

Deadlines in Family Law Litigation

Jimmy L. Verner, Jr.¹

I. Introduction

This outline summarizes the more common deadlines encountered in family law litigation. It does not list all of them.

II. Intake

When a case comes in the door, counsel should obtain the client's signature on a written fee agreement, then determine whether the proposed suit is barred by limitations and whether there are any jurisdictional problems.

A. Fee Agreement

There is no requirement for a written fee agreement in a family law case. However, it is strongly recommended that counsel sign a written fee agreement with the client. Not only will the precise scope of representation be defined, but one of the grounds for withdrawal is that the client has failed to pay as agreed. Tex. Disc. R. Prof. Conduct 1.15(b)(5). A written fee agreement stating what amounts are due and when they are due will assist counsel if the client fails to pay as agreed.

B. Limitations

In the section we consider whether a proposed law suit clearly is barred by limitations, or some variation of limitations.

¹ Verner & Brumley, P.C., 3131 TurtleCreek Blvd., The Penthouse, Dallas, Texas 75219, 214.526.5234, 214.526.0957.fax, jverner@vernerbrumley.com, www.vernerbrumley.com

1. Proof of Informal Marriage

There is no statute of limitations for getting divorced, but there is a statute of limitations - in effect - for obtaining a divorce when the parties were married at common law. It is rebuttably presumed that the parties were not married if a divorce is not commenced within two years of the date the parties separated and ceased living together. Tex. Fam. Code § 2.401(b).

2. Enforcement

Deadlines for enforcement of an order or decree vary depending upon whether the provisions to be enforced concern a SAPCR or property division upon divorce.

a. SAPCR Issues

When the remedy sought is contempt, an enforcement proceeding (for access denial) must be brought within six months after the child becomes an adult or (for child support) the obligor's child-support obligation ceases. Tex. Fam. Code §§ 157.004 (access) & 157.005(a) (child support).

In contrast, when the remedy sought is merely a judgment, the court retains jurisdiction to confirm the total amount of child support arrearages indefinitely. Tex. Fam. Code § 157.005(b).

b. Property Issues

A suit to enforce division of personal property after divorce must be filed within two years of the date the trial court signed the decree or, after appeal, the judgment became final. Tex. Fam. Code § 9.202.

3. Paternity

A suit to adjudicate the parentage of a child with a presumed father must be commenced before the child is four years old. Tex. Fam. Code § 160.607(a).

4. Modification

A modification suit over a child's primary residence cannot be brought until at least one year has passed since the prior order unless the petitioner submits an affidavit with the suit setting out an emergency, an agreement, or voluntary relinquishment. Tex. Fam. Code § 156.102.

C. Jurisdictional Requisites

1. Divorce

To obtain a divorce, at least one of the spouses must have been a domiciliary of Texas for the six months proceeding the filing of the suit plus a resident of the county in which suit is filed for the 90 days proceeding the filing of suit. Tex. Fam. Code § 6.301.

2. SAPCR

Although there are many wrinkles and exceptions to the rule, generally speaking a child not born in Texas must live in Texas for at least six months before a Texas court can assert jurisdiction over that child. Similarly, if a child moves away, after six months another state may assume jurisdiction. Tex. Fam. Code ch. 152 (UCCJEA).

III. Filing & Response

A. Petitioner's Concerns

1. Service

If counsel is facing a potential limitations problem, then service must be accomplished with due diligence after the filing of suit.

2. TRO/Temporary Orders

A temporary restraining order is effective for only 14 days and may be renewed once for a like period. Tex. R. Civ. P.680.

3. Enforcement

Whenever one party seeks to hold the other party in contempt of court, the opposing party must have at least 10 days' notice of the enforcement hearing. Tex. Fam. Code § 157.062(c).

B. Respondent's Concerns

1. Special Appearance

When challenging the court's jurisdiction, a party must file a special appearance before any other plea, pleading or motion, or the jurisdictional challenge is waived. Tex. R. Civ. P. 120a.

2. MTV

A motion to transfer venue must be filed prior to any other plea, pleading or motion, except a special appearance, or the objection to venue is waived. Tex. R. Civ. P. 86.

3. TRO/Temporary Orders

Absent extraordinary circumstances, a court cannot issue a kick-out order until a temporary orders hearing. Tex. Fam. Code § 6.502(a)(6).

IV. Discovery

The discovery rules are set forth at Tex. R. Civ. P. 190 *et seq.* The discovery rules include not only timing provisions but also provisions governing the various types of discovery. Rule 190 identifies what "level" of discovery is attached to a case which in turn determines the discovery deadlines.

A. Overview

Discovery is supposed to take place during the "discovery period. Unless a case is otherwise designated, it is a Level 2 case. Most family law cases are Level 2 cases.

Level 2 Family Code cases are governed by Rule 190.3(b)(1)(A), which states that

the discovery period begins when suit is filed and continues until 30 days before the date the case is set for trial.

B. Timetables

1. When Discovery Period Begins

Although the discovery period begins when suit is filed, if discovery commences then, the response time for discovery is expanded. Normally, discovery responses are due 30 days after service, but if counsel serves discovery before a respondent's answer is due, the respondent has 50 days within which to respond.

2. When Discovery Period Ends

Because the discovery period ends 30 days prior to trial, all discovery must be propounded at least 60 days prior to trial.

C. Supplementation of Discovery

1. In General

Supplementation of discovery is supposed to take place as information and documents are received.

2. Experts

Discovery of experts is governed by Tex. R. Civ. P. 195. Under this rule, counsel must designate testifying experts not later than 90 days before the end of the discovery period if the party is seeking affirmative relief. Other experts must be designated not later than 60 days prior to the end of the discovery period.

Because the discovery period ends 30 days before trial, counsel seeking affirmative relief must designate experts 120 days before trial.

V. Motion Practice

A. Usual Motion Rules

Under the usual motion rules, a motion requires three days' notice. Tex. R. Civ. P. 21. The three days is exclusive of the day of notice, the day of hearing, and any intervening weekends or holidays. Tex. R. Civ. P. 4. Thus, to have a motion heard on a Friday, you must notice the motion by Monday of that week.

B. Summary Judgment Motions

The rules for summary judgment motions are different from the usual motion rules. A summary judgment motion requires 21 days' notice. Tex. R. Civ. P. 166a. Because of the day-counting rule, 22 days really is required. Tex. R. Civ. P. 4.

VI. Approaching Trial

A. Setting Notice

A party is entitled to 45 days' notice of the first trial setting. Tex. R. Civ. P. 245.

B. Requesting Jury Trial

A jury trial must be requested, and the fee paid, within a reasonable time before the trial setting, and in any event not later than 30 days prior to trial. Tex. R. Civ. P. 216.

C. BRAs

Business records affidavits must be filed at least 14 days prior to trial. Tex. R. Evid. 902(10)(a).

D. Amending Pleadings

Pleadings may be amended at any time without leave of court, "at such time as not to operate as a surprise to the opposite party." Tex. R. Civ. P. 63. Within seven days of trial, one is supposed to request leave of court prior to filing an amended pleading. Tex. R. Civ. P. 63.

VII. Special Notes for Jury Trials

A. Requesting Charge

As a practical matter, the trial court will invite charge submissions or provide counsel with a copy of the proposed charge. See Tex. R. Civ. P. 273.

B. The Charge Conference

Normally, the court will hold a charge conference with the attorneys to go over the charge and any modifications requested to it. At this point, counsel must be prepared to persuade the court that one's proposed charge is correct.

C. Objecting to the Charge

Prior to submission of the charge to the jury, the court will provide counsel an opportunity to object to the charge on the record. At this time, counsel must make specific objections to the charge. Tex. R. Civ. P. 274. Further, if the court refuses to submit a question, the party wanting the question submitted must submit it in writing. If the question is one the opposing party wishes to submit, oral objections on the record will preserve the issue for review. Either party who claims a definition or instruction should have been submitted must submit the definition or instruction in writing. Tex. R. Civ. P. 278.

VII. Deadlines Posttrial

A. Findings of Fact and Conclusions of Law

1. Child Support FOFCOL

Within 10 days of a hearing counsel must request child support findings. Tex. Fam. Code § 154.130.

2. Regular FOFCOL

Requests for FOFCOL - other than child support findings noted above - must be made within 20 days of the date the judgment is signed. Tex. R. Civ. P. 296. If the trial court has failed to file FOFCOL within 20 days after the request is filed, then one must file a Notice of Past Due Findings of

Fact and Conclusions of Law not later than 30 days after initial request for FOFCOL. Tex. R. Civ. P. 297.

If the court has filed FOFCOL but one seeks additional FOFCOL, the request for additional FOFCOL must be made within 10 days after the date that the court filed its FOFCOL. Tex. R. Civ. P. 298.

B. Posttrial Motions

1. MNT

A motion for new trial must be filed within 30 days of the date a judgment is signed. Tex. R. Civ. P. 329b. The motion for new trial may be amended within this time period but not more than 30 days after the date the judgment was signed.

2. MJNOV

The same 30-day time period applies to motions for judgment notwithstanding the verdict or other posttrial motions.

3. MTOs

A motion for temporary orders pending appeal must be filed and heard within 30 days after the date a judgment is signed. Tex. Fam. Code §§ 6.709 & 109.001.

C. Notice of Appeal

1. Accelerated Appeals

A notice of appeal must be filed within 20 days after the date a judgment is signed if the appeal is accelerated. Termination cases are accelerated appeals.

2. Ordinary Appeals

A notice of appeal must be filed within 20 day after the date an order is signed unless the time for filing has been extended by the filing of a

motion for new trial or other post trial motion, or by a request for FOFCOL.

D. When Jurisdiction Ends

1. Without Extensions

The trial court's jurisdiction expires 30 days after judgment.

2. With Extensions

Assuming jurisdiction has been extended by the filing of a motion for new trial, or a request for FOFCOL, the trial court's plenary jurisdiction ends on the 105th day after an order is signed.

3. No Extensions for Accelerated Appeals

Filing a motion for new trial, other post trial motion, or a request for FOFCOL will not extend the time to perfect an appeal when the appeal is accelerated, as in termination cases.