

42nd ANNUAL PAGE KEETON
CIVIL LITIGATION CONFERENCE
NOVEMBER 8-9, 2018
HOUSTON, TEXAS

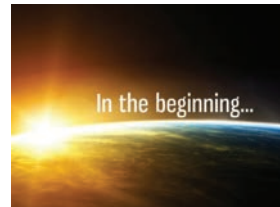
THRESHOLD DISPOSITIVE MOTIONS

RULE 91A MOTIONS TO DISMISS . . . Even if you're not getting SLAPPED

Gregory P. Sapire, Cleveland | Terrazas PLLC • Austin, Texas

© Copyright 2018 by Cleveland Terrazas PLLC. All rights reserved.

ORIGINS OF RULE 91A



- House Bill 274, 2011:

The Texas Supreme Court shall adopt . . .

- “rules to promote the prompt, efficient and cost-effective resolution of civil actions”
- “rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence”

TEX. GOV'T CODE § 22.004(g)-(h)

TEX. CIV. PRAC. & REM. CODE § 30.021

- Along with these Government Code amendments, the 2011 Legislature also added CPRC Section 30.021
- **“In a civil proceeding, on a trial court’s granting or denial, in whole or in part, of a motion to dismiss . . . The court shall award costs and reasonable and necessary attorneys’ fees to the prevailing party.”**
- But: exceptions for government entity suits



Tex. R. Civ. P. 91a Basics . . .

- Effective March 1, 2013
- Entitled:
 “Dismissal of Baseless Causes of Action”
- At least 47 substantive opinions from Texas Courts of Appeals
- Family cases and inmate litigation excluded



Tex. R. Civ. P. 91a Basics . . . continued

- Movant “submits to . . . jurisdiction only in proceedings on the motion”
- No waiver of personal jurisdiction
- “[D]oes not supersede or affect other procedures that authorize dismissal”
- Special exceptions and summary judgment motions unaffected – even on the same grounds

It's not just a “little” version of Rule 12(b)(6)

“The Supreme Court Advisory Committee and its subcommittee went out of their way to make clear that the dismissal rule is not merely a little Rule 12(b)(6).”



- Hon. Randy Wilson, *From My Side of the Bench: Motions to Dismiss*, The Advocate, Winter 2013.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Threshold Dispositive Motions. Rule 91A Motions to Dismiss... Even if you're not getting SLAPPED

Also available as part of the eCourse

[2018 Page Keeton Civil Litigation eConference](#)

First appeared as part of the conference materials for the 42nd Annual Page Keeton Civil Litigation Conference session "Early Dismissal Trends: 91a Dismissals and Anti-SLAPP"