

**JUDGE FERNANDO RODRIGUEZ, JR.**

United States Courthouse  
600 East Harrison, #301  
Brownsville, Texas 78520-7114  
(956) 548-2755

Balvina Espinoza, Case Manager  
United States District Clerk  
600 East Harrison, Suite 101  
Brownsville, Texas 78520-7114  
Direct No.: (956) 548-2756  
Balvina\_Espinoza@txs.uscourts.gov  
District Clerk's Office: (956) 548-2500

### **CRIMINAL PROCEDURES**

1. CONTACT WITH COURT PERSONNEL
2. EMERGENCIES
3. ELECTRONIC FILINGS
4. CONTINUANCES
5. MOTION PRACTICE AND BRIEFS
6. COURT SETTINGS
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*Last Updated: April 5, 2019*

## **1. CONTACT WITH COURT PERSONNEL**

- A. Case-related inquiries should be made by email only to the Case Manager, with a copy to all opposing counsel and *pro se* parties. Telephone inquiries are permitted only in an emergency. No inquiries may be made to Chambers.
- B. Information about the filing of documents, entry of orders, or docket entries should be obtained from the CM/ECF or Pacer Systems.
- C. Correspondence.
  - 1) Do not address substantive issues in letter form addressed to the Court because they may not be docketed or included in the appellate record.
  - 2) Case-related correspondence must be addressed to and e-filed with:  
  
United States District Clerk  
600 East Harrison Street, Suite 101  
Brownsville, Texas 78520-7114
- D. Courtesy copies of urgent documents may be sent to Chambers (the Case Manager) simultaneously with the originals being filed with the Clerk of the Court.

## **2. EMERGENCIES**

- A. Applications for restraining orders or other applications for immediate relief must be made through the District Clerk's office:  
  
U.S. District Clerk's Office  
600 E. Harrison Street, Suite 101  
Brownsville, Texas 78520  
(956) 548-2500
  - 1) Applications shall be presented to the Court by the Case Manager following counsel's affirmation that the opposing party has been contacted and that both parties can be available for a conference before the Court.
- B. Counsel shall contact the Case Manager at (956) 548-2756 for matters requiring immediate attention.
- C. In addition to any filing or electronic filing of emergency motions, counsel shall send a courtesy hard copy of emergency motions directly to the Case Manager so that they quickly reach the Court's attention.

## **3. ELECTRONIC FILINGS**

- A. The Southern District of Texas requires the electronic filing of all pleadings. This reduces the burden on the District Clerk's Office and increases the efficiency of the Court.
- B. Generally, all pleadings in this District must be filed through the Electronic Case Filing System (ECF). Electronic filings shall be in accordance with

Administrative Procedures for Electronic Filing in Civil and Criminal Cases.  
Answers to frequently asked questions regarding electronic filing may be obtained at the District Clerk's Office.

- C. The parties shall submit a courtesy hard copy to the District Clerk's Office of all filings, including any attachments, that are 20 pages or longer. Stated differently, any single submission containing a motion, brief, and attachments that together contain a total of 20 pages or more must be filed both electronically and in courtesy hard copy directly to the District Clerk's Office. Both the courtesy hard copy and the electronic filing must be filed on the same day.
- D. Voluminous, double-sided or irregular documents:
  - 1) Leave of Court is required for the conventional filing of documents greater than 50 pages in length. Such documents should be filed electronically when possible.
  - 2) Leave of Court is required for the conventional filing of documents printed on both sides. Such documents should be filed electronically when possible.
  - 3) Leave of Court is required for the filing of over-sized or irregularly shaped documents which are not capable of being readily imaged by court personnel and equipment. Such documents should be filed electronically when possible.

#### **4. CONTINUANCES**

- A. Joint motions for continuances are not binding on the Court. Trial will not be continued because of the unavailability of one or more witnesses. Counsel should anticipate such possibilities and be prepared to present testimony by written deposition, videotaped deposition, or by stipulation.
- B. A Motion for Continuance must set out the relevant exception(s) to the Speedy Trial Act, where applicable, and set out the length of time for which the continuance is requested.

#### **5. MOTION PRACTICE AND BRIEFS**

- A. Unless the Court orders differently, counsel must respond to an opposed motion within twenty-one days from the date the motion is filed with the District Clerk's Office. Failure to file a timely response shall be taken as an indication that the opposing party agrees to the motion and the relief requested. If the movant files a reply, it must be filed within ten days after the filing of the response.
- B. All Motions to Dismiss, Motions to Sever, and Motions for Separate Trial must be specific and must be filed at least 30 days before jury selection.
- C. Upon a defendant entering a plea of guilty or nolo contendere in front of a Magistrate Judge, the Court will adopt the Magistrate Judge's Report and Recommendation and "accept" the defendant's guilty plea, unless: (1) the defendant timely files within 14 days from the plea hearing a written motion

requesting a formal withdrawal of the defendant's guilty or nolo contendere plea pursuant to Federal Rules of Criminal Procedure 11(d)(1); or (2) the defendant timely files written objections within 14 days from the date of execution of the Magistrate Judge's Report and Recommendation. It is the defendant's responsibility to schedule a hearing within 30 days from the filing of either pleading. In the event a defendant does not timely exercise either of the above referenced options, the sole basis for withdrawal of a guilty or nolo contendere plea would be the demonstration of a fair and just reason pursuant to Federal Rules of Criminal Procedure 11(d)(2)(B).

- D. Briefs must be filed together with or incorporated within a motion, response or reply. Briefs and legal memoranda shall be limited to 20 pages, unless permitted by the Court to exceed this limit.
- 1) All briefs and memoranda exceeding five pages must contain an initial Statement of the Issues, which consists of a brief statement highlighting the issues before the Court, with the standard of review and supporting authority for each issue.
  - 2) Any brief or memorandum with more than 10 pages of argument must also contain the following:
    - Table of Contents
    - Table of Authorities
    - Summary of the Argument
    - Relief Sought: a short recitation of the precise relief requested.
  - 3) References to evidence in support of or in opposition to a motion must be specific, citing page and line numbers for depositions, or page and paragraph number for any other type of exhibit.
- E. All pending motions will be considered at the Final Pretrial Conference.

## **6. COURT SETTINGS**

- A. Re-arraignments will be held at the end of the Final Pretrial Conference unless other arrangements are made with the Case Manager. Once a plea agreement is reached, counsel should notify the Case Manager immediately. The Magistrate Judge may take guilty pleas in felony cases as requested by the Court.
- B. Sentencings are routinely scheduled at 8:30 a.m. throughout the month as the Court's schedule permits.
- 1) Unopposed or joint motions for continuance should be presented to the Case Manager prior to the scheduled sentencing hearing.
  - 2) Objections to the Presentence Investigation Report must be filed within 14 days after receipt of the Presentence Investigation Report. Failure to timely object may waive counsel's right to formally object to the Presentence Investigation Report at the sentencing hearing.

## 7. TRIAL

- A. Final Pretrial Conferences will be held on a monthly basis on designated days. Counsel should be prepared to discuss all matters related to the trial – e.g., jury selection, 404(b) matters, motions to suppress, and motions *in limine*. See Appendix A (sample form of Exhibit List); Appendix B (sample form of Witness List).
- B. Jury Selection will be held once a month on a designated schedule. Typically, the Court will pick 12 jurors and two alternates.
- C. During trial, the Court's hours will vary depending upon the type of case and the needs of the parties, counsel, witnesses, jurors, and the Court. The Court will normally convene trial at 9:00 a.m. and adjourn at 5:30 p.m., recessing for lunch between 12:00 noon and 1:30 p.m.
- D. The table nearer to the jury box is to be used by the prosecution, and the defense is to use the one sitting farther from the jury box. Once counsel have determined their seating arrangement, the Case Manager will note their position on a chart for the Court and there will be no change once trial has begun, except at the Court's direction.
- E. Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. If “the Rule” has been invoked, counsel are also responsible for instructing their witnesses as to their duties thereunder. Witnesses shall be questioned while the attorney is standing at the podium unless otherwise instructed by the Court.
- F. Jury Trials.
  - 1) The Court will conduct the examination of the panel. Following this initial examination, the Court will consider counsel's request to question individual venire members outside the presence of the venire. At least 10 days before trial, counsel must file proposed *voir dire* questions and proposed jury instructions. Counsel will provide supporting authority for each proposed jury instruction, using the Fifth Circuit Pattern Jury Instructions, as modified by case law or statutory amendments, when possible, and identifying any deviations with legal authority for the proposed deviations.
  - 2) While the jury is deliberating, unless given permission by the Court, counsel should remain in or near the courtroom to be available for jury notes or a verdict.
  - 3) After the jury and counsel have been excused, neither counsel, nor the parties, nor their representatives, may contact jurors without permission of the Court.
- G. Trial Exhibits.
  - 1) Prior to the Final Pretrial Conference, the offering party will mark each exhibit to be offered with the party's identity, case number, and exhibit

number. Counsel for each party is required to provide the Court with a copy of that party's exhibits in a properly tabbed and indexed notebook.

- 2) As the first order of business, the Court will admit all exhibits offered without objection or for which objections have been overruled. All counsel are expected to agree to admissibility when possible so that the jury is not burdened with witnesses called to prove up mere formalities in situations in which all counsel are aware that there is no question concerning authenticity.
- 3) The government agent will retain custody of all sensitive exhibits (such as weapons, drugs, and money) throughout the proceedings. Photographs may be introduced in place of the real item when the jury retires for deliberations.
- 4) Counsel will not pass exhibits to the jury during trial without first obtaining permission from the Court. All admitted exhibits will go to the jury during its deliberations. It is the duty of counsel to make sure all the admitted exhibits and only the admitted exhibits are in the possession of the Case Manager for delivery to the jury. It is also the duty of the offering party to make sure the Court has available the means for the jury to access all exhibits.

#### H. Disposition of Exhibits Following Trial

- 1) Exhibits that are not easily stored in a file folder (such as posters, parts, or models) must be withdrawn after the completion of the trial and substituted with reduced reproductions or photographs.
- 2) If there is no appeal, exhibits will be removed by the offering party within 30 days after disposition of the case.
- 3) When there is an appeal, exhibits returned by the Court of Appeals will be removed by the offering party within 14 days after written notice from the Clerk of Court.
- 4) Exhibits not removed will be disposed of by the Clerk of Court, and the expenses incurred will be taxed against the offering party.

#### I. Equipment

- 1) The courtroom includes easels with writing pads and drawing boards, as well as a DVD/VCR. A Document Camera is available for projecting documents, including pictures, which are letter-sized or smaller. Counsel must provide any other equipment necessary to facilitate opening/closing arguments and presentation of the case (e.g., PowerPoint). Counsel must inform the Case Manager/Court Reporter prior to trial so arrangements can be made to accommodate building security.
- 2) Real-time reporting is not provided by the Court Reporter. Any requests for a transcript or portions thereof should be arranged directly with the Court Reporter.

**8. DECORUM**

- A. Counsel and parties will comply with the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed and the Local Rules adopted by the Southern District of Texas regarding courtroom behavior described in Appendix C.
- B. No electronic devices are allowed in the courtroom. If counsel anticipates a need for any electronic item, arrangements should be made in advance with the Case Manager.

## **[APPENDICES]**

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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS			
United States of America v.		BROWNSVILLE DIVISION			
		Criminal No. B-			
		EXHIBIT LIST			
List of: Type of Hearing:		AUSA:			
Judge: FERNANDO RODRIGUEZ, JR.		Clerk: BALVINA ESPINOZA		Reporter: SHEILA PERALES	
No.	Description	Ofr	Obj	Adm	Date
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**APPENDIX "A"**

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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
UNITED STATES OF AMERICA v.		BROWNSVILLE DIVISION	
		CRIMINAL NO. B-	
		WITNESS LIST	
LIST OF: TYPE OF HEARING:		AUSA:	
JUDGE: FERNANDO RODRIGUEZ, JR.	CLERK: BALVINA ESPINOZA	REPORTER: SHEILA PERALES	
No.	NAME OF WITNESS		
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**APPENDIX "B"**

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**Courtroom Etiquette**

People who appear in court must observe these and other conventions of courteous, orderly behavior.

- A. Be punctual.
- B. Remain in attendance until excused. All persons sitting before the bar shall remain there during each session and return after each recess. Parties and counsel must remain in attendance during jury deliberations; absence waives the right to attend the return of the verdict.
- C. Dress with dignity.
- D. Address others only by their titles, if applicable, and/or surnames, including lawyers, witnesses, and court personnel.
- E. Unless instructed otherwise, stand when the Court speaks to you; stand when you speak to the Court. Speak only to the Court, except for questioning witnesses and, in opening and closing, addressing the jury. Do not argue with opposing counsel.
- F. Avoid approaching the bench. Counsel should anticipate the necessity for rulings and discuss them when the jury is not seated. When a bench conference is unavoidable, get permission first.
- G. Hand to the Case Manager, not the judge or reporter, all documents or items tendered for examination by the judge.
- H. Stand when the judge or jury enters or leaves the courtroom.
- I. Contact with the law clerks is *ex parte* contact with the Court. Contact must only be through the Case Manager.

- J. Assist in the summoning of witnesses from outside the courtroom. Furnish the Case Manager, marshal, and court reporter with a list of witnesses showing the order in which they are likely to be called.
- K. Question witnesses while standing at the lectern unless instructed otherwise by the Court. When it is necessary to question a witness about an exhibit, ask permission to approach the witness.
- L. Conduct no experiment or demonstration without permission.
- M. Do not participate in a trial as an attorney if you expect you may be called as a witness unless given prior permission by the Court.
- N. Avoid disparaging remarks and acrimony toward counsel and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.
- O. Make no side-bar remarks.
- P. Counsel are responsible for advising their clients, witnesses, and associate counsel about proper courtroom behavior and about pertinent rulings of the Court such as rulings on motions *in limine*.
- Q. Request the use of easels, light boxes, and other equipment well in advance so that they may be set up while the Court is not in session.