

Tex. R. Civ. P. 166(g): What Is It Good For?

Jane Webre
Scott Douglass & McConnico LLP
303 Colorado St., Suite 2400
Austin, Texas 78701
jwebre@scottdoug.com

Presented at:
33rd Annual Conference on State and Federal Appeals
UT Law CLE
Austin, Texas
June 7-8, 2023

TABLE OF CONTENTS

A.	What is Rule 166(g), and how can courts use it?.....	1
B.	Isn't it just summary judgment-lite?.....	2
C.	What kinds of non-dispositive issues have been resolved through Rule 166(g) motions?.....	5

Tex. R. Civ. P. 166(g): What Is It Good For?

by Jane Webre

Rule 166(g) is a short, generic-sounding rule that provides for a trial court to hold a pretrial conference and consider “the identification of legal matters to be ruled on or decided by the court.” Tex. R. Civ. P. 166(g). That doesn’t seem like much, but the mighty little Rule 166(g) can be a helpful procedural vehicle to resolve discrete legal issues that may impact how a case is ultimately tried. It may not be a substitute for a proper summary judgment motion (though it can support a complete dismissal of claims), but not every procedural tool needs to be able to do every job.

This paper will identify the sorts of issues that courts have resolved through Rule 166(g) motions and offer suggestions regarding how best to convince your audience that, really, Rule 166(g) does exist.

A. What is Rule 166(g), and how can courts use it?

Rule 166(g) authorizes a trial court may make determinations on legal issues prior to trial. It grants the court authority to “assist in the disposition of the case” to “direct the attorneys . . . to appear before it for a conference to consider: . . . (g) the identification of legal matters to be ruled on or decided by the Court”). Tex. R. Civ. P. 166(g); *see also Walden v. Affiliated Computer Servs., Inc.*, 97 S.W.3d 303, 326 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (“Because Rule 166 expressly authorizes the trial court to rule on legal issues before trial, we find no error in the trial court’s procedure for disposing of various claims and defenses as a matter of law.”); *Orca Assets, G.P. L.L.C. v. Dorfman*, 470 S.W.3d 153 (Tex. App.—Fort Worth 2015, pet. denied) (affirming “Rule 166 Order on Legal Matters Decided by the Court”).

One court explained that the “Texas Rules of Civil Procedure provide several procedural vehicles that may be used to resolve a dispute between the parties. Those options include, among other things, the following: trial on the merits, either to a jury or the bench, motions for summary judgment, or agreements by the parties to compromise some or all of a party’s claims.” *In re Park Mem’l Condo. Ass’n, Inc.*, 322 S.W.3d 447, 451 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding). The court went on to explain that Rule 166(g) is another appropriate vehicle to “resolve a dispute between parties”:

This list is far from exhaustive. Depending on the circumstances, a lawsuit could also be concluded by, for example, a plea to the jurisdiction, special exceptions, special appearance, nonsuit, sanctions,

Also available as part of the eCourse

[2023 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the
33rd Annual Conference on State and Federal Appeals session
"Under-Utilized Procedural Tools"