3. The emotional and physical danger to the child now and in the future;
4. The parental abilities of the individuals seeking custody;
5. The programs available to assist these individuals to promote the best interest of the child;

6. The plans for the child by these individuals or the agency seeking custody;
7. The stability of the home or proposed placement;
8. The acts or omissions of the parent which indicate the existing parent-child relationship is not a proper one; and
9. Any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371-372 (Tex.1976).

E. Assign Homework

The client should know prior to engagement that they will be assigned homework and will be expected to complete it timely and accurately. Coordinate with the client any information and documents needed before the hearing. The type of information requested will vary depending on the type of case and relief sought. My office typically sends an inventory and appraisal form for the client to complete prior to the hearing in the event certain real or personal property, businesses, accounts, or debts need to be accounted for and temporarily allocated at the hearing. You should have the client provide the following:

1. Any documents required by the local rules;

2. Financial information statement;
3. Back up documents to financial information statement;
4. W-2 statements and tax returns for the last two years;
5. Last two paystubs showing year to date earnings;
6. Inventory and Appraisal;
7. Health and dental insurance summary of benefits and premium costs breakdown;
8. Timeline of relevant events, typically beginning with the client's relationship with the opposing party;
9. "Day in the life" document;
10. Custody questionnaire;
11. A list of requested relief;
12. A list of real and personal property the client wants to have exclusive use over while the case is pending, including a list of property the client wants from the home if leaving or if the court awards the other party temporary use of the home;
13. Documents related to specific events, such as a police report or photographs;
14. Identification of bills or debts each party should pay while the case is pending with last 3 digits of the account numbers;
15. Calendar of missed or exercised visitation;

16. Best interest checklist; and
17. A signed HIPAA release from the client.

F. Prepare Exhibits and File

The homework completed by the client will aid in preparing the exhibits. Have exhibits available on a USB drive for use during the hearing. My office will organize the hard file and have the file and exhibits on a USB drive for easy access from a laptop in court. We also prepare an attorney hearing notebook and an exhibit notebook for witnesses and the court. Some courts prefer exhibits only in electronic form and some prefer notebooks, so it is important to check beforehand. The attorney's hearing notebook will contain at minimum live pleadings, discovery responses, if any, and the exhibits.

Several courts around the State are conducting temporary orders hearings via Zoom during the COVID-19 pandemic. Check the rules for exhibit exchange deadlines as your court may require that exhibits be exchanged the day before the hearing and submitted to the court using a file sharing application, like Dropbox. If you are used to attending the hearing with your attorney and pulling up exhibits on prompting from the attorney, you may be able to participate in the Zoom hearing by having the exhibits available on your PC and sharing your screen or by

sitting next to the attorney and working off his/her computer.

Hearing exhibits should include:

1. Summary of relief requested;
2. Personal property take-list;
3. Proposed parenting plan, if the client isn't seeking a Standard/Expanded Possession Order;
4. Calendar of missed/exercised visitation;
5. Photographs of the child/child and parent;
6. Photographs of new home if the client is leaving the home;
7. Financial information statement (include back up documents in the file)
8. Child support calculation and health/dental insurance premium costs breakdown;
9. Any documents required under the local rules;
10. If seeking interim attorney's fees, Engagement Agreement, CV, bills, and summary of anticipated fees; and
11. Case specific documentation (records, photographs, police report, etc.).

G. Select Witnesses

If a time constraint is imposed by the court, the parties are often the only witnesses, but collateral

witnesses should be considered when they have personal knowledge about a specific event or pattern of behavior that is relevant to the hearing or if they have specialized knowledge (e.g. records custodian or expert). A clearly biased witness, like a grandparent who could only bolster the client's testimony if there is nothing new or specific to offer through that witness, should be avoided.

Interview the witness beforehand outside the presence of the client. Find out what the witness knows and their willingness to get involved. Thereafter, discuss with the client what the witness said. If a medical or health care professional is testifying, get the records as early as possible so they can be reviewed prior to the hearing.

H. Prepare the Client for Court

Preparing the client for court is best done prior to the day of the hearing. The client should be appropriately "woodshed" on what to expect procedurally while in court, the order of presentation, what to expect while testifying, anticipated questions and witnesses, and how to appropriately answer questions. If the client has been prepped for court prior to the day of the hearing, arrange for them to meet the attorney 30 minutes – 1 hour in advance to discuss last

minute matters. Before the client comes to court, discuss appropriate dress and conduct, how to get to court and where to meet the attorney, where to park, parking fees, and how long the client can expect to be there.

If the hearing is being conducted via Zoom, you should have the client testify at your office from a computer in a different room with a clean background and no distractions. The client should arrive early enough to have a practice Zoom call to ensure they look presentable for the camera. I have the client seated back, away from the computer and camera, with their hands in their lap looking straight ahead. We position the computer and camera leveled with the client and not hovered over their laptop looking down into the camera; I have found that this stance looks aggressive at a Zoom hearing. Remember, you are trying to recreate the look of the client being on the witness stand. If there will be multiple witnesses and you have enough time, check that they also look presentable in front of the camera from where they are testifying.

IV. PREPARING THE TEMPORARY ORDERS

It is best to have prepared proposed language for an unusual issue the client wants addressed and attach it to the relief requested exhibit in the event the court agrees to order

the relief (e.g. a proposed parenting plan that differs from an SPO). If a default judgment is anticipated, prepare a proposed order for the court to sign following the hearing. Following a contested hearing, the court will typically set an entry date, which is the date by the which the order must be filed or a hearing must be held to address drafting disputes. Some courts may also have deadlines by which you must get the proposed order over to the other side, so each party has enough time to review the proposed order prior to entry.

A. Get the Ruling

The court may render an oral ruling immediately or a written ruling following the hearing. If the court renders an oral ruling, take extensive notes if you're present at the hearing, get the attorney's notes following the hearing, or order the transcript. Several courts have blank temporary orders forms that can aid in documenting the ruling. I bring an extra copy of my relief requested document to write on when I'm getting the ruling.

B. Drafting the Temporary Orders

Generally, the prevailing party prepares a draft of the proposed order. Like preparing the initial pleadings, start with the temporary orders complete form from the form

manual and tailor it to the ruling in your case. As you move through your order, rather than copying and pasting an entire order from a prior case, refer to a prior order wherein you have had a similar provision and copy that provision only so that you don't have to rewrite an already well written provision, but you also focus on each specific provision and are able to best avoid leaving a provision out on the current order.

1. Refer to the Local Rules

Check the local rules before drafting temporary orders because some counties have required language. For example, Tarrant County requires that every temporary order containing provisions for child support must contain a paragraph ordering the parties to pay the appropriate fees that may be charged by the agency to whom child support is paid. TARRANT CTY. FAM. DIST. LOC. R. 4.01(7).

2. Be Specific

The language of the order must be clear, specific, and unambiguous so that it can be enforceable by contempt. Identify the parties and children by name. Identify the rights and duties of each conservator and whether that conservator may exercise those rights exclusively, jointly, or independently. The terms and conditions of a

visitation schedule should provide specific days or dates, beginning and ending times, who is to surrender and return the children, and where the surrender and return will occur.

An order for child or medical support, spousal support, or reimbursement of health insurance or dental insurance premiums should state the amount of support ordered, the dates for payments, where and to whom payments must be made, and the duration of the obligation. If spousal support or other payments are ordered, I typically use the form child support language as a jumping off point to ensure the command language is specific; make sure to include manner of payment as these payments will not be made through the Office of the Attorney General.

Any orders for payments enforceable as child support should contain wage withholding provisions and be submitted with a wage withholding order along with any other documents required by the court. Orders for temporary possession of property should also contain unambiguous language identifying and awarding a specific asset to a party, and the deadline and location by which a party may retrieve that asset, if not already in that party's possession.

3. Contents of the Order
Temporary orders should identify and address:

1. Date of hearing;
2. Appearances;
3. Jurisdiction;
4. Identification of children;
5. Findings and reasons for issuance (“preserve property”, “protection of spouse”, “safety and welfare of the child”);
6. Type of conservatorship ordered;
7. The identification and allocation of rights and duties;
8. Possession and access schedule;
9. Passport provisions;
10. Temporary child support and wage withholding provisions;
11. Temporary medical support and health care and dental care provisions;
12. Temporary allocation of property and debts;
13. Temporary allocation of costs, support, and attorney's fees;
14. Temporary injunctions;
15. Other provisions (deadlines to produce inventory and appraisal, parenting classes, mediation, etc.); and
16. Statutory warnings.

C. Clarifying and Modifying Temporary Orders

File a Motion to Clarify if the temporary orders are not specific enough to be enforceable by contempt. You may also file a Motion for Additional Temporary Orders if the original temporary orders don't address a certain issue. File a Motion to Modify Temporary Orders if you wish to change a substantive matter. A showing of a material and substantial change in circumstances is not necessary to modify a temporary order; rather, it is sufficient to show that the modification is for the safety and welfare of the child. TEX. FAM. CODE §105.001(a); *In re Casanova*, No. 05-14-01166-CV, 2014 Tex. App. LEXIS 12638, at *10 (Tex. App.—Dallas, Nov. 20, 2014).

Keep in mind that the decision to grant additional temporary orders or modify existing orders varies from court to court, and some courts may require a supporting affidavit for additional temporary orders or outright refuse to hear additional requests. Because it can be difficult (if not impossible) and expensive to be heard multiple times prior to final trial, try to anticipate future issues and be as inclusive as possible the first time around.

preparing to prosecute or defend a request for temporary orders. While it is important to anticipate what the opposing party will do and to respond appropriately, don't be exclusively focused on being on the defensive. Sticking to the theme and keeping in mind the client's story, motivations, and goals will go a long way in conveying a clear and persuasive presentation both in writing through the pleadings and in the evidence at a temporary orders hearing.

V. CONCLUSION

Preparation and focusing on the big picture is critical when

Appendix A: Initial Intake Form

Consultation Form

Hello, may I speak with _____. I am returning your call. Is this a good time? Or, how may we help you today?

How did you hear about our office?

We are a family law firm working with divorce, child custody, and property division.

You are doing the right thing by calling an attorney.

Our firm requires a consultation with Emily so she may better understand your case. During the consultation Emily will discuss with you your specific situation, your legal rights and options, and how we may help you.

Consultations typically last an hour to an hour and a half.

There is a consultation fee of \$200. If you hire Emily within 30 days of the consultation the fee will be applied towards your retainer.

- Emily has been working in family law for over 10 years.
- Retainers depend on the complexity of the case. Emily is the only one who can quote the amount of the retainer after hearing the facts of the case.
- Inform potential client that they will be receiving a confirmation via email with attached information questionnaire, consultation agreement and option to pay consultation fee with link in the email.

Information on client

Consultation date and time:	
Name:	
Phone:	
Email: Is this an email that the other party has access to?	
Regarding: (divorce, child support, adoption etc.)	
State/County/Length of time at residence	
First and Last name of opposing party: (check parties on conflict checklist)	Children's names/ages/residence
Cause number/upcoming settings:	

Office information	
Phone number:	281-305-2775
Fax number:	281-825-5227
Address:	Law Office of Emily T. Ross 33300 Egypt Lane, Suite J100 Magnolia, TX 77354
Website:	emilyrosslaw.com
Email:	info@emilyrosslaw.com emily@emilyrosslaw.com

Appendix B: Consultation Agreement



Date: _____ Who referred you to the office? _____

Reason for your visit:

Divorce	Termination/Adopt.
Modification	Child Support
Paternity	Name Change
Protective Order	Pre-Marital Agreement
Enforcement	Other:

CONSULTATION AGREEMENT

The Law Office of Emily T. Ross, PLLC provides an initial one-hour consultation at a rate of \$275.00, which is due in advance. You must first sign this agreement before receiving any professional services. Any time spent thereafter will be billed in 6-minute increments at \$275.00/hour and will be due immediately following the consultation. If you decide to hire the Firm within 30 days of the initial consultation, the \$275.00 will be applied towards your retainer.

At your initial consultation, you and the attorney will identify the type of case you have, the key issues, and the options you may have under the law. You and the attorney will discuss whether the Firm will represent you, what the representation could involve, and the amount of the initial retainer that would be required.

At the conclusion of the consultation, the attorney may provide you with a contract for employment. If you or the Firm do not sign this contract for employment, an attorney-client relationship between you and the Firm will not extend beyond the initial consultation. However, any communications you make to the attorney during the initial consultation are protected by the attorney-client privilege.

SHOULD THIS OFFICE NOT BE RETAINED FOR ANY REASON, YOU ARE STRONGLY ENCOURAGED TO SEEK LEGAL ADVICE FROM ANOTHER ATTORNEY AS SOON AS PRACTICABLE AS YOUR CASE MAY HAVE TIME SENSITIVE DEADLINES THAT REQUIRE YOU TO ACT QUICKLY. LEGAL RIGHTS CAN BE LOST WITH THE PASSAGE OF TIME; FAILURE TO SEEK LEGAL ADVICE IMMEDIATELY MAY CAUSE YOU TO LOSE SOME OR ALL OF YOUR RIGHTS.

As evidenced by my signature below, I have read, understand and agree to the terms of this consultation agreement. I understand that and unless I and the attorney sign a contract for employment, neither the attorney nor the Law Office of Emily T. Ross, PLLC have any obligation to provide services of any kind after the initial office consultation is completed.

Print Name _____ Signature _____ Date _____

Appendix C: Information Questionnaire



BASIC INFORMATION SHEET

To better assist you with your case, please fill out the entire form by providing as much information as you can. It is very important that you answer this questionnaire truthfully as the attorney will rely upon the truthfulness of your answers in preparing your case.

You should answer all questions relevant to your case. If you believe that a question does not apply to your particular situation, please indicate by marking the question "N/A." If the question applies to your case, but you don't know the answer, please indicate that you don't know. Refer to the question to which your answer applies.

Remember that the Law Office of Emily T. Ross, PLLC does not represent you until a contract for employment is signed by you and the attorney and the conditions stated in the contract required for employment have been met.

Date: _____

Information about You

Your full legal name: _____

Previous/Maiden names used: _____

Your relationship to the children who are the subject of this case:

How did you hear about our office?

Friend (Please provide name and address) _____

Internet (Please provide name of site or search terms used) _____

Other (Please specify) _____

Birthdate: _____

Age: _____

Birthplace (county and state): _____

Social security number (last 4): _____

Driver's license number (last 3) and issuing state: _____

Home address: _____

Mailing address: Same as home address

Home telephone number: _____

Mobile telephone number: _____

Fax number: _____

Email address: _____

Website: _____

Address where you prefer to receive mail from our office:

May we contact you via email for routine questions or to send you documents?

Yes No

How long have you lived in Texas? _____

County of residence: _____

How long have you lived in this county? _____

Employer: _____

Occupation: _____

Business address: _____

Length of time at current employment: _____

Salary/Hourly Rate: \$ _____

Motor vehicle (year, make, model, color): _____

Information about Opposing Party

Full legal name of other parent or person: _____

Previous/maiden names used: _____

Relationship to the children who are the subject of this case:

Birthdate: _____

Age: _____

Birthplace (county and state): _____

Social security number (last 4): _____

Driver's license number (last 3) and issuing state: _____

Home address: _____

Mailing address: Same as home address: _____

County of residence: _____

Length of time in county: _____

Home telephone number: _____

Mobile telephone number: _____

Fax number: _____

Email address: _____

Website: _____

Employer: _____

Occupation: _____

Business address: _____

Business telephone: _____

Length of time at current employment: _____

Salary: \$ _____

Physical address for service of documents on opposing party:

Home address

Business address

Other address _____

Hours and dates at the above address for service of documents on opposing party:

Height, weight, and hair color & length of opposing party:

Other distinguishing characteristics of opposing party, if any (tattoos, piercings, etc.), which may help our office identify the appropriate party upon which to serve documents: _____

Vehicle driven by opposing party (year, make, model, and color):

Information about the Children who are the Subject of this Action

1. Full legal name: _____

Birthplace (county and state): _____

Birthdate: _____

Born/Adopted during this marriage? _____

Gender: _____

Disability, if any: _____

Social security number (last 4): _____

Driver's license number and issuing state: _____

Present residence: _____

Length of time at present address: _____

School: _____

Dates attended: _____

Grade: _____

Name of teacher(s), counselor(s), or principal(s) who is/are familiar with the child: _____

If any of the foregoing teacher(s), counselor(s), or principal(s) may have knowledge of information significant to your case, *other* than the standard information a school would normally maintain (such as grades or attendance), please state the name of the person with the information and give a brief description of the information. An example of this information might be having witnessed behavior by a parent or child relevant to this case:

2. Full legal name: _____

Birthplace (county and state): _____

Birthdate: _____

Born/Adopted during this marriage? _____

Gender: _____

Disability, if any: _____

Social security number (last 4): _____

Driver's license number and issuing state: _____

Present residence: _____

Length of time at present address: _____

School: _____

Dates attended: _____

Grade: _____

Name of teacher(s), counselor(s), or principal(s) who is/are familiar with the child: _____

If any of the foregoing teacher(s), counselor(s), or principal(s) may have knowledge of information significant to your case, *other* than the standard information a school would normally maintain (such as grades or attendance), please state the name of the person with the information and give a brief description of the information. An example of this information might be having witnessed behavior by a parent or child relevant to this case:

3. Full legal name: _____

Birthplace (county and state): _____

Birthdate: _____

Born/Adopted during this marriage? _____

Gender: _____

Disability, if any: _____

Social security number (last 4): _____

Driver's license number and issuing state: _____

Present residence: _____

Length of time at present address: _____

School: _____

Dates attended: _____

Grade: _____

Name of teacher(s), counselor(s), or principal(s) who is/are familiar with the child: _____

If any of the foregoing teacher(s), counselor(s), or principal(s) may have knowledge of information significant to your case, *other* than the standard information a school would normally maintain (such as grades or attendance), please state the name of the person with the information and give a brief description of the information. An example of this information might be having witnessed behavior by a parent or child relevant to this case:

4. Full legal name: _____

Birthplace (county and state): _____

Birthdate: _____

Born/Adopted during this marriage? _____

Gender: _____

Disability, if any: _____

Social security number (last 4): _____

Driver's license number and issuing state: _____

Present residence: _____

Length of time at present address: _____

School: _____

Dates attended: _____

Grade: _____

Name of teacher(s), counselor(s), or principal(s) who is/are familiar with the child: _____

If any of the foregoing teacher(s), counselor(s), or principal(s) may have knowledge of information significant to your case, *other* than the standard information a school would normally maintain (such as grades or attendance), please state the name of the person with the information and give a brief description of the information. An example of this information might be having witnessed behavior by a parent or child relevant to this case:

Health Insurance

If private health insurance is in effect on the children, please answer the following questions:

Name of insurance company: _____

Policy number: _____

Which parent is responsible for payment of insurance premiums?

Is coverage provided through parent's employment? Yes No

If private health insurance is *not* in effect, are the children receiving medical assistance under a government sponsored or subsidized plan? If so, list all sources of such assistance and the cost of any premium on each:

If the children are *not* receiving private or government insurance, does either parent have access to private insurance? If yes, state which parent has such access and what is the cost:

Additional Information

Date and place of marriage, if any, to opposing party:

Date of separation/date you stopped living together as husband and wife:

Do you want your maiden name restored? Yes No

Name to restore: _____

IS THERE IS A PRIOR ORDER IN YOUR CASE? Yes No

IF YES:

Name of Prior Order: _____

Date and Cause Number of Prior Order: _____

Where Order Entered (city and state): _____

Do you have a copy? _____

Current Proceedings

Are there any court proceedings currently pending in this action? If so, please give name, county, and state of court, date of filing, case number, and status of case:

Does the opposing party in this matter have an attorney? If so, state the attorney's name, address, and phone number:

Court Ordered Relationships (List Any of the Following In Existence)

1. Managing conservator
 Possessory conservator
 Custodian under the decree of another state
 Person with visitation or access
 Guardian of the estate of the child
 Guardian of the person of the child

First, middle, and last name: _____

Home address: _____

Relationship to child: _____

Telephone number: _____

2. Managing conservator
- Possessory conservator
- Custodian under the decree of another state
- Person with visitation or access
- Guardian of the estate of the child
- Guardian of the person of the child

First, middle, and last name: _____

Home address: _____

Relationship to child: _____

Telephone number: _____

**Other Litigation Regarding Custody, Visitation, Domestic Violence,
Protective Orders, Termination of Parental Rights, Adoption, or Enforcement
of Any Such Order**

1. Name, county, and state of court: _____

Case number: _____

Date of proceeding: _____

Name of opposing party: _____

Your relationship to opposing party: _____

Names of children the subject of action and your relationship to

children: _____

Name, address, and phone number of attorney that represented you:

Name, address, and phone number of attorney that represented opposing party:

Nature of proceeding:

Custody

Visitation

Domestic Violence

Protective Order

Termination of Parental Rights

Adoption

Enforcement

Other (Please describe): _____

2. Name, county, and state of court: _____

Case number: _____

Date of proceeding: _____

Name of opposing party: _____

Your relationship to opposing party: _____

Names of children the subject of action and your relationship to children: _____

Name, address, and phone number of attorney that represented you:

Name, address, and phone number of attorney that represented opposing party:

Nature of proceeding:

Custody

Visitation

Domestic Violence

Protective Order

Termination of Parental Rights

Adoption

Enforcement

Other (Please describe): _____

Appendix D: Misc. Docket No. 20-9101

IN THE SUPREME COURT OF TEXAS

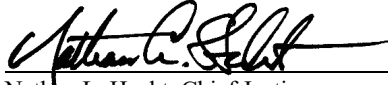
Misc. Docket No. 20-9101

**ORDER AMENDING TEXAS RULES OF
CIVIL PROCEDURE 47, 169, 190, 192, 193, 194, AND 195**

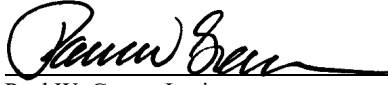
ORDERED that:

1. In accordance with the Act of May 27, 2019, 86th Leg., R.S., ch. 696 (SB 2342), the Supreme Court approves the following amendments to Rules 47, 169, 190, 192, 193, 194, and 195 of the Texas Rules of Civil Procedure.
2. The amendments take effect January 1, 2021, and apply to cases filed on or after January 1, 2021, except for those filed in justice court.
3. The amendments may be changed before January 1, 2021, in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by December 1, 2020.
4. Because the Court previously approved amendments to Rule 47, effective September 1, 2020 (Misc. Dkt. No. 20-9070), the amendments to Rule 47 approved in this Order are shown in redline against the version of Rule 47 that takes effect September 1, 2020.
5. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

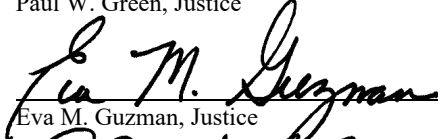
Dated: August 21, 2020



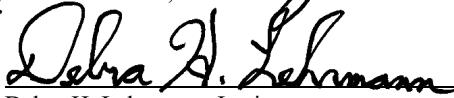
Nathan L. Hecht, Chief Justice



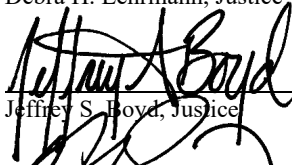
Paul W. Green, Justice



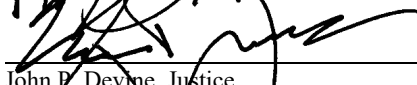
Eva M. Guzman, Justice



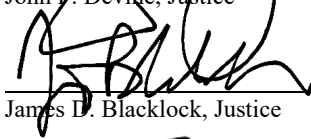
Debra H. Lehrmann, Justice



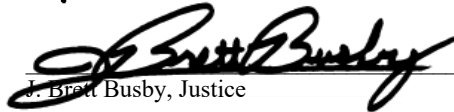
Jeffrey S. Boyd, Justice



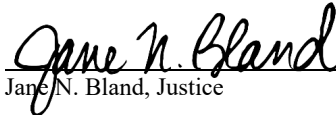
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

RULE 47. CLAIMS FOR RELIEF

An original pleading which sets for a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

- (a) a short statement of the cause of action sufficient to give fair notice of the claim involved;
- (b) a statement that the damages sought are within the jurisdictional limits of the court;
- (c) except in suits governed by the Family Code, a statement that the party seeks:
 - (1) only monetary relief of ~~\$100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs;
~~or~~
 - (2) monetary relief of ~~\$100,000~~250,000 or less and non-monetary relief; ~~or~~
 - ~~(3) monetary relief over \$100,000 but not more than \$250,000; or~~
 - ~~(4)~~ (3) monetary relief over \$250,000 but not more than \$1,000,000; or
 - ~~(5)~~ (4) monetary relief over \$1,000,000; and
- (d) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2021 change: Rule 47 is amended to implement section 22.004(h-1) of the Texas Government Code. A suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process in Rule 169.

RULE 169. EXPEDITED ACTIONS

- (a) *Application.*
 - ~~(1)~~ (1) The expedited actions process in this rule applies to suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating ~~\$100,000~~250,000 or less, ~~including damages of any kind, penalties, costs, expenses, pre judgment interest, and attorney fees~~excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs.

~~(2) — The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.~~

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of \$~~100,000~~250,000, excluding ~~post-judgment~~ interest, statutory or punitive damages and penalties, and attorney's fees and costs.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)~~(1)~~.

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, the court must reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends. The court may continue the case twice, not to exceed a total of 60 days.

(3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more than twelve hours per side.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, bills of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.

- (4) Alternative Dispute Resolution.
- (A) Unless the parties have agreed not to engage in alternative dispute resolution, the court may refer the case to an alternative dispute resolution procedure once, and the procedure must:
- (i) not exceed a half-day in duration, excluding scheduling time;
 - (ii) not exceed a total cost of twice the amount of applicable civil filing fees; and
 - (iii) be completed no later than 60 days before the initial trial setting.
- (B) The court must consider objections to the referral unless prohibited by statute.
- (C) The parties may agree to engage in alternative dispute resolution other than that provided for in (A).
- (5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comment to 2021 change: Rule 169 is amended to implement section 22.004(h-1) of the Texas Government Code—which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000—and changes to section 22.004(h) of the Texas Government Code. Certain actions are exempt from Rule 169’s application by statute. See e.g., TEX. ESTATES CODE §§ 53.107, 1053.105.

RULE 190. DISCOVERY LIMITATIONS

190.1 Discovery Control Plan Required.

Every case must be governed by a discovery control plan as provided in this Rule. A plaintiff must allege in the first numbered paragraph of the original petition whether discovery is intended to be conducted under Level 1, 2, or 3 of this Rule.

190.2 Discovery Control Plan - Expedited Actions and Divorces Involving ~~\$50,000~~250,000 or Less (Level 1)

- (a) **Application.** This subdivision applies to:
- (1) any suit that is governed by the expedited actions process in Rule 169; and

- (2) unless the parties agree that rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than \$~~50,000~~250,000.
- (b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:
- (1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~the suit is filed~~initial disclosures are due and continues until 180 days after the date the ~~first request for discovery of any kind is served on a party~~initial disclosures are due.
 - (2) **Total time for oral depositions.** Each party may have no more than ~~six~~20 hours in total to examine and cross-examine all witnesses in oral depositions. ~~The parties may agree to expand this limit up to ten hours in total, but not more except by court order.~~ The court may modify the deposition hours so that no party is given unfair advantage.
 - (3) **Interrogatories.** Any party may serve on any other party no more than 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.
 - (4) **Requests for Production.** Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.
 - (5) **Requests for Admissions.** Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.
 - ~~(6) **Requests for Disclosure.** In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.~~
- (c) **Reopening Discovery.** If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

190.3 Discovery Control Plan - By Rule (Level 2)

Misc. Docket 20-9101

- (a) **Application.** Unless a suit is governed by a discovery control plan under Rules 190.2 or 190.4, discovery must be conducted in accordance with this subdivision.
- (b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:
- (1) **Discovery period.** All discovery must be conducted during the discovery period, which begins when ~~suit is filed~~initial disclosures are due and continues until:
- (A) 30 days before the date set for trial, in cases under the Family Code; or
- (B) in other cases, the earlier of
- (i) 30 days before the date set for trial, or
- (ii) nine months after the ~~earlier of the date of the first oral deposition or the due date of the first response to written discovery~~initial disclosures are due.
- (2) **Total time for oral depositions.** Each side may have no more than 50 hours in oral depositions to examine and cross-examine parties on the opposing side, experts designated by those parties, and persons who are subject to those parties' control. "Side" refers to all the litigants with generally common interests in the litigation. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. The court may modify the deposition hours and must do so when a side or party would be given unfair advantage.
- (3) **Interrogatories.** Any party may serve on any other party no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

* * *

Comment to 2021 change: Rule 190.2 is amended to implement section 22.004(h-1) of the Texas Government Code, which calls for rules "to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000" that "balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Under amended Rule 190.2, Level 1 discovery limitations now apply to a broader subset of civil actions: expedited actions under Rule 169, which is also amended to implement section 22.004(h-1) of the Texas Government Code, and divorces not involving children in which the value of the marital estate is not more than \$250,000. Level 1 limitations are revised to impose a twenty-hour limit on oral deposition. Disclosure requests under Rule 190.2(b)(6) and Rule 194 are now replaced by required disclosures under Rule

194, as amended. The discovery periods under Rules 190.2(b)(1) and 190.3(b)(1) are revised to reference the required disclosures.

**RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT;
PROTECTIVE ORDERS; DEFINITIONS**

192.1 Forms of Discovery.

Permissible forms of discovery are:

- (a) ~~requests for~~required disclosures;
- (b) requests for production and inspection of documents and tangible things;
- (c) requests and motions for entry upon and examination of real property;
- (d) interrogatories to a party;
- (e) requests for admission;
- (f) oral or written depositions; and
- (g) motions for mental or physical examinations.

192.2 Timing and Sequence of Discovery.

(a) **Timing.** Unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery until after the initial disclosures are due.

(b) **Sequence.** The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.

* * *

192.7 Definitions.

As used in these rules

- (a) *Written discovery* means ~~requests for~~required disclosures, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission.
- (b) *Possession, custody, or control* of an item means that the person either has physical possession of the item or has a right to possession of the item that is equal or superior to the person who has physical possession of the item.

- (c) A *testifying expert* is an expert who may be called to testify as an expert witness at trial.
- (d) A *consulting expert* is an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.

RULE 193. WRITTEN DISCOVERY: RESPONSE; OBJECTION; ASSERTION OF PRIVILEGE; SUPPLEMENTATION AND AMENDMENT; FAILURE TO TIMELY RESPOND; PRESUMPTION OF AUTHENTICITY

193.1 Responding to Written Discovery; Duty to Make Complete Response.

A party must respond to written discovery in writing within the time provided by court order or these rules. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request or required disclosure to which they apply.

* * *

193.3 Asserting a Privilege

A party may preserve a privilege from written discovery in accordance with this subdivision.

- (a) **Withholding privileged material or information.** A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state—in the response (or an amended or supplemental response) or in a separate document—that:
 - (1) information or material responsive to the request or required disclosure has been withheld,
 - (2) the request or required disclosure to which the information or material relates, and
 - (3) the privilege or privileges asserted.
- (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.
- (c) **Exemption.** Without complying with paragraphs (a) and (b), a party may withhold a privileged communication to or from a lawyer or lawyer's representative or a privileged document of a lawyer or lawyer's representative
 - (1) created or made from the point at which a party consults a lawyer with a view to obtaining professional legal services from the lawyer in the prosecution or defense of a specific claim in the litigation in which discovery is requested or required, and
 - (2) concerning the litigation in which the discovery is requested or required.
- (d) **Privilege not waived by production.** A party who produces material or information without intending to waive a claim of privilege does not waive that claim under these rules or the Rules of Evidence if—within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made—the producing party amends the response, identifying the material or information produced and stating the privilege asserted. If the producing party thus amends the response to assert a privilege, ~~the requesting~~any party who has obtained the specific material or information must promptly return the specified material or information and any copies pending any ruling by the court denying the privilege.

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 or required disclosure 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 of privilege, the responding party has no further duty to respond to that request or required disclosure. To the extent the court overrules the objection or claim of privilege, the responding party must produce the requested or required 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.
- (c) **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.

* * *

RULE 194. ~~REQUESTS FOR~~REQUIRED DISCLOSURES

194.1 ~~Request~~Duty to Disclose; Production.

~~A party may obtain disclosure from another party of the information or material listed in Rule 194.2 by serving the other party no later than 30 days before the end of any applicable discovery period the following request: "Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, e.g., 194.2, or 194.2(a), (e), and (f), or 194.2(d) (g)]."~~

- ~~(a) **Duty to Disclose.** Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.~~
- ~~(b) **Production.** Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~

194.2 ~~Content~~Initial Disclosures.

- ~~(a) **Time for Initial Disclosures.** A party must make the initial disclosures at or within 30 days after the filing of the first answer unless a different time is set by the parties' agreement or court order. A party that is first served or otherwise joined after the filing of the first answer must make the initial disclosures within 30 days after being served or joined, unless a different time is set by the parties' agreement or court order.~~
- ~~(b) **Content.** Without awaiting a discovery request, ~~A~~ party ~~may request disclosure of any or all of the following~~ must provide to the other parties:
 - ~~(a)1~~ the correct names of the parties to the lawsuit;
 - ~~(b)2~~ the name, address, and telephone number of any potential parties;
 - ~~(c)3~~ the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
 - ~~(d)4~~ ~~the amount and any method of calculating economic damages~~ a computation of each category of damages claimed by the responding party—who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;~~

- ~~(e5)~~ the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- ~~(6)~~ a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment;
- ~~(f)~~ for any testifying expert:
- ~~(1)~~ the expert's name, address, and telephone number;
- ~~(2)~~ the subject matter on which the expert will testify;
- ~~(3)~~ the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- ~~(4)~~ if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
- ~~(A)~~ all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
- ~~(B)~~ the expert's current resume and bibliography;
- ~~(e7)~~ any indemnity and insuring agreements described in Rule 192.3(f);
- ~~(h8)~~ any settlement agreements described in Rule 192.3(g);
- ~~(i9)~~ any witness statements described in Rule 192.3(h);
- ~~(j10)~~ in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
- ~~(k11)~~ in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- ~~(l12)~~ the name, address, and telephone number of any person who may be designated as a responsible third party.

(c) Content in Certain Suits Under the Family Code.

(1) In a suit for divorce or annulment, a party must, without awaiting a discovery request, provide to the other party a copy of:

(A) all documents pertaining to real estate;

(B) all documents pertaining to any pension, retirement, profit-sharing, or other employee benefit plan, including the most recent account statement for any plan;

(C) all documents pertaining to any life, casualty, liability, and health insurance; and

(D) the most recent statement pertaining to any account at a financial institution, including banks, savings and loans institutions, credit unions, and brokerage firms.

(2) In a suit in which child or spousal support is at issue, a party must, without awaiting a discovery request, provide to the other party a copy of:

(A) all policies, statements, and the summary description of benefits for any medical and health insurance coverage that is or would be available for the child or the spouse;

(B) the party's income tax returns for the previous two years or, if no return has been filed, the party's Form W-2, Form 1099, and Schedule K-1 for such years; and

(C) the party's two most recent payroll check stubs.

(d) Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure:

(1) an action for review on an administrative record;

(2) a forfeiture action arising from a state statute; and

(3) a petition for habeas corpus.

194.3 Response.

~~The responding party must serve a written response on the requesting party within 30 days after service of the request, except that:~~

~~(a) — a defendant served with a request before the defendant’s answer is due need not respond until 50 days after service of the request, and~~

~~(b) — a response to a request under Rule 194.2(f) is governed by Rule 195.~~

194.3 Testifying Expert Disclosures.

~~In addition to the disclosures required by Rule 194.2, a party must disclose to the other parties testifying expert information as provided by Rule 195.~~

194.4 Production.

~~Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.~~

194.4 Pretrial Disclosures.

~~(a) **In General.** In addition to the disclosures required by Rule 194.2 and 194.3, a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:~~

~~(1) the name and, if not previously provided, the address, and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;~~

~~(2) an identification of each document or other exhibits, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.~~

~~(b) **Time for Pretrial Disclosures.** Unless the court orders otherwise, these disclosures must be made at least 30 days before trial.~~

194.5 No Objection or Assertion of Work Product.

No objection or assertion of work product is permitted to a ~~request~~disclosure under this rule.

194.6 Certain Responses Not Admissible.

A ~~response to requests~~disclosure under Rule 194.2(~~eb~~)(3) and (~~d4~~) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

Comment to 2021 change: Rule 194 is amended to implement section 22.004(h-1) of the Texas Government Code, which calls for rules “to promote the prompt, efficient, and cost-effective

resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000” that “balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions.” Rule 194 is amended based on Federal Rule of Civil Procedure 26(a) to require disclosure of basic discovery automatically, without awaiting a discovery request. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party’s disclosures or because another party has not made its disclosures. As with other written discovery responses, required disclosures must be signed under Rule 191.3, complete under Rule 193.2, served under Rule 191.5, and timely amended or supplemented under Rule 193.5.

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

195.1 Permissible Discovery Tools.

A party may ~~request another party to designate and disclose~~obtain information concerning testifying expert witnesses only through ~~a request for~~ disclosure under Rule 194 and this rule and through depositions and reports as permitted by this rule.

195.2 Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts—that is, furnish information ~~requested under described in~~ Rule ~~194.2(f)~~195.5(a)—by the ~~later of the~~ following ~~two~~ dates: ~~30 days after the request is served, or~~

- (a) with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period;
- (b) with regard to all other experts, 60 days before the end of the discovery period.

* * *

195.4 Oral Deposition.

In addition to the information ~~disclosed~~ under Rule ~~194.5(a)~~195.5(a), a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert’s mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert’s mental impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.

195.5 ~~Court Ordered~~Expert Disclosures and Reports.

(a) **Disclosures.** Without awaiting a discovery request, a party must provide the following for any testifying expert:

- (1) **the expert’s name, address, and telephone number;**

- (2) the subject matter on which the expert will testify;
 - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
 - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;
 - (B) the expert's current resume and bibliography;
 - (C) the expert's qualifications, including a list of all publications authored in the previous 10 years;
 - (D) a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and
 - (E) a statement of the compensation to be paid for the expert's study and testimony in the case.
- (b) **Expert Reports.** If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition.

* * *

Comment to 2021 change: Rule 195 is amended to reflect changes to Rule 194. Amended Rule 195.5(a) lists the disclosures for any testifying expert, which are now required without awaiting a discovery request, that were formerly listed in Rule 194(f). Amended Rule 195.5(a) also includes three new disclosures based on Federal Rule of Civil Procedure 26(a)(2)(B).

Appendix E: Rngcf kpi u'Kpf gz

CAUSE NO. 0000-00000

IN THE MATTER OF § IN THE DISTRICT COURT
THE MARRIAGE OF §
§
JANE DOE §
AND §
JOHN DOE §
§
§
AND IN THE INTEREST OF §
JIMMY DOE AND JASANA §
DOE, CHILDREN § 309TH JUDICIAL DISTRICT
§ HARRIS COUNTY, TEXAS

PLEADINGS INDEX

LAST UPDATED: _____

No.	Title	Date filed	Filed by
1	Original Petition for Divorce	08/09/2018	
2	Temporary Restraining Order and Order Setting Hearing for Temporary Orders	08/09/2018	
3	Respondent's Original Answer	08/21/2018	
4	Original Counterpetition for Divorce	08/22/2018	
5	Financial Information Statement of JANE DOE	09/07/2018	
6	Respondent's Designation of Expert Witnesses	09/07/2018	
7	Notice of Hearing on Motion for Temporary Orders	09/07/2018	
8	Mediated Settlement Agreement – Temporary Orders	10/15/2018	
9	Proposed Agreed	11/21/2018	

	Temporary Orders		
10	Mediated Settlement Agreement (Final)	12/07/2018	

Appendix F: Dgu'Kwt gu'Ej gemkuv

Best Interest List

Mother

Father

The emotional and physical needs of the child now and in the future;

The emotional and physical danger to the child now and in the future;

The parental abilities of the individuals seeking custody;

The programs available to assist these individuals to promote the best interest of the child (like counseling);

The plans for the child by these individuals seeking custody;

The stability of the home or proposed placement;

The acts or omissions of the parent which indicate the existing parent-child relationship is not a proper one; and

Any excuse for the acts or omissions of the parent.

Appendix G: Ewuxf { 'S wguqppctg

CUSTODY QUESTIONNAIRE
BASIC INFORMATION ABOUT CHILD(REN) OF THIS MARRIAGE:

If you want sole custody of your child(ren), please tell me why you think you should have sole custody in fifty words or less:

Names and addresses of schools child(ren) attend, dates attended, and name of teacher or principal there who is familiar with child(ren):

Child's name: _____

School: _____

Address: _____

Dates attended: _____

Grade(s): _____

Teacher or principal: _____

CARE OF THE CHILD(REN):

To the extent that both you and your spouse or ex-spouse have shared the responsibilities listed below, describe the degree to which the responsibilities have been shared:

Who helps the child(ren) get dressed in the morning?

Who bathes the child(ren) and grooms them?

Are any of the child(ren) nursing?

Who takes care of the child(ren) during the day?

Who arranges for getting the child(ren) together with playmates? Who puts the child(ren) to bed at night?

Who prepares the meals?

Who arranges for medical and dental care and takes the child(ren) to doctor's appointments?

Who takes the child(ren) to school?

Who picks the child(ren) up from school?

Who shops for the child(ren)'s clothes?

Who transports the child(ren) to extracurricular activities?

Do you or your spouse participate in recreational or educational activities?

Describe the nature of the activities and how often you and your spouse or ex-spouse participate in them:

Do the child(ren) receive religious training? If so, from whom?

Who arranges the child(ren)'s birthday parties?

Who helps the child(ren) with their homework?

Who attends parent-teacher conferences?

Are the child(ren) more likely to turn to you or to your spouse or ex-spouse when they have problems?

Do you feel the child(ren) are closer to you or to your spouse or ex-spouse?

Are the child(ren) in day-care or with a sitter?

If so, how many hours per week?

Give name, address, and telephone number of the day-care service or sitter:

Who arranges for the day-care or sitter?

Who cares for the child(ren) when they are ill?

Who disciplines the child(ren)? By what method? Has the division of responsibility for childcare changed over the years? If so, describe:

TIME AVAILABLE TO SPEND WITH THE CHILD(REN) AND PLANS FOR THEIR FUTURE CARE:

What are your working hours?

What time do you leave home?

When do you return?

Do you have flexible working hours?

Does your work require travel?

If so, what distance and amounts of time?

Is your work schedule likely to change in the future?

What are your plans for child care?

Describe your housing arrangements, including number of bedrooms:

What are your spouse's or ex-spouse's working hours?

What time does your spouse or ex-spouse leave home?

When does your spouse or ex-spouse return?

Are your spouse's or ex-spouse's working hours flexible?

Does your spouse's or ex-spouse's work require travel?

If so, what distances and amounts of time?

Is your spouse's or ex-spouse's work schedule likely to change in the future?

What are your spouse's or ex-spouse's plans for child care?

Describe your spouse's or ex-spouse's household arrangements, including number of bedrooms:

SPECIAL NEEDS OF THE CHILD(REN):

Do the child(ren) have any special or unusual educational or health care needs?
If so, describe them:

Who has worked to meet those needs?

Are you or your spouse or ex-spouse better able to meet those needs?

Have the child(ren)'s academic performance changed in the last few years or months? If so, what is the reason for the change?

INTERFERENCE WITH OTHER PARENT'S RELATIONSHIP WITH THE CHILD(REN):

Have you or your spouse or ex-spouse interfered with the child(ren)'s relationship with the other parent or spoken badly about the other parent to the child(ren)? If so, explain:

Have you or your spouse or ex-spouse blocked the other parent's visitation with the child(ren)? If so, explain, giving dates and frequency with which visitation was blocked:

Have you or your spouse or ex-spouse discouraged the child(ren) from having a good relationship with a step-parent or a "significant person" in the other parent's life? If so, explain:

COOPERATION BETWEEN YOU AND YOUR SPOUSE OR EX-SPOUSE:

How well have you and your spouse or your ex-spouse been able to cooperate on matters concerning the child(ren) and on matters concerning visitation or access to the child(ren)?

To what extent do you and your spouse or ex-spouse share values regarding how the child(ren) should be raised, what kind/level of education they should have, and what type of religious training they should have (if any)?

FREQUENCY OF MOVES AND PLANS TO MOVE:

Have you or your spouse or ex-spouse moved in the last ten years?

If so, when and where (include moves in the same city)?

Do you or your spouse or ex-spouse plan to move in the near future? If so, when and where?

Does the parent who is not moving oppose the move? Why?

CHILD(REN)'S PREFERENCES:

Have the child(ren) told you with whom they want to live? What is the basis for the preference?

If so, How strong is the preference? How long has the preference been held?
Has the preference changed?

How would you feel about the child(ren) talking to the judge regarding their preference?

GOALS:

What are your future goals for and with the child(ren) and the reason for your goals?

To what extent do you believe that you and your spouse or ex-spouse should have joint custody (sometimes referred to as "shared parental responsibility") under which you both would share equally in making major decisions affecting the child(ren) and/or being with the child(ren) for substantial periods of time?

What are your spouse's or ex-spouse's future goals with the child(ren) and the reasons for those goals?

Have you and your spouse or ex-spouse attempted to work out a settlement of the case between yourselves? What progress have you made?

What are your positions?

Who do you think would make good witnesses for you, and what do you think the testimony would be? Possible witnesses include neighbors, the child(ren)'s teachers, friends, doctors, babysitters, day-care workers, clergy, and family members.

Name: _____
Address: _____
Home Telephone: _____ Business Telephone: _____

Name: _____
Address: _____
Home Telephone: _____ Business Telephone: _____

Name: _____
Address: _____
Home Telephone: _____ Business Telephone: _____

Name: _____
Address: _____
Home Telephone: _____ Business Telephone: _____

Appendix J $\{ \text{cpf} \text{ "Cr r tclugo gpv}$



EMILY T. ROSS
EMILY@EMILYROSSLAW.COM

I. GENERAL INSTRUCTIONS

Accurate information concerning property and debts (liabilities) is very important in divorce cases. Please fill out the attached form as completely as you can, drawing on any source of information to which you have access. **Do not enlist your spouse's help unless I specifically permit it. DO NOT LET ANYONE SEE THIS DOCUMENT. YOUR INVENTORY AND APPRAISEMENT IS A CONFIDENTIAL MATTER BETWEEN YOU AND YOUR ATTORNEY.** Be cautious: you and your spouse are now legal adversaries, and you should verify all information on your own. You should make your own independent estimate, especially when it comes to questions of the present value of property.

The attached form provides for only a few items under each type of property. If you need to provide additional information, photocopy an extra page or use a separate piece of paper and number the information as it is numbered on the inventory. If you do not know the answer to an item, **DO NOT LEAVE IT BLANK**; write "I don't know."

II. FULL DISCLOSURES

Your attorney will rely on your Inventory and Appraisal to prepare your case. **If you omit any asset, the court could set it aside to your spouse now or at a later date. If you omit a liability, you may be solely responsible for it.**

III. TIME

Please complete this Inventory and Appraisal as soon as possible.

IV. DEFINITIONS

A. Separate Property

Generally, property acquired by a spouse before marriage and property a spouse acquired individually by gift or inheritance during marriage are considered to be separate property of that spouse. Separate property also consists of property

that is acquired with separate property funds or assets and recoveries for personal injuries sustained by a spouse, except recovery loss of earning capacity during marriage. Written property agreements between spouses, such as premarital agreements or post marital agreements, can also create separate property which would otherwise be characterized as community property. If you or your spouse have any property you think is separate property, complete the sections marked "Separate Property of Husband" and "Separate Property of Wife."

B. Community Property

All property acquired by either spouse during marriage which is not separate property is community property.

C. Fair Market Value

A generally accepted definition of fair market value is the price at which the asset would change hands between a willing seller, under no compulsion to sell, and a willing buyer, under no compulsion to buy, with both parties having reasonable knowledge of the relevant facts. Use this value whenever possible. If an asset has no fair market value, state the actual value of the asset to you considering its present condition.

V. COPIES OF DOCUMENTS TO BE FURNISHED TO YOUR ATTORNEY

If an asset has a statement of account, furnish a copy of the current statement of account with this Inventory and Appraisal. If an asset has a title document (deed, deed of trust, certificate of title to motor vehicle), furnish a copy with this Inventory and Appraisal.

If an asset has any document that can clearly identify it, furnish a copy with this Inventory and Appraisal.

Here is a checklist of copies of items you should furnish with this Inventory and Appraisal. Please supply the most current statement wherever applicable:

- (1) financial institution statements;
- (2) bank statements;
- (3) current Keogh statements;
- (4) IRA statements;
- (5) SEP statements;
- (6) certificate of deposit statements;
- (7) company retirement benefits statements of account;
- (8) life insurance policies and premium notices;
- (9) broker statements;
- (10) deeds;
- (11) deeds of trust;
- (12) mortgage company payment coupon books (usually one page is enough);
- (13) certificates of title to motor vehicles;
- (14) stocks;
- (15) last statement from each creditor (bank credit cards, department store charge cards, gasoline credit cards, etc.); and
- (16) any other documents that may lead to the discovery of assets or liabilities.

Community Property

1. **Real Property** (include any property purchased by contract for deed, such as Texas Veterans Land Board property, property purchased in recreational developments, and time-shares)

Street address: _____

County of location: _____

Description of improvements, if any: _____

Legal description: _____

Current fair market value (as of _____): \$_____

Name of mortgage company and account number, if any:
_____ account number _____

Current balance of mortgage (as of _____): \$_____

Other liens against property: _____

- a. Name of other lienholder: _____

Current balance of lien (as of _____): \$_____

Current net equity in property: \$_____

2. **Mineral Interests** (include any property in which the parties own the mineral estate, separate and apart from the surface estate, such as oil and gas leases; also include royalty interests, working interests, and producing and nonproducing oil and gas wells)

1. Name of mineral interest/lease/well: _____

Type of interest: _____

Percentage ownership: _____

County of location: _____

Legal description: _____

Name of producer/operator: _____

Monthly/yearly income: \$ _____

Current value (as of _____): \$ _____

3. Cash and Accounts with Financial Institutions (include cash, traveler's checks, money orders, and accounts with commercial banks, savings banks, credit unions, and funds on deposit with attorneys and other third parties; exclude accounts with brokerage houses and all retirement accounts)

1. Cash on hand (as of _____):
\$ _____

Traveler's checks (as of _____):
\$ _____

Money orders (as of _____):
\$ _____

Name of financial institution: _____

Account name: _____

Account number: _____

Type of account: [checking/savings/money market/cd]: _____

Name(s) on withdrawal cards:

Current account balance (as of _____):
\$ _____

2. Cash on hand (as of _____):
\$ _____

Traveler's checks (as of _____):
\$ _____

Money orders (as of _____):
\$ _____

Name of financial institution:

Account name: _____

Account number: _____

Type of account: [checking/savings/money
market/cd]: _____

Name(s) on withdrawal cards:

Current account balance (as of _____):
\$ _____

3. Cash on hand (as of _____):
\$ _____

Traveler's checks (as of _____):
\$ _____

Money orders (as of _____):
\$ _____

Name of financial institution:

Account name: _____

Account number: _____

Type of account: [checking/savings/money
market/cd]: _____

Name(s) on withdrawal cards:

Current account balance (as of _____):
\$ _____

4. Cash on hand (as of _____):
\$ _____
- Traveler's checks (as of _____):
\$ _____
- Money orders (as of _____):
\$ _____
- Name of financial institution:

- Account name: _____
- Account number: _____
- Type of account: [checking/savings/money market/cd]: _____
- Name(s) on withdrawal cards:

- Current account balance (as of _____):
\$ _____

4. Brokerage and Mutual Fund Accounts

1. Name of brokerage firm or mutual fund:

- Address of brokerage firm or mutual fund:

- Name account held in:

- Name of account:

- Account number:

- Margin loan balance (as of _____):
\$ _____

Value of community interest in account (as of _____): \$ _____

Tax basis of security held: \$ _____

5. Publicly Traded Stocks, Bonds, and Other Securities (include securities not in a brokerage account, mutual fund, or retirement fund)

1. Name of security: _____

Number of shares: _____

Type of security: [common stock/preferred stock/bond/other] _____

Certificate numbers: _____

In possession of: _____

Name of exchange on which listed: _____

Pledged as collateral? [Yes/No] _____

If yes, explain: _____

Date acquired: _____

Tax basis: \$ _____

Current market value (as of _____):
\$ _____

Value of community interest (as of _____):
\$ _____

6. Stock Options (include all exercisable nonexercisable, vested, and nonvested stock options regardless of any restrictions on transfer)

1. Name _____ of _____ company:

Date of option/grant: _____

Vesting schedule: _____

Number of options: _____

Are the options exercisable? [Yes/No] _____

Are the options registered? [Yes/No] _____

Current stock price: \$_____

Strike price: \$_____

If purchased, total purchase price of option contract (including commissions): \$_____

Current net market value (as of _____):
\$_____

Value of community interest (as of _____):
\$_____

7. Bonuses

1. Name _____ of _____ company:

Spouse earning bonus: _____

Date bonus expected to be paid: _____

Time period covered by bonus:

Anticipated amount of bonus: \$_____

8. Closely Held Business Interests (include sole proprietorships, professional practices, corporations, partnerships, limited liability companies and partnerships, joint ventures, and other nonpublicly traded business entities)

1. Name _____ of _____ business:

Address:

Type of business organization:

Percentage of ownership: _____%

Number of shares owned: _____

Value (as of _____):
\$ _____

Balance of accounts receivable if on cash basis accounting:
\$ _____

Balance of liabilities if on cash basis accounting:
<\$ _____>

9. Retirement Benefits

A. *Defined Contribution Plans* (a plan that provides for an individual account for a participant and for benefits based solely on the amount contributed to the participant's account; IRC §§ 401(k), 403(b))

1. Exact name of plan:

Name and address of plan administrator:

Employee: _____

Employer: _____

Starting date of creditable service:

Account name:

Account number:

Account balance as of date of marriage:
\$ _____

Payee of survivor benefits:

Designated beneficiary:

Current account balance (as of _____):
\$ _____

Balance of loan against plan: \$ _____

Value of community interest in plan (as of _____): \$ _____

B. *Defined Benefit Plan* (any plan that is not a defined contribution plan and that usually involves payment of benefits according to a formula)

1. Exact name of plan:

Name and address of plan administrator:

Employee: _____

Employer: _____

Starting date of creditable service:

Designated beneficiary: _____

Payee of survivor benefits: _____

Description of benefits:

Value of community interest in plan (as of _____): \$ _____

C. *IRA/SEP*

1. Name of financial institution:

- Account name: _____
- Account number: _____
- Payee of survivor benefits:

- Designated beneficiary:

- Current account balance (as of _____):
\$ _____
- Value of community interest (as of _____):
\$ _____

D. *Military Benefits*

1. Branch of service: _____
- Name of service member:

- Rank/pay grade of service member:

- Starting date of creditable service:

- Status of service member: [active/reserve/retired]

- Payee of survivor benefits: _____
- Description of benefits:

- Monthly benefit payable: \$ _____
- Value of community interest in plan (as of _____): \$ _____

Percentage of plan that is community: _____%

E. *Nonqualified Plans (Not under ERISA)*

1. Name of financial institution:

Account name: _____

Account number: _____

Account balance as of date of marriage:
\$ _____

Payee of survivor benefits:

Designated beneficiary:

Value of community interest in plan (as of
_____): \$ _____

F. *Government Benefits* (civil service, teacher, railroad, state, and local)

1. Name of plan:

Account name: _____

Account number: _____

Account balance as of date of marriage:
\$ _____

Payee of survivor benefits:

Designated beneficiary:

Value of community interest in plan (as of
_____): \$ _____

10. Other Deferred Compensation Benefits (e.g., worker's compensation, disability benefits, other "special payments," and other forms of compensation)

1. Husband - description of assets:

Asset: _____
Value as of _____: \$ _____

Asset: _____
Value as of _____: \$ _____

2. Wife - description of assets:

Asset: _____
Value as of _____: \$ _____

Asset: _____
Value as of _____: \$ _____

11. Union Benefits (include all insurance, pensions, retirement benefits, and other benefits arising out of membership in any union)

1. Name of union member: _____

Name of union: _____

Description of benefits:

Value (as of _____): \$ _____

12. Insurance and Annuities

A. *Life Insurance*

1. Name of insurance company:

Policy number: _____

Name of insured: _____

Name of owner: _____

Type of insurance: [term/whole/universal/other]

Amount _____ of _____ premiums
[monthly/quarterly/semiannually/other]:
\$ _____

Date of issue: _____

Face amount: \$ _____

Cash surrender value on date of marriage:
\$ _____

Current cash surrender value: \$ _____

Designated _____ beneficiary:

Balance of loan against policy:

Value of community interest (as of _____):
\$ _____

B. *Annuities*

1. Name of company: _____

Policy number: _____

Name of annuitant: _____

Name of owner: _____

Type of annuity: _____

Amount _____ of _____ premiums
[monthly/quarterly/semiannually/other]:
\$ _____

Date of issue: _____

Face amount: \$ _____

Designated beneficiary: _____

Value on date of marriage: \$ _____

Current value (as of _____):
\$ _____

Balance of loan against policy:

Value of community interest (as of _____):
\$ _____

C. *Health Savings Accounts*

1. Institution holding account:

Account number: _____

Name of high-deductible health plan with which the
HSA is coupled: _____

Value of assets in account (as of _____):
\$ _____

D. *Medical Savings Accounts*

1. Institution holding account:

Account number: _____

Name of high-deductible health plan with which the
MSA is coupled: _____

Value of assets in account (as of _____):
\$ _____

13. Motor Vehicles, Boats, Airplanes, Cycles, etc. (including mobile homes, trailers, and recreational vehicles; exclude company-owned vehicles)

1. Year: _____
Make: _____
Model: _____
Name on title: _____
In possession of: _____
Vehicle identification number:

Fair market value of vehicle: \$ _____
Name of creditor if loan against vehicle:

Current balance (as of _____):
\$ _____

2. Current net equity in vehicle: \$ _____
Year: _____
Make: _____
Model: _____
Name on title: _____
In possession of: _____
Vehicle identification number:

Fair market value of vehicle: \$ _____
Name of creditor if loan against vehicle:

Current balance (as of _____):
\$ _____
Current net equity in vehicle: \$ _____

3. Year: _____
Make: _____
Model: _____
Name on title: _____
In possession of: _____
Vehicle identification number:

Fair market value of vehicle: \$ _____
Name of creditor if loan against vehicle:

Current balance (as of _____):
\$ _____
Current net equity in vehicle: \$ _____

4. Year: _____
Make: _____
Model: _____
Name on title: _____
In possession of: _____
Vehicle identification number:

Fair market value of vehicle: \$ _____
Name of creditor if loan against vehicle:

Current balance (as of _____):
\$ _____
Current net equity in vehicle: \$ _____

14. Money Owed to Me or My Spouse (include any expected federal or state income tax refund but do not include receivables connected with a business)

1. Name of debtor: _____

Debtor's relationship to you: _____

Is debt evidenced in writing? [Yes/No] _____

Is debt secured? [No/Yes] _____

Current loan amount owed (as of _____):
\$ _____

15. Household Furniture, Furnishings, and Fixtures

In possession of Husband:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

In possession of Wife:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Electronics and Computers

In possession of Husband:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

In possession of Wife:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

17. Antiques, Artwork, and Collections (include any works of art, such as paintings, tapestry, rugs, and coin or stamp collections)

_____	_____
_____	_____
_____	_____
_____	_____

In possession of Wife:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

19. Jewelry and Other Personal Items

In possession of Husband:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

In possession of Wife:

Asset	Value
_____	_____

_____	_____
_____	_____
_____	_____
_____	_____

In possession of Wife:

Asset	Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

24. Safe-Deposit Boxes

1. Name of financial institution or other depository:

Location: _____

Box number: _____

Names of persons with access to contents:

Items in safe-deposit box:

—

25. Storage Facilities

1. Name and location: _____

Unit number: _____

Terms and length of lease:

Names of persons with access to contents:

Items in storage unit:

26. Community Claim for Reimbursement (contribution by community to spouse's separate estate)

1. Reimbursement claim against husband's separate estate:

Basis of claim: _____

Amount claimed (as of _____):
\$ _____

2. Reimbursement claim against wife's separate estate:

Basis of claim: _____

Amount claimed (as of _____):
\$ _____

27. Contingent Assets (e.g., lawsuits by either party against a third party)

1. Nature of claim:

Amount of claim: \$ _____

28. Community Liabilities

A. *Credit Cards and Charge Accounts*

1. Name of creditor:

Account number: _____

Name(s) _____ on _____ account:

Current balance (as of _____):
<\$_____>

Balance as of _____:
<\$_____>

2. Name _____ of _____ creditor:

Account number: _____

Name(s) _____ on _____ account:

Current balance (as of _____):
<\$_____>

Balance as of _____:
<\$_____>

3. Name _____ of _____ creditor:

Account number: _____

Name(s) _____ on _____ account:

Current balance (as of _____):
<\$_____>

Balance as of _____:
<\$_____>

4. Name _____ of _____ creditor:

Account number: _____

Name(s) _____ on _____ account:

Current balance (as of _____):
<\$ _____>

Balance as of _____:
<\$ _____>

B. Federal, State, and Local Tax Liability

1. Amount owed in any previous tax year: _____
<\$ _____>

Amount owed for current year _____:
<\$ _____>

C. Attorney's Fees in This Case

1. Description of fee: _____

Amount owed (as of _____):
<\$ _____>

2. Description of fee: _____

Amount owed (as of _____):
<\$ _____>

D. Other Professional Fees in This Case

1. Description of fee: _____

Amount owed (as of _____):
<\$ _____>

E. Other Liabilities Not Otherwise Listed in This Inventory (e.g., loans and margin accounts, if not previously disclosed)

1. Name _____ of _____ creditor:

Account number: _____

Party incurring liability: _____

Is loan evidenced in writing? [Yes/No] _____

Current balance (as of _____):
<\$_____>

Security, if any: _____

2. Name _____ of _____ creditor:

Account number: _____

Party incurring liability: _____

Is loan evidenced in writing? [Yes/No] _____

Current balance (as of _____):
<\$_____>

Security, if any: _____

F. *Reimbursement Claims against Community Estate
(contribution made to community by spouse's separate estate)*

1. Reimbursement claim by husband's separate estate:

Basis of claim: _____

Amount claimed (as of _____):
\$_____

2. Reimbursement claim by wife's separate estate:

Basis of claim: _____

Amount claimed (as of _____):
\$_____

G. *Pledges (include charitable, church, and school related)*

1. Name and address of recipient: _____

Date of pledge: _____

Total amount of pledge: <\$_____>

Is pledge payable in installments? [Yes/No]

Date each installment payment is due:

Amount of each installment: \$_____

H. *Contingent Liabilities* (e.g., lawsuit against either party, guaranty either party may have signed)

1. Name of creditor: _____

Name of person primarily liable:

Amount of contingent liability:

<\$_____>

Nature of contingency:

Separate Estates of the Parties

29. Separate Assets of Husband (generally defined as assets owned before marriage or assets acquired during marriage by gift or inheritance or as a result of personal injury)

Description of Asset	Date Property Acquired	How acquired (e.g., by gift, by devise, by descent, or owned before marriage):	Value	Date of Valuation

2. Husband's separate reimbursement claim against community estate:

Basis of claim: _____

Value (as of _____):
 \$ _____

3. Husband's separate reimbursement claim against wife's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

30. Liabilities of Husband's Separate Estate

1. Description of liability: _____

Date of liability: _____

How liability acquired:

Amount of liability (as of _____):
<\$ _____ >

2. Wife's separate property reimbursement claim against husband's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

3. Community estate's reimbursement claim against husband's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

31. Separate Assets of Wife (generally defined as assets owned before marriage or assets acquired during marriage by gift or inheritance or as a result of personal injury)

Description of Asset	Date Property Acquired	How acquired (e.g., by gift, by devise, by descent, or owned before marriage):	Value	Date of Valuation

2. Wife's separate reimbursement claim against community estate:

Basis of claim: _____

Value (as of _____):
\$ _____

3. Wife's separate reimbursement claim against husband's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

32. Liabilities of Wife's Separate Estate

1. Description of liability: _____

Date of liability: _____

How liability acquired:

Amount of liability (as of _____):
<\$ _____ >

2. Husband's separate property reimbursement claim against wife's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

3. Community estate's reimbursement claim against wife's separate estate:

Basis of claim: _____

Value (as of _____):
\$ _____

Child[ren]'s Property

33. Child[ren]'s Property (e.g., custodial accounts under the Texas Uniform Gifts to Minors Act or Uniform Transfers to Minors Act, 529 plans)[None (children's assets)]

A. *Custodial Account under Texas Uniform Transfers to Minors Act*

1. Name of financial institution:

Address of financial institution:

Name of account: _____

Account number: _____

Amount on deposit (as of _____):
\$ _____

Name of minor for whom funds were deposited:

B. 529 Plan

1. Institution or entity administering plan:

Designated beneficiary: _____

Type of plan: [prepaid/savings]

Value of assets in plan (as of _____):
\$ _____

Trust and Estate Assets

34. Assets Held by Either Party for the Benefit of Another (include formal and informal trusts)

1. Name(s) of person(s) holding assets:

Description of assets:

Name and title of fiduciary (e.g., executor, trustee):
_____, _____

Name of owner of beneficial interest:

Value of assets (as of _____):
\$ _____

Percentage interest: _____

35. Assets Held for the Benefit of Either Party as a Beneficiary (include formal and informal trusts)

1. Name(s) of person(s) holding assets:

Description of assets:

Name and title of fiduciary (e.g., executor, trustee):

_____, _____

Name of owner of beneficial interest:

Value of assets (as of _____):
\$ _____

Percentage interest: _____

Appendix K' T grgh' T gs wguvgf

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. 0000-00000

**IN THE MATTER OF
THE MARRIAGE OF**

**JANE DOE
AND
JOHN DOE**

**AND IN THE INTEREST OF
JIMMY DOE and JASANA
DOE, CHILDREN**

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IN THE DISTRICT COURT

309th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

RELIEF REQUESTED BY PETITIONER JANE DOE

Respondent/Counterpetitioner, JANE DOE respectfully requests that the Court ORDER that the following orders are in the best interest of the child and should be the Temporary Orders of this Court while this case is pending:

TYPE OF RELIEF	RELIEF REQUESTED	AGREED	GRANTED	DENIED	MODIFIED
Conservatorship	Mother and Father appointed JMCs with all rights and duties of TEX. FAM. CODE §§ 153.073, 153.074				
Right to Designate Residence/ Geographic Restriction	Mother has the right to designate residence within Harris County				
Rights and duties: Education, Invasive Medical, Psychiatric/ Psychological,	By joint agreement (except school based on				

TYPE OF RELIEF	RELIEF REQUESTED	AGREED	GRANTED	DENIED	MODIFIED
Marriage/ Enlistment	residence); tie breaker to school counselor or doctor				
All other rights and duties	Independent				
Possession and Access	See Attached Modified Possession Schedule: 2-2-3 throughout year; 10 days in the summer; ESPO on Holidays				
Possession and Access (ALTERNATIVE)	Father to have standard possession schedule with all elections of TEX. FAM. CODE §153.317(a)				
Child Support	Mother to receive child support. Father to pay guideline child support of \$XXX/month through The Texas State Disbursement Unit while case is pending beginning January 1, 2019.				

TYPE OF RELIEF	RELIEF REQUESTED	AGREED	GRANTED	DENIED	MODIFIED
Medical Support/ Unreimbursed medical	Father shall continue to provide health insurance; Parents to split unreimbursed medical expenses 50/50				
Use/Possession of Marital Residence	To Wife; Husband to retrieve his sporting gear and camping equipment from residence by December 31, 2018.				
Use/Possession of Apartment	To Husband				
Use/ Possession/ Management of Income and Expenses of Rental Property	Husband and Wife to have equal access to unit while case is pending; Husband to have exclusive management and control of income and expenses				
Vehicles & Note Payments	To Husband: 2017 Mercedes C300, with associated car payment To Wife: 2013 Jeep Grand Cherokee and associated				

TYPE OF RELIEF	RELIEF REQUESTED	AGREED	GRANTED	DENIED	MODIFIED
	car payment				
Bank Accounts	Husband to redirect paycheck to separate account; Husband to have exclusive use and possession of Chase XXXX account (rental property account)				
Expenses	Each pay own monthly/day to day expenses				
Spousal Support	Husband to pay temporary spousal support directly to Wife in the amount of \$XXX/month for 3 months beginning January 1, 2010.				
Temporary Injunctions	Standard Injunctions per TFC				

TYPE OF RELIEF	RELIEF REQUESTED	AGREED	GRANTED	DENIED	MODIFIED
Miscellaneous – Appraisal	Marital Residence and Rental Property to be appraised by Jim Appraiser.				

SIGNED ON _____.

JUDGE PRESIDING