

Expert Opinion **Litigation**

## Update: A New Era for Summary Judgment Practice in Texas Courts

Among the critical changes, the amended rule revises the timing and sequence of briefing to a 21- and 7-day response/reply format, aligns deadlines for court action with the new requirements of Section 23.303 of the Texas Government Code, streamlines and neatens the different procedures applicable to “traditional” vs. “no-evidence” motions, and introduces new ancillary requirements.

January 08, 2026 at 11:00 AM By **Jarod Stewart & Patrick Fields**



**Jarod Stewart, left, and Patrick Fields, right, with Steptoe. Courtesy photos**

On Dec. 30, 2025, the Texas Supreme Court issued an order granting preliminary approval to amendments to Rule 166a of the Texas Rules of Civil Procedure. The proposed amendments, expected to be effective on March 1, 2026, introduce broad changes to the language and structure of Rule 166a. As the order recognizes, “Rule 166a has been completely rewritten.” Among the critical changes, the amended rule revises the timing and sequence of briefing to a 21- and 7-day response/reply format, aligns deadlines for court action with the new requirements of Section 23.303 of the Texas Government Code, streamlines and neatens the different procedures applicable to “traditional” vs. “no-evidence” motions, and introduces new ancillary requirements.

## New 21-day Response and 7-day Reply Deadlines

Amended Rule 166a re-configures the timing and sequence of summary judgment briefing. The current rule permits a nonmovant to file a response with evidence at least 7 days prior to a hearing, and the rule is silent on movant reply briefs. The amended rule, in contrast, requires the nonmovant to file a response with any evidence within 21 days after a motion is filed and permits (but does not require) the movant to file a reply within 7 days of a response. The court must then set a hearing or submission day within 35-60 days (or up to 90 days under limited circumstances) of the motion's filing.

As many Texas practitioners know, summary judgment hearings are frequently set months after a motion is filed, giving nonmovants weeks or months to prepare a response and leading to eleventh-hour replies that can put great pressure on litigants and courts to sort complex issues on short notice. The amended rule rebalances this. Instead of issues and arguments surfacing in the days and hours before a hearing, briefing and clear articulation of issues and contentions are now frontloaded in summary judgment practice.

### Alignment of Rule 166a with Section 23.303 of the Texas Government Code

Effective Sept. 1, 2025, Section 23.303 of the Texas Government Code imposes hard deadlines on district courts, the business court, and statutory county courts to hear and adjudicate summary judgment motions. See Jarod Stewart & Patrick Fields, [A New Era for Summary Judgment Practice in Texas Courts](#), Texas Lawyer (Sep. 24, 2025). The statute requires courts to hear oral argument or set a motion for submission within 60 days after a motion is filed (or 90 days for "good cause," the movant's consent, or docket management purposes), record on the docket the date the motion is argued or considered, and issue a written ruling within 90 days of argument or the motion's consideration.

Amended Rule 166a implements this new framework. Upon the filing of a motion, the rule requires the court clerk to "immediately call the motion to the court's attention." The court must then "promptly set the motion for submission or a hearing" within 35-60 days of the motion's filing (or within 90 days for reasons that mirror Section 23.303), record the motion's hearing or submission date on the docket, and ultimately issue a written ruling within 90 days of the hearing or submission day. Amended Rule 166a also explicitly contemplates the withdrawal of a motion commensurate with Section 23.303's recognition that deadlines do not apply to withdrawn motions.

After its initial passage, Section 23.303 was quickly amended to address concerns raised by the bar and judiciary about linking the court's deadline to act to the filing of a response. Stewart & Fields, *supra*. The amended and current version of the statute went into effect Dec. 4, 2025 and is

explicitly not retroactive. Consequently, there are effectively two sets of rules governing motions for summary judgment: one for motions filed Sept. 1 to Dec. 3 and another for motions filed on or after Dec. 4. Chief among the differences—for motions filed in the earlier window, courts must hear argument or consider a motion within 45 days “*after the date the response to the motion was filed* (emphasis added).”

Notably, amended Rule 166a hews to the current version of Section 23.303, which ties the court’s deadline to the act of filing a motion. Neither the proposed rule nor its comments contemplate what, if any, complexities could arise for motions filed in the Sept. 1-Dec. 3 window that remain pending when amended Rule 166a takes effect. *See, e.g., Fisher v. Capp*, 597 S.W.2d 393, 400 (Tex.App.—Amarillo 1980 writ ref’d n.r.e.) (holding that summary judgment rule change made effective in interim between motion’s filing and argument and decision was controlling as of effective date).

## **Additional Changes**

Amended Rule 166a provides a few other changes as well. It explicitly recognizes and contrasts a “traditional motion” from a “no-evidence motion.” While current Rule 166a expresses the concept of a traditional motion and explicitly recognizes no-evidence motions, the amended rule cleanly identifies and defines them as separate genres with distinct timing, content, and ruling standards (e.g., traditional can be filed “any time after the adverse party has appeared”; no-evidence can be filed “after adequate time for discovery”). The amended rule also imposes several new ancillary requirements, including instructions on how to title briefs and request hearings and a requirement that both movants and nonmovants submit proposed orders.

## **Summary Judgment Practice Going Forward**

Assuming the amended version of Rule 166a stays largely intact through the Court’s public comment process, practitioners will need to further recalibrate their summary judgment motion practice and strategies beyond the changes implemented by Section 23.303. There are several things to keep in mind, especially for nonmovants:

- Move fast. Nonmovants are in a completely new timing posture under the amended rule. Absent an extension, arguments, evidence gathering and synthesis, and briefing must not merely develop immediately upon the filing of a motion but must be ready in finalized and polished form for presentation to the court within 21 days.
- Over-anticipating is better than being caught unprepared. The immediate and shortened briefing schedule leaves little room for error or flexibility. The risk of being unprepared to meet a dispositive motion deadline will likely outweigh the attendant costs of an

anticipatory strategy. While good practitioners are constantly evaluating issues and arguments during the life of a case, earlier intensity and preliminary steps (assemble evidence, prepare briefing templates, etc.) will be at a new premium when the first adverse summary judgment motion arrives at the door under the amended rule.

- Work with opposing counsel to iron out procedural wrinkles. Amended Rule 166a will require a break-in period of alignment and understanding with local practices and rules and perhaps the earlier version of Section 23.303. Discussions with opposing counsel to ensure expectations and mechanics of summary judgment practice should be had early in a case and again near the time a motion is filed.
- Don't forget withdrawals. Both Section 23.303 and amended Rule 166a contemplate motion withdrawals, with the amended rule simply stating a withdrawal of a motion "must be filed" without any mention of requesting leave. Movants that need to change strategy mid-motion practice, especially in light of the required ruling dates imposed on judges, should be mindful of this potential exit ramp.

Like Section 23.303 of the Government Code, the amendments to Rule 166a present sea changes in Texas summary judgment practice. Though they will require practitioners to retool approaches, the amendments offer predictability, earlier issue crystallization, and reduced last-minute pressure while facilitating the judicial system's positive steps toward greater efficiency and responsiveness in summary judgment practice.

**Jarod Stewart** *is a partner at Steptoe and chair of the firm's commercial trials & litigation group.* **Patrick Fields** *is a commercial litigation associate at Steptoe.*

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