

# House Judiciary and Civil Jurisprudence Committee Interim Hearing – September 14, 2016

Interim Charge #5: Implementation of Expedited Actions Provisions



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# Expedited Actions Rules Changes

- HB 274 (82<sup>nd</sup> Legislature, R.S., 2011) required the Supreme Court to promulgate rules:
  - Governing Permissive Appeals
  - Offers of Judgment
  - Dismissal
  - **Expedited Actions**
- New TRCP 169 (Expedited Actions)
- Amendments to TRCP 47 (Claims for Relief) and TRCP 190 (Discovery Limitations)
- Amendments to Rule 902, Texas Rules of Evidence (Self-Authenticating Evidence)
- New and amended rules applied to all cases filed on or after March 1, 2013.



# Goal of TRCP 169



To aid in the **prompt, efficient and cost effective** resolution of cases, while maintaining **fairness** to litigants.

# Civil Case Complexities - Discovery

- TRCP Rule 190 provides for three levels of complexity:
  - **Rule 190.2 – Level 1**
  - Rule 190.3 – Level 2
  - Rule 190.4 – Level 3
- Level 1
  - Used to be cases under \$50k
  - Now is ALL EXPEDITED CASES
- Expedited Actions Qualifications
  - All claimants plead only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.
  - Does not apply to suit under Family Code, Property Code, Tax Code, of Chapter 74 of Civil Practice and Remedies Code (Medical Malpractice)
  - Good cause exceptions from process



CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED \_\_\_\_\_

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, pro health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the time of filing.



1. Contact information for person completing case information sheet:		Names of parties in case:
Name:	Email:	Plaintiff(s)/Petitioner(s):
Address:	Telephone:	Defendant(s)/Respondent(s):
City/State/Zip:	Fax:	
Signature:	State Bar No:	

[Attach additional page as necessary to list all parties]

**Damages Sought**

Click to select Damages Sought

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Click to select Damages Sought

- Less than \$100,000 including damages of any kind
- Less than \$100,000 and non-monetary relief
- Over \$100,000 but not more than \$200,000
- Over \$200,000 but not more than \$1,000,000
- Over \$1,000,000

**2. Indicate case type, or identify the most important issue in the case (select only 1):**

Civil			
Contract	Injury or Damage	Real Property	Marriage R
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure  <input type="checkbox"/> Franchise <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal</b> <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order  <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover

**4. Indicate damages sought (do not select if it is a family law case):**

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees  
 Less than \$100,000 and non-monetary relief  
 Over \$100,000 but not more than \$200,000  
 Over \$200,000 but not more than \$1,000,000  
 Over \$1,000,000



# Discovery – Expedited Trial Process

- Governed by TRCP Rule 190.2 – applies to family law under \$50k with no children too
- Discovery period is limited to 180 days after first request for discovery is served on any party
  - Used to be no limit, except 30 days before trial
- No more than 15 interrogatories
  - Used to be 25
- No more than 25 requests for production
  - Used to be unlimited
- No more than 15 requests for admission
  - Used to be unlimited
- Requests for disclosure are now blanket requests



# ADR & Experts – Expedited Trial Process

- Alternative Dispute Resolution
  - Mediation, arbitration, summary trial, etc
- Parties can agree not to engage in ADR
- Otherwise, Court may refer to ADR ONCE:
  - Can't exceed 1/2 day
  - Can't exceed twice the filing fee in cost
  - Has to be completed at least 60 days before the first trial setting
- Parties can agree to ADR outside of this
- Can only challenge expert as part of summary judgment motion or during trial on the merits
- Doesn't apply to late designations



# Expedited Actions Study

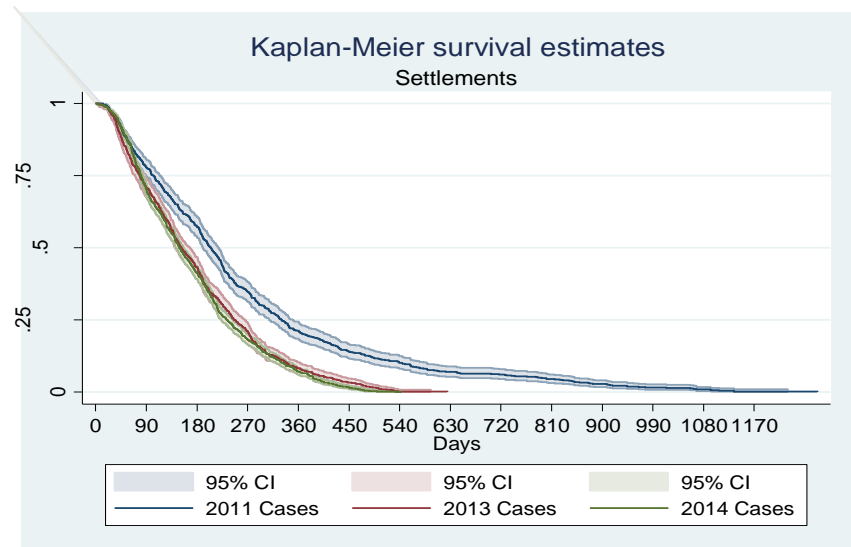
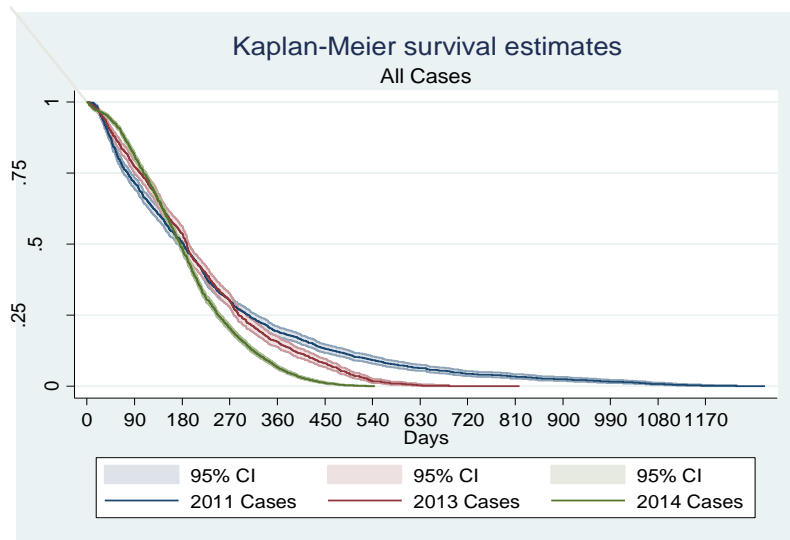
- Evaluated the use and effectiveness of the rule
- Sampled cases from 5 county courts at law
  - Dallas, Fort Bend, Harris, Lubbock, Travis
- Compared the process prior to the rule and post-rule
- Part of the Conference of Chief Justices Civil Justice Initiative
- NCSC analyzed the data
- Report released yesterday





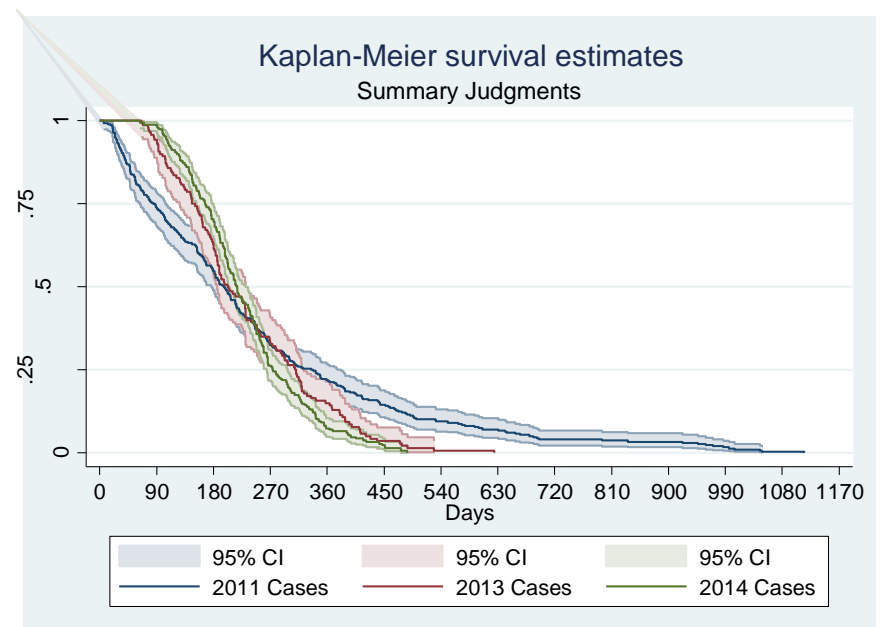
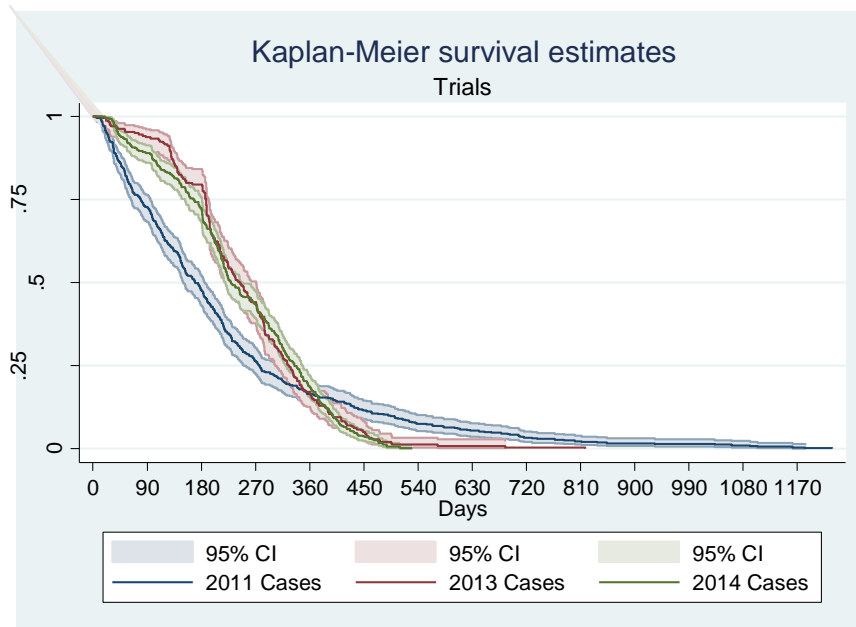
# Study Findings – Settlements Increase, Quicker

- Substantial increase in settlement rates with corresponding decreases in trial and summary judgment rates
  - 48.6% vs. 66.2% - settled
  - 29.3% vs. 19.8% - trial
  - 18.9% to 11.5% - summary judgment
- Cases disposed by settlement resolved roughly 3 months



# Study Findings – Trials slower at first, then faster

- Cases disposed by trial and summary judgment within 12 months were slower
- Trials and summary judgments after one year were faster
- May indicate calendaring issues



# Other Study Findings

- Rule 47 requirement to state amount in controversy was frequently violated - potential evading of expedited action rules
- Attorneys indicate that discovery restrictions do not interfere with ability to assess the merits of claims and defenses.
  - Some lawyers unhappy with early deadlines in rules, calendaring practices
- Referrals to ADR decreased overall, especially by standing orders.
  - Increase in referrals following motions by parties – more discriminate usage of ADR
  - Referrals of more complicated cases



# Other Study Findings

- Surveys of judges and attorneys indicate they are unaware that they have cases subject to the expedited actions rules
- Court and clerk staff are key to implementing the rules and calendaring practices



# Study Recommendations

- Amend TRCP Rule 47(c) to provide default presumption of expedited action when failure to state amount
- Increase education to judges about ADR requirements
- Investigate complaints about calendaring problems
  - Design procedures to ensure cases that are trial ready receive priority
- Investigate reports of potential rules conflicts and harmonize as appropriate
- Provide additional training to court coordinators and clerks about the expedited actions rules



Questions?

