

## Question

The wife did not plead the alleged misconduct (drug use, nudity, etc.) and failed to disclose her intended testimony during discovery. Texas Rules of Civil Procedure require parties to plead material facts and disclose evidence and witnesses in discovery (see Tex. R. Civ. P. 47, 192.3, 193.6). Because the wife failed to plead these facts and did not disclose her testimony, the court may exclude her evidence and testimony on these issues, weakening her case.

## Answer (Texas)

### Short response

If the wife failed to plead the alleged misconduct and did not disclose her intended testimony or evidence during discovery, Texas law generally requires exclusion of such evidence or testimony at trial unless she can show good cause or lack of unfair surprise or prejudice. This failure to comply with pleading and discovery obligations can significantly weaken her case.

### Summary

Texas Rules of Civil Procedure mandate that parties must both plead material facts with sufficient detail to provide fair notice and timely disclose evidence and witnesses during discovery. If a party, such as the wife in this scenario, fails to plead specific allegations (like drug use or nudity) and does not disclose related evidence or intended testimony, the court is typically required to exclude that evidence or testimony at trial unless the party can demonstrate good cause for the failure or show that the opposing party is not unfairly surprised or prejudiced.

The exclusion of such evidence is not discretionary but mandatory under Texas Rule of Civil Procedure 193.6, unless an exception applies. The burden is on the party seeking to introduce the undisclosed evidence to prove an exception, and courts have consistently enforced these rules to ensure fairness and prevent trial by ambush. As a result, the wife's failure to comply with these procedural requirements would likely result in the exclusion of her evidence and testimony on the alleged misconduct, thereby undermining her position in the litigation.

## Background and Relevant Law

### Pleading Requirements

Under Texas law, pleadings must provide fair notice of the claims and material facts at issue. Texas Rule of Civil Procedure 47 requires that a pleading contain a short statement of the cause of action sufficient to give

fair notice of the claim involved. The "fair notice" standard is designed to ensure that the opposing party is not taken by surprise and has an adequate opportunity to prepare a defense. If a party fails to plead specific facts or allegations, such as misconduct involving drug use or nudity, those issues may not be properly before the court, and evidence related to them may be subject to exclusion, as the opposing party would not have been put on notice to address or rebut those claims ([Marin v. Iesi TX Corp., 317 S.W.3d 314 \(Tex. App. 2010\)](#)).

## **Discovery Obligations**

Texas Rules of Civil Procedure 192.3 and 193.6 govern the scope of discovery and the consequences of failing to comply with discovery obligations. Rule 192.3 outlines the general scope of discovery, including the requirement to disclose the identity of witnesses and the existence of documents or other evidence that a party intends to use at trial. Rule 193.6 provides that if a party fails to make, amend, or supplement a discovery response in a timely manner, that party may not introduce the undisclosed material or information into evidence, nor offer the testimony of a witness who was not timely identified, unless the court finds good cause for the failure or determines that the opposing party will not be unfairly surprised or prejudiced by the late disclosure (Civil Litigation (2022-05-05); *Good v. Baker*, 339 S.W.3d 260 (Tex.App., 2011)).

The exclusion of evidence under Rule 193.6 is mandatory unless one of the exceptions applies. The burden is on the party seeking to introduce the evidence to establish either good cause for the failure to disclose or that the opposing party will not be unfairly surprised or prejudiced (*Good v. Baker*, 339 S.W.3d 260 (Tex.App., 2011)).

## **Case Law Interpreting the Rules**

Texas courts have consistently enforced these procedural requirements. In [Marin v. Iesi TX Corp., 317 S.W.3d 314 \(Tex. App. 2010\)](#), the court explained that Rule 193.6(a) prohibits a party from introducing evidence or testimony that was not timely disclosed in discovery, unless the party can show good cause or lack of unfair surprise or prejudice. The court also reiterated the fair notice pleading standard under Rule 47. However, it is important to note that *Marin* was later abrogated by *Clay v. AIG Aerospace Ins. Servs., Inc.*, 488 S.W.3d 402 (Tex. App. 2016) on unrelated grounds, but the core principles regarding exclusion for nondisclosure and the fair notice standard remain consistent with other authorities.

In [Schindler Elevator Corp. v. Ceasar](#) (2021-11-30), the court reinforced the importance of timely disclosure and the court's authority to sanction parties for discovery violations, including exclusion of evidence and monetary sanctions. The court emphasized that parties must either produce or at least disclose the existence of responsive materials, and failure to do so constitutes a material violation of the discovery rules.

Secondary materials further confirm that the penalty for failing to respond to a discovery request is the mandatory exclusion of the unidentified witness or evidence, unless an exception applies (Civil Litigation (2022-05-05)).

## **Analysis**

### **Application to the Wife's Failure to Plead and Disclose**

In the scenario presented, the wife did not plead the alleged misconduct (such as drug use or nudity) and failed to disclose her intended testimony or evidence during discovery. Under Texas Rule of Civil Procedure 47, her pleadings would likely be deemed insufficient to provide fair notice to the opposing party regarding these specific allegations. This lack of notice could itself be grounds for excluding related evidence, as the opposing party would not have had an opportunity to prepare a defense to these claims ([Marin v. Iesi TX Corp., 317 S.W.3d 314 \(Tex. App. 2010\)](#)).

More critically, under Rule 193.6, the wife's failure to disclose her intended testimony or evidence during discovery triggers the mandatory exclusion rule. Unless she can demonstrate good cause for her failure to disclose or show that the opposing party will not be unfairly surprised or prejudiced, the court must exclude the undisclosed evidence and testimony (Civil Litigation (2022-05-05); *Good v. Baker*, 339 S.W.3d 260 (Tex.App., 2011)). The burden is on the wife to establish one of these exceptions, and the court's findings must be supported by the record.

Texas courts have repeatedly held that the exclusion of evidence for discovery violations is not discretionary but mandatory, absent a showing of good cause or lack of unfair surprise or prejudice. In *Good v. Baker*, 339 S.W.3d 260 (Tex.App., 2011), the court stated that the rule requiring witness disclosure is mandatory, and the penalty for nondisclosure is automatic exclusion unless an exception is proven. This approach is designed to prevent trial by ambush and to ensure that all parties have a fair opportunity to prepare their cases.

The same principles apply to both documentary evidence and witness testimony. In [Schindler Elevator Corp. v. Ceasar](#) (2021-11-30), the court sanctioned a party for failing to produce or disclose documents that were responsive to discovery requests, emphasizing that such failures are material violations of the discovery rules and warrant exclusion and sanctions.

### **Impact on the Wife's Case**

Because the wife failed to plead the alleged misconduct and did not disclose her intended testimony or evidence during discovery, she is likely precluded from introducing that evidence or testimony at trial. This exclusion can significantly weaken her case, particularly if the alleged misconduct is central to her claims or defenses. The court's enforcement of the exclusion rule is intended to protect the integrity of the discovery process and to ensure that all parties are treated fairly.

If the wife attempts to introduce the undisclosed evidence or testimony at trial, the opposing party can object on the grounds of nondisclosure, and the court is required to exclude the evidence unless the wife can meet her burden of proving good cause or lack of unfair surprise or prejudice. If she cannot do so, the evidence will not be admitted, and her case will be weakened as a result.

## **Exceptions and Caveats**

There are two primary exceptions to the mandatory exclusion rule under Rule 193.6: (1) if the party can show good cause for the failure to disclose, or (2) if the court finds that the opposing party will not be unfairly surprised or prejudiced by the late disclosure. The burden of proof is on the party seeking to introduce the evidence, and the court's findings must be supported by the record (*Good v. Baker*, 339 S.W.3d 260 (Tex.App., 2011)).

Good cause may exist if the failure to disclose was due to circumstances beyond the party's control or if the information was not reasonably available during the discovery period. Lack of unfair surprise or prejudice may be found if the opposing party was otherwise aware of the evidence or had an opportunity to address it before trial. However, courts are generally reluctant to find these exceptions unless the facts clearly support them, as the purpose of the rules is to prevent surprise and ensure fairness.

It is also important to note that [\*Marin v. Iesi TX Corp.\*, 317 S.W.3d 314 \(Tex. App. 2010\)](#) was abrogated by *Clay v. AIG Aerospace Ins. Servs., Inc.*, 488 S.W.3d 402 (Tex. App. 2016) on unrelated grounds. While this limits the precedential value of *Marin* on issues not directly related to the abrogation, the principles regarding exclusion for nondisclosure and the fair notice pleading standard remain consistent with other authorities and are still widely applied.

Additionally, courts have discretion to reopen discovery or allow late disclosures in the interest of justice, as noted in [\*Schindler Elevator Corp. v. Ceasar\*](#) (2021-11-30). However, such relief is not automatic and typically requires a showing of good cause.

## **Conclusion**

Texas law strictly enforces the requirements for pleading material facts and disclosing evidence and witnesses during discovery. If a party fails to plead specific allegations or to disclose intended evidence or testimony, the court is generally required to exclude that evidence or testimony at trial unless the party can demonstrate good cause or lack of unfair surprise or prejudice. The burden is on the party seeking to introduce the evidence, and courts have consistently applied these rules to prevent unfairness and trial by ambush. In this scenario, the wife's failure to comply with these procedural requirements would likely result in the exclusion of her evidence and testimony on the alleged misconduct, thereby weakening her case.

## **Legal Authorities**

[Marin v. Iesi TX Corp., 317 S.W.3d 314 \(Tex. App. 2010\)](#)

## **Texas Court of Appeals**

### **Extract**

Texas Rule of Civil Procedure 193.6(a) provides that a party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, unless the court finds that there was good cause for the failure to make, amend, or supplement the discovery response timely, or that the other parties will not be unfairly surprised or prejudiced by the failure to make, amend or supplement. Tex.R. Civ. P. 193.6(a). The party seeking to introduce the evidence carries the burden of establishing good cause, lack of unfair surprise, or lack of unfair prejudice. Tex.R. Civ. P. 193.6(b). A finding of good cause, lack of unfair surprise, or lack of unfair prejudice must be supported by the record." ... "Texas follows a 'fair notice' standard for pleading... Rule 47 of the Texas Rule of Civil Procedure provides a pleading 'shall contain ... a short statement of the cause of action sufficient to give fair notice of the claim involved....' Tex.R. Civ. P. 47.

### **Summary**

The case articulates the mandatory exclusion rule in TRCP 193.6 for evidence not timely disclosed in discovery, absent good cause or lack of unfair surprise/prejudice, placing the burden on the proponent. It also reiterates Rule 47's fair-notice pleading standard. These principles support excluding a party's undisclosed testimony/evidence and requiring sufficient pleadings of material facts.

[Schindler Elevator Corp. v. Ceasar](#)

## **Texas Court of Appeals**

### **Extract**

The trial court told the parties it could reopen discovery at any time, which is consistent with Texas Rule of Civil Procedure 190.5, which permits a court to modify a discovery control plan 'at any time' when justice requires. See Tex.R.Civ.P. 190.5. ... [T]he order to produce documents during trial related to documents were timely requested, that existed, and that Schindler failed to produce during the discovery period, and the order was 'an opportunity to remedy that discovery violation[.]' ... [T]he Court finds that the Schindler policy manual and the work orders for the 12 month period preceding the accident were responsive to the original discovery request and should have either been produced, or at a minimum, disclosed the existence of the materials subject to an applicable objection. ... The Court finds that these failures by Schindler were a material violation of Tex.R.Civ.P. 193.1, and therefore a monetary sanction of \$25,000.00 is warranted.

## Summary

The passages reinforce Texas courts' strict enforcement of discovery obligations and willingness to sanction parties who fail to disclose responsive information, identifying nondisclosure as a material violation of Rule 193.1 and characterizing mid-trial orders as remedies for discovery violations. While the case addresses documents rather than testimony, the same discovery framework (Rules 192-193) governs disclosure of evidence and witnesses, and Rule 193.6 authorizes exclusion for nondisclosure. This supports arguing that a party's failure to plead and disclose intended evidence/testimony permits exclusion and sanctions, weakening the noncompliant party's case.

## [Enforcement](#)

**Discovery Collection. James' Best Materials - Volume 2 - James Publishing - Ashley Lipson - 2015-04-29**

## Extract

Good v. Baker, 339 S.W.3d 260 (Tex.App., 2011). A trial court's decision to admit or exclude evidence is reviewed for abuse of discretion. The rule requiring that witnesses be disclosed in response to a discovery request is mandatory, and the penalty, exclusion of evidence, is automatic, absent a showing of: (1) good cause; (2) lack of unfair surprise; or (3) unfair prejudice. The burden of establishing good cause or lack of unfair surprise for failure to disclose a witness is on the party seeking to introduce the witness's testimony.

## Summary

The passage states Texas law that witness disclosure is mandatory and nondisclosed witness testimony is automatically excluded unless the proponent shows good cause or lack of surprise/prejudice. This aligns with Tex. R. Civ. P. 193.6 and supports excluding the wife's undisclosed testimony about alleged misconduct, thereby weakening her case.

## [Civil Litigation](#)

**Texas Small-Firm Practice Tools. Volume 1-2 - James Publishing - Cindy Stormer - 2022-05-05**

## Extract

Failure to cooperate in the discovery process can result in sanctions, including costs incurred ... The penalty for a party's failure to respond to a discovery request is mandatory exclusion of the unidentified witness or evidence sought. [TRCP 193.6.] The Rule provides as follows: (a) Exclusion

of Evidence and Exceptions. A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that: (1) there was good cause for the failure to timely make,

## **Summary**

The quoted material states that under TRCP 193.6, the consequence for failing to timely disclose information or identify witnesses is exclusion of the evidence or testimony, unless an exception applies. This directly supports excluding undisclosed misconduct evidence and testimony. While the passage does not discuss Rule 47 pleading requirements, it provides the key discovery-based exclusion authority that aligns with the proposition's argument that nondisclosure permits exclusion and weakens the wife's case.

This memo was compiled by Vincent AI based on vLex materials available as of December 12, 2025. [View full answer on vLex](#)