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REAL ESTATE LAW



- App.—Houston [14th Dist.] Dec. 18, 2025, no pet. h.).
4. *Id.* at *11 (plaintiff must prove Exxon believed specific injuries would result to plaintiff with substantial certainty).
 5. TEX. LABOR CODE § 408.001.
 6. *Warnke v. Nabors Drilling USA, L.P.*, 358 S.W.3d 338, 343 (Tex. App.—Houston [1st Dist.] 2011, no pet.).
 7. TEX. LABOR CODE § 408.001; *Estate of Howard*, 543 S.W.3d 397, 404 (Tex. App.—Houston [14th Dist.] 2018, no pet.).
 8. *Mo-Vac Serv. Co.*, 603 S.W.3d at 130.
 9. *In re Ooida Risk Retention Group, Inc.*, 475 S.W.3d 905, 913 (Tex. 2015).
 10. *In re McAllen Medical Center, Inc.*, 275 S.W.3d 458, 465 (Tex. 2008).
 11. *Ooida*, 475 S.W.3d at 913; see also *ExxonMobil Corp.*, 2025 WL 3672143 at *1 (mandamus relief is available only when (1) the trial court clearly abused its discretion; and (2) no adequate remedy by appeal exists).
 12. *ExxonMobil Corp.*, 2025 WL 3672143 at *9.
 13. *Id.* at *11 (explaining that it is insufficient for plaintiff to show that all workers inside the vessel faced a constant risk due to the presence of an ignition source, even if such conditions made injury inevitable; instead, the plaintiff needed to present evidence that ExxonMobil believed, with substantial certainty, that these conditions would cause a specific injury to him).

New Changes to Summary Judgment Practice in Texas

By NIKKI MORRIS

Recently, Summary judgment is a great tool to narrow the issues and better position the parties for settlement or trial, but often, in Texas state courts, summary judgments have been left undecided indefinitely. In 2025, the Texas Legislature took action to change that with the enactment of Section 23.303 of the Texas Government Code, which puts trial courts on a clock to decide these dispositive motions. More recently, effective March 1, 2026, the Texas Supreme Court completely reworked Rule 166a, imposing new deadlines and requirements for the actual filing, consistent with the legislative updates.

Section 23.303 codifies certain proce-

dures for motions for summary judgment and requires annual reporting from the clerks of court. Under this new provision, all business courts, district courts, and statutory county courts are required to hear oral argument or consider the motion without oral argument no later than the 60th day after the motion was filed or the 90th day after the motion was filed, provided certain conditions are met.¹ The date of consideration or hearing must be noted on the docket, and the clerks will be required to submit quarterly and annual reporting regarding compliance with these new deadlines.² Written rulings are required within 90 days after the date the motion was argued or considered.³

To implement the changes in Section 23.303, the Texas Supreme Court completely reworked Texas Rule of Civil Procedure 166a. For all motions for summary judgment filed after March 1, 2026, new Rule 166a will govern the timing, procedure, and even titling of those motions. The key changes are as follows:

Specific Briefing Requirements

The rule now expressly allows parties to file traditional, no evidence, or combined motions for summary judgment, but the motion must use specific language set out in the rule to identify which type of motion is being filed.⁴ Parties must additionally state in the title of the motion or response whether an oral hearing is requested.⁵ Both parties are required to submit proposed orders.⁶

Responses are due within 21 days after the motion is filed, but if additional time is needed to secure evidence, the non-movant must file an affidavit or declaration specifying the reasons why additional time is required.⁷ If the nonmovant seeks an extension, the court may extend the time to file a response, deny the motion without prejudice to permit additional discovery, or issue another appropriate order.⁸

Replies are due within 7 days after the response is filed unless the parties agree

otherwise or obtain leave of court.⁹ Replies are expressly precluded from raising new or independent summary judgment grounds.¹⁰

Hearings

One key change is that the hearing date is determined based on when the motion is filed rather than the other way around. After the motion is filed, the clerk must bring the motion to the court's attention, the court must set it for hearing or submission, and then the clerk must send a notice of the submission or hearing date to the parties.¹¹ Consistent with section 23.303, motions must be heard between 35 and 90 days after filing.¹² Resets are permitted but only within the time constraints of the rule, and the court must record in the docket the date the motion was heard or submitted.¹³ Rulings are required within 90 days after the hearing or submission date.¹⁴

Assuming no agreed extensions, the new timeline for decisions on motions for summary judgments is as follows:

Motion for Summary Judgment filed	
Response Due	+ 21 days
Reply Due	+ 7 days
Oral argument or consideration of motion	+ 35-90 days from motion
Court issues ruling	+ 90 days from hearing

Thus, parties can now expect the court to rule between 125 and 180 days from when the original motion was filed.

Evidence

New Rule 166a provides further guidance on what evidence parties may rely on to support their respective positions, including identifying specific categories of documents that parties may rely on.¹⁵ The rule further specifies when evidence may be produced by reference and how it should be incorporated into the filings.¹⁶ The rule also provides more guidelines for evidence in the form of affidavits or declarations and imposes a penalty for affidavits or declarations that are submitted in bad faith.¹⁷ Later-filed evidence may also be considered if the court notes it is doing so on the record.¹⁸

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What has not changed

While it appears that much has changed with the new rule, there are many practical elements of the old rule that remain in effect, and the comment to the rule states that it is not intended to substantively change the law. Generally, the docket control order dictates the time for filing traditional summary judgment motions, but they may also be filed any time after the nonmovant has appeared or answered.¹⁹ No evidence motions for summary judgment may be filed after an adequate time for discovery.²⁰ The well-established standards for summary judgment are also unchanged, and many of the rules regarding use of evidence that were previously understood are now expressly stated.²¹

Going forward, parties and the courts should consider Rule 166a when negotiating or establishing docket control orders and key deadlines leading up to trial. Ideally, these concrete deadlines will help parties plan and prepare their cases for trial or position themselves for settlement, while also keeping dockets moving forward. While these developments will hopefully enable the courts to dispose of these motions more efficiently, it remains to be seen how this will play out in practice and whether the anticipated effects will be realized.

Nikki Morris is a commercial litigation partner with BakerHostetler and the editor in chief of *The Houston Lawyer*.

Endnotes

1. Tex. Gov't Code § 23.303(a)(1).
2. *Id.* § 23.303(b), (c).
3. *Id.* § 23.303(a)(2).
4. Tex. R. Civ. P. 166a(a)-(b).
5. *Id.* 166a(b)(2)(B).
6. *Id.* 166a(g)(3).
7. *Id.* 166a(d).
8. *Id.*
9. *Id.* 166a(e).
10. *Id.*
11. *Id.* 166a(c).
12. *Id.* 166a(g).
13. *Id.*
14. *Id.* 166a(j).
15. *Id.* 166a(j).
16. *Id.* 166a(j)(2)-(3).
17. *Id.* 166a(j)(4)-(5).
18. *Id.* 166a(j)(6).
19. *Id.* 166a(b)(3).
20. *Id.*
21. *Id.* 166a(h), (j).