

Dismissal Procedures Under Texas Rule of Civil Procedure 91a



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Rule 91a.1: Dismissal Standards



A party may move to “dismiss a cause of action on the grounds that it has no basis in law or fact.”

- “A cause of action has **no basis in law** if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” (Emphasis added.)
- “A cause of action has **no basis in fact** if no reasonable person could believe the facts pleaded.” (Emphasis added.)

Rule 91a.3–91a.5: Strict Deadlines



- File the motion within 60 days after service of the pleading containing the challenged cause of action and at least 21 days before the motion is heard
- Provide 14 days' notice of the hearing
- Respond to the motion no later than 7 days before the date of the hearing
- Nonsuit the challenged cause of action at least 3 days before the hearing
- Amend the challenged cause of action at least 3 days before the hearing
- Withdraw the motion at least 3 days before the hearing, unless the withdrawal is prompted by a pleading amendment
- Rule within 45 days after the motion is filed, absent a timely withdrawal, amendment, or nonsuit

Rule 91a.7: Loser-Pays Provision



- Rule: “[T]he court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court.”
- Exception: The loser-pays provision does not apply “in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law.”

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