

Table of Contents

CHAPTER 1. SUMMARY JUDGMENT

§ 1:1 Suggested Motion Text—Summary judgment

§ 1:2 Overview of Motion

I. KEY SUPPORTING CITATIONS

§ 1:3 Summary judgment—Authority for motion [Tex. R. Civ. P. 166a]

§ 1:4 — —Description and purpose

§ 1:5 — —Authority for motion [Tex. R. Civ. P. 166a] “Harsh” but necessary measure

§ 1:6 — —“Genuine issues of material fact”

§ 1:7 — —Genuine issues of material fact re opposition to motion

§ 1:8 — —Summary judgment in specific cases—Dangerous condition of property

§ 1:9 — —First Amendment cases

§ 1:10 — —Defamation cases

§ 1:11 — —Contract cases

§ 1:12 Procedural considerations—Generally

§ 1:13 — —Timing—Bringing motion

§ 1:14 — —Notice of motion

§ 1:15 — —Opposition and reply

§ 1:16 — —Specific grounds—Generally

§ 1:17 — —No evidence motion

§ 1:18 — —Specific references to discovery or other instruments

§ 1:19 — —Failure to state a claim

§ 1:20 — —Form of affidavits and testimony—Generally

§ 1:21 — —Defects

§ 1:22 — — —Preserving error

§ 1:23 — —Continuances—Generally

§ 1:24 — —Need for additional discovery

§ 1:25 — —Opposing continuance

§ 1:26 — —Court’s discretion

§ 1:27 — —Award of “fees and costs”

§ 1:28 — —Oral argument

§ 1:29 — —Case not fully adjudicated

§ 1:30 Burden of proof—Generally

§ 1:31 — —Burden where defendant brings motion

§ 1:32 — —Defendant’s no evidence motion

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 1:33 — —Negating plaintiff's case
- § 1:34 — —Proving affirmative defense
- § 1:35 — —Shifting burden to plaintiff
- § 1:36 — —Proving counterclaim
- § 1:37 —Burden where plaintiff brings motion
- § 1:38 — —Proving each element of cause of action
- § 1:39 — —Shifting burden to defendant
- § 1:40 — —Against defendant's counterclaim
- § 1:41 —Burden in no evidence motion
- § 1:42 —When both parties move for summary judgment
- § 1:43 Evidence on motion—Generally
- § 1:44 — —Strict construction of movant's evidence
- § 1:45 —Court's files
- § 1:46 —Pleadings—Acceptable use
- § 1:47 — —Unacceptable use
- § 1:48 —Admissible supporting evidence—Generally
- § 1:49 — —Affidavits
- § 1:50 — —Readily controverted
- § 1:51 — —Conclusory statements
- § 1:52 — —Discovery responses
- § 1:53 — —Admissions
- § 1:54 — —Inferences
- § 1:55 — —Exhibits
- § 1:56 — —Request for judicial notice
- § 1:57 — —Stipulated facts
- § 1:58 — —Timeliness
- § 1:59 — —Specific reference
- § 1:60 —Attacking opposition evidence—Generally
- § 1:61 — —Incompetent affidavits
- § 1:62 — —Admissions
- § 1:63 — —Untimely-filed evidence
- § 1:64 — —Court's files
- § 1:65 —Objections—Generally
- § 1:66 — —Specific objections
- § 1:67 — —Ruling on objections
- § 1:68 — —Waiver of objections
- § 1:69 Sanctions—Generally
- § 1:70 Review of motion—By direct appeal
- § 1:71 —By interlocutory appeal
- § 1:72 —Standard of review
- § 1:73 — —De novo review
- § 1:74 — —No evidence motion

II. KEY OPPOSITION CITATIONS

- § 1:75 Summary judgment—Generally

TABLE OF CONTENTS

§ 1:76	—Harsh remedy
§ 1:77	—No need to file response
§ 1:78	Procedural considerations—Request for continuance— Generally
§ 1:79	— —Continuance for additional discovery
§ 1:80	—Amendment of pleadings—Generally
§ 1:81	— —Effect of amended petition
§ 1:82	Burden of proof—Generally
§ 1:83	—Burden where defendant brings motion—Generally
§ 1:84	— —Negating plaintiff’s case
§ 1:85	— —Motion based on affirmative defense
§ 1:86	—Burden where plaintiff brings motion—Generally
§ 1:87	Evidence on motion—Generally
§ 1:88	— —Inferences in favor of nonmovant
§ 1:89	—Genuine issue of material fact
§ 1:90	— —Genuine issue of material fact—Examples
§ 1:91	— —Property cases
§ 1:92	— —Probate cases
§ 1:93	— —Contract cases
§ 1:94	— —Family law cases
§ 1:95	— —Employment cases
§ 1:96	— —Insurance cases
§ 1:97	— —Business organization cases
§ 1:98	— —Personal injury cases
§ 1:99	— —Products liability cases
§ 1:100	—Attacking supporting evidence—Generally
§ 1:101	— —Incompetent affidavits
§ 1:102	— —Declarant lacks personal knowledge
§ 1:103	— —Hearsay
§ 1:104	— —Inadmissible discovery
§ 1:105	— —Contradictory admissions
§ 1:106	— —Conclusory statements
§ 1:107	— —Argument vs. evidence
§ 1:108	— —Improper judicial notice
§ 1:109	— —Improper reference to exhibits
§ 1:110	—Objections—No waiver if substantive defect

III. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

§ 1:111	Motion for summary judgment by defendant—Motion for summary judgment
§ 1:112	—Request for judicial notice in support of motion for summary judgment

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 1:113 —Affidavit in support of motion for summary judgment
- § 1:114 Plaintiff's opposition to motion for summary judgment—Memorandum of points and authorities in opposition to motion for summary judgment
- § 1:115 Sample orders—Order for entry of summary judgment
- § 1:116 —Order denying summary judgment
- § 1:117 Sample judgment

CHAPTER 2. PLEA TO THE JURISDICTION

- § 2:1 Suggested motion text
- § 2:2 Overview of motion

I. KEY SUPPORTING CITATIONS

- § 2:3 General authorities
- § 2:4 —Typical use of motion
- § 2:5 Grounds for plea—Sovereign/governmental immunity
- § 2:6 —Religious-liberty grounds
- § 2:7 —Non-justiciable questions [moot, hypothetical, or abstract questions]
- § 2:8 —Lack of standing
- § 2:9 —Elections
- § 2:10 —Exclusive administrative jurisdiction
- § 2:11 —Amount in controversy not within jurisdiction limits of court
- § 2:12 —Subject matter of suit not within court's jurisdiction
- § 2:13 —Federal preemption of jurisdiction
- § 2:14 Evidence on motion
- § 2:15 Determination of motion
- § 2:16 Review of motion—Interlocutory appeal
- § 2:17 —Mandamus
- § 2:18 —Standard of review

II. KEY OPPOSITION CITATIONS

- § 2:19 General authorities—Motion improper
- § 2:20 —Sovereign/governmental immunity
- § 2:21 —Religious-liberty grounds
- § 2:22 —Non-justiciable questions [moot, hypothetical, or abstract questions]
- § 2:23 —Standing
- § 2:24 —Elections
- § 2:25 —Exclusive administrative jurisdiction

TABLE OF CONTENTS

- § 2:26 —Amount in controversy not within jurisdiction limits of court
- § 2:27 —Federal preemption of jurisdiction
- § 2:28 Procedural considerations—Verification
- § 2:29 —Waiver
- § 2:30 Determination of motion

III. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

- § 2:31 Plea to the jurisdiction [part of original answer]

CHAPTER 3. MOTION TO STRIKE

- § 3:1 Suggested motion text
- § 3:2 Overview of motion

I. KEY SUPPORTING CITATIONS

- § 3:3 Typical use of motion—Arising from discovery abuse
- § 3:4 —Where attorney does not have authority [Tex. R. Civ. P. 12]
- § 3:5 Typical use of motion—Pleadings filed in bad faith, pleadings that are groundless or frivolous, or pleadings that have no basis in law or fact [Tex. R. Civ. P. 13, 91a, Tex. Civ. Prac. & Rem. C. 10.001]
- § 3:6 Typical use of motion—Untimely amendments/supplemental pleadings
- § 3:7 Grounds for motion to strike—Discovery abuse
- § 3:8 —Rule 13 sanction
- § 3:9 —Untimely-filed pleadings
- § 3:10 Key procedural requirements—Discovery abuse—Hearing
- § 3:11 — —Effect of grant of motion
- § 3:12 —Rule 13 motion—Burden
- § 3:13 — —Hearing
- § 3:14 — —Order
- § 3:15 —Lack of authority
- § 3:16 —No basis in law or fact (Rule 91a)
- § 3:17 Evidence on motion
- § 3:18 Abuse of discovery process
- § 3:19 Failure to appear at deposition or to provide answers or objections to discovery requests
- § 3:20 Failure to comply with orders
- § 3:21 Groundless pleadings—Generally
- § 3:22 —Groundless and in bad faith
- § 3:23 —Groundless and for purposes of harassment

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 3:24 —No basis in law or fact (Tex. R. Civ. P. 91a)
- § 3:25 Untimely pleadings
- § 3:26 Appellate review of motion—Review of dismissal as sanction for discovery abuse
- § 3:27 —Review of dismissal under Rule 13 or 91a
- § 3:28 —Mandamus

II. KEY OPPOSITION CITATIONS

- § 3:29 Motion to strike—Generally
- § 3:30 Discovery abuse—Generally
- § 3:31 —Effectiveness of lesser sanctions
- § 3:32 —Evidence on motion
- § 3:33 —Waiver
- § 3:34 —Direct relationship between misconduct and sanction
- § 3:35 Motion based on Tex. Civ. Prac. & Rem. Code 10.001—Generally
- § 3:36 Rule 13 motion—Generally
- § 3:37 —Burden
- § 3:38 —Groundless and for purposes of harassment
- § 3:39 Untimely pleadings—Generally

III. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

A. MOTION TO STRIKE PLEADINGS FOR DISCOVERY ABUSE

- § 3:40 Notice of motion and motion to strike pleadings for discovery abuse
- § 3:41 Affidavit in support of motion to strike pleadings for discovery abuse
- § 3:42 Response to motion to strike pleadings for discovery abuse
- § 3:43 Affidavit in support of response to motion to strike pleadings for discovery abuse
- § 3:44 Order granting motion to strike pleadings for discovery abuse

B. MOTION TO STRIKE PLEADINGS FOR LACK OF AUTHORITY [TEX. R. CIV. P. 12]

- § 3:45 Notice of motion and motion to strike pleadings for lack of authority of counsel
- § 3:46 Response to motion to strike pleadings for lack of authority of counsel

TABLE OF CONTENTS

- § 3:47 Order granting motion to strike pleadings for lack of authority of counsel

C. MOTION TO STRIKE GROUNDLESS PLEADINGS [TEX. R. CIV. P. 13]

- § 3:48 Motion to strike groundless pleadings pursuant to Tex. R. Civ. P. 13
- § 3:49 Response to motion to strike groundless pleadings pursuant to Tex. R. Civ. P. 13
- § 3:50 Order granting motion to strike groundless pleadings pursuant to Tex. R. Civ. P. 13

D. MOTION TO STRIKE UNTIMELY-FILED PLEADINGS [TEX. R. CIV. P. 63]

- § 3:51 Motion to strike untimely-filed pleadings
- § 3:52 Response to motion to strike untimely-filed pleadings
- § 3:53 Order denying motion to strike untimely-filed pleadings

CHAPTER 4. SPECIAL APPEARANCE

- § 4:1 Suggested motion text
- § 4:2 Overview of motion

I. KEY SUPPORTING CITATIONS

- § 4:3 General authorities [Tex. R. Civ. P. 120a]
- § 4:4 —Due process considerations
- § 4:5 —Burden of proof
- § 4:6 —Special vs. general appearance
- § 4:7 —Caution: special appearance “designations”
- § 4:8 —Attendance at hearings
- § 4:9 —Non-residents
- § 4:10 —Participation in discovery
- § 4:11 —Stipulation or order for extension of time to plead
- § 4:12 —Motion to dismiss
- § 4:13 —Default or motion for relief from default
- § 4:14 —Defect in special appearance
- § 4:15 Grounds for motion
- § 4:16 Grounds for motion—Special appearance as to severable claims
- § 4:17 Procedural considerations—Timing of motion—Generally
- § 4:18 — —Motion made simultaneous to responsive pleading [Tex. R. Civ. P. 120a(1)]

SUMMARY JUDGMENT AND RELATED MOTIONS

- § 4:19 —Proof of jurisdiction
- § 4:20 —Affidavits in support
- § 4:21 —Notice
- § 4:22 Lack of personal jurisdiction—Generally
- § 4:23 —Burden of showing
- § 4:24 —General jurisdiction
- § 4:25 —Specific jurisdiction
- § 4:26 —Minimum contacts
- § 4:27 —Fiduciary shield doctrine
- § 4:28 —Types of jurisdiction—Over the person
- § 4:29 — —Over the property
- § 4:30 — —Over personal status
- § 4:31 — —Consent [forum selection clauses]
- § 4:32 —Types of actions—Products liability
- § 4:33 — —Tort actions
- § 4:34 — —Contract actions
- § 4:35 Review of motion—Interlocutory appeal
- § 4:36 —Standard of review

II. KEY OPPOSITION CITATIONS

- § 4:37 General authorities—General appearance
- § 4:38 —Burden
- § 4:39 —Plaintiff's right to discovery on jurisdiction issue
- § 4:40 Personal jurisdiction
- § 4:41 —Minimum contacts
- § 4:42 —Doing business in state
- § 4:43 —Jurisdiction over person
- § 4:44 —Contract actions
- § 4:45 —Products liability actions
- § 4:46 —Tort actions
- § 4:47 Procedural considerations—Waiver of jurisdictional defect claim
- § 4:48 —Form of special appearance

III. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

- § 4:49 Special appearance motion
- § 4:50 Affidavit in support of special appearance motion
- § 4:51 Response to special appearance motion—Plaintiff's points and authorities in response to special appearance motion

TABLE OF CONTENTS

CHAPTER 5. DISMISSAL MOTIONS

I. CHAPTER OVERVIEW

§ 5:1 Summary of motions

**II. DISMISSAL BASED ON FORUM NON
CONVENIENS**

§ 5:2 Suggested motion text

§ 5:3 Overview of motion

A. KEY SUPPORTING CITATIONS

§ 5:4 Primary authorities [Tex. Civ. Prac. & Rem. C. 71.051]

§ 5:5 —Description and purpose

§ 5:6 —Discretionary motion

§ 5:7 —Factors weighed by court

§ 5:8 — —Adequate alternate forum

§ 5:9 — —Substantial injustice to the moving party

§ 5:10 — —Whether alternative forum can exercise
jurisdiction over all parties and case

§ 5:11 — —Considering private and public interests

§ 5:12 —Stay of action

§ 5:13 Procedural considerations—Timing of motion

§ 5:14 —Burden of proof

§ 5:15 —Order

§ 5:16 Review of refusal to dismiss by mandamus

§ 5:17 Forum selection clauses

§ 5:18 Forum Selection Clauses—Discretion

§ 5:19 —Burden

§ 5:20 —Parties to the transaction

§ 5:21 —Motion

§ 5:22 —Review of refusal to dismiss by mandamus

B. KEY OPPOSITION CITATIONS

§ 5:23 Forum non conveniens—Adequate alternative forum

§ 5:24 —Presumptively convenient forum

§ 5:25 Burden of proof

§ 5:26 Forum selection clauses

§ 5:27 Forum selection clause—Parties not bound

§ 5:28 —Waiver

**III. DISMISSAL BASED ON FAILURE TO SERVE
SUMMONS**

§ 5:29 Suggested motion text

§ 5:30 Overview of Motion

A. KEY SUPPORTING CITATIONS

§ 5:31 Primary authorities [Tex. R. Civ. P. 21b, 215.2]

§ 5:32 —Description and purpose

B. KEY OPPOSITION CITATIONS

§ 5:33 General authorities

IV. DISMISSAL BASED ON DELAY IN PROSECUTION

§ 5:34 Suggested motion text

§ 5:35 Overview of Motion

A. KEY SUPPORTING CITATIONS

§ 5:36 Primary authorities [Tex. R. Civ. P. 165a]

§ 5:37 —Discretionary motion

§ 5:38 Grounds for motion [Tex. R. Civ. P. 165a]—Failure to appear

§ 5:39 —Case not disposed of within Supreme Court’s time standards

§ 5:40 —Lack of diligence in prosecution

§ 5:41 Factors

§ 5:42 Procedural considerations—Notice of intent to dismiss

§ 5:43 —Notice of ruling [Tex. R. Civ. P. 165a]

§ 5:44 —On court’s own motion

§ 5:45 Overcoming plaintiff excuses for delay—Diligence

§ 5:46 —Good cause to maintain case on docket

§ 5:47 Review of dismissal for want of prosecution

§ 5:48 Opposing motions to reinstate

B. KEY OPPOSITION CITATIONS

§ 5:49 General authorities—Court’s discretion

§ 5:50 — —Abuse of discretion

§ 5:51 Grounds—Failure to appear

§ 5:52 —Case not disposed of within supreme courts time standards

§ 5:53 Factors considered

§ 5:54 Procedural considerations—Due process

§ 5:55 —Where court brings motion

§ 5:56 —Timing

§ 5:57 —Dismissal without prejudice

TABLE OF CONTENTS

- § 5:58 Excuse for delay—Reasonable diligence
- § 5:59 —Good cause to maintain on docket
- § 5:60 Motion to reinstate

V. DISMISSAL BASED ON FAILURE TO JOIN INDISPENSABLE PARTY

- § 5:61 Suggested motion text
- § 5:62 Overview of motion

A. KEY SUPPORTING CITATIONS

- § 5:63 Primary authorities—Joining indispensable parties
[Tex. R. Civ. P. 39(a)]
- § 5:64 —Dismissal for failure to join indispensable party [Tex.
R. Civ. P. 39(b)]
- § 5:65 Grounds for motion—Statutory factors [Tex. R. Civ. P.
39(b)]
- § 5:66 —Determination

B. KEY OPPOSITION CITATIONS

- § 5:67 Generally—Not a jurisdictional defect
- § 5:68 —Non-indispensable parties
- § 5:69 Discretionary motion

VI. DISMISSAL BASED ON INHERENT AUTHORITY OF COURT

- § 5:70 Suggested motion text
- § 5:71 Overview of motion

A. KEY SUPPORTING CITATIONS

- § 5:72 Primary authorities [Tex. Govt C. 21.001(a)]
- § 5:73 Grounds—Lack of diligence
- § 5:74 —Failure to comply with court orders

B. KEY OPPOSITION CITATIONS

- § 5:75 General authorities

VII. DISMISSAL BASED ON TEXAS CITIZENS PARTICIPATION ACT

- § 5:76 Suggested motion text
- § 5:77 Overview of motion

SUMMARY JUDGMENT AND RELATED MOTIONS

A. KEY SUPPORTING CITATIONS

- § 5:78 Primary authorities—Statutory authority [Tex. Civ. Prac. & Rem. Code 27.001-.003]
- § 5:79 Description of TCPA motions
- § 5:80 Policy underlying TCPA motion
- § 5:81 Liberally construed
- § 5:82 Activities subject to motion—General
- § 5:83 —Legal action
- § 5:84 —Communications based on matter of public concern
- § 5:85 —Cause of action based on exercise of right to free speech
- § 5:86 —Cause of action based on exercise of right to petition
- § 5:87 —Communication or conduct under Section 27.010(b)
- § 5:88 Exemptions from TCPA motions [Tex. Civ. Prac. & Rem. Code § 27.010(a)]
- § 5:89 Proof
- § 5:90 Timing of TCPA motion to dismiss and response
- § 5:91 Hearing
- § 5:92 Ruling on motion
- § 5:93 Effect of ruling
- § 5:94 Burden of proof
- § 5:95 Stay of discovery
- § 5:96 Determination by court
- § 5:97 Damages and costs
- § 5:98 Appeal
- § 5:99 Appellate standard of motion

B. KEY OPPOSITION CITATIONS

- § 5:100 Activities subject to motion
- § 5:101 Activities not subject to motion
- § 5:102 Evidence on motion

VIII. SAMPLE SUPPORTING AND OPPOSITION BRIEFS

A. MOTION TO DISMISS BASED ON FORUM NON CONVENIENS [PERSONAL INJURY/ WRONGFUL DEATH ACTION]

- § 5:103 Motion to dismiss
- § 5:104 Order granting defendants motion to dismiss on grounds of forum non conveniens

B. MOTION TO DISMISS FOR WANT OF PROSECUTION

- § 5:105 Motion to dismiss for want of prosecution

TABLE OF CONTENTS

§ 5:106 Affidavit in support of motion to dismiss for want of
prosecution

§ 5:107 Order to dismiss action for want of prosecution

C. DISMISSAL BASED ON TEXAS CITIZENS
PARTICIPATION ACT

§ 5:108 Sample supporting and opposition briefs—Motion to
dismiss complaint (TCPA motion)

§ 5:109 —Plaintiff's opposition to motion to dismiss portions
of complaint (TCPA motion)

Table of Laws and Rules

Table of Cases

Index