Defeating Frivolous Defenses

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**Federal Rules of Civil Procedure**

**Rule 8. General Rules of Pleading**

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

• accord and satisfaction;

• arbitration and award;

• assumption of risk;

• contributory negligence;

• duress;

• estoppel;

• failure of consideration;

• fraud;

• illegality;

• injury by fellow servant;

• laches;

• license;

• payment;

• release;

• res judicata;

• statute of frauds;

• statute of limitations; and

• waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

**Texas Rules of Civil Procedure**

**Rule 1. Objective of Rules**

The proper objective of rules of civil procedure is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. **To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, these rules shall be given a liberal construction.**

**Rule 13. Effect of Signing of Pleadings, Motions and Other Papers; Sanction****s**

**The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.** Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215,[1](#co_footnote_I24CD2420B5A811DDAA3884F8AA3) upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. **“Groundless” for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law.** A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

**Rule 45. Definition and System**

Pleadings in the district and county courts shall

(a) be by petition and answer;

(b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for an objection when fair notice to the opponent is given by the allegations as a whole; and

(c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense.

Pleadings that are not filed electronically must be in writing, on paper measuring approximately 8 1/2 inches by 11 inches, and signed by the party or his attorney. The use of recycled paper is strongly encouraged.

All pleadings shall be construed so as to do substantial justice.

**Rule 68. Court May Order Repleader**

**The court, when deemed necessary in any case, may order a repleader on the part of one or both of the parties, in order to make their pleadings substantially conform to the rules.**

**Rule 90. Waiver of Defects in Pleading**

General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by exception in writing and brought to the attention of the judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the judgment is signed, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

**Rule 91. Special Exceptions**

A special exception shall not only point out the particular pleading excepted to, but it shall also point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations in the pleading excepted to.

**Rule 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. 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 may 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. Any award of costs or fees must be based on evidence.

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.

**Rule 92. General Denial**

A general denial of matters pleaded by the adverse party which are not required to be denied under oath, shall be sufficient to put the same in issue. When the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

When a counterclaim or cross-claim is served upon a party who has made an appearance in the action, the party so served, in the absence of a responsive pleading, shall be deemed to have pleaded a general denial of the counterclaim or cross-claim, but the party shall not be deemed to have waived any special appearance or motion to transfer venue. In all other respects the rules prescribed for pleadings of defensive matter are applicable to answers to counterclaims and cross-claims.

**Rule 94. Affirmative Defenses**

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. Where the suit is on an insurance contract which insures against certain general hazards, but contains other provisions limiting such general liability, the party suing on such contract shall never be required to allege that the loss was not due to a risk or cause coming within any of the exceptions specified in the contract, nor shall the insurer be allowed to raise such issue unless it shall specifically allege that the loss was due to a risk or cause coming within a particular exception to the general liability; provided that nothing herein shall be construed to change the burden of proof on such issue as it now exists.

**V.T.C.A., Civil Practice & Remedies Code § 10.001**

**§ 10.001. Signing of Pleadings and Motions**

The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory’s best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) **each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery**; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

**§ 10.002. Motion for Sanctions**

**(a) A party may make a motion for sanctions, describing the specific conduct violating** [**Section 10.001**](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000170&cite=TXCPS10.001&originatingDoc=N6F3CCB10BE7011D9BDF79F56AB79CECB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))**.**

**(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate** [**Section 10.001**](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000170&cite=TXCPS10.001&originatingDoc=N6F3CCB10BE7011D9BDF79F56AB79CECB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) **and direct the alleged violator to show cause why the conduct has not violated that section.**

(c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney’s fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

**§ 10.003. Notice and Opportunity to Respond**

The court shall provide a party who is the subject of a motion for sanctions under [Section 10.002](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000170&cite=TXCPS10.002&originatingDoc=N704B06C0BE7011D9BDF79F56AB79CECB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) notice of the allegations and a reasonable opportunity to respond to the allegations.

**§ 10.004. Violation; Sanction**

(a) A court that determines that a person has signed a pleading or motion in violation of [Section 10.001](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000170&cite=TXCPS10.001&originatingDoc=N6C28D450BE7011D9BDF79F56AB79CECB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)) may impose a sanction on the person, a party represented by the person, or both.

(b) The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated.

(c) A sanction may include any of the following:

(1) a directive to the violator to perform, or refrain from performing, an act;

(2) an order to pay a penalty into court; and

(3) an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney’s fees.

(d) The court may not award monetary sanctions against a represented party for a violation of [Section 10.001(2)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000170&cite=TXCPS10.001&originatingDoc=N6C28D450BE7011D9BDF79F56AB79CECB&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_58730000872b1).

(e) The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party’s attorney who is to be sanctioned.

(f) The filing of a general denial under [Rule 92, Texas Rules of Civil Procedure](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1003817&cite=TXRRCPR92&originatingDoc=N6C28D450BE7011D9BDF79F56AB79CECB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), shall not be deemed a violation of this chapter.