

Tex. R. Civ. P. 195

Rule 195 - Discovery Regarding Testifying Expert Witnesses in Suits Not Governed by The Family Code

195.1 Permissible Discovery Tools.

A party may obtain information concerning testifying expert witnesses only through disclosure under this rule and through depositions and reports as permitted by this rule.

195.2 Schedule for Designating Experts.

Unless otherwise ordered by the court, a party must designate experts - that is, furnish information described in Rule 195.5(a) - by the following dates:

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

195.3 Scheduling Depositions.

(a) Experts for party seeking affirmative relief. A party seeking affirmative relief must make an expert retained by, employed by, or otherwise in the control of the party available for deposition as follows:

(1) If no report furnished. If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is not produced when the expert is designated, then the party must make the expert available for deposition reasonably promptly after the expert is designated. If the deposition cannot--due to the actions of the tendering party--reasonably be concluded more than 15 days before the deadline for designating other experts, that deadline must be extended for other experts testifying on the same subject.

(2) If report furnished. If a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions is produced when the expert is designated, then the party need not make the expert available for deposition until reasonably promptly after all other experts have been designated.

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

195.4 Oral Deposition.

In addition to the information disclosed under Rule 195.5(a), a party may obtain discovery concerning the subject matter on which the expert is expected to testify, the expert's mental impressions and opinions, the facts known to the expert (regardless of when the factual information was acquired) that relate to or form the basis of the testifying expert's mental

impressions and opinions, and other discoverable matters, including documents not produced in disclosure, only by oral deposition of the expert and by a report prepared by the expert under this rule.

195.5 Expert Disclosures and Reports.

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

- (1) the expert's name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony;
 - (B) the expert's current resume and bibliography;
 - (C) the expert's qualifications, including a list of all publications authored in the previous 10 years;
 - (D) except when the expert is the responding party's attorney and is testifying to attorney fees, a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition; and
 - (E) a statement of the compensation to be paid for the expert's study and testimony in the case.

(b) Expert Reports. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert have not been recorded and reduced to tangible form, the court may order these matters reduced to tangible form and produced in addition to the deposition.

(c) Expert Communications Protected. Communications between the party's attorney and any testifying expert witness in the case 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 to be expressed; or
- (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(d) Draft Expert Reports and Disclosures Protected. A draft expert report or draft disclosure required under this rule is protected from discovery, regardless of the form in which the draft is recorded.

195.6 Amendment and Supplementation.

A party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5. If an expert witness is retained by, employed by, or otherwise under the control of a party, that party must also amend or supplement any deposition testimony or written report by the expert, but only with regard to the expert's mental impressions or opinions and the basis for them.

195.7 Cost of Expert Witnesses.

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

Tex. R. Civ. P. 195

Amended August 21, 2020, effective 1/1/2021; amended December 23, 2020, effective 1/1/2021; Amended August 7, 2023, effective 9/1/2023; amended November 17, 2023, effective 11/17/2023.

Comment to 2021 change: Rule 195 is amended to reflect changes to Rule 194. Amended Rule 195.5(a) lists the disclosures for any testifying expert, which are now required without awaiting a discovery request, that were formerly listed in Rule 194(f). Amended Rule 195.5(a) also includes three new disclosures based on Federal Rule of Civil Procedure 26(a)(2)(B). New Rules 195.5(b) and (c) are based on Federal Rules of Civil Procedure 26(b)(4)(B) and (C) and are added to clarify protections available.
