NEW RULES FOR "EXPEDITED TRIALS" FOR LAWSUITS SEEKING LESS THAN $100,000 IN DAMAGES

By: Ron M. Ihle

I. BACKGROUND

In 2011, the Texas state legislature directed the Supreme Court of Texas to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions in which all claims for damages of any kind do not exceed $100,000. The intent of the rules was to address the need for lowering discovery costs in these cases and expediting them to trial.

In November of last year, the Texas Supreme Court issued proposed rules for these "expedited actions." The Court invited input from anyone who wanted to throw in their two cents worth, but the deadline to do so ended February 1st, 2013. On February 12th, 2013, the Supreme Court issued their ruling which will go into effect on March 1, 2013.

The Court amended Rules 47 and 190 and added new rules 169 and 91(A) to the Texas Rules of Civil Procedure. A copy of the Supreme Court's order is attached at the end of this article.

II. AMOUNT OF DAMAGES MUST BE STATED IN PLAINTIFF'S PETITION

The amended Rule 47 requires a party to include in the original pleading the specific amount of damages being claimed. It no longer allows to a vague reference to an amount of damages. If the plaintiff's pleading does not comply with this rule, the defendant can file a special exception, and the pleading must be amended by the plaintiff. No discovery can take place until the amendment occurs.

According to the amendments to Rule 47(c), a statement of damages must state as follows:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $500,000; or

(4) monetary relief over $500,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000

III. EXPEDITED ACTIONS

A. What is an "Expedited Action?" (new Rule 169 TRCP)

Under Rule 169, the "expedited action" rule does not apply unless all claimants affirmatively plead that they are seeking only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Post-judgment interest is excluded. This rule does not apply to counter claimants.

B. Removal from the expedited process. Under Rule 169, the Court may remove a suit from the expedited process:

1) On Motion and a showing of good cause by any party; or

2) If any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than monetary relief allowed under (a)(1).

C. A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited process may not be filed without leave of court unless it is filed before the earlier of:

1) 30 days after the discovery period is closed; or

2) 30 days before the date set for trial.

D. Trial of the case

The Supreme Court has also imposed time limits for trials. First, if a trial is requested by either party, the court must set the case for trial within 90 days after the end of the discovery period. The discovery period ends 180 days after the first written discovery is served, so reaching trial may be much quicker. Each side is allowed only **8 hours** to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses AND closing arguments. (WOW!) It can be extended to 12 hours upon a showing of good cause. In addition, the Court is limited to granting only 2 continuances, the aggregate of which cannot exceed 60 days.

E. Experts

The rule regarding experts has also changed. Robinson motions are not permitted prior to trial unless they are filed as an objection to evidence filed in a Motion for Summary Judgment, or they can be filed during the trial itself. Instead of being able to argue the qualifications or relevancy of the expert's testimony in a hearing before trial, now part of our precious limited trial time will have to be used to try and get the expert disqualified.

F. Limits on Discovery. The Court's ruling makes significant new discovery limitations which include the following:

1) Deposition Limits

Each side is limited to only 6 hours for oral depositions to examine and cross examine **ALL** witnesses. However, this may increase to 10 hours upon agreement of the parties.

2) Discovery Limits

a) Interrogatories are limited to 15;

b) Request for Production are limited to 15;

c) Request for Admissions are limited to 15;

d) Request for Disclosure are affected as follows:

A party may now ask for "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." This is not considered a Request for Production.

IV. MEDIATION

Originally, mediators were very nervous because the Court considered removing mandatory orders for mediation of expedited cases. However, much to their relief, as well as to the relief of the parties, I believe, that was not what occurred in the final version.

Under the new rules, unless all parties agree **not** to mediate, a court may order a case to mediation for a maximum of one half-day, to be completed at least 60 days prior to the trial date, and the cost may not exceed two times the civil filing fee of the case.

V. THE NEW DISMISSAL RULE (RULE 91(A) TRCP)

The Texas Supreme Court now allows a party to move to dismiss cause of action on the grounds that it has no basis in law or in fact. "No basis in law or in fact" occurs when the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. The cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

A. The Motion to Dismiss must be:

1) filed within 60 days after the first pleading containing the challenged cause of action is served upon the movant;

2) filed at least 21 days before the Motion is heard; and

3) granted or denied within 45 days after the Motion is filed.

4) A response to the Motion must be filed no later than 7 days before the date of the hearing

B. Effect of non-suit or amendment; withdrawal of motion

1) The Court may not rule on a Motion to Dismiss if, at least 3 days before the date of the hearing, the Respondent files a non-suit of the challenged cause of action, or the Movant files a withdrawal of the Motion;

2) If the Respondent amends the challenged cause of action at least 3 days before the date of the date of the hearing, the Movant may, before the day of the hearing, file a withdrawal of the Motion or an amended Motion directed to the amended cause of action.

3) No hearing is required. The Court may, but is not required to, conduct an oral hearing on the Motion. The Court may not consider evidence in ruling on the Motion, and must decide the Motion based solely on the pleadings, together with any pleading exhibits permitted by Rule 59.

4) The Court must award the prevailing party on the Motion all costs and reasonable and necessary attorney's fees incurred with respect to the challenged cause of action in the trial court except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law,

VI. ANALYSIS

Again, these new rules apply only to cases in which damages claimed do not exceed $100,000 as determined when the case is filed.

Once the plaintiff has pleaded his case into the expedited process, the Defendant has no opportunity to opt out of the process, absent a showing of "good cause." Leave to amend may be granted only if "good cause" outweighs any prejudice to the opposing party. If the motion for "good cause" to opt out is denied, there may be no adequate remedy upon appeal for the Defendant. The only option may be a Writ of Mandamus.

If a case is removed from the expedited process, the court must reopen discovery. The court can then consider a Motion for Continuance upon the filing of a motion by either party. Under Rule 190.2(c), once the case is removed from the expedited process, the Rule states a person who has been previously deposed, "may" be re-deposed. Since the term "may" is used, this certainly does not give the impression that it's mandatory, and it may require court intervention

The discovery period under the new rule begins when discovery is served. Therefore, if the plaintiff serves discovery with the citation, it appears the 180 day discovery would begin at that time. The discovery limitations could prove extremely problematic with multiple party cases, or those cases with multiple witnesses or cases that require the use of experts. The trials are going to have to be conducted at warp speed which seems like a real disservice to all parties. After all, this isn't an episode of "Law and Order" where everything gets wrapped up at the end of the show.

These new rules will present new challenges. We will all need to remain aware that events can move quickly in this process, and our path to trial may be swift.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9022

FINAL APPROVAL OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(10)(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows.

2. By Order dated November 13, 2012, in Misc. Docket No. 12-9191, the Court promulgated Rules of Civil Procedure 91a and 169 and Rule of Evidence 902(10)(c), as well as amendments to Rules of Civil Procedure 47 and 190, and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules, effective March 1, 2013.

3. Rule of Civil Procedure 91a and Rule of Evidence 902(10)(c) apply to all cases, including those pending on March 1, 2013. Rule of Civil Procedure 169 and the amendments to Rules of Civil Procedure 47 and 190 apply to cases filed on or after March 1, 2013, except for those filed in justice court.

4. This Order also promulgates a revised civil case information sheet required by Rule 78a of the Texas Rules of Civil Procedure, in accordance with the amendments to Rule of Civil Procedure 47. The revised case information sheet applies to cases filed on or after March 1, 2013.

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: February 12, 2013

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

(a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a

withdrawal of the motion or an amended motion directed to the amended cause of action.

(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a.7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be

ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth 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) ~~in all claims for unliquidated damages only the~~ 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 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $200,000; or

(4) monetary relief over $200,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(cd) 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 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

(a) *Application.*

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

(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, excluding post-judgment interest.

(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.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule.

3. In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that

allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

4. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of $100,000 to the party. The limitation in 169(b) does not apply to a counter-claimant that seeks relief other than that allowed under 169(a)(1).

5. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

. . .

190.2. Discovery Control Plan — ~~Suits Involving $50,000 or Less~~ Expedited Actions and Divorces Involving $50,000 or Less (Level 1)

(a) *Application.* This subdivision applies to:

(1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $50,000 or less, excluding costs, pre-judgment interest and attorneys' fees~~ 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.

~~(b) Exceptions. This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~

(~~c~~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 and continues until ~~30 days before the date set for trial~~ 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 six 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 ~~25~~ 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.

(dc) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable,~~ 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.

. . .

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, t~~T~~he court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than

$50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(10)(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

. . .

(10) Business Records Accompanied by Affidavit.

. . .

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

Mv name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____.

_____
Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

_____
Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____

Comment to 2013 Change: Rule 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. *See Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011).