



PROCEDURES MANUAL
UNITED STATES
MAGISTRATE JUDGE
FRANCES H. STACY

Modified July 2015

The following are procedures which, in addition to the Federal Rules of Civil Procedure, and the Local Rules of the Southern District of Texas, will govern all cases that are to be tried before United States Magistrate Judge Frances H. Stacy.

CHAMBERS INFORMATION:

Address: 515 Rusk, Room 7525, Houston, Texas
P.O. Box 61010, Houston, Texas 77208-1408

Location: 7th floor of the Federal Building, 515 Rusk, Room 7525

Telephone: (713) 250-5681

Facsimile: (713) 250-5188

Do not send any documents to Judge Stacy by facsimile without prior Court approval.

Courtroom: 704

Staff: Beverly White, Case Manager
United States District Clerk
P.O. Box 610070
Houston, Texas 77208-0070
(713) 250-5565

Alice Moore, Law Clerk
Karen Schwab, Law Clerk
515 Rusk, Room 7727
Houston, Texas 77002

1. COMMUNICATIONS WITH COURT AND COURT PERSONNEL

- a. Communications with the Court and inquiries regarding motions, hearings, etc. should be made through the Case Manager, Beverly White. Ex-parte contact by counsel through the law clerks is strictly forbidden.
- b. The law clerks are not allowed to discuss any cases, motions pending before the Court, or Court procedures with parties or attorneys. At times, the Court, in its discretion, may direct that the law clerks contact the attorneys in a case regarding a specific matter. Attorneys shall, however, refrain from discussing any issue not directly raised by the law clerks. The law clerks have been directed to report any and all attorney communications to Judge Stacy.
- c. Information regarding the filing of documents, entry of orders, or docket entries

should be obtained from the Civil Docket Coordination Center of the United States District Clerk's Office.

- d. All case-related correspondence must be addressed to:
United States District Clerk
P.O. Box 61010
Houston, Texas 77208
- e. Do not address any substantive issues in letter form as they are not docketed or included in the appellate record.
- f. Courtesy copies of all pleadings requiring immediate attention should be forwarded to Chambers to ensure that they reach the Court's attention.
- g. All questions regarding any criminal matters should be directed to the Case Manager, Beverly White who may be reached at (713) 250-5565.

2. SCHEDULING CONFERENCES

- a. Prior to any scheduled Rule 16 Conference, the parties must conduct the initial FED. R. CIV. P. 26 meeting, make mandatory disclosures in accordance with that Rule, and file the Joint Discovery and Case Management Plan. The parties should be prepared to discuss every aspect of the case, including the discovery plan, settlement possibilities, and mediation. The Court will not hear any oral argument on pending dispositive matters at the Rule 16 Conference.
- b. The Scheduling Order will control the subsequent course of the case, and shall not be modified except by leave of Court upon a showing of good cause.
- c. When the parties consent to trial before Judge Stacy, any previously entered scheduling order and trial date set by the prior judge may be changed. A second Rule 16 conference may be held before Judge Stacy by telephone to re-set the deadlines that will govern the case. The Scheduling Order that will be entered for consent cases will contain a date certain for trial.

3. ATTORNEY APPEARANCES

- a. The attorney of record shall appear at all hearings and settings before Judge Stacy, or send an attorney familiar with the case who has the authority to make binding decisions affecting the case.
- b. Telephone conferences are allowable, but only in limited circumstances. Requests

for telephone conferences shall be made in writing to the Court, either in the form of a motion or a letter. The request shall indicate the agreement of **all** parties to appear by telephone, and must be submitted to the Court well in advance of the scheduled hearing. The request should be filed as any other court document, with a courtesy copy forwarded to Judge Stacy either by mail, or by facsimile.

- c. Counsel shall notify the Case Manager **immediately** of the resolution of any matter that is set for a trial or hearing.
- d. Failure to appear at any Court setting may subject the attorney and/or his client to appropriate sanctions, including dismissal of the matter.

4. MOTION PRACTICE

- a. All motions must follow the written motion practice outlined in the Local Rules for the Southern District of Texas. *See* Local Rules.
- b. All motions filed are governed by the submission period outlined in Local Rule 7.3, which provides for a 21 day response time for all motions. Upon expiration of the 21 day response period, the motion is ripe for submission and may be ruled on at any time thereafter. The submission (or response) date may be extended by a properly filed motion to extend the submission date. Unopposed motions for extension of time will be granted at the discretion of the Court. Opposed motions for extension of the submission date will only be considered if they are timely filed. Parties are also advised to forward to Chambers a courtesy copy of all motions and responses filed in cases before Judge Stacy, or that have been specifically referred to Judge Stacy for resolution. **Do not forward any courtesy copies of motions, or responses by facsimile unless so directed by the Court.**
- c. Unless the scheduling order provides to the contrary, or unless leave of court is granted, no motion filed within one week of the trial setting will be considered.
- d. All requests for expedited consideration of motions, as well as all requests for oral argument on motions submitted for Judge Stacy's consideration shall be made in writing, either at the time of the filing of the motion, or by subsequently filed written request. Such requests are to be filed with the Clerk of Court in the usual manner, with a courtesy copy forwarded to Judge Stacy either by mail, or by facsimile.
- e. The Court will not, as a matter of course, conduct a hearing on every discovery motion that is filed. The Court will schedule a hearing if one is deemed necessary to determine the propriety of the relief sought.

5. **FINAL PRETRIAL CONFERENCES**

Pretrial conferences are not held as a matter of course, but are held at the discretion of the Court. If the Court determines that a pretrial conference is needed, the parties shall be so notified by Order of Court. The parties may request a pretrial conference by telephoning the Case Manager at 250-5565 at least two weeks prior to the trial of the matter.

6. **REQUIRED PRETRIAL MATERIALS**

a. **Joint Pretrial Order**

Counsel for the plaintiff is responsible for ensuring that the Joint Pretrial Order is timely filed. If, for some reason, the plaintiff fails to file the Joint Pretrial Order, the defendant(s) is responsible for filing its part of the Pretrial Order. **All parties are responsible for complying with the requirements of the final joint pretrial order.** The Joint Pretrial Order is due one week prior to the trial setting. Failure to timely file the Joint Pretrial Order may subject the offending party to sanctions, including, when appropriate, dismissal for want of prosecution. A courtesy copy of the pretrial order should be forwarded to Chambers.

If the case is to be tried to a jury, the Joint Pretrial Order shall contain, at a minimum, the following:

- i. Each sides' claims and affirmative defenses
- ii. Contested and Uncontested Issues of Fact and how they relate or are applicable to each sides' claims and defenses
- iii. Contested and Uncontested Issues of Law and how they relate or are applicable to each sides' claims and defenses
- iv. Witness Lists for all parties in the form provided by the Clerk's Office
- v. Exhibit Lists for all parties in the form provided by the Clerk's Office
- vi. Trial Brief(s) or Memorandum of Law on relevant issues in the case, if applicable
- vii. Proposed Voir Dire Questions
- viii. Joint Proposed Jury Instructions and Jury Questions

The Court will use the general instructions in the form set forth in the Fifth Circuit Pattern Jury Instructions. With respect to the special instructions – those that relate to the particular claims and defenses in the case – it is the parties' responsibility to confer about the the type and form of such instruction and submit them to Court in the Joint Pretrial Order in a joint or agreed form. Instructions the parties cannot agreed to shall be included, but labeled to indicate the party seeking the instruction, and any relevant authority supporting the submission of the instruction.

If the case is to be tried to the bench, the Joint Pretrial Order shall contain, at a minimum, the following:

- i. Each sides' claims and affirmative defenses
- ii. Contested and Uncontested Issues of Fact and how they relate or are applicable to each sides' claims and defenses
- iii. Contested and Uncontested Issues of Law and how they relate or are applicable to each sides' claims and defenses
- iv. Witness Lists for all parties in the form provided by the Clerk's Office
- v. Exhibit Lists for all parties in the form provided by the Clerk's Office
- vi. Trial Briefs or Memorandum of Law on relevant issues in the case
- vii. Proposed Findings of Fact and Conclusions of Law.

The Court may, from time to time, allow the parties to file supplemental briefing following the conclusion of a trial.

b. Motions in Limine

Unless otherwise ordered, Motions in Limine shall be filed with the Joint Pretrial Order. An Order must be included with the motion in limine.

c. Objections to Exhibits and Deposition designations

Any objections to the exhibits and deposition testimony to be offered at trial must be filed with the Joint Pretrial Order. The Court expects parties to confer prior to the filing of the Joint Pretrial Order and make a good faith attempt to resolve their differences as to any such objections.

7. EXHIBITS

- a. Regardless of whether the case is tried to the bench or to a jury, it is the responsibility of the parties to provide current and complete exhibit lists in the Joint Pretrial Order. Exhibits shall be marked and numbered prior to trial. Such numbering shall correspond to the exhibit list included in the Joint Pretrial Order, *and will not be changed.*
- b. An exhibit which has not been disclosed in the Joint Pretrial Order will not be considered for admission unless the party offering it shows extraordinary circumstances for its omission from the Joint Pretrial Order. Under these circumstances, it is the parties' responsibility to provide the Court with an updated exhibit list.

- c. Counsel for each party shall assemble all documents, photographs, or other materials expected to be used at trial, and make the same available to opposing counsel 10 days prior to the date the Joint Pretrial Order is due. The Court encourages counsel to agree upon joint exhibits to avoid voluminous duplication. If joint exhibits are agreed upon, they must be so designated with the case name, case number, and appropriate exhibit number.
- d. Counsel for each party shall copy each exhibit to be offered at trial and place the exhibits, in numerical order, in a notebook to be provided to the Court. A similar notebook of exhibits shall be made available by each party for use by any witnesses to offer testimony at trial.
- e. The Court will rule on all objections to the exhibits at the Final Pretrial Conference, if one is timely requested, or on the first day of trial.
- f. All exhibits will be offered and received in evidence as the first order of business at trial. Once admitted, the exhibits are to be kept on the Court's exhibit table at all times, until the completion of trial.
- g. Exhibits of unmanageable size (such as charts, diagrams, posters, etc.) shall be withdrawn immediately upon completion of trial and reduced reproduction or photographs substituted pursuant to Local Rule 79.2.
- h. At the conclusion of trial, counsel must withdraw all exhibits offered and received in evidence, and sign a *Receipt for Withdrawal of Exhibits*. In the event of a bench trial, the Court will retain the copies of the exhibits provided to it by the parties, and may request the retention of additional exhibits pending the final resolution of the matter. Following the completion of trial, counsel may, in the alternative, immediately notify the Clerk of Court in writing of their consent to the disposal of the exhibits.

8. WITNESSES

- a. Counsel is responsible for summoning a witness into the courtroom and instructing them as to proper courtroom decorum.
- b. Witnesses shall be made available to testify in accordance with the trial scheduling policy of this Court as noted below. The Court will not recess to permit counsel to call a missing witness unless the witness has failed to appear in violation of a properly served subpoena.
- c. Witness rooms are available for the parties' use and are located on the 7th Floor, readily accessible to the courtroom. Please contact the Case Manager on or before the first day of trial to ensure that the witness rooms are unlocked the day of trial, and

have been appropriately reserved for each party.

9. TRIAL

- a. Each trial setting before this Court is for a **date certain**. Unless an attorney has actually begun trial in another court, prior settings will not cause a case to be continued.
- b. It is this Court's policy to conduct the trial proceedings in such a way so as to complete the trial as quickly and efficiently as possible. This may include beginning the proceedings early (sometimes at 8:00 a.m.) and ending late (as late as 7:30 p.m.). Additionally, hearings out of the presence of the jury may be conducted before the jury is empaneled in the morning, during the morning or afternoon break, during the lunch break, and after the jury has been excused for the day. In this regard, counsel are instructed to have **all** their respective witnesses readily available to offer testimony in accord with the foregoing scheduling policy of the Court.
- c. In order to make a clear record of the trial, counsel are advised to speak clearly and directly into the microphones provided. There are microphones at each counsel table, the podium, the witness box, and in front of the bench.
- d. While the case is being tried, it remains the parties' responsibility to file their own documents with the Clerk's office. Neither the Case Manager nor any of the other Court personnel is under any obligation to file the parties' pleadings for them. However, counsel are advised to deliver a courtesy copy of any motions filed during the course of trial to the Chambers of Judge Stacy.
- e. The Court may, in its discretion, impose a timing order on the parties in any trial where the Court deems it necessary to more efficiently expedite the presentation of the evidence.

10. VOIR DIRE

- a. The Court will commence jury selection with some general opening remarks, but allows counsel to conduct the voir dire, provided that the voir dire questions are included in the Joint Pretrial Order.
- b. Time limitations for voir dire may be imposed by the Court in some limited circumstances.
- c. In some circumstances, the voir dire may be conducted solely by the Judge.

11. CONTINUANCES

- a. The Scheduling Order gives a date certain for trial. Motions for continuance will be considered only if they are filed at least two weeks prior to the trial date provided in the Scheduling Order. Any response to a motion for continuance shall be filed at least one week prior to the scheduled trial date.
- b. Joint motions for continuance are not binding, and they will be granted only at the discretion of the Court.
- c. Vacation letters will only be honored if they are filed well in advance of the trial setting.

12. COURTROOM PROCEDURES

- a. **Seating:** There are no designated seating arrangements for the parties and their attorneys. The counsel tables in the courtroom are available on a first-come, first-serve basis.
- b. **Equipment:** The Court has the following equipment in the Courtroom that is available for the parties' use at trial: Television with video-recorder, a chalkboard, and an easel, Elmo, computer screens, and computer outlets but the parties must provide their own paper.

To the extent that counsel requires any other equipment, such as other sound and/or video equipment, the parties shall so inform the Court in writing prior to the trial of the matter. Specifically, counsel must provide the Case Manager with a list of all the equipment to be used during trial so that the appropriate security clearance from the United States Marshal Service can be timely obtained.

- c. **Decorum:**
 1. As with any appearance before the bench, counsel, parties, and witnesses are expected to address the Court with the customary respect, and conduct themselves with the usual decorum and dignity for the proceedings.
 2. Counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, smoking, wearing hats, or reading newspapers, books, etc. in the courtroom. All cellular telephones, and beepers must be turned off before entering the courtroom.

3. Counsel and parties are expected to be seated at the counsel tables and ready to proceed when Court is called into session. **Counsel may drink water in the courtroom (provided at the counsel table), but no other eating or drinking is permissible.**
 4. Counsel may question witnesses either while standing at the lectern, or seated at the counsel table, whichever is preferred.
 5. Counsel is expected to stand at all times when addressing the Court.
- d. **Access to the Courtroom:** Enter and leave the courtroom only by the front doors. Do not use the Court's entrance or the side entrances. Counsel needing access to the courtroom to set up any equipment or exhibits prior to trial, before or after normal hours of court, must arrange in advance with the Case Manager to have the courtroom open.
 - e. **Availability:** While a jury is deliberating, counsel are to remain near the courtroom to be available immediately for jury notes or a verdict unless given permission to leave by the Court.
 - f. **Telephones:** Telephone messages will **not** be taken by the Judge's staff during the course of trial, and counsel shall refrain from requesting use of telephones in Chambers. All cellular telephones and beepers must be turned off prior to entering the Courtroom. An Attorney Conference Room is available on the 7th Floor.

13. SETTLEMENTS/DISMISSALS

- a. The parties in every civil action must make a good faith effort to settle, and settlement negotiations shall be entered into at the earliest time possible, well in advance of any pretrial conference.
- b. The Court will be available for settlement discussions upon the request and agreement of all concerned parties.
- c. The Court strictly follows FED. R. CIV. P. 41(a) with regard to voluntary dismissals. Once an adverse party has answered in a case, a plaintiff may only be allowed to dismiss the case upon a stipulation of dismissal signed by all parties who have entered an appearance in the case.
- d. If a settlement has been reached by the parties, but the final settlement papers have not yet been completed, the parties may request a "90-day Dismissal Order." This

Order technically dismisses the case, but allows the parties to reinstate the case within 90 days of the Order. Requests for 90-day Dismissal Orders will only be granted if they are signed by all the parties to the case.