

Question

In Texas family law, if a final trial is set, and the petitioner has not disclosed any evidence or witnesses, what's the process during trial if they try to have her testify without disclosing the testimony?

Answer (Texas)

Short response

In Texas family law, if the petitioner has not disclosed any evidence or witnesses before a final trial, the petitioner may still testify as a named party, but any undisclosed evidence or testimony on undisclosed topics may be excluded unless the court finds good cause for the nondisclosure or determines that the failure to disclose does not unfairly surprise or prejudice the opposing party. The respondent should object under Texas Rule of Civil Procedure 193.6, triggering a hearing where the petitioner must prove an exception applies for any undisclosed evidence or testimony beyond what is inherent to her status as a party.

Summary

Texas law requires parties in civil cases, including family law matters, to disclose witnesses and evidence before trial. If a party fails to do so, Texas Rule of Civil Procedure 193.6 generally mandates exclusion of undisclosed evidence and the testimony of undisclosed witnesses, unless the offering party can show good cause for the failure or that the lack of disclosure does not unfairly surprise or prejudice the other side. However, the rule specifically exempts named parties from the witness-identification requirement, so a petitioner may testify as a party even if not listed as a witness, though the scope of her testimony may be limited to what was properly disclosed.

At trial, if the petitioner attempts to testify or introduce evidence that was not disclosed, the opposing party should object under Rule 193.6. The court will then determine whether to allow the testimony or evidence, considering whether the petitioner can establish good cause for the nondisclosure or show that the respondent is not unfairly surprised or prejudiced. The court may also grant a continuance to cure any prejudice. In child custody cases, courts have some discretion to admit late-disclosed testimony if the best interest of the child so requires, but this is a narrow exception.

Background and Relevant Law

Texas Rules of Civil Procedure 193.6 and 194

The Texas Rules of Civil Procedure govern discovery and disclosure obligations in civil cases, including family law matters. Rule 194 requires parties to make initial disclosures, including the identification of witnesses and evidence they may use at trial, at least 30 days before trial ([Accelerated Inventory Mgmt. v. McElroy](#), 2024 Tex. App. LEXIS 2042 (Tex. App. Mar. 28, 2024)). Rule 193.6 provides the enforcement mechanism: if a party fails to timely disclose evidence or identify witnesses, that party is generally prohibited from introducing the undisclosed evidence or offering the testimony of the undisclosed witness at trial unless the court finds (1) good cause for the failure or (2) that the failure will not unfairly surprise or prejudice the other parties ([Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#); [AlphaMar Grp. v. M&M Prot., 14-20-00350-CV \(Tex. App. May 10, 2022\)](#)).

Importantly, Rule 193.6 expressly excludes named parties from the witness-identification requirement, meaning a party cannot be barred from testifying solely because she was not listed as a witness in discovery ([Edgley v. Ragland, 01-23-00537-CV \(Tex. App. Jul 24, 2025\)](#)). However, the content of the party's testimony may still be limited to topics that were properly disclosed, and any attempt to introduce undisclosed documents or other evidence remains subject to exclusion.

Case Law Interpreting Rule 193.6

Texas appellate courts have consistently enforced the automatic exclusion rule for undisclosed evidence and witnesses, subject to the two exceptions of good cause or lack of unfair surprise/prejudice ([F 1 Constr., Inc. v. Banz, No. 05-19-00717-CV \(Tex. App. Jan 20, 2021\)](#); [West Telemarketing Corp. v. McClure, 225 S.W.3d 658 \(Tex. App. 2006\)](#)). The burden is on the party seeking to introduce the evidence or testimony to establish that an exception applies ([In re Cruz, 04-18-00865-CV \(Tex. App. Aug 18, 2021\)](#)). If the offering party cannot meet this burden, the court must exclude the evidence or testimony, though it may grant a continuance to allow the opposing party to conduct discovery and cure any prejudice ([Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#); [In re Cruz, 04-18-00865-CV \(Tex. App. Aug 18, 2021\)](#)).

In family law cases, particularly those involving child custody, courts have recognized a narrow exception where the best interest of the child may justify admitting late-disclosed testimony, even if the technical requirements of Rule 193.6 are not met ([Magro v. Magro, NO. 01-19-00701-CV \(Tex. App. Dec 10, 2020\)](#); [In re Marriage of Keys, No. 06-19-00018-CV \(Tex. App. Oct 03, 2019\)](#)). However, this exception is applied sparingly and only where the record supports a finding that the best interest of the child outweighs the prejudice to the opposing party.

Analysis

The Process at Trial

If the petitioner in a Texas family law case has not disclosed any evidence or witnesses before a final trial, and then attempts to testify at trial, the following process applies:

1. **Objection by Opposing Party:** The respondent should object to the petitioner's testimony or the introduction of any evidence on the grounds of nondisclosure under Rule 193.6 ([Clark v. Trailways, Inc., 774 S.W.2d 644 \(Tex. 1989\)](#); [Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 \(Tex. 1989\)](#)). This objection must be made contemporaneously, at the time the evidence or testimony is offered, to preserve error for appeal.
2. **Named Party Exception:** Under Rule 193.6, a named party (such as the petitioner) cannot be barred from testifying solely because she was not identified as a witness in discovery ([Edgley v. Ragland, 01-23-00537-CV \(Tex. App. Jul 24, 2025\)](#)). Therefore, the court will generally allow the petitioner to take the stand and testify as to matters inherent to her status as a party.
3. **Scope of Testimony:** While the petitioner may testify as a party, the scope of her testimony may be limited. If she attempts to testify about matters, facts, or evidence that were not disclosed in discovery, the respondent can object to those specific topics or items. The court must then determine whether to allow the testimony or evidence, applying the Rule 193.6 framework ([Oscar Luis Lopez v. La Madeleine of Texas, 200 S.W.3d 854 \(Tex. App. 2006\)](#); [Harris County v. Inter Nos, Ltd., 199 S.W.3d 363 \(Tex. App. 2006\)](#)).
4. **Burden on Offering Party:** The petitioner bears the burden of showing either good cause for the failure to disclose or that the respondent is not unfairly surprised or prejudiced by the late disclosure ([F 1 Constr., Inc. v. Banz, No. 05-19-00717-CV \(Tex. App. Jan 20, 2021\)](#); [Brunelle v. Txvt Ltd. Partnership, 198 S.W.3d 476 \(Tex. App. 2006\)](#)). The court has discretion to determine whether this burden has been met, but the record must support any finding of good cause or lack of unfair surprise/prejudice.
5. **Court's Options:** If the petitioner cannot meet her burden, the court must exclude the undisclosed evidence or testimony. Alternatively, the court may grant a continuance or temporarily postpone the trial to allow the respondent to conduct discovery and cure any prejudice ([Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#); [In re Cruz, 04-18-00865-CV \(Tex. App. Aug 18, 2021\)](#)).
6. **Preservation of Error:** If the court erroneously admits undisclosed evidence or testimony without the required showing, the respondent must make an offer of proof to preserve the issue for appeal

([Accelerated Inventory Mgmt. v. McElroy](#), 2024 Tex. App. LEXIS 2042 (Tex. App. Mar. 28, 2024)).

Application to the Petitioner's Testimony

- **If the petitioner was not disclosed as a witness:** She may still testify as a named party. Rule 193.6 does not permit exclusion of a party's own testimony solely for failure to list herself as a witness ([Edgley v. Ragland, 01-23-00537-CV \(Tex. App. Jul 24, 2025\)](#)).
- **If the petitioner attempts to testify about undisclosed topics or introduce undisclosed evidence:** The respondent should object. The court will then require the petitioner to show good cause for the nondisclosure or that the respondent is not unfairly surprised or prejudiced. If the petitioner cannot meet this burden, the court must exclude the testimony or evidence on those topics ([Oscar Luis Lopez v. La Madeleine of Texas, 200 S.W.3d 854 \(Tex. App. 2006\)](#)).
- **If the petitioner attempts to introduce documents or other evidence not disclosed:** The same process applies. The evidence is excluded unless the petitioner can meet the Rule 193.6 exceptions.

Special Considerations in Family Law

In family law cases, especially those involving child custody, courts have recognized that the best interest of the child may, in rare cases, justify admitting late-disclosed testimony ([Magro v. Magro, NO. 01-19-00701-CV \(Tex. App. Dec 10, 2020\)](#); [In re Marriage of Keys, No. 06-19-00018-CV \(Tex. App. Oct 03, 2019\)](#)). This is not a blanket exception, and the court must still consider whether the respondent is unfairly surprised or prejudiced. The record must support any finding that the best interest of the child outweighs the prejudice to the opposing party.

Remedies and Sanctions

If the court finds that the petitioner's failure to disclose was not justified and would unfairly surprise or prejudice the respondent, the court must exclude the evidence or testimony. The court may also grant a continuance to allow the respondent to conduct discovery and cure any prejudice ([Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#)). Additional sanctions may be imposed for discovery abuses, including orders precluding the presentation of evidence or testimony (Civil Litigation, 2022-05-05).

Exceptions and Caveats

- **Named Party Exception:** A named party cannot be barred from testifying solely for failure to disclose herself as a witness ([Edgley v. Ragland, 01-23-00537-CV \(Tex. App. Jul 24, 2025\)](#)).
- **Best Interest of the Child:** In child custody cases, courts may admit late-disclosed testimony if the best interest of the child so requires, but this is a narrow and fact-specific exception ([Magro v. Magro, NO.](#)

[01-19-00701-CV \(Tex. App. Dec 10, 2020\); In re Marriage of Keys, No. 06-19-00018-CV \(Tex. App. Oct 03, 2019\)](#).

- **Continuance as a Remedy:** The court may grant a continuance to allow the opposing party to conduct discovery and cure any prejudice caused by the late disclosure ([Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#)).
- **Superseded Authority:** The case [In the interest of P.M.B., 2 S.W.3d 618 \(Tex. App. 1999\)](#) was superseded by statute as recognized in [In re Interest of H.A.C., No. 06-16-00063-CV \(Tex. App. Feb 15, 2017\)](#), but the general principle of automatic exclusion absent good cause or lack of unfair surprise/prejudice remains valid under current Rule 193.6.

Conclusion

In summary, if a petitioner in a Texas family law case has not disclosed any evidence or witnesses before trial, she may still testify as a named party, but her testimony and any evidence she seeks to introduce may be limited to what was properly disclosed. The respondent should object to any undisclosed evidence or testimony under Rule 193.6, shifting the burden to the petitioner to show good cause for the nondisclosure or that the respondent is not unfairly surprised or prejudiced. The court has discretion to admit or exclude the evidence or testimony, grant a continuance, or impose other sanctions, but must be guided by the principles of fairness and the specific exceptions recognized in the rules and case law. In child custody cases, the best interest of the child may, in rare circumstances, justify admitting late-disclosed testimony, but this is not the norm. The key for practitioners is to timely object, clearly articulate the basis for exclusion, and ensure the record reflects any findings or exceptions the court relies upon.

Legal Authorities

[Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 \(Tex. 1989\)](#)

Texas Supreme Court

Extract

Liberty Mutual filed a motion in limine prior to trial to exclude any witnesses not indicated in Gee's response. In addition, Liberty Mutual filed a written motion to exclude testimony of unnamed witnesses pursuant to Texas Rules of Civil Procedure 215(5). The trial court overruled these motions and allowed Gee to present two undisclosed fact witnesses... Gee was further allowed to introduce deposition testimony of two undisclosed expert witnesses... In the instant case, there is nothing in the record which indicates Gee satisfied his burden to show good cause. Therefore... It is apparent the trial court erred because the testimony of the unidentified witnesses should not have been admitted in this case.

Summary

The case holds that, when a party fails to identify witnesses in discovery, their testimony should be excluded at trial unless the offering party shows good cause. It also notes the mechanism: opposing party files motions (in limine and to exclude under the rule). If the court erroneously admits such testimony without good cause, it can be reversible error, subject to harm analysis.

[Clark v. Trailways, Inc., 774 S.W.2d 644 \(Tex. 1989\)](#)

Texas Supreme Court

Extract

Moreover, an erroneous finding of good cause under rule 215(5) does not provide a basis for reversal on appeal unless the undisclosed witness or evidence is actually offered and admitted at trial. An objection or motion at that point in the proceedings provides the trial court with a final opportunity to prevent the erroneous admission of the testimony or evidence... The efficient administration of justice thus requires that trial courts have the opportunity to review any previous finding of good cause, regardless of whether the finding occurred several months or one day prior to the actual offering of the testimony or evidence at issue." ... "TDN filed a motion for sanctions under Tex.R.Civ.P. 215(5) in which it asked the trial court not to permit any witness to testify who had not been revealed... the trial court held a hearing... Without a showing of good cause by Clark for failure to supplement... the trial court denied the motion for sanctions and ruled that he would allow Lira to testify. Trial commenced the next day... The court of appeals held that the trial court abused its discretion in allowing the undisclosed witness to testify... it reverses... on the basis that this error was not preserved... It is important to emphasize the time frame... This is not a situation in which a party makes a general pre-trial motion to exclude testimony of undisclosed witnesses and months later... fails to object to the admission of such testimony.

Summary

The case explains that when a party attempts to present an undisclosed witness, the opposing party must object at the time the testimony is offered to preserve error and give the trial court a final chance to exclude it. It ties the process to Rule 215(5)'s exclusionary sanction absent good cause and emphasizes contemporaneous objection, even if there was a prior ruling.

[Alvarado v. Farah Mfg. Co., Inc., 830 S.W.2d 911 \(Tex. 1992\)](#)

Texas Supreme Court

Extract

We note, however, that the trial courts are not without power to prevent the enforcement of Rule 215(5) from operating as an injustice in a particular case. When a party has failed to timely identify evidence in response to discovery requests, the trial court has the discretion to postpone the trial and, under Rule 215(3), to impose an appropriate sanction upon the offending party for abuse of the discovery process... Arrambide was called as a rebuttal witness... This is the first time the court has considered Rule 215(5) in a case involving an undisclosed rebuttal witness... Rule 215 was amended... to specify that the burden to show good cause for the admission of evidence not disclosed in response to requests for discovery is on the party offering the evidence.

Summary

Under TRCP 215(5), evidence or witnesses not timely disclosed in discovery are subject to exclusion unless the offering party shows good cause. The burden to show good cause is on the offering party. Trial courts may cure prejudice by continuing the trial and imposing sanctions under TRCP 215(3). The case also addresses that even rebuttal witnesses can fall under disclosure and the exclusion rule.

[In Interest of M.P.J., No. 14-03-00746-CV \(TX 7/20/2004\) \(Tex. 2004\)](#)

Texas Supreme Court

Extract

Appellant also complains that Samuel's testimony was unreliable. However, at trial, appellant objected to Samuel's testimony only on the grounds she was not disclosed as a witness and her testimony was hearsay. Therefore, he has waived his complaint about reliability. See TEX. R. APP. P. 33.1(a)... Accordingly, the trial court did not abuse its discretion in admitting Samuel's testimony.

Summary

The passage shows that when a party objects at trial to an undisclosed witness, the court may still admit the testimony; other grounds not raised are waived on appeal. It underscores the need to timely object and preserve error, but it does not announce a categorical exclusion rule for undisclosed witnesses; admissibility is within the trial court's discretion, subject to proper objections and harm analysis.

[Smith v. Southwest Feed Yards, 835 S.W.2d 89 \(Tex. 1992\)](#)

Texas Supreme Court

Extract

Eleven times before today... this court has not found good cause to allow the testimony of a previously undisclosed, incompletely disclosed, or untimely disclosed person with knowledge of relevant facts in the face of a proper discovery request. ... While the sanction is automatic... When a party has failed to timely identify evidence in response to discovery requests, the trial court has discretion to postpone the trial and, under Rule 215.3, to impose an appropriate sanction upon the offending party for abuse of the discovery process. ... Although the trial court should not allow delay to prejudice the non-offending party, the trial court should ordinarily be able to cure any prejudice by a just imposition of sanctions.

Summary

The Texas Supreme Court states exclusion of undisclosed witnesses is automatic absent good cause. If a party tries to offer undisclosed testimony, the proper process is objection under the discovery sanction rule, shifting the burden to the offering party to show good cause (or lack of unfair surprise/prejudice under current Rule 193.6). The court may alternatively continue the trial and impose sanctions to cure prejudice.

[Striegler, In Interest of, 915 S.W.2d 629 \(Tex. App. 1996\)](#)

Texas Court of Appeals

Extract

The cornerstone of discovery is to 'seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed.' ... First, discovery provides parties with notice of the evidence that the opposing party intends to present. For example, with regard to witnesses, the discovery process insures that parties can prepare for trial assured that a witness will not be called when the opposing party has not previously identified him. ... Therefore, when Purdom was not designated and his documentation was not identified in response to the interrogatory requesting the names of expert witnesses and documents prepared by experts, his evidence was, under Sharp and Youngblood, automatically excluded upon the objection made when good cause for its admission was not shown.

Summary

The case reaffirms Texas discovery rules: undisclosed witnesses or evidence are subject to automatic exclusion at trial upon a timely objection unless the proponent shows good cause for the failure to disclose. Although the quoted portion addresses an expert, it articulates the broader rule that witnesses should not be called when not previously identified, supporting exclusion or limitation of testimony if not disclosed.

[In re A.M., NO. 09-19-00075-CV \(Tex. App. Aug 29, 2019\)](#)

Texas Court of Appeals

Extract

Father also argues on appeal that the testimony of Officer Allen was not disclosed before trial. At trial, when Allen testified, Father's attorney objected as follows: The Department represented to the court that it had disclosed both Allen and Powell as witnesses, that Powell's recommendations were presented in previous hearings, and that Powell's testimony on father's visitation with Amy should not be a surprise to Father because Father had met with her during the visits and Powell testified during prior hearings." ... "Mother's tenth issue argues that the trial court erred in excluding the testimony of Mother's witness Susan Sorenson... the Department stated that Sorenson had not been disclosed as a witness until February 4, 2019... Mother's trial counsel told the trial court she had not filed a motion for leave to identify the witness late. On appeal, Mother argues there was no surprise to the Department in calling this witness because the witness's name and resume had been disclosed twenty-one days before she was called as a witness.

Summary

The passages show (1) when an objection is made that a witness was not disclosed, the offering party may argue lack of unfair surprise due to prior involvement or prior hearings; (2) trial courts have discretion to admit or exclude testimony based on disclosure compliance and surprise; (3) failure to move for leave to late-designate can support exclusion; and (4) overlapping evidence admitted elsewhere can render any error harmless. The material is illustrative but not a comprehensive procedural rule; it demonstrates how Texas courts handle objections and discretion at trial.

[Fort Brown Villas III Condo. v. Gillenwater, 285 S.W.3d 879 \(Tex. 2009\)](#)

Texas Supreme Court

Extract

Under Rule 193.6, discovery that is not timely disclosed and witnesses that are not timely identified are inadmissible as evidence. TEX.R. CIV. P. 193.6(a). A party who fails to timely designate an expert has the burden of establishing good cause or a lack of unfair surprise or prejudice before the trial court may admit the evidence. TEX.R. CIV. P. 193.6(b)." ... "We decide whether Texas Rule of Civil Procedure 193.6, which provides for the exclusion of evidence due to an untimely response to a discovery request, applies in a summary judgment proceeding. We hold that it does..."

Summary

The case confirms Rule 193.6's mandatory exclusion of untimely-disclosed evidence/witnesses unless the offering party proves good cause or lack of unfair surprise/prejudice. Though the opinion's holding concerns summary judgments, Rule 193.6 by its terms governs trial as well, so its mechanism applies at a family law final trial.

[Oscar Luis Lopez v. La Madeleine of Texas, 200 S.W.3d 854 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

Texas Rule of Civil Procedure 193.6, which provides for the automatic exclusion of La Madeleine's evidence unless it can show: (1) good cause for failing to timely disclose the information; or (2) that the failure to timely disclose the information 'will not unfairly surprise or unfairly prejudice' Lopez. See TEX.R. CIV. P. 193.6(a). ... Rule of civil procedure 193.6(a) is entitled 'Failing to Timely Respond — Effect on Trial' and provides: (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 ...; or (2) the failure ... will not unfairly surprise or unfairly prejudice the other parties. ... it is not in the interest of justice to apply the rules of procedure unevenly or inconsistently. ... Relying on Patterson ... La Madeleine argues the trial judge 'has the discretion to receive evidence which holds the promise of exposing falsehoods.' This is a false statement. As discussed above, rule 193.6 governs what the trial court may do when confronted with evidence that was undisclosed during discovery.

Summary

The case interprets and enforces TRCP 193.6's automatic exclusion of undisclosed evidence or witnesses, unless the proponent proves good cause or lack of unfair surprise/prejudice. Courts may not admit undisclosed evidence simply "in the interest of justice" or to expose alleged falsehoods; Rule 193.6 controls. While a named party may testify, undisclosed material information from that party is still subject to exclusion unless an exception is proven.

[Fleming v. Fleming, NUMBER 13-16-00373-CV \(Tex. App. Jul 27, 2018\)](#)

Texas Court of Appeals

Extract

When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. TEX. R. CIV. P. 193.1. If a party learns that the party's response to written discovery was incomplete or is no longer complete and correct, the party must supplement the response to the extent that the written discovery sought other information. Id. R. 193.5. If a party fails to make or supplement a discovery response, the information not disclosed may be excluded at trial unless, among other things, the trial court finds that the failure to respond did not 'unfairly surprise' the other party. Id. R. 193.6(a)(2). The trial court has discretion to determine whether the proponent of the evidence met its burden to show lack of surprise. ... See *In re E.A.G.*, 373 S.W.3d 129, 145 (Tex. App.—San Antonio 2012, pet. denied) (holding that trial court did not abuse its discretion in finding that the party was not unfairly surprised by undisclosed information of which the party was aware prior to trial); *In re M.H.*, 319 S.W.3d 137, 147 (Tex. App.—Waco 2010, no pet.) (same); *Brunelle v. TXVT Ltd. P'ship*, 198 S.W.3d 476, 480 (Tex. App.—Dallas 2006, no pet.) (finding no abuse of discretion when appellant 'knew enough about [an undisclosed] witness to not be unfairly surprised')

Summary

The passage states that undisclosed information can be excluded at trial under Rule 193.6 unless the proponent shows lack of unfair surprise, with the trial court exercising discretion. It cites cases where courts found no unfair surprise when the opposing party already knew the information or the witness. Thus, if petitioner did not disclose witnesses or testimony, the opposing party can object and seek exclusion; petitioner must then prove lack of unfair surprise or other good cause.

[Boothe v. Hausler, 762 S.W.2d 304 \(Tex. App. 1988\)](#)

Texas Court of Appeals

Extract

Before a party may call a witness who is not named in response to a relevant interrogatory, or is the subject of that party's unsupplemented interrogatories, the trial court, to effectuate this rule, must find good cause that 'requires' admission of that witness's testimony. Such a showing of good cause is the only basis for allowing the testimony. ... Exclusion of the testimony for noncompliance with the supplementation requirement is mandatory unless good cause, sufficient to require admission, is shown to exist.

Summary

The case explains Texas's no-ambush policy and mandates exclusion of undisclosed witnesses absent a showing of good cause. It sets the trial process: if a party attempts to call an undisclosed witness, the court must exclude the testimony unless the offering party proves good cause requiring admission.

[Accelerated Inventory Mgmt. v. McElroy](#)

Texas Court of Appeals

Extract

Under the Texas Rules of Civil Procedure, parties are required to provide opposing parties with certain information about evidence they may present at trial, other than solely for impeachment purposes, at least 30 days before trial. See Tex. R. Civ. P. 194.4. A party may not introduce material or information that was not timely disclosed unless the trial court finds that '(1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.' Tex.R.Civ.P. 193.6(a). The party seeking to introduce the evidence carries the burden of establishing either good cause for the failure to disclose or that the failure will not unfairly surprise or prejudice the other party. Tex.R.Civ.P. 193.6(b)." ... "'A party may claim error in a ruling to... exclude evidence only if the error affects a substantial right of the party and... a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.' Tex. R. Evid. 103(a)(2)... 'Making an offer of proof enables an appellate court to determine whether the exclusion of the evidence was erroneous and harmful, and it allows the trial court to reconsider its ruling in light of the actual evidence.'

Summary

The passages state (1) pretrial disclosure obligation 30 days before trial; (2) automatic exclusion of undisclosed evidence/witness testimony unless the proponent proves good cause or no unfair surprise/prejudice; and (3) the mechanism of offer of proof to preserve error if exclusion occurs. These rules govern attempts to have a party testify on undisclosed topics other than impeachment.

[Olvera v. Fid. & Deposit Co. of Md., 14-23-00528-CV \(Tex. App. Aug 29, 2024\)](#)

Texas Court of Appeals

Extract

Generally, a party who fails to timely amend or supplement a discovery response requesting evidence or the identity of witnesses may not introduce the evidence or offer the testimony of the witness at trial. See Tex. R. Civ. P. 193.6(a). However, the trial court may admit untimely disclosed evidence or allow a witness to testify if the proponent shows there is (1) good cause for its failure to timely amend its response or identify the witness, or (2) a lack of unfair prejudice or unfair surprise to the other party. Id. 193.6(a), (b). Even if the party seeking to introduce the evidence at issue does not carry its burden of establishing the grounds for the exception, the trial court may grant a continuance or temporarily delay the trial 'to allow opposing parties to conduct discovery regarding any new information presented by that response.' Id. 193.6(c).

Summary

The passage states the default exclusion sanction under Rule 193.6 for undisclosed witnesses/evidence; outlines two exceptions (good cause or no unfair surprise/prejudice); and notes the court's alternative of granting a continuance to cure surprise. It describes the burden on the proponent and the court's options at trial.

[In re Marriage of Keys, No. 06-19-00018-CV \(Tex. App. Oct 03, 2019\)](#)

Texas Court of Appeals

Extract

In response to a request for disclosure under Rule 194.2 of the Texas Rules of Civil Procedure, a party must disclose 'the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.' TEX. R. CIV. P. 194.2(e). Under Rule 193.6, 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: ... The purpose of this Rule 'is to require complete responses to discovery so as to promote responsible assessment of settlement and prevent trial by ambush.' ... 'The Rule is mandatory, and its sole sanction—exclusion of evidence—is automatic, unless there is good cause to excuse its imposition.' ... 'The trial court has discretion to determine whether the offering party has met his burden of showing good cause to admit the testimony; but the trial court has no discretion to admit testimony excluded by the rule without a showing of good cause.' ... There is a split between our Court and the Austin Court of Appeals... The Austin court reiterated that '[c]ompared to the best interest of the child, technical rules of pleading and practice are of little importance in determining child custody issues' and wrote that, '[r]egardless of whether the Department suffered unfair surprise or whether appellant had good

cause for the delay, the court should have admitted the testimony because the best interest of children was at stake.' ... Applying the precedent of the Austin Court of Appeals, we conclude that the trial court did not abuse its discretion in finding that there was good cause to admit K.G.'s testimony and, therefore, did not err in allowing it.

Summary

The passages explain Texas's automatic exclusion rule for undisclosed evidence/witnesses (Rule 193.6), its purpose, and that admission requires a showing of good cause. They also note a carve-out/split in child-custody contexts where best-interest considerations may justify admission despite nondisclosure, especially per Austin Court of Appeals, and that trial courts have discretion to find good cause.

[In re A.C., No. 02-18-00129-CV \(Tex. App. Oct 24, 2018\)](#)

Texas Court of Appeals

Extract

The trial court ruled that TDFPS's witnesses could testify after clarifying that the disclosures were, at most, six days late (or eighty-four days before trial) and after TDFPS's counsel explained that Mother knew what the witness would testify about. On this record, the trial court could have reasonably concluded that TDFPS met its burden to show that Mother sustained no unfair surprise or prejudice. See Tex. R. Civ. P. 193.6(a)(2), (b)...

Summary

Texas Rule of Civil Procedure 193.6 generally excludes testimony from a party or witness not timely disclosed unless the proponent shows good cause or lack of unfair surprise/prejudice. In re A.C. affirms a trial court's discretion to allow late-disclosed witnesses to testify where the record supports a finding of no unfair surprise or prejudice, even when disclosures were late, and notes harmlessness if testimony is cumulative. This indicates that at trial, if a party seeks to offer testimony without proper disclosure, the court conducts a Rule 193.6 analysis and can allow the testimony upon a showing under 193.6(a)(2), (b).

[Edgley v. Ragland, 01-23-00537-CV \(Tex. App. Jul 24, 2025\)](#)

Texas Court of Appeals

Extract

Texas Rule of Civil Procedure 193.6 provides that a party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce into evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) that was not timely identified, unless the trial court finds good cause for the failure to timely make, amend, or supplement the discovery response or that the failure would not unfairly surprise or prejudice the other parties. ... Notably, under Texas Rule of Civil Procedure 193.6, a trial court may not exclude the testimony of a named party at trial, even if the party fails to disclose or identify herself as a witness in her discovery responses. ... Ragland is a named party in this case, and as such, is not barred from testifying under Texas Rule of Civil Procedure 193.6.

Summary

TRCP 193.6 bars undisclosed evidence and unidentified witnesses unless good cause or lack of unfair surprise/prejudice is shown. However, the rule expressly excludes named parties from the witness-identification requirement; a named party cannot be barred from testifying solely for failure to disclose herself as a witness. Thus, at trial you can object under 193.6 to undisclosed documents or nonparty witnesses, but you cannot exclude the petitioner's own testimony on that basis; other remedies (limiting to disclosed topics, continuance, or excluding undisclosed exhibits) may be sought.

[Magro v. Magro, NO. 01-19-00701-CV \(Tex. App. Dec 10, 2020\)](#)

Texas Court of Appeals

Extract

If a party fails to timely make, amend, or supplement a discovery response, that party may not offer the testimony of a witness who was not timely identified unless the trial court finds that (1) good cause exists for the failure to timely make, amend, or supplement the response, or (2) the failure will not unfairly surprise or prejudice the other party. See TEX. R. CIV. P. 193.6(a)... The party seeking to call the witness bears the burden of establishing good cause or the lack of unfair surprise or prejudice. See TEX. R. CIV. P. 193.6(b)... The trial court, however, found that Elizabeth was not unfairly surprised or prejudiced by Alejandro's failure to disclose the identities of Smiley and the officers and that the best interest of the child required that those witnesses be allowed to testify at trial. ... see also In re C.H.... (affirming, in conservatorship case, trial court's ruling allowing late-disclosed witness to testify based on best interest of child); C__ v. C__ ... ('[T]he court's duty to protect the children's interests should not be limited by technical rules.').

Summary

The passage explains the default exclusion sanction under TRCP 193.6 for untimely-disclosed witnesses: the party cannot offer the testimony unless they prove good cause or lack of unfair surprise/prejudice. The burden is on the offering party, and the court has broad discretion. In custody cases, courts may also allow late-disclosed testimony when the best interest of the child warrants it, even if there was nondisclosure, provided the record supports lack of unfair surprise/prejudice or other justification.

[In re Cruz, 04-18-00865-CV \(Tex. App. Aug 18, 2021\)](#)

Texas Court of Appeals

Extract

Rule 193.6 provides evidence is generally inadmissible if not timely disclosed: Tex. R. Civ. P. 193.6(a). 'The burden of establishing good cause or the lack of unfair surprise or unfair prejudice is on the party seeking to introduce the evidence or call the witness.' Id. R. 193.6(b). 'Even if the party seeking to introduce the evidence or call the witness fails to carry the burden under paragraph (b), the court may grant a continuance or temporarily postpone the trial to allow a response to be made, amended, or supplemented, and to allow opposing parties to conduct discovery regarding any new information presented by that response.' Id. R. 193.6(c).

Summary

The passage explains that undisclosed evidence/witness testimony is inadmissible unless the offering party proves good cause or no unfair surprise/prejudice. If they cannot, the court still has discretion to grant a continuance to cure prejudice and allow discovery.

[Best Indus Uniform v. Gulf Coast Alloy, 41 S.W.3d 145 \(Tex. App. 2000\)](#)

Texas Court of Appeals

Extract

Rule of Civil Procedure 193.6(a) provides: (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, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties. Tex. R. Civ. P. 193.6(a).

Summary

Parties cannot introduce undisclosed material or offer testimony from an undisclosed witness (other than a named party) unless they satisfy one of the two exceptions.

[In the interest of P.M.B., 2 S.W.3d 618 \(Tex. App. 1999\)](#)

Texas Court of Appeals

Extract

Former Rule 215(5) of the Texas Rules of Civil Procedure provides: A party who fails to respond to or supplement his response to a request for discovery shall not be entitled to present evidence which the party was under a duty to provide in a response or supplemental response or to offer the testimony of an expert witness or of any other person having knowledge of discoverable matter, unless the trial court finds that good cause sufficient to require admission exists. The burden of establishing good cause is upon the party offering the evidence and must be shown in the record." ... "The rule is mandatory, and its sole sanction--exclusion of evidence--is automatic, unless there is good cause to excuse its imposition. ... The trial court has discretion to determine whether the offering party has met his burden of showing good cause to admit the testimony; but the trial court has no discretion to admit testimony excluded by the rule without a showing of good cause.

Summary

The case explains that if a party fails to timely disclose witnesses or evidence, exclusion at trial is automatic unless the offering party shows good cause (or, under modern Rule 193.6, lack of unfair surprise/unfair prejudice). The burden is on the offering party, and the court cannot admit the testimony without the required showing on the record.

[Harris County v. Inter Nos, Ltd., 199 S.W.3d 363 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

Rule 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.' ... Absent a showing of good cause, lack of unfair surprise, or lack of unfair prejudice, rule 193.6 mandates exclusion of the undisclosed material or information.

Summary

Texas Rule of Civil Procedure 193.6 bars a party from introducing undisclosed evidence or information at trial if they failed to timely disclose it in discovery. The exclusion is mandatory unless the offering party shows good cause for the failure or proves no unfair surprise or prejudice to the opposing party. This applies to witness testimony (including a party's own testimony on undisclosed topics) and other evidence. The trial court enforces the rule at trial via objections and rulings.

[F 1 Constr., Inc. v. Banz, No. 05-19-00717-CV \(Tex. App. Jan 20, 2021\)](#)

Texas Court of Appeals

Extract

Rule 193.6 requires the exclusion of evidence and witnesses that are not timely disclosed in response to discovery requests. TEX. R. CIV. P. 193.6(a). The Rule 'is mandatory, and the penalty—exclusion of evidence—is automatic, absent a showing of: (1) good cause or (2) lack of unfair surprise or (3) unfair prejudice.' ... The purposes of Rule 193.6 are threefold: (i) to promote responsible assessment of settlement, (ii) to prevent trial by ambush, and (iii) to give the other party the opportunity to prepare rebuttal to expert testimony. ... [T]he party seeking to call an untimely disclosed witness or introduce untimely disclosed evidence must establish that the other party had enough evidence to reasonably assess settlement, to avoid trial by ambush, and to prepare rebuttal to expert testimony.

Summary

Texas Rule 193.6 mandates exclusion of undisclosed witnesses/evidence at trial unless the proponent shows good cause or no unfair surprise/prejudice. The burden is on the offering party to make that showing. The purposes emphasize preventing trial by ambush and ensuring fair preparation. Thus, if petitioner tries to testify without prior disclosure, the respondent should object under Rule 193.6; the court must exclude unless petitioner proves an exception (good cause or no unfair surprise/prejudice), typically via an on-the-record offer of proof.

[AlphaMar Grp. v. M&M Prot., 14-20-00350-CV \(Tex. App. May 10, 2022\)](#)

Texas Court of Appeals

Extract

When a party does not produce discovery, including a required disclosure, or ignores the request, the evidence that was not timely disclosed will be excluded at trial unless the non-producing party demonstrates good cause

for not producing the discovery or unless the other parties will not be unfairly surprised or prejudiced by the undisclosed evidence. Tex.R.Civ.P. 193.6(a); ... The trial court's order excluded evidence and witnesses ... 'calling any witnesses (fact or expert) since none were properly disclosed.' ... In 2020, the Supreme Court of Texas amended Rule 194, effective January 1, 2021. Following the amendments, a party is now generally required to disclose certain information without waiting for a discovery request by the other party.

Summary

The passage explains that under TRCP 193.6, undisclosed evidence or witnesses must be excluded at trial unless the proponent proves good cause or no unfair surprise/prejudice. It also notes post-2021 mandatory disclosures. Courts may exclude a party from testifying if not disclosed, as in the cited order. This framework applies to any Texas civil trial, including family cases.

[West Telemarketing Corp. v. McClure, 225 S.W.3d 658 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

When a party fails to supplement a discovery response in a timely manner, the evidence may be excluded. TEX.R.CIV.P. 193.6(a)... The remedy is mandatory and automatic unless the court finds there was good cause for the failure to amend or supplement, or the failure will not unfairly surprise or prejudice the other party. TEX.R.Civ.P. 193.6(a). The burden of establishing good cause or lack of unfair surprise is on the party seeking to introduce the evidence. TEX.R.CIV.P. 193.6(b). The trial court has discretion to determine whether the offering party has met its burden of showing good cause. The record must support a finding of good cause or lack of unfair surprise. TEX.R.CIV.P. 193.6(b).

Summary

The passage states that undisclosed evidence can be excluded under Rule 193.6, with exclusion being mandatory unless the offering party proves good cause or lack of unfair surprise/prejudice. The trial court has discretion but must be guided by these principles; the offering party bears the burden, and the record must support any exception.

[Brunelle v. Txvt Ltd. Partnership, 198 S.W.3d 476 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

A party may not call to testify a witness whom it should have identified during discovery unless it can establish either good cause for failing to identify the witness or that the opposing party was not unfairly surprised or prejudiced by the omission. See TEX.R. CIV. P. 193.6(a). The proponent of the testimony bears the burden to establish good cause or lack of unfair surprise or prejudice. See TEX.R. CIV. P. 193.6(b). The trial court has discretion to determine whether the proponent has met its burden.

Summary

The passage explains that undisclosed witnesses are excluded unless the offering party proves good cause or no unfair surprise/prejudice; the burden is on the offering party, and the court has discretion. This directly informs the process at trial when a party seeks to elicit testimony from an undisclosed witness.

[Good v. Smith County Judge, 339 S.W.3d 260 \(Tex. App. 2011\)](#)

Texas Court of Appeals

Extract

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, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties.

Summary

The passage articulates the Texas rule that undisclosed evidence or undisclosed witnesses (other than a named party) are excluded unless the proponent establishes good cause or no unfair surprise/prejudice. It speaks to the process: object, seek exclusion, and court assesses good cause or lack of unfair surprise/prejudice. It also clarifies the exception for named parties.

[Enforcement](#)

Guerrilla Discovery - James Publishing - Ashley Lipson - 2022-04-01

Extract

not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." ... "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

Summary

The passages explain the automatic exclusion sanction in Texas for failure to disclose witnesses or information, unless the failure was substantially justified or harmless. They also note the abuse-of-discretion standard and that courts may impose additional sanctions. This directly addresses attempting to have an undisclosed witness (the petitioner) testify at trial.

[Civil Litigation](#)

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

Extract

Enter an order that [Respondent/Petitioner] shall not be entitled to present evidence which she was under a duty to provide or to offer testimony of any expert witness or of any other person having knowledge of discoverable matter as per TRCP 215" ... "Enter an order deeming the Request for Admissions to be admitted as per TRCP 215 (4) and TRCP 198.2(c)" ... "Respondent attempts to require [Plaintiff/Defendant/Petitioner/Respondent] to produce a list of witnesses to be called at trial by [Plaintiff/Defendant/Petitioner/Respondent] and a list of evidence to be presented at trial as well. Therefore, this interrogatory is well beyond the scope of Texas Rules of Civil Procedure.

Summary

The material indicates that under TRCP 215, a court can exclude a party from presenting evidence or witness testimony not disclosed in discovery, and can deem RFAs admitted under TRCP 198.2(c). It also includes form language to request an order precluding undisclosed witnesses/evidence as a sanction for discovery failures. While one excerpt cautions against interrogatories demanding a trial witness list as beyond scope in that specific form, the key point is: failure to comply with discovery obligations can lead to exclusion of testimony.

This memo was compiled by Vincent AI based on vLex materials available as of December 06, 2025. [View full answer on vLex](#)