

Chapter 26

REQUESTS FOR DISCLOSURE

QUICK VIEW

Requests for disclosure are requests from one party to another for information from any or all of 11 specific items of disclosure described in Rule 194.

Scope of chapter: General principles and techniques about requests for disclosure; how to respond; supplemental and amended responses.

Strategies and tactics:

Propounder: Serve requests for disclosure at an early stage in the discovery process to obtain basic information about your opponent's case.

Respondent: Do not forget to supplement your responses, particularly the responses dealing with witness identification.

Statutes and rules: TRCP 192, 193, 194, 195.

Related topics: Scope of Discovery, Ch 24; Request for Admissions, Ch 31; Document Requests, Ch 27; Interrogatories, Ch 30; Discovery Motions, Ch 32; Document production at deposition, Ch 28; Initial Investigation and Research, Ch 2.

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I. GENERAL POINTS

Basic Principles

The request for disclosure is a new tool (added in 1999) under the Texas Rules of Civil Procedure. It is designed to afford parties basic discovery of specific categories of information without preparation of a lengthy inquiry, and without objection or assertion of work product. [Comment 1 to TRCP 194.]

A request for disclosure is thus a very quick and easy way to obtain basic information from another party without the necessity of drafting lengthy interrogatories.

§26:02 By Parties, on Parties

Any party may serve a request for disclosure upon any other party. [TRCP 194.1.] Requests may not be served by or upon non-parties.

Just as with interrogatories, there is no requirement that the party be adverse; it must simply have been named in the lawsuit.

§26:03 When to Make the Request

The request may be served any time during the course of the litigation up to 30 days before the end of the applicable discovery period. [TRCP 194.1.]

The discovery period is determined by the track to which the case has been assigned. [See Ch 24, All Discovery, for a discussion of case tracking under TRCP 190.]

[§§26:04-26:07 Reserved]

II. MAKING A REQUEST

A. Format

§26:08 General Form

The Rule gives no indication whether a request for disclosure must be served in the form of a pleading or a letter. However, the safest (and most professional appearing) method is to use the same form as all other Texas discovery requests.

This means that the request should conform to the following standard format:

- Paper. Requests should be on 8 1/2 by 11 paper, and the Rules encourage use of recycled paper. [See TRCP 45(d).]
- Caption. The first page should include a case caption, as is done with pleadings and motions. [For caption of litigation documents, see Ch 14, Pleadings.]
- Title. Label the requests to identify the propounding party and the responding party.

- Footer. Have each page numbered and titled in the lower margin. [See, e.g., Dallas Civil District Court Rule 1.31.]
- Signature. Requests (as well as responses) must be signed by the party's attorney of record, or by the party if the party is appearing pro se. [TRCP 191.3(a).] The signature block must include counsel's State Bar of Texas number, address, telephone number, and fax number. A pro se signatory must also show address and phone and fax numbers, if any. [TRCP 191.3(a).]

TRCP 191.3 and TRCP 191.4 apply only to discovery conducted after 1/1/1999.

REMINDER: YOUR SIGNATURE IS A CERTIFICATION

The signature constitutes certification by counsel or the party that the discovery requests:

- Are consistent with the Rules of Civil Procedure.
- Have a good faith basis.
- Are not used for improper purpose, such as harassment or delay.
- Are not unreasonable or unduly burdensome within the context of the particular case.

[TRCP 191.3(c).]

IN PRACTICE: UNSIGNED REQUESTS DO NOT REQUIRE RESPONSES

If the document is *not* signed, it will be stricken unless it is signed promptly after the omission is called to the attention of the erring party, though a party is not required to take any action with respect to a request or notice that is not signed. [TRCP 191.3(d).] Thus, if you want responses to your requests, sign them before they are sent.

FORM:

See Form 26:10, Request for Disclosure, on the CD.

§26:09 Certificate of Service

Although not required, you should include a certificate of service with the requests. [See TRCP 21a.] The certificate will establish the fact of service in the event that the party served does not respond to the request.

§26:10 Key Language

A request for disclosure must be made with the following language:

"Pursuant to Rule 194, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2 ____."

[TRCP 194.1 (indicating that the Rule 194.2 may be identified without a subpart, with a subpart, or with any grouping of subparts, e.g.: 194.2, or 194.2(a), (c), and (f), or 194.2(d)-(g)).]

§26:11 *Selecting the Information Category*

The request may seek one or all of eleven separate categories of information and documents. [See TRCP 194.2.] The statement in the key language of the request indicates the choice of the category or categories.

EXAMPLES:

- If the request ends with “Rule 194.2,” then it asks for *all* the information described in Rule 194.2(a)-(k).
- If the request ends with “Rule 194.2(d)-(g),” then it asks for the information described in subparts (d) through (g) of Rule 194.2.

IN PRACTICE: NARROW THE REQUEST TO WHAT YOU WANT

If you do not need *all* the information described in the Rule, then limit the request to the specific items that you are seeking. For example, in a suit where there are no allegations of physical or mental injury, you should not seek the information allowed by Rule 194.2(j) and (k). If you do so, there is no real harm because your opponent can simply respond “not applicable.” However, you will appear sloppy to your opponent from the outset of the litigation.

[§§26:12-26:15 Reserved]

B. Areas of Inquiry

§26:16 *Parties and Potential Parties*

By listing subsection (a), you request disclosure of the correct names of the parties of the lawsuit. [TRCP 194.2(a).] This request eliminates the need for an interrogatory asking the other party whether they have been correctly named in the lawsuit.

By listing subsection (b), you request disclosure of the name, address, and telephone number of any potential parties. [TRCP 194.2(b).] Potential parties include potential co-defendants for contribution and potential third-party defendants.

§26:17 *Legal Theories and Factual Bases of Claims or Defenses*

By listing subsection (c), you request disclosure of the legal theories and factual bases of the responding party’s claims or defenses. [TRCP 194.2(c).]

Pleadings are only required to give fair notice of claims and defenses. [See Ch 14, Pleadings] This request allows you further inquiry into your opponent’s legal theories and factual claims than is provided by notice pleading,

and serves the same purpose as contention interrogatories. [Comment 2 to TRCP 194.]

However, the responding party’s obligation is limited because a responding party need not marshal all evidence that may be offered at trial. [TRCP 194.2(c).]

EXAMPLE:

If a request is made by a defendant in an automobile collision case, the plaintiff is required to disclose the basis for a claim of negligence, such as that the defendant was speeding, but the plaintiff is not required to state the speed at which defendant was allegedly driving. [Comment 2 to TRCP 194.]

§26:18 *Calculation of Economic Damages*

By listing subsection (d), you request disclosure of the amount and method of calculation of economic damages. [TRCP 194.2(d).] Like subsection (c), subsection (d) is intended to require disclosure of a party’s basic assertions. [Comment 2 to TRCP 194.]

EXAMPLE:

If a defendant in a personal injury action makes a request, the plaintiff is required to show how loss of past earnings and future earning capacity was calculated. [Comment 2 to TRCP 194.]

REMINDER: REQUEST COVERS ECONOMIC, BUT NOT NON-ECONOMIC, DAMAGES

The request does not require a party to state a method of calculating non-economic damages such as for mental anguish. [Comment 2 to TRCP 194.]

§26:19 *Witnesses*

By listing subsection (e), you request disclosure about persons having knowledge of relevant facts. The disclosure required is:

- The name, address, and telephone number of such persons.
- A brief statement of each identified person’s connection with the case.

[TRCP 194.2(e).]

This request eliminates the need for a separate interrogatory asking the other party to identify persons with knowledge of relevant facts. And the requirement to also provide a brief statement of each person’s connection with the case will often alleviate the need at a deposition to go through a list of persons with knowledge of relevant facts and ask why they were listed.

By listing subsection (i), you request production of any witness statements. [TRCP 194.2(i).]