

**United States District Court Southern District of Texas
Houston Division**

Judge Ewing Werlein, Jr.



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1. CONTACT WITH COURT PERSONNEL

- A. Case-related telephone inquiries should be made only to the Case Manager. Inquiries should not be made to the Court's secretary or law clerk.
- B. The case load will not allow the Case Manager to respond to casual telephone inquiries about motions and case status generally.
- C. Information about the filing of documents, entry of orders, or docket entries may be obtained from the Clerk's Office at 713-250-5500 or from the Court's website at www.txs.uscourts.gov.
- D. At the Court's direction, law clerks may contact counsel; however, they will not discuss matters other than the subject of the call.
- E. Case related correspondence must be addressed to:
 - United States District Clerk
 - Post Office Box 61010
 - Houston, Texas 77208
- F. Do not address substantive issues in letter form because they are not docketed or included in the appellate record.
- G. Copies of urgent documents (including letters) may be sent to chambers.

2. EMERGENCIES

- A. Applications for restraining orders or for other immediate relief shall be made through the Case Manager. Such 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 an in-chambers conference before the Court. *Ex parte* applications for restraining orders will not be entertained by the Court unless the requirements of Fed. R. Civ. P. 65(b) have been satisfied.
- B. Motions for extension of deadlines or cut-off dates are not emergencies.

3. CONTINUANCES

- A. Pursuant to The Civil Justice Reform Act of 1990, 28 U.S.C. § 473(b)(3), and the Cost and Delay Reduction Plan adopted by the Court on October 24, 1991, "**all requests for extensions of deadlines for completion of discovery or for postponement of the trial [must] be signed by the attorney and the party making the request.**"
- B. Joint motions for continuance are not binding, and they will be granted only at the Court's discretion.
- C. Bona fide vacation requests will be respected.

4. APPEARANCES

- A. An attorney who appears at a hearing or conference shall
- B. be familiar with the case,
- C. have authority to bind the client, and
- D. be in charge for that appearance.
- E. If out-of-town counsel desire to appear by telephone, a written request should be made to the Case Manager as far as reasonably possible in advance of the conference. The Court will attempt to accommodate out-of-town counsel.
- F. Counsel will notify the Case Manager **immediately** of the resolution of any matter that is set for trial or hearing.

5. MOTION PRACTICE

The Court follows the written motion practice described in the Local Rules. Since most motions will be ruled on without an oral hearing, brief, clear motion papers are very

important. The motion and response will be considered by the Court after the submission date.

- A. The submission date may be extended by agreement of counsel except when the extension violates a court-imposed deadline. Counsel should immediately notify the Case Manager, in writing of such an agreement.
- B. The Court believes that most discovery disputes, especially those dealing with (1) scheduling, (2) the number, length, and form of oral and written questions, (3) the responsiveness of answers to oral and written questions, and (4) the mechanics of document production, including protective orders and the proper method of raising claims of privilege, can be resolved by counsel without the intervention of the Court.

In order to curtail undue delay in the administration of justice, the Court will not hear discovery motions unless moving counsel advises the Court, in the motion, that counsel have conferred in a good faith effort to resolve the matters in dispute but are unable to reach an agreement. The statement shall recite the date, time, and place of such conferences, and the names of all parties participating therein. If counsel has been unable to confer because of unavailability or unwillingness of opposing counsel to do so, the statement shall recite the facts concerning attempts to confer.

- C. Motions for extension of discovery must be filed far enough in advance of the deadline so that opposing counsel may respond prior to the deadline.
- D. Requests for oral argument on motions are not necessary. The Case Manager will notify counsel should the Court determine that oral argument would be beneficial.
- E. The Court will rule on motions as soon as possible. Counsel will be furnished with copies of orders.

6. BRIEFS

- A. The Court requires concise, pertinent and well organized briefs and memoranda of law. Without leave of Court any brief or memorandum shall be limited to 25 pages. Any brief or memorandum that has more than 10 pages of argument must contain the following items. All briefs and memoranda must contain items (3), (4), (6), and (7).
 - (1) A table of contents setting forth the page number of each section, including all headings designated in the body of the brief or memorandum.

- (2) A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically arranged.
 - (3) A short statement of the nature and stage of the proceeding.
 - (4) A statement of the issues to be ruled upon by the Court and with respect to each issue a short statement, supported by authority, of the standard of review.
 - (5) A short summary of the argument.
 - (6) The argument shall be divided under appropriate headings succinctly setting forth separate points.
 - (7) A short conclusion stating the precise relief sought.
- B. Any brief, memorandum or motion that cites authorities not found in the United States Code, United States Supreme Court Reporter, Federal Reporter, Federal Rules Decisions, Federal Supplement, Southwestern Reporter Second or Vernon's Revised Statutes and Codes Annotated should have appended to it copies of the relevant parts of such authorities other than cases, and complete copies of cases. Copies of any affidavits, deposition testimony, or other discovery referred to should also be contained in the appendix. All appendices should contain a paginated table of contents, and should be tabbed to locate easily the materials contained in the appendix.

7. INITIAL PRETRIAL CONFERENCES AND SCHEDULING ORDERS

Refer to [Local Rules 16.1](#). Attached is a form of [Docket Control Order](#) and [Joint Discovery / Case Management Plan Under Rule 26\(f\) Federal Rules of Civil Procedure](#) used by the Court. The parties may agree on additional deadlines for completion of pretrial matters and bring a proposed docket control order with them to the initial pretrial conference.

8. REQUIRED PRETRIAL MATERIALS

A. Joint Pretrial Order

Counsel for the plaintiff is responsible for ensuring that the joint pretrial order is filed on time. A form [Joint Pretrial Order](#) is attached. Follow the form distributed by the Court, adapting it within reason to the size and type of case. Joint pretrial orders must be signed by all counsel.

B. Other Required Documents

With the filing of the Pretrial order, each party also must also provide the Case Manager a courtesy copy of the following items (captioned, signed by counsel, and including a certificate of service):

(1) For Jury Trials

- a. Proposed jury instructions, definitions, and interrogatories. Each requested instruction, definition, and interrogatory must be numbered and presented on a separate sheet of paper with the citation of authority upon which counsel rely.
- b. Memorandum of law.

(2) For Non-Jury Trials

- a. Proposed Findings of Fact.
- b. Proposed Conclusions of Law.
- c. Memorandum of law.

(3) For All Trials and Hearings include the following:

- a. Exhibit Lists
- b. Objections to Exhibits
- c. Witness Lists

9. TRIAL SETTINGS

- A. The Court uses docket call as a final pretrial conference. All pending motions may be ruled on at docket call, and the case will be set for trial if the complete [Joint Pretrial Order](#) has been filed. The Court maintains a four or five-week trailing docket during which a case is subject to call to trial on short notice. The Case Manager cannot inform you as to when the case will be set for trial. The trial date will be set by the Judge at Docket Call.

- B. Unless an attorney has actually commenced trial in another court, prior settings will not cause a case to be passed.
- C. A case not reached for trial will be reset as soon as possible.

10. EXHIBITS

- A. All exhibits must be marked and exchanged among counsel prior to trial. The offering party will mark his own exhibits with the party's name, case number, and exhibit number on each exhibit to be offered.
- B. Any counsel requiring authentication of an exhibit must notify offering counsel in writing within five (5) business days after the exhibit is listed and made available to opposing counsel. Failure to do so is an admission of authenticity. See [Local Rules 11](#).
- C. The Court will admit all exhibits listed in the final pretrial order into evidence unless opposing counsel files written objections supported by authority at least three (3) business days before trial. See [Local Rules 11](#).
- D. Counsel will not pass exhibits to the jury during trial without obtaining permission in advance from the Court. All admitted exhibits will go to the jury during its deliberations.
- E. 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.
- F. Counsel should become familiar with [Local Rules 11.C](#), regarding disposition of exhibits following trial.

11. EQUIPMENT

- A. The courtroom is equipped with the following:
- Document Camera
 - Projector and Screen
 - DVD Player
 - Annotation Monitors on Equipment Stand and Witness Box
 - Video and Audio inputs at counsel tables, which provide for courtroom use of personal laptop computers and personal audio equipment
 - Real-time transcription capability, depending on the Court Reporter.
- B. Training and familiarization sessions can be set up by contacting the Court's Case Manager.

12. COURTROOM PROCEDURES

- A. Hours: The Court's hours during trial will vary depending upon the type of case and the needs of the parties, counsel, witnesses, and the Court. Court normally will not convene before 8:30 a.m. and normally will adjourn by 5:30 p.m., with a noon lunch recess.
- B. Access at Other Times: Counsel needing access to the courtroom to set up equipment or exhibits before or after normal hours of court must arrange in advance with the Case Manager to have the courtroom open.
- C. Telephones: Telephone messages will not be taken by the Judge's staff, and counsel shall refrain from requesting the use of telephones in chambers.
- D. Filing of Documents: Two copies of documents filed immediately prior to and during trial should be submitted to the Case Manager.
- E. Decorum:
1. Counsel and parties will comply with [Local Rules 83.8](#) regarding Courtroom Behavior. These procedures are strictly enforced.

2. Counsel will ensure that all parties and witnesses refrain from drinking, eating, smoking or reading newspapers, books, etc. in the courtroom.
3. *No cellular telephone, beepers or pagers may be turned on while in the courtroom. Counsel are also responsible for insuring that their clients, witnesses and spectators comply with this order.*

F. Witnesses:

1. Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. Witnesses may be questioned while the attorney is seated at counsel table or standing at the podium.
2. Counsel shall make every effort to elicit from the witnesses only information relevant to the issues in the case and to avoid cumulative testimony.
3. Counsel should bear in mind the Court's hours and arrange for witnesses accordingly. The Court will not recess to permit counsel to call a missing witness unless he or she has been subpoenaed and has failed to appear.

G. Seating:

1. The Court does not designate seating at counsel tables; this is determined on a first-come, first-served basis on the first day of trial.
2. Enter and leave the courtroom only by the front doors; do not use the Court's entrance or the side entrances.
3. While the jury is deliberating, counsel are to remain near the courtroom to be immediately available for jury notes or a verdict.

13. VOIR DIRE

The Court will conduct a preliminary examination of the jury panel. Following the Court's examination, each side in civil cases usually will be allowed briefly to examine the panel. In criminal cases the Court usually will conduct all examination of the panel, and counsel should file in advance of trial their requests for any particular inquiries.

14. DEPOSITIONS

- A. The Court will accept the parties' agreement to use a deposition at trial even though the witness is available; otherwise, follow Fed. R. Civ. P. 32.

- B. Before trial, counsel must provide the Case Manager with a copy of any deposition to be used at trial.
- C. Counsel will designate the portion of any deposition to be read by citing pages and lines in the joint pretrial order. Objections to those portions (citing pages and lines) with supporting authority must be filed at least three business days before trial.
- D. Use of videotape depositions is permitted if counsel edit to resolve objections.

15. SETTLEMENTS AND ORDERS OF DISMISSAL

A. Settlements

1. Upon settlement of any case set for conference, hearing or trial, counsel shall immediately notify the Case Manager.
2. An order of dismissal without prejudice to the right of any party to move for reinstatement within 90 days will be entered on all settlement announcements.
3. Upon settlement of a suit involving a minor plaintiff, counsel will jointly move for appointment of a *guardian ad litem* if there is potential conflict of interest between the parties(s) and the minor. The parties may (but are not required to) submit the names of proposed *ad litem*s upon whom they agree. The Court will consider any names submitted, but may appoint as *guardian ad litem* a person whose name has not been submitted by counsel. Contemporaneously with the motion for appointment, counsel will notify the Case Manager by letter requesting a settlement conference.

B. Orders of Dismissal

Any defendant upon whom service has not been perfected within 120 days after filing of the complaint will be dismissed for want of prosecution in accordance with Fed. R. Civ. P. 4(m).