

**Subcommittee Draft (December 7, 2011)  
modified December 12, 2011**

[Note: I have modified this draft to reflect changes suggested at the  
Dec. 10 meeting, including some that were given to me privately  
and seemed helpful.]

1 **Rule 94a. Motion to Dismiss Claim Having No Basis in Law or Fact.**

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3 **A. Grounds and content of motion.**

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5 (1) On motion a court must dismiss a claim that *has no basis in fact or that* is not  
6 supported by existing law or by a reasonable argument for extending, modifying, or  
7 reversing existing law.

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9 (2) In deciding the motion to dismiss the court must not ~~hear~~ *consider* evidence, except  
10 as to attorneys' fees, and must accept ~~all allegations~~ *as true all allegations in the*  
11 *challenged pleading* unless a reasonable person could not believe them.

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13 (3) The motion to dismiss must state that it is filed pursuant to this rule, identify  
14 each claim subject to the motion, and state the specific reasons supporting the  
15 motion.

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17 **B. Time.** A motion to dismiss a claim must be filed within 60 days after the pleading, or  
18 amended pleading, containing the claim was served and must be ~~decided~~ *granted or denied*  
19 within 45 days after the motion was filed.

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21 **C. Right to amend.** The court must allow the party asserting the claim and the party filing  
22 the motion to amend *or withdraw the pleading or motion* before the date of hearing or  
23 submission.

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25 **D. Hearing.** Upon request *by either party* the court must ~~hold an oral hearing~~ *allow oral*  
26 *argument*. Each party must be given at least seven days' notice of the date of hearing or  
27 submission.

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29 **E. No waiver of venue motion or special appearance.** Notwithstanding the provisions  
30 of rules 86 and 120a, neither the filing nor the determination of a motion to dismiss under  
31 this rule waives the right to seek a transfer of venue or dismissal for lack of personal

32 jurisdiction.

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34 **F. Dismissal procedure cumulative.** This rule is in addition to, and does not supersede  
35 or affect, other procedures that authorize dismissal; but a motion filed under this rule must  
36 seek dismissal pursuant to this rule only and not pursuant to special exceptions or any  
37 other motion or pleading.

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39 **G. Attorneys' fees.** Upon granting or denying the motion in whole or in part, the court  
40 must award costs and reasonable and necessary attorneys' fees to the prevailing party for  
41 preparing and presenting, or responding to, the motion. This subsection does not apply  
42 to actions by or against the state, other governmental entities, or public officials acting in  
43 their official capacity or under color of law.

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45 **H. Family Code.** This rule does not apply to cases brought under the Family Code *or to*  
46 *cases subject to chapter 14 of the Civil Practice and Remedies Code.*