

# A New Era for Summary Judgment Practice in Texas

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## Patrick Fields

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## Jarod Stewart

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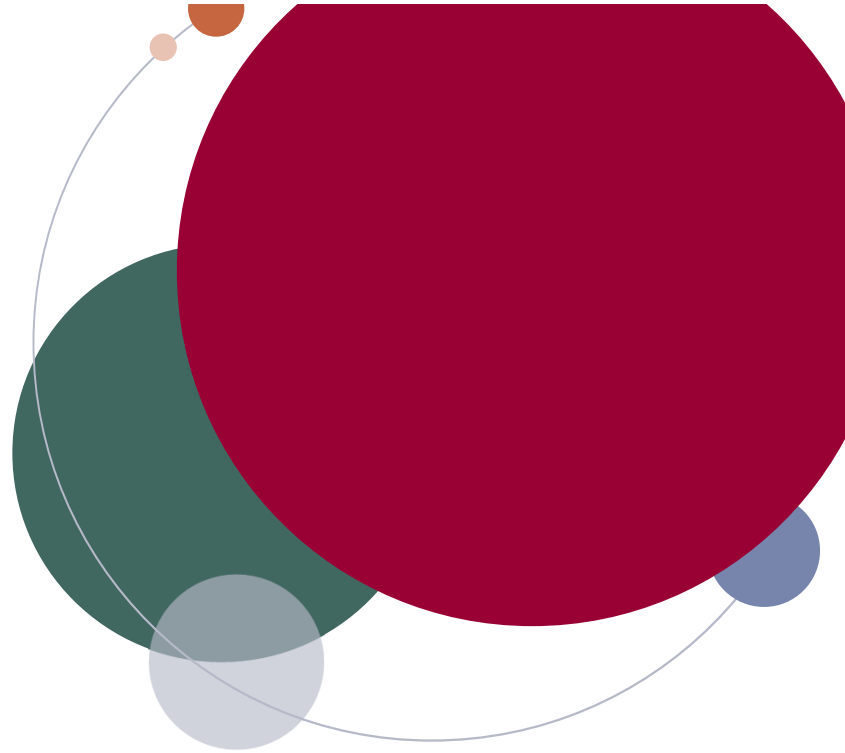
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# Texas Rule of Civil Procedure 166a “has been completely rewritten”

-- Supreme Court of Texas, Preliminary Approval of Amendments to Rule 166a of the Texas Rules of Civil Procedure, Misc. Dkt No. 25-9106 (Dec. 30, 2025)

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# TRCP 166a Changes Preceded by Legislative Enactments

- **S.B. 293** – created Tex. Gov’t Code § 23.303
  - Effective Sept. 1, 2025 – Dec. 3, 2025
- **H.B. 16** – amended Tex. Gov’t Code § 23.303
  - Effective Dec. 4, 2025 – Present
- **Amended TRCP 166a**
  - Effective Mar. 1, 2026



# Amended TRCP 166a – Critical Changes



## Briefing Deadlines

Nonmovant response due 21 days after motion  
Movant (optional) reply due 7 days after response



## Deadlines for Court to Act

Motion must be submitted or heard within 35-60 days after filed (or 90 in certain circumstances)  
Written ruling required within 90 days of submission/hearing date



## Total Time from Motion Filing to Written Ruling

35-180 days

# Amended TRCP 166a – Additional Changes

- Neatly Codifies Traditional vs. No-Evidence Motion Timing, Content, and Standards
- Affidavit Required to Move for Additional Response Time
- Motion Formatting
- Formal Procedure to Withdraw Motion



# Judicial Compliance

- **Tex. Gov't Code § 23.303(c)-(d)**
  - Clerk to quarterly report compliance to OCA; OCA to annually report compliance to Executive, Legislature, and public
- **Proposed Tex. Jud. Admin. R. 6.3**
  - Expected to take effect July 1, 2026
  - District court judges must submit semi-annual sworn statement to Regional Presiding Judge and OCA stating number of hours “presiding over court” and “performing other judicial duties”



# Amended TRCP 166a – Implementation

- **Compliance data not yet publicly available**
  - First reports to OCA due Sept. 2026
- **Localized Changes Have So Far Been Uneven – Example: Harris County**
  - Some courts and judges have not addressed the changes
  - Others have – *e.g.*, 61st (Judge Shuchart), 80th (Judge Aston), 133rd (Judge Perdue), 190th (Judge Miller)
  - New local rules:
    - Motion auto denied w/o prejudice if not set/heard in 60 or 90 days
    - Passing a motion not allowed; motion must be withdrawn
    - Email/call insufficient to withdraw motion or pass hearing

# Amended TRCP 166a – Implementation

- **Dallas and Travis Counties Also Have Uneven Changes – Notables:**
  - 44th District Court, Dallas County (Judge Frazier)
    - Automatically sets MSJs for submission on first available date after 35 days of motion’s filing
    - If a litigant wants a motion delayed, he/she must withdraw it.
  - 250th District Court, Travis County (Judge Liu)
    - Automatically sets MSJs for submission 36 days from filing.
    - Standing order notes it is “intended to ensure that the 250th District Court complies with Texas Government Code § 23.303 and Tex. R. Civ. P. 166a.”



# Considerations for Appellate Practitioners

- **Strategies for Trial Court Motion Practice Must Evolve Quickly**
- **Late Hearing/Submission Date or Ruling Violates both TRCP and Statute**
- **Complexities if Deadline for Ruling Approaches**
  - Withdraw Motion?
  - Effect of Perfunctory Denial at Deadline
  - Effect of Ruling that Violates Statutory Timing Requirement



# Considerations for Appellate Practitioners

- **Impacts On Other Types of Motion Practice**
  - Rule 166 – New Utility?
    - (g): “The identification of legal matters to be ruled on or decided by the court.”
      - Example: *Enosis Investments v. Jensen*, No. 25-BC03A-0008, 2026 WL 1104315, at \*1 (Tex. Bus. Ct. Apr. 23, 2026) – Finding no fiduciary duty existed based on pleadings and LLC agreements
    - (p): “Such other matters as may aid in the disposition of the action.”

# Considerations for Appellate Practitioners

- **Preserve the Record**
  - Clear Record of Docket Activity: Date Motion Filed, Heard/Submitted, Ruled On
  - Devices by Which to Call Court's Attention to Noncompliance
- **Streamline and Simplify Individual Motions**
  - Limited Issue Set
- **Use Proposed Orders**
  - Enhanced Usefulness in Defining Appeals



# Considerations for Appellate Practitioners

- **New Grounds to Force a Judge to Act**
  - At least one person has tried it: *In re Penson*, No. 06-26-00007-CV, 2026 WL 308317, at \*1 (Tex. App.—Texarkana Feb. 5, 2026, no pet. h.).
    - Trial court granted indefinite continuance of MSJ submission
    - Pro se plaintiff petitioned for mandamus relief
    - The Court of Appeals held: *“Trial courts are required to consider and rule on motions within a reasonable time.’ . . . Often, ‘[d]etermining what time period is reasonable is not subject to exact formulation.’ . . . However, the Legislature has recently provided statutory timelines for considering motions for summary judgment. . . . The petition does not show that the trial court exceeded the time permitted by Section 23.303. We deny Relator’s requested mandamus relief.”*

# Comments and Q&A



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