FAMILY LAW UPDATE

2023

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- **Baylor University B.A., 1970; J.D., 1973**
- **State Bar of Texas, 1973; and Family Law Section**
- **United States District Court for the Western District of Texas**
- **Fifth Circuit Court of Appeals**
- **Waco-McLennan County Bar Association**
- **Bell County Bar Association**

BOARD CERTIFICATIONS

- **Family Law – Texas Board of Legal Specialization, 1989 to present**

SPECIAL DISTINCTIONS

- **Fourteen years as primary trial Guardian/Attorney ad Litem for the 19th Judicial District Court, Waco, Texas, in contested child abuse and neglect actions**
- **Adjunct Professor, Baylor University School of Law—Presented Courses: "Professional Responsibility," "Children and the Law," "Family Practice Skills," "Advanced Family Law" and "Advanced Family Law Issues", "Family Law Advocacy and Procedure"; "Family Law"; Past Lecturer in "Family Law (Survey)," "Professionalism," "Juvenile Law Seminar," and "Law Ethics and Morality Seminar."**
- **Supreme Court of Texas, Board of Disciplinary Appeals (1995-2000; 2006-2012)**
  - **Past Chairman**
  - **Past Vice Chairman**
  - **Chairman, District Disability Committee, Dallas County, Tarrant County, Parker County and Potter County (2000-2003; 2014-current)**
- **Active duty, City of Woodway, Texas, Public Safety Department (Captain of Fire Service/Firefighter/Engineer/Training Officer, Rescue, Uniformed Police Services, SRT Team [SWAT--Precision Marksman; Heavy Weapons; Dignitary Protection])**
- **Commission for Lawyer Discipline, State Bar of Texas**
  - **Member, 2003 – 2006**
- **State Bar of Texas**
  - **Past Member, Crime Victims and Witnesses Committee**
  - **Past Member, District 8B Grievance Committee**
  - **Past Chairman, District 8B Grievance Committee**
    - **Past Investigatory Panel Chairman, District 8B Grievance Committee**
  - **Life Fellow, Texas Bar Foundation**
  - **Lola Wright Service Award, Texas Bar Foundation, 2022**
- **Martindale-Hubbell peer review rating – AV**

PERSONAL

Endowment Life Member, National Rifle Association of America—Instructor: Pistol, Personal Security; Expert Classification—High Power Rifle (Inactive)
Member, Columbus Avenue Baptist Church—Ordained Deacon; Ordained Elder
Dayspring Community FireSafety Initiative, Ggaba City, Uganda—Command Staff; Training Officer; Engineer; Firefighter

Bibliography on Request

Created in part by Emily Agee, J.D. Candidate 2024, Baylor University School of Law.

LEGISLATIVE UPDATE

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES
CHAPTER 3. MARITAL PROPERTY RIGHTS AND LIABILITIES
Subchapter E. Claims for Reimbursement

BACK TO THE FUTURE—A WHOLESALE RETURN TO EQUITABLE RULES OF REIMBURSEMENT TO ALIGN THE CODE WITH THE CASE LAW:

§ 3.401. Definitions—AMENDED/ADDED

(1) ***"Benefited estate"*** means a marital estate that receives a benefit from another marital estate.
(2) ***"Conferring estate"*** means a marital estate that confers a benefit on another marital estate.

§ 3.402. Claim for Reimbursement; Offsets—AMENDED

(a) A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate ~~[For purposes of this subchapter, a claim for reimbursement includes:~~
~~[(1) payment by one marital estate of the *unsecured liabilities* of another marital estate;~~
~~[(2) *inadequate compensation for the time, toil, talent, and effort* of a spouse by a business entity under the control and direction of that spouse;~~
~~[(3) the *reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt* existed at the time of marriage;~~
~~[(4) the *reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent* during a marriage, to the extent the debt existed at the time the property was received;~~
~~[(5) the reduction of the principal amount of that part of a debt, including a home equity loan: [(A) incurred during a marriage;~~
~~[(B) secured by a lien on property; and~~
~~[(C) incurred for the acquisition of, or for *capital improvements* to, property;~~
~~[(6) the reduction of the principal amount of that part of a debt:~~
~~[(A) incurred during a marriage;~~
~~[(B) secured by a lien on property owned by a spouse;~~
~~[(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and~~
~~[(D) incurred for the acquisition of, or for capital improvements to, property;~~
~~[(7) the refinancing of the principal amount described by Subdivisions (3)–(6), to the extent the refinancing reduces that principal amount in a manner described by the applicable subdivision;~~
~~[(8) capital improvements to property other than by incurring debt; and~~
~~[(9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses~~].
(b) A spouse seeking reimbursement to a marital estate must prove:
(1) that the spouse or both spouses ***used property of the marital estate to confer a benefit*** on the property of another marital estate;
(2) the ***value of the benefit*** described by Subdivision (1); and
(3) that ***unjust enrichment of the benefited estate will occur*** if the benefited estate is not required to reimburse the conferring estate.
(c) For purposes of this subchapter, the property of a marital estate confers a benefit on another marital estate's property if:
(1) one or both spouses used property of the conferring estate to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property;

(2) one or both spouses used property of the conferring estate to make improvements on the benefited estate's real property, and the improvements resulted in an enhancement in the value of the benefited estate's real property; or
(3) one or both spouses used time, toil, talent, or effort to enhance the value of property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation.
(d) For purposes of this subchapter, the value of the benefit conferred by the property of one marital estate on the property of another marital estate is determined as of the date of the trial's commencement and:
(1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate;
(2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or
(3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and preserve the spouse's separate property.
(e) The determination of whether unjust enrichment will occur if one marital estate is not required to reimburse another marital estate is a question for the court to decide.
(f) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.
(g) ***A claim for reimbursement of a marital estate by one spouse may be offset by the value of any related benefit that the other spouse proves that the conferring estate received*** from the benefited estate, including:
(1) the value of the ***use and enjoyment*** of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate;
(2) ***income received*** by the conferring estate from the property of the benefited estate; or
(3) any ***reduction in the amount of any income tax obligation*** of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments.
(h) [(c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse ***may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.***
~~[(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be ***measured by the enhancement in value to the benefited marital estate.***~~
~~[(e)]~~ The ***party seeking an offset to a claim for reimbursement has the burden of proof*** with respect to the offset.

§ 3.404. Application of Inception of Title Rule; Ownership Interest not Created—AMENDED

(b) A ***claim for reimbursement under this subchapter does not create an ownership interest in property, but does create a claim*** against the property of the benefited estate by the conferring [~~contributing~~] estate. The claim matures on dissolution of the marriage or the death of either spouse.

Source: HB 1547

EFF. DATE: 9/1/2023—applies to a claim for reimbursement that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

THIS IS REINFORCEMENT OF THE CONCEPTS OF: 1., EQUITY IN REIMBURSEMENT CLAIMS (BASED ON A RECOVERY GROUNDED IN "UNJUST ENRICHMENT"); 2., THE DISCRETIONARY NATURE OF A REIMBURSEMENT CLAIM; AND, 3., THE FACT THAT SUCH CLAIMS DO NOT RESULT IN TITLE CHANGE.

NOTHING NEW...EXCEPT THE LEGISLATURE ADOPTED ALL OF THE REIMBURSEMENT RULES WE LEARNED IN SCHOOL AS THE STATUTE, INCLUDING $ FOR $ REIMBURSEMENT, ENHANCEMENT IN VALUE, AND T T T (THE JENSEN 4 RULES) WITH OFFSETTING BENEFITS. WORTHY OF RE-READING BECAUSE THE RULES ARE NOW BOTH CASE LAW AND LEGISLATIVE.
REMEMBER: SPECIFIC PLEADINGS OF SEPARATE PROPERTY AND REIMBURSEMENT ARE REQUIRED IF YOUR CLIENT IS ASKING FOR EITHER OR BOTH. THERE IS NO BASIS FOR THE COURT TO RECEIVE EVIDENCE TO AWARD EITHER WITHOUT PLEADINGS AND PROOF.

SUBTITLE C. DISSOLUTION OF MARRIAGE
CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE
Subchapter F. Temporary Orders

§ 6.501(a). Temporary Restraining Order—AMENDED

(a) After the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, the court may grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from: ...
(27) tracking or monitoring personal property or a motor vehicle in the possession of a party (INCLUDING THE CAR THAT IS TITLED IN THE NAME OF YOUR CLIENT, OR IN JOINT NAMES), without that party's effective consent, including by:
(A) using a tracking application on a personal electronic device in the possession of that party or using a tracking device; or
(B) physically following that party or causing another to physically follow that party.

Source: HB 2715
EFF. DATE: 9/1/2023

FIRST, THIS IS DISCRETIONARY—THAT IS, THE LIMITATION DOES NOT INVOKE CRIMINAL OR CIVIL PENALTY UNLESS THE JUDGE DOES IT, OR THE REQUEST IS MADE AND THE JUDGE DOES IT.

THAT SAID:

1., IF APPLIED TO ITS LOGICAL END, THIS IS THE DEATH OF THE PRIVATE INVESTIGATOR.

2., IN FACT, YOU PROBABLY CAN'T FOLLOW THE OTHER PARTY AROUND BECAUSE YOUR CLIENT CAN'T AND CANNOT GIVE YOU AUTHORITY TO;

3., NO MORE APPLE AIR TAGS OR GPS TRACKERS…

YEP--LET'S THROW IN "FIND MY PHONE" AND "KID LOCATOR" APPS—EVEN THOSE APPS. PRE-EXISTING THE FILING.

BEST INFORMATION RIGHT NOW IS THAT THE JUDGES ARE PROBABLY GOING TO BE ENCOURAGED IN JUDICIAL CONFERENCE TO ADOPT THE "TRACKING AND SURVEILLANCE" ORDERS AS AMENDMENTS TO THE STANDING ORDERS. YOU SHOULD CERTAINLY ADD THESE TO YOUR FORM REQUESTS, ESPECIALLY WHERE IT IS YOUR CLIENT WHO IS THE TARGET OF THE OTHER PARTY'S ALLEGATIONS OF INFIDELITY

WHAT ABOUT SAPCRs? UNADDRESSED BY THE STATUTE. THE CONSERVATIVE APPROACH IS TO INCLUDE THIS RELIEF IN YOUR SAPCRs.

EFFECTIVE NOW? YES. (SINCE THE ORDERS ARE BROUGHT ABOUT ON MOTION—THAT'S EVEN IN SUITS PENDING ON SEPTEMBER 1)

§ 6.502(a-1). Temporary Injunction and Other Temporary Orders—ADDED

(a-1) If the court on its own motion refers to mediation a suit described by Subsection (a) in which a motion for a temporary order described by that subsection is **pending**, the ***court may not postpone the initial hearing*** on the pending motion to a date that is ***later than the 30th day after the date set for the hearing.***

Source: HB 2671
EFF. DATE: 9/1/2023—applies to a suit that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

WHAT ABOUT A STANDING ORDER THAT REFERS THE CASE TO MEDIATION? — THAT'S PROBABLY CONTEMPLATED BY THIS SECTION.

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE
SUBTITLE B. PROTECTIVE ORDERS
CHAPTER 81. GENERAL PROVISIONS

§ 81.001. Entitlement to Protective Order—AMENDED

A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred [~~and is likely to occur in the future~~].

Source: HB 1432
EFF. DATE: 9/1/2023

"ONE STRIKE AND YOU'RE OUT". CARRIED OUT THROUGHOUT THE PO SECTIONS OF THE CODE.

NO LONGER IS PLEADING OR PROOF OF REOCCURANCE OF VIOLENCE REQUIRED. WHAT ABOUT "SINGLE INCIDENT" FAMILY VIOLENCE? COURT HAS A MANDATORY DUTY TO RENDER A PO ON A FINDING OF "FAMILY VIOLENCE"—FRIENDS, THAT IS ONE EVENT.

§ 81.0015. Presumption—AMENDED

For purposes of this subtitle, there is a presumption that family violence has occurred [~~and is likely to occur in the future~~] if:

(1) the respondent has been convicted of or placed on deferred adjudication community supervision for any of the following the offenses against child for whom the petition is filed:
  (A) an offense under Title 5, Penal Code, for which the court has made an affirmative finding that the offense involved family violence under Article 42.013, Code of Criminal Procedure; or
  (B) an offense under Title 6, Penal Code; and
(2) the respondent's parental rights with respect to the child have been terminated [~~; and~~
[~~(3) the respondent is seeking or attempting to seek contact with the child~~].

Source: HB 1432
EFF. DATE: 9/1/2023

AS AMENDED, THIS SECTION IS AN EXCLAMATION MARK ON WHAT OUGHT TO BE OBVIOUS—NO RELATIONSHIP TO A TERMINATED CHILD, BUT REMEMBER THAT CHILD IS PART OF ANOTHER FAMILY UNIT, AND THIS PO PROVIDES PRESUMPTIVE PROTECTION FOR THAT FAMILY UNIT, EVEN WHEN THE ADULTS OR OTHER CHILDREN ARE NOT THE SUBJECT MATTER OF THE CONVICTION.

§ 83.007. Standard Temporary Ex Parte Order Form—AMENDED/ADDED

a) The ***court shall use the standardized temporary ex parte order form created by the Office of Court Administration*** of the Texas Judicial System under Section 72.039, Government Code, to issue a temporary ex parte order under this chapter.
b) A court's failure to use the standardized temporary ex parte order form as required under Subsection (a) does not affect the validity or enforceability of the temporary ex parte order issued.

Source: SB 48
EFF. DATE: 6/18/2023

CHAPTER 104. EVIDENCE

§ 104.008 (a-1). Certain Testimony Prohibited—ADDED

(a-1) Subsection (a) does *not prohibit a person from offering an expert opinion regarding the qualifications of, reliability of the methodology used by, or relevance of the information obtained by a person who has conducted a custody evaluation* relating to the child under Subchapter D, Chapter 107, as long as the person's testimony does not violate Subsection (a).

Source: HB 891
EFF. DATE: 9/1/2023—applies only to a suit affecting the parent-child relationship that is filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit is filed, and the former law is continued in effect for that purpose.

WE ALL KNOW THAT UNLESS THERE IS A COURT ORDER FOR A CHILD CUSTODY EVALUATOR, YOU CANNOT OFFER PROOF OF BEST INTEREST, OR MAKE

RECOMMENDATIONS FOR CUSTODY OR ACCESS THROUGH AN EXPERT WITNESS UNDER CHAPTER 107.

THIS SECTION MAKES CLEAR THAT YOU MAY ATTACK THE CREDIBILITY OF THE EVALUATOR OR THE OPINION REACHED ON STANDARD EXPERT WITNESS BASIS: CREDENTIALS, INFORMATION PROVIDED, OR METHODOLOGY AND USE AN EXPERT TO OPINE ON ANY, OR ALL, OF THOSE ISSUES.

CPS CONTINUES TO HAVE FULL AUTHORITY TO DISREGARD THE NICIETIES OF EXPERT WITNESS PRACTICE, OR OF CUSTODY EVALUATION ORDERS REQUIRED UNDER CHAPTER 107.

CHAPTER 105. SETTINGS, HEARINGS AND ORDERS

§ 105.001 (a-1). Temporary Orders Before Final Order—ADDED

(a-1) If the ***court on its own motion refers to mediation a suit in which an initial hearing regarding the rendition of a temporary order described by Subsection (a) has not yet occurred, the court may not postpone the hearing to a date that is later than the 30th day after the date se***t for the hearing.

Source: HB 2671
EFF. DATE: 9/1/2023—applies to a suit that is pending in a trial court on the effective date of this Act or that is filed on or after that date.

MOST LOCAL COURTS DO NOT ORDER MEDIATION DURING TEMPORARY UNLESS REQUESTED. THIS RULE CHANGE HAS NO IMPACT ON LOCAL RULE 2.4 b. MAKING ADR MANDATORY BEFORE FINAL SETTING.

CHAPTER 107. SPECIAL APPOINTMENTS, CHILD CUSTODY EVALUATIONS AND ADOPTION EVALUATIONS
SUBCHAPTER D. CHILD CUSTODY EVALUATION

§ 107.112. Communications and Recordkeeping of Child Custody Evaluator—AMENDED/ ADDED

(a) Subject to Subsection (b-1), notwithstanding [~~Notwithstanding~~] any rule, standard of care, or privilege applicable to the professional license held by a child custody evaluator, a communication made by a participant in a child custody evaluation is subject to disclosure and may be offered in any judicial or administrative proceeding if otherwise admissible under the rules of evidence.

(b-1) *A child custody evaluator shall create an audiovisual recording of each interview the evaluator conducts with a child who is the subject of a suit seeking conservatorship of, possession of, or access to the child.* A recording created under this subsection is confidential and may not be released after the completion of the suit in which the evaluator conducted the evaluation, except by court order for good cause shown.

(c) Subject to Subsection (b-1) and except [~~Except~~] for records obtained from the department in accordance with Section 107.111, records relating to a child custody evaluation conducted by an employee of or contractor with a domestic relations office shall, after completion of the evaluation and the preparation and filing of a child custody evaluation report under Section

107.113, be made available on written request according to the local rules and policies of the office.

Source: HB 4062
EFF. DATE: 9/1/2023—apply only to an interview conducted by a child custody evaluator in a suit affecting the parent-child relationship on or after the effective date of this Act. An interview conducted before the effective date of this Act is governed by the law in effect on the date the interview was conducted, and the former law is continued in effect for that purpose.

HOW APPLICABLE IS THIS TO MOST OF OUR PRACTICES? ANY TIME THERE IS A ORDER, OR POTENTIAL FOR RENDITION OF AN OPINION ON BEST INTEREST, CUSTODY, OR TIMES OF ACCESS BY A PERSON TESTIFYING AS AN EXPERT, THE RECORDING RULE MAY BE APPLICABLE.

AS A PRACTICAL MATTER, THIS DOES NOT AFFECT AMICUS PRACTICE WHICH IS PREVELANT HERE.

CHAPTER 154. CHILD SUPPORT
Subchapter A. Court Ordered Child Support

§ 154.017. Employment Services-Related Orders for Unemployed and Underemployed Obligors—ADDED.

a) When establishing, modifying, or enforcing a child support obligation, ***a court or Title IV-D agency may render an order requiring an unemployed or underemployed obligor*** to:
   1) enroll and participate fully in a ***program available in the obligor's community that provides employment assistance, skills training, or job placement services***; or
   2) **WORK !!!!!!!!**, ***have a plan ???????? to pay*** child support, or ***participate in work activities appropriate to pay the support obligation***

   (HOW ON EARTH IS THAT GOING TO BE ENFORCEABLE? OH, WAIT, THE LEGISLATIVE FAIRY WAVES THE MAGIC WAND IN (13) AND TURNS THIS PIG INTO A UNICORN.)

   IS THIS AN EXAMPLE OF THE LEGISLATIVE MANDATE TO THE COURTS THAT FEELS GOOD BUT DOES NOTHING OF VALUE, EXCEPT POTENTIALLY GENERATE MORE LITIGATION?

b) An order rendered under this section is ***enforceable as provided by Chapter 157.***

Source: SB 870
EFF. DATE: 9/1/2023—does not constitute a material and substantial change of circumstances under Section 156.401, Family Code, sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the effective date of this Act.

Subchapter D. Hearing and Enforcement Order

§ 157.168. Additional Periods of Possession or Access—AMENDED

a) Except as provided in Subsection (a-1), a [~~A~~] court may order additional periods of possession of or access to a child to compensate for the denial of court-ordered possession or access.

(a-1) Unless a party shows good cause why the order should not be rendered, a *court shall order additional periods of possession of or access to a child to compensate for a denial of court-ordered possession or access that resulted from an investigation by the Department of Family and Protective Services that did not result in a finding of abuse or neglect.*

(a-2) The additional periods of possession or access:

1) must be of the ***same type and duration of the possession or access that was denied***;
2) may include weekend, holiday, and summer possession or access; and
3) must occur ***on or before the second anniversary of the date the court finds that court-ordered possession or access has been denied.***

b) The ***PERSON DENIED POSSESSION OR ACCESS IS ENTITLED TO DECIDE THE TIME OF THE ADDITIONAL POSSESSION OR ACCESS***, subject to the provisions of Subsection (a-2)(1) [~~(a)(1)~~].

c) Subsection (a-1) does not:

1) create a cause of action against the Department of Family and Protective Services; or
2) waive sovereign immunity to suit or liability.

Source: SB 718

EFF. DATE: 9/1/2023—The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the possession of or access to a child rendered before the effective date of this Act. The change in law made by this Act applies only to a suit affecting the parent-child relationship pending before a trial court on or filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

MANDATORY.

"MAKE UP" VISITATION MUST OCCUR WITHIN TWO YEARS AFTER DENIAL OF ACCESS. COULD RESULT IN SIGNIFICANT DENIAL OF ACCESS TO THE OTHER PARTY.

RELYING ON A PARTY TO MAKE WHAT APPEARS TO BE AN UNFETTERED CHOICE AS TO TIME OF MAKE-UP COULD PRESENT SIGNIFICANT ISSUES WITH THE CHILD'S LIFE CIRCUMSTANCES.

THIS IS A WARNING SHOT ACROSS THE BOW OF THE LITIGANTS WHO BELIEVE THAT A MARGINAL CPS REFERRAL WILL HAVE NO REPERCUSSIONS.

CHAPTER 162. ADOPTION
Subchapter A. Adoption of A Child

§ 162.003. Adoption Evaluation—AMENDED

In a suit for adoption, an adoption evaluation must be conducted as provided in Chapter 107, unless the court waives the requirement for the performance of an adoption evaluation under Section 107.153(a-1).

Source: HB 461

EFF. DATE: 9/1/2023—applies only to a suit for adoption that is pending in trial court on the effective date of this Act or filed on or after the effective date of this Act.

READ THIS ONE BACKWARDS—THE COURT MAY WAIVE THE ADOPTION EVALUATION REQUIRED BY CHAPTER 107, WHICH WAS A MANDATORY REQUIREMENT IN YOUR ADOPTION PRACTICE PRIOR TO THE CHANGE.

CHAPTER 234. STATE CASE REGISTRY, DISBURSEMENT UNIT, AND DIRECTORY OF NEW HIRES
Subchapter A. Unified State Case Registry and Disbursement Unit

§ 234.001. Establishment and Operation of State Case Registry and State Disbursement Unit—AMENDED

(d) A *certified child support payment record produced by the Title IV-D agency or state disbursement unit is admissible* as evidence of the truth of the information contained in the record and does not require further authentication or verification.

A FURTHER LEGISLATIVE EXCEPTION TO THE HEARSAY RULES IN THE JUDICIAL RULES OF EVIDENCE—ISN'T THAT A VIOLATION OF SEPARATION OF POWERS? "...WELL, ALL THIS DOES IS JUST ADD THE RECORDS OF A FEDERALLY-MANDATED AGENCY TO AN ALREADY EXISTING SECTION WITH WHICH WE ARE ALL FAMILIAR...." FORGET THE ARGUMENT AND HOLD THAT THOUGHT FOR JUST A SECOND...

Source: SB 870
EFF. DATE: 9/1/2023- applies only to the admissibility of evidence in a proceeding commenced on or after the effective date of this Act. The admissibility of evidence in a proceeding that commences before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

§ 234.0015. Child Support Payments—ADDED

For purposes of services provided by the state disbursement unit under this subchapter, a *child support payment includes child support, medical support, and dental support* ordered under Chapter 154.

Source: SB 870
EFF. DATE: 9/1/2023—apply to a child support or maintenance payment made on or after the effective date of this Act regardless of whether the order for child support or maintenance was rendered before, on, or after the effective date of this Act.

§ 234.013. Applicability to Certain Maintenance Payments—ADDED

The state disbursement unit *shall administer maintenance payments* ordered under Section 8.062 in the same manner as child support payments under this subchapter.

Source: SB 870
EFF. DATE: 9/1/2023—apply to a child support or maintenance payment made on or after the effective date of this Act regardless of whether the order for child support or maintenance was rendered before, on, or after the effective date of this Act.

THE STATE CASE REGISTRY NOW MAINTAINS RECORDS FOR CHILD SUPPORT, MEDICAL AND DENTAL SUPPORT, UNREIMBURSED MEDICAL AND DENTAL PAYMENTS, AND MAINTENANCE.

NOW, ASK THE HEARSAY "LEGISLATIVE VS. JUDICIAL" (SEPARATION OF POWERS????) WHO HAS THE RIGHT TO MANDATE WHICH RULES OF CIVIL PROCEDURE AND EVIDENCE WE FOLLOW? FORGET SEPARATION OF POWERS UNDER THE STATE CONSTITUTION---BECAUSE, YOU SEE, EFFECTIVE SEPTEMBER 1, 2023, EVERY FAMILY CODE ACTION NOW HAS ITS OWN RULES OF EVIDENCE AND CIVIL PROCEDURE. BIGGEST SINGLE "JUST GET USED TO IT" IS TRCP RULE 194.2 ON THE SEQUENCING OF INITIAL TRIAL DISCLOSURES IS OUT, SUPPLANTED BY TFC 301.051....BUT, FOLLOW ME ON THE BASICS....

TITLE 6. CIVIL PROCEDURE—ADDED
CHAPTER 301. DISCOVERY PROCEDURES FOR CIVIL ACTIONS
Subchapter A. General Provisions

§ 301.003. Draft Expert Reports and Disclosures Protected.

A draft expert report or draft disclosure required under this chapter is protected from discovery, regardless of the form in which the draft is recorded.

Subchapter B. Request for Disclosure

§ 301.053. Response.

The responding party must serve a written response on the requesting party not later than the 30th day after the date the requesting party serves a request under Section 301.051, except that:

(1) a defendant served with a request before the defendant's answer is due is not required to respond until the 50th day after the date the request is served; and
(2) a response to a request under Section 301.052(a)(6) is governed by Subchapter C.

INITIAL DISCLOSURE PRACTICE UNDER EXISTING RULES IS A DEAD LETTER AS TO FAMILY CODE PRACTICE.

NOTE THE SINGLING OUT OF THE TFC SPECIFIC EXPERT WITNESS RULE IN THE 2 SECTION)

§ 301.054. Production of Documents and Tangible Items.

The responding party shall provide copies of documents and other tangible items with the response to a request served under Section 301.051 unless:

(1) the responsive documents are voluminous;
(2) the responding party states a reasonable time and place for the production of the documents;
(3) the responding party produces the documents at the time and place stated under Subdivision **(2) unless otherwise agreed by the parties or ordered by the court; and**
(4) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

§ 301.055. Work Product Objection Prohibited.

A party may not assert a work product privilege for or object on the basis of a work product privilege to a request served under Section 301.051.

"WORK PRODUCT" IS A DEAD LETTER UNDER THE TFC, ONCE DISCLOSURES HAVE BEEN REQUESTED AND RESPONDED TO....BUT, WHAT ABOUT THE FIRST PART OF RULE 194.5, TRCP SAYING "NO OBJECTION...IS PERMITTED"?

THE OBJECTION RULE DID NOT CARRY OVER INTO CHAPTER 301, TFC.

CAN ONE LEGITIMATELY CONCLUDE THAT OBJECTIONS TO DISCLOSURES ARE BACK, BASED ON THAT OMISSION?

§ 301.056. Certain Responses Not Admissible.

A response to a request under Section 301.052(a)(3) or (4) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

WHAT THAT MEANS IS THE OLD QUESTION: "...YOU CHANGED YOUR MIND..." AS TO ISSUES ON WHICH DISCLOSURE HAS BEEN MADE IS NOT PROPER IMPEACHMENT WHEN RESPONSES HAVE BEEN CHANGED.

WHAT ABOUT ADMISSIONS, RFP AND INTERROGATORIES?
THE ANSWER IS: "PROCEED AT YOUR OWN PACE"

QUOTING MISC. DOCKET ORDER 23-9052:

"...192.2 Timing and Sequence of Discovery. (a) Timing. (1) In a suit not governed by the Family Code, unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due. *(2) In a suit governed by the Family Code, a party may serve discovery with the initial pleading. (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 required disclosures, requests for disclosure in suits governed by the Family Code, requests for production and inspection of documents and tangible things, requests for entry onto property, interrogatories, and requests for admission...."*

THE COMBINATION OF THESE RULES SIGNALS THAT WRITTEN DISCOVERY FORMS AND SEQUENCING FOR FAMILY LAWYERS ARE BACK TO DISCLOSURES, INTERROGATORIES, RFP, AND ADMISSIONS AT YOUR OWN PACE, SUBJECT TO DISCOVERY CLOSE TIME.

Subchapter C. Discovery Regarding Testifying Expert Witnesses

§ 301.102. Deadline for Response.

Unless otherwise ordered by the court, a responding party shall provide the information requested under Section 301.052(a)(6) not later than the later of:

(1) the 30th day after the date the request is served; or
(2) either, as applicable:
  (A) with respect to an expert testifying for a party seeking affirmative relief, the 90th day before the end of the discovery period; or
  (B) with respect to an expert not described by Paragraph (A), the 60th day before the end of the discovery period.

DISCLOSURES REGARDING EXPERT FOR A PARTY SEEKING RELIEF—90 DAYS PRIOR TO CLOSE OF DISCOVERY PERIOD (120 DAYS OUT FROM TRIAL) DISCLOSURES REGARDING EXPERT FOR THE DEFENDING PARTY—60 DAYS PRIOR TO CLOSE OF DISCOVERY PERIOD (90 DAYS OUT FROM TRIAL)

§ 301.103. Deposition Availability.

(a) A party seeking affirmative relief shall make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with this section.

(b) If a party seeking affirmative relief does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party shall make the expert available for a deposition reasonably promptly after the designation. If the ***deposition cannot be reasonably concluded more than 15 days be- fore the deadline for designating other experts due to the actions of the party who designated*** the expert, ***the court shall extend the deadline for other experts testifying on the same subject.***

(c) If a ***party seeking affirmative relief provides a report*** of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the ***party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.***

(d) A party not seeking affirmative relief shall make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

§ 301.105. Court-Ordered Reports.

If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced in addition to the deposition.

§ 301.108. Expert Communications Protected.

Communications between a party's attorney and a testifying expert witness **in an action subject to this chapter are *protected from discovery* regardless of the form of the communications, *except* to the extent that the communications:**

(1) relate to compensation for the expert's study or testimony;

(2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions the expert will express; or

(3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.

Source: HB 2850
EFF. DATE: 9/1/2023

THE OTHER UNAMENDED RULES OF EVIDENCE AND CIVIL PROCEDURE REMAIN IN EFFECT

...AND, THE AUTHORITY????

SUPREME COURT MISCELLANEOUS DOCKET ORDER 23-9052 (AUGUST 7, 2023) EMBRACES TITLE 6, AND APPEARS TO SWEEP AWAY ANY NOTION THAT THERE IS ANY VIOLATION OF THE SEPARATION OF POWERS IN THE LEGISLATURE ADOPTING, WHOLESALE, EXCEPTIONS TO THE SC'S RULES OF EVIDENCE OR CIVIL PROCEDURE.

ONLY REMAINING QUESTION: DOES THE EFFECTIVE DATE APPLY TO PENDING SUITS ON SEPTEMBER 1, 2023?

THE ANSWER: PROBABLY. A CLOSER QUESTION IS WHAT TO DO WITH INITIAL DISCLOSURES DUE ON A PENDING CASE BEFORE SEPTEMBER 1? LIKELY, IF TITLE 6 DOES AWAY WITH 194.2, TRCP, AND IF THAT REQUIREMENT IS SUPPLANTED WITH TITLE 6, AND THERE ARE STILL NO OBJECTIONS TO DISCLOSURES, WHAT DIFFERENCE DOES IT MAKE?

I'M SURE NOT GOING TO ARGUE THAT DIFFERENCE TO ANY COURT I PRACTICE IN.

I HAVE SELECTED SPECIFIC PORTIONS OF THE AMENDMENTS FROM THE OVERALL LEGISLATIVE REPORT AS OF THIS TIME FROM THE LAST LEGISLATURE UP THROUGH THE SPECIAL SESSIONS. FOR FURTHER STUDY, PICK UP THE ENTIRE LEGISLATIVE RESULTS FROM: WWW.SBOTFAM.ORG AND GO TO THE SECTION REPORT. FOR THOSE OF YOU WHO ARE NOT MEMBERS OF THE FAMILY LAW SECTION OF THE STATE BAR OF TEXAS, KEEPING UP WITH WHAT IS GOING ON TO CHANGE YOUR FAMILY LAW PRACTICE THROUGH MEMBERSHIP IN THE FAMILY LAW SECTION IS THE CHEAPEST $30 PER YEAR YOU WILL EVER SPEND.

Supreme Court of Texas

Misc. Docket No. 23-9052

Preliminary Approval of Texas Rules of Civil Procedure 194a and 195a and of Amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198

ORDERED that:

1. The Court invites public comments on proposed new Texas Rules of Civil Procedure 194a and 195a and on proposed amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198.

2. To effectuate the Act of May 24, 2023, 88th Leg., R.S., ch. 844 (H.B. 2850), the rules and amendments are effective September 1, 2023. But the rules and amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by November 1, 2023.

3. New Texas Rules of Civil Procedure 194a and 195a are demonstrated in clean form. The amendments to Texas Rules of Civil Procedure 190, 192, 194, 195, 196, 197, and 198 are demonstrated in redline form.

4. The rules and amendments approved by this Order apply only to an action filed on or after September 1, 2023.

5. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

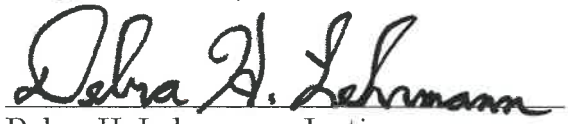
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

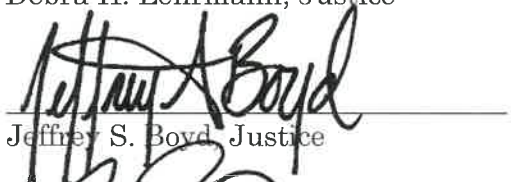
d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 7, 2023.

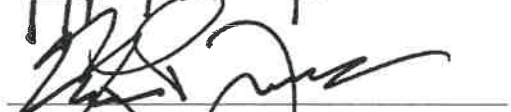
Nathan L. Hecht, Chief Justice



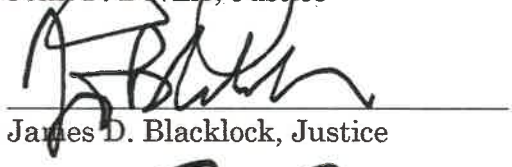
Debra H. Lehrmann, Justice



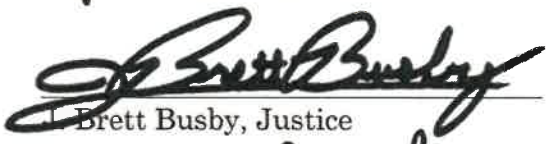
Jeffrey S. Boyd, Justice



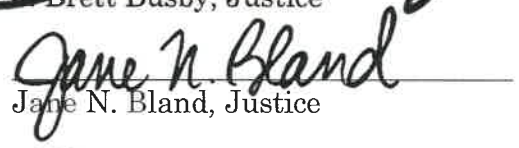
John P. Devine, Justice



James D. Blacklock, Justice

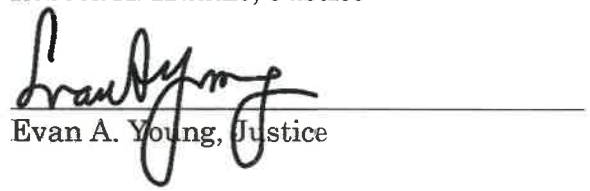


Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 190. DISCOVERY LIMITATIONS (Redline Form)

***

190.2 Discovery Control Plan - Expedited Actions and Divorces Involving $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 $250,000.

(b) **Limitations.** Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) **Discovery period.**

(A) In a suit not governed by the Family Code, ~~A~~all discovery must be conducted during the discovery period, which begins when the first initial disclosures are due and continues for 180 days.

(B) In a suit governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party.

(2) **Total time for oral depositions.** Each party may have no more than 20 hours in total to examine and cross-examine all witnesses in oral depositions. 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.

(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)

(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.**

(A) In a suit not governed by the Family Code, ~~A~~all discovery must be conducted during the discovery period, which begins when the first 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 first initial disclosures are due.

(B) In a suit governed by the Family Code, all discovery must be conducted during the discovery period, which begins when the suit is filed and continues until 30 days before the date set for trial.

(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.

***

RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS (Redline Form)

192.1 Forms of Discovery.

Permissible forms of discovery are:

(a) except in a suit governed by the Family Code, required disclosures;

(b) in a suit governed by the Family Code, requests for disclosure;

(~~b~~c) requests for production and inspection of documents and tangible things;

(~~c~~d) requests and motions for entry upon and examination of real property;

(~~d~~e) interrogatories to a party;

(~~e~~f) requests for admission;

(~~f~~g) oral or written depositions; and

(~~g~~h) motions for mental or physical examinations.

192.2 Timing and Sequence of Discovery.

(a) **Timing.**

(1) In a suit not governed by the Family Code, ~~U~~unless otherwise agreed to by the parties or ordered by the court, a party cannot serve discovery on another party until after the other party's initial disclosures are due.

(2) In a suit governed by the Family Code, a party may serve discovery with the initial pleading.

(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 required disclosures, requests for disclosure in suits governed by the Family Code, 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 194. REQUIRED DISCLOSURES IN SUITS NOT GOVERNED BY THE FAMILY CODE (Redline Form)

194.1 Duty to Disclose; Production.

(a) **Duty to Disclose.** Except in a suit governed by the Family Code, as exempted by Rule 194.2(~~dc~~), 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.** If a party does not produce copies of all responsive documents, electronically stored information, and tangible things with the response, the response must state a reasonable time and method for the production of these items. The responding party must produce the items at the time and in the method 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 Initial Disclosures.

(a) **Time for Initial Disclosures.** A party must make the initial disclosures within 30 days after the filing of the first answer or general appearance 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 or general appearance 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 must provide to the other parties:

(1) the correct names of the parties to the lawsuit;

(2) the name, address, and telephone number of any potential parties;

(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);

(4) the amount and any method of calculating economic damages;

(5) 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;

(7) any indemnity and insuring agreements described in Rule 192.3(f);

(8) any settlement agreements described in Rule 192.3(g);

(9) any witness statements described in Rule 192.3(h);

(10) 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;

(11) 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

(12) 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, annulment, or to declare a marriage void, a party must, without awaiting a discovery request, provide to the other party the following, for the past two years or since the date of marriage, whichever is less:~~

~~(A) all deed and lien information on any real property owned and all lease information on any real property leased;~~

~~(B) all statements for any pension plan, retirement plan, profit-sharing plan, employee benefit plan, and individual retirement plan;~~

~~(C) all statements or policies for each current life, casualty, liability, and health insurance policy; and~~

~~(D) all statements 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) information regarding 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~~c) **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;

(3) a petition for habeas corpus;

~~(4) an action under the Family Code filed by or against the Title IV-D agency in a Title IV-D case;~~

~~(5) a child protection action under Subtitle E, Title 5 of the Family Code;~~

~~(6) a protective order action under Title 4 of the Texas Family Code;~~

(~~7~~4) ~~other~~an action~~s~~ involving domestic violence; and

(~~8~~5) an action on appeal from a justice court.

***

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.

~~(c) **Proceedings Exempt from Pretrial Disclosure.** An action arising under the Family Code filed by or against the Title IV-D agency in a Title IV-D case is exempt from pretrial disclosure, but a court may order the parties to make particular disclosures and set the time for disclosure.~~

***

Comment to 2023 change: Rule 194 is amended to implement chapter 301 of the Family Code.

194a. REQUESTS FOR DISCLOSURE IN SUITS GOVERNED BY THE FAMILY CODE (Clean Form)

194a.1 Request.

No later than 30 days before the end of any applicable discovery period, a party may obtain disclosure from another party of the information or material described in Rule 194a.2 by serving the other party the following request: "Under Rule 194a, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule [state rule, *e.g.*, 194a.2, or 194a.2(a), (c), and (f), or 194a.2(d)–(g)]."

194a.2 Content.

A party may request disclosure under Rule 194a.1 of any of the following:

(a) the correct names of the parties to the lawsuit;

(b) the name, address, and telephone number of any potential parties;

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (but the responding party need not marshal all evidence that may be offered at trial);

(d) the amount and any method of calculating economic damages;

(e) the name, address, and telephone number of any person having knowledge of relevant facts and a brief statement of each identified person's connection with the case;

(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 that information; and

(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 biography;

(g) any discoverable settlement agreement described by Rule 192.3(g);

(h) any discoverable witness settlement described by Rule 192.3(h);

(i) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case:

(1) all medical records and bills that are reasonably related to the injuries or damages asserted; or

(2) an authorization permitting the disclosure of the information described by paragraph (i)(1);

(j) 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 through an authorization provided by the requesting party; and

(k) the name, address, and telephone number of any person who may be designated as a responsible third party.

194a.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 is not required to respond until 50 days after service of the request; and

(b) a response to a request under Rule 194a.2(f) is governed by Rule 195a.

194a.4 Production of Documents and Tangible Items.

The responding party must provide copies of documents and other tangible items with the response unless:

(a) the responsive documents are voluminous;

(b) the responding party states a reasonable time and place for the production of the documents;

(c) the responding party produces the documents at the time and place stated under paragraph (b) unless otherwise agreed by the parties or ordered by the court; and

(d) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

194a.5 Work Product Objection Prohibited.

A party may not assert a work product privilege for or object on the basis of a work product privilege to a request served under Rule 194a.1.

194a.6 Certain Responses Not Admissible.

A response to a request under Rule 194a.2(c) or (d) that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

Comment to 2023 change: New Rule 194a is added to implement chapter 301 of the Family Code.

RULE 195. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES IN SUITS NOT GOVERNED BY THE FAMILY CODE (Redline Form)

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195a. DISCOVERY REGARDING TESTIFYING EXPERTS IN SUITS GOVERNED BY THE FAMILY CODE (Clean Form)

195a.1 Permissible Discovery Methods.

A party may request another party to designate and disclose information concerning testifying expert witnesses only through:

(a) a disclosure request served under Rule 194a.1; or

(b) a deposition or report permitted by this rule.

195a.2 Deadline for Response.

Unless otherwise ordered by the court, a responding party must provide the information requested under Rule 194a.2(f) by the later of the following dates:

(a) 30 days after the request is served; or

(b) either, as applicable:

(1) with respect to an expert testifying for a party seeking affirmative relief, 90 days before the end of the discovery period; or

(2) with respect to an expert not described by paragraph (b)(1), 60 days before the end of the discovery period.

195a.3 Deposition Availability.

(a) A party seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with this rule.

(b) If a party seeking affirmative relief does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party must make the expert available for a deposition reasonably promptly after the designation. If the deposition cannot be reasonably concluded more than 15 days before the deadline for designating other experts due to the actions of the

party who designated the expert, the court must extend the deadline for other experts testifying on the same subject.

(c) If a party seeking affirmative relief provides a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, the party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.

(d) A party not seeking affirmative relief must make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed.

195a.4 Content of Oral Depositions and Court-Ordered Reports.

In addition to a disclosure request served under Rule 194a.1, a party may obtain discovery by oral deposition and a report prepared in accordance with Rule 195a.5 of:

(a) the subject matter on which a testifying expert is expected to testify;

(b) the expert's mental impressions and opinions;

(c) the facts known to the expert, regardless of when the factual information is acquired, that relate to or form the basis of the expert's mental impressions and opinions; and

(d) other discoverable items, including documents not produced in response to a disclosure request.

195a.5 Court-Ordered Reports.

If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced in addition to the deposition.

195a.6 Amendment and Supplementation of Discovery.

A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If a party retains, employs, or otherwise controls an expert witness, the party must amend or supplement the expert's deposition

testimony or written report only with regard to the expert's mental impressions or opinions and the basis for those impressions or opinions.

195a.7 Cost of Expert Witnesses.

When a party takes the oral deposition of an expert witness retained by an opposing party, the party retaining the expert must pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

195a.8 Expert Communications Protected.

Communications between a party's attorney and a testifying expert witness in an action subject to this chapter are protected from discovery regardless of the form of the communications, except to the extent that the communications:

(a) relate to compensation for the expert's study or testimony;

(b) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions the expert will express; or

(c) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.

Comment to 2023 change: New Rule 195a is added to implement chapter 301 of the Family Code.

RULE 196. REQUESTS FOR PRODUCTION AND INSPECTION TO PARTIES; REQUESTS AND MOTIONS FOR ENTRY UPON PROPERTY (Redline Form)

***

196.2 Response to Request for Production and Inspection.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

***

196.7 Request of Motion for Entry Upon Property.

***

(c) **Response to request for entry.**

(1) **Time to respond.** The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

***

RULE 197. INTERROGATORIES TO PARTIES (Redline Form)

***

197.2 Response to Interrogatories.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

***

RULE 198. REQUESTS FOR ADMISSIONS (Redline Form)

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198.2 Response to Requests for Admissions.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

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CASE LAW UPDATE

PROPERTY

RULE 11 AGREEMENT EFFECTS AND PRACTICE

Rodriguez v. Rodriguez, No. 05-22-00056-CV, 2022 Tex. App. LEXIS 9479 (Tex. App.—Dallas Dec. 28, 2022, no pet.) (mem. op.)

Once a new trial is granted, prior findings, rulings, and agreements within the original trial are set aside and have no preclusive effect.

RULE 11 SUBJECT TO BEING REVOKED UNDER THE RULE, REGARDLESS.

FINALITY OF MSA – MOTION TO SET ASIDE

Emami v. Emami, No. 02-21-00319-CV, 2022 Tex. App. LEXIS 5840 (Tex. App.—Fort Worth Aug. 11, 2022, no pet.) (mem. op.)

MSA could not be set aside where husband brought claims of duress only against husband's attorney and mediator rather than against the only other party to the MSA, the wife.

CAN MEDIATOR EVEN BE CALLED TO TESTIFY?

Higginbotham v. Higginbotham, No. 03-21-00201-CV, 2022 Tex. App. LEXIS 8966 (Tex. App.—Austin Dec. 8, 2022, no pet.) (mem. op.)

Mediator called to testify in attempt to set aside MSA on the ground that husband committed fraud by nondisclosure, which failed because the document, although in husband's possession, belonged to wife, who was aware of its contents and could have obtained another copy.

MARITAL PROPERTY/PREMARITAL AGREEMENT PRACTICE

In re Banigan, 660 S.W.3d 307 (Tex. App.—Dallas 2023, no pet.) (orig. proceeding)

There was no jurisdiction to issue declaratory judgment establishing husband and wife's partition of community property agreement as valid and enforceable because the judgment did not resolve any live controversy between the parties and was, therefore, void.

ENOUGH QUESTIONS EXISTED ABOUT USING DECLARATORY ACTION FORMAT TO "PREJUDGE" ENFORCEABILITY BY COLLATERAL ESTOPPEL OR RES JUDICATA PREVIOUSLY, THAT SUCH PRACTICE IS PROBABLY NOW A DEAD LETTER.

Perez v. Perez, No. 01-22-00290-CV, 2023 Tex. App. LEXIS 2998 (Tex. App.—Houston [1st Dist.] May 4, 2023, no pet.) (mem. op.)

Premarital agreement was enforceable at the time of divorce because sufficient evidence established that husband signed a premarital agreement identical to the unsigned copy admitted

into evidence per TFC § 4.002, and husband did not attempt to amend or withdraw his admissions about executing the agreement.

McDonald v. McDonald, No. 02-22-00446-CV, 2023 Tex. App. LEXIS 3980 (Tex. App.—Fort Worth June 8, 2023, no pet.) (mem. op.)

Premarital agreement was enforceable because it was not proven to be unconscionable following consideration of "entire atmosphere" surrounding the execution of the agreement, despite the lack of disclosures or advice of counsel prior to execution.

CHARACTERIZATION/REIMBURSEMENT

In the Interest of J.Y.O., No. 05-20-00987-CV, 2022 Tex. App. LEXIS 3953 (Tex. App.—Dallas June 9, 2022, pet. filed) (mem. op.)

Discretionary bonus awarded to husband as his separate property was not abuse of discretion because husband's right to the bonus vested when he received it, and at the time husband received the bonus, husband was no longer married and wife was therefore not entitled to any division of the property.

In the Interest of M.H.A., No. 05-20-00787-CV, 2022 Tex. App. LEXIS 4668 (Tex. App.—Dallas July 7, 2022, no pet.) (mem. op.)

Husband failed to overcome shifted burden of proof following constructive fraud claim when there was credible proof that husband disposed of over $300,000 in community property without wife's knowledge or consent.

THE SHIFT OF THE BURDEN ON CONSTRUCTIVE FRAUD (HAS THE APPEARANCE OF FRAUD WITHOUT THE SPECIFIC ELEMENTS OF COMMON LAW FRAUD) PLEADING IS A POWERFUL TOOL—BUT IT NEEDS TO BE PLEADED.

In re Marriage of Wells, No. 12-21-00152-CV, 2022 Tex. App. LEXIS 6603 (Tex. App.—Tyler Aug. 30, 2022, no pet.) (mem. op.)

Reversal of award for reimbursement claim for capital improvements under TFC § 3.401(a)(8) was required because realtor provided values that did not provide fair market value of the property with and without any improvements or tie any of the valuation testimony to all the husband's improvements.

REVAMPED CHAPTER 3, EFFECTIVE SEPTEMBER 1, IS THE AFFIRMATION OF THE THREE TYPES OF REIMBURSEMENT: $ FOR $, ENHANCEMENT IN VALUE, AND TTT; AND OF THE EQUITABLE NATURE OF THE REMEDY. EACH MUST BE PLEADED AND PROOF MUST BE PUT ON OF WHICH IS BEING SOUGHT. CASE IS A ROADMAP TO PLEADING AND PROOF.

In re Marriage of Thomas, No. 06-22-00048-CV, 2023 Tex. App. LEXIS 932 (Tex. App.—Texarkana Feb. 14, 2023, no pet.) (mem. op.)

Four properties belonging to LLC could not be divided in divorce decree because the properties did not belong to the individual LLC members and therefore could not be characterized as separate or community property subject to award or division in a divorce.

VALUE OF THE ENTITY IS THE VALUE OF THE OWNERSHIP SHARE AND NOT THE INDIVIDUAL UNDERLYING ASSETS. ENTITIES FORMED DURING MARRIAGE CARRY COMMUNITY CHARACTERIZATION OF THE OWNERSHIP SHARES, REGARDLESS OF THE CHARACTERIZATION OF THE UNDERLYING ASSETS.

SAPCR

PROCEDURE AND EVIDENCE

In the Interest of A.C.P.C., No. 12-22-00080-CV, 2022 Tex. App. LEXIS 5976 (Tex. App.—Tyler Aug. 17, 2022, no pet.) (mem. op.)

Clinic could not be required to operate as "tiebreaker" in custody dispute, because clinic was not named in the pleadings and was not a party to the lawsuit.

In re Hallas, No. 03-22-00413-CV, 2022 Tex. App. LEXIS 6276 (Tex. App.—Austin Aug. 25, 2022, no pet.) (mem. op.)

Trial court abused discretion by granting multiple extensions of TRO with indefinite deadlines because the extensions did not comply with the requirements of TRCP 680.

THE TRO SIMPLY GOES OUT OF EFFECT ON SUBSEQUENT EXTENSIONS. REMEMBER THE AMENDMENT THAT TEMPORARY HEARING MEDIATION CANNOT FORESTALL TIMELY HEARING OF THE TEMPORARY ORDERS REQUEST EFFECTIVE NOW.

In the Interest of V.R.W., No. 05-22-00631-CV, 2023 Tex. App. LEXIS 3712 (Tex. App.—Dallas May 31, 2023, no pet.) (mem. op.)

Mother was not properly served with process in accordance with TRCP 106(b) where there was no sworn statement or other evidence showing that the proposed service via social media would be reasonably effective to give mother notice of the suit because nothing indicated that mother regularly used the particular social media platform or that the internet address was the mother's.

IT'S STILL SUBSTITUTED SERVICE. THE FACT THAT THE SERVICE BY FACEBOOK MESSENGER IS ONE ALLOWABLE TYPE OF SUBSTITUTED SERVICE, THE PROCEDURE OF DEMONSTRATING ATTEMPTED PERSONAL SERVICE AND FAILURE IN A MOTION FOR SUBSTITUTED SERVICE UNDER R. 109, TRCP MUST FOLLOW THE FORM AND PROCEDURE OF THE RULE WITH AN ORDER ALLOWING.

In re J.H., No. 02-22-00457-CV, 2023 Tex. App. LEXIS 329 (Tex. App.—Fort Worth Jan. 19, 2023, no pet.) (mem. op.)

Trial court did not abuse discretion in admitting evidence of prejudicial hearsay from the children through their counselor's notes and testimony regarding the father's application for mandamus relief because the counselor's notes were admissible under the business records exception under TRE 803(6). The counselor testified that the notes were treatment records made at or near the time of events recorded by, or from information transmitted by, a person with knowledge acting in the regular course of business and that it was the regular practice of the counselor's business to make such records. Father further failed to demonstrate a lack of trustworthiness in the source of the information or the method or circumstances of the records' preparation.

STANDING AND JURISDICTION

Bridges v. Pugh, No. 01-22-00027-CV, 2023 Tex. App. LEXIS 3159 (Tex. App.—Houston [1st Dist.] May 11, 2023, no pet.) (mem. op.)

Grandmother's attempt to establish standing under TFC § 102.004(a)(1) failed because grandmother's testimony that mother and father were incarcerated did not raise more than a surmise or speculation of possible harm and child's residing with a maternal aunt was not evidentiary support of the child's circumstances.

In the Interest of J.N.M., No. 04-22-00430-CV, 2023 Tex. App. LEXIS 2678 (Tex. App.—San Antonio Apr. 26, 2023, pet. filed)

Stepfather had standing to intervene and bring suit seeking possessory conservatorship of child under TFC § 102.003(a)(9) because stepfather had established actual care, custody, and control of the child for over six months ending not more than 90 days prior to the filing of his petition. Stepfather was denied his due process rights because of the trial court's refusal to allow him a meaningful opportunity to be heard on the merits in a temporary orders hearing.

In the Interest of L.M., No. 02-22-00277-CV, 2023 Tex. App. LEXIS 3983 (Tex. App.—Fort Worth June 8, 2023, no pet.) (mem. op.)

Divorce decree failed to adjudicate parentage where child was not listed as a child of the marriage, failing to rebut presumption of paternity and allowing father standing to bring SAPCR.

UCCJEA

In the Interest of L.N.A.H., 665 S.W.3d 907 (Tex. App.—Houston [14th Dist.] 2023, no pet.)

No personal service is required to terminate father's rights where alleged father has not registered in the paternity registry or otherwise demonstrated a father-child relationship.

REMEMBER THAT THE PATERNITY REGISTRY IS ALSO THE "SEX REGISTRY"—THAT IS, IF A PERSON THINKS THEY ARE GOING TO HAVE SEX, OR HAS HAD SEX, THERE IS AN OBLIGATION TO REGISTER OR SUFFER THE "NO NOTICE" PENALTY IF THAT EVENT RESULTS IN A CHILD SUBJECT TO SUBSEQUENT LITIGATION.

In re Muldoon, No. 04-22-00685-CV, 2023 Tex. App. LEXIS 2686 (Tex. App.—San Antonio Apr. 26, 2023, no pet.)

Under TFC § 152.110, the trial court was required to allow the parties to present facts and legal arguments in UCCJEA court conference before making a jurisdictional decision.

PARENT V. NON-PARENT

In the Interest of N.H., 652 S.W.3d 488 (Tex. App.—Houston [14th Dist.] 2022, pet. filed)

A nonparent who has no biological or legal relationship to the child must prove, at a minimum, that denial of possession sought by the nonparent would significantly impair the child's physical health or wellbeing to rebut the fit parent presumption.

In re J.O.L., 668 S.W.3d 160 (Tex. App.—San Antonio 2023, pet. filed)

Mother was entitled to retroactive application of the fit-parent presumption under TFC Ch. 156 in light of *In re CJC*, and the evidence presented at trial was insufficient to overcome that presumption because no evidence established physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior on behalf of the mother.

RIGHTS OF CONSERVATORSHIP

Donnelly v. Speck, 667 S.W.3d 885 (Tex. App.—Houston [14th Dist.] 2023, no pet.)

Where pleadings explicitly raise issues of modification rights and duties but fail to specifically call for modification of certain rights and duties, the court is still required to specify how all rights and duties of a parent are to be exercised and allocated.

In the Interest of K.S.F., No. 05-21-01030-CV, 2023 Tex. App. LEXIS 720 (Tex. App.—Dallas Feb. 3, 2023, no pet.)

Per TFC § 151.001, decisions concerning the residency and education of a child are separate rights; thus, the person with the exclusive right to determine the primary residence of a child is not necessarily given the exclusive right to choose the school the child will attend.

In the Interest of C.A.C., No. 07-22-00029-CV, 2022 Tex. App. LEXIS 9110 (Tex. App.—Amarillo Dec. 14, 2022, no pet.) (mem. op.)

Order imposing conditions on the father's access to and visitation with the children on the completion of certain requirements and imposition of safety measures, supervision, and measured approach to unsupervised supervision per TFC § 153.004(d-1) was affirmed despite prior family violence finding.

DISCRETION BEYOND STATUTORY LIMITS?

In the Interest of T.E.H., No. 05-21-00938-CV, 2022 Tex. App. LEXIS 8940 (Tex. App.—Dallas Dec. 7, 2022, no pet.) (mem. op.)

Trial court order allowing the parents to have flexibility regarding visitation depending on the teenage children's schedules and expressed desires did not interfere with father's possession and access of the children.

THE INMATES CONTROLLING THE ASYLUM?

SPEAKING OF ASYLUMS — *Gardner v. McKenney*, No. 03-21-00130-CV, 2023 Tex. App. LEXIS 962 (Tex. App.—Austin Feb. 15, 2023, no pet.) (mem. op.)

There was sufficient evidence in appeal brought under TFC § 156.101(a)(1) from which the trial court could exercise discretion in determining that it was in the best interest of the child that father not rent out the children's bedrooms when the children were not in his possession.

BONUS—

OBERGERFELL RETROACTIVE IN EFFECT

Ranolls v. Dewling, 223 F. Supp. 3d 613 (E.D. Tex. 2016)

Same-sex partner intervening in wrongful death suit had standing on the basis of informal or common-law marriage under retroactive application of *Obergefell.*

RECOGNITION OF SAME GENDER MARRIAGES UNDER *OBERGERFELL* IS RETROACTIVE. IF THE PARTIES WERE MARRIED PRIOR TO 2015, THEY WERE AND ARE MARRIED, AND PROPERTY ACQUIRED IS PRESUMED CP. OBERGERFELL WILL BE SUBJECT TO SCRUTINY IN COMING TERM OF SC BASED ON THE "NARROWING" OF THE SCOPE OF THE CONSTITUTIONAL PRIVACY RIGHT FROM THE *DOBBS* DECISION. BE WATCHFUL FOR CHANGE. REMEMBER THAT TEXAS' VERSION(S) OF THE DOMAS, AND QUALIFICATIONS TO MARRY HAVE NOT BEEN REPEALED. IF *OBERGERFELL* IS STRUCK DOWN, THE VACUUM WILL BE FILLED BY STATUTORY PROHIBITIONS AGAINST SAME GENDER MARRIAGE, REGARDLESS OF THE PLACE OR TIME OF MARRIAGE.

Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022)

Under rational-basis review for constitutionality challenge brought by facility providing abortion services in Mississippi, SCOTUS held that legitimate interests supported Mississippi's Gestational Age Act which prohibited abortions after 15 weeks' gestation except in medical emergency or in case of severe fatal abnormality.

PREVIOUSLY RECOGNIZED CONSTITUTIONAL RIGHTS OF PRIVACY SCRUTINIZED AND LIMITED.