

PROCEDURES
for
THE HONORABLE MELINDA HARMON
U. S. District Judge
Courtroom 9C, 9th Floor
515 Rusk Avenue
Houston, Texas 77002

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I. CONTACT WITH COURT AND COURT PERSONNEL

- A. Court:** Counsel shall strictly abide by Appendix C of the Local Rules regarding communication with the Court.
- B. Law Clerks:** Counsel are not permitted to discuss cases or procedures with the Court's law clerks. At the Court's discretion, law clerks may contact counsel; however, they will not discuss matters other than the subject of the call.
- C. Case Manager:** The caseload will not allow the case manager to respond to email or telephone inquiries unless it is an emergency matter. Inquiries regarding motions, status of the case, *etc.*, are not considered emergencies and should be addressed either by logging into Pacer or by contacting the Help Desk in the Clerk's Office at 713-250-5500.

II. 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 absent the prerequisites of Federal Rule 65(b).
- B.** Motions for extension of deadlines or cut-off dates are not emergencies.

III. COURT SETTINGS

- A. Transferred Cases:** When a case is transferred from another district judge to Judge Harmon, scheduling orders, trial dates, oral motions or other hearing dates, *etc.*, set by the prior judge will be reset to another time, unless counsel are notified to the contrary.
- B. Appearance at Settings:**
 - 1. The attorney designated on the pleadings as "in charge" must attend all settings before the Court, or send an attorney familiar with the case who has authority to make decisions binding on the party that is being represented.
 - 2. The Court requires that counsel be on time for all settings.
 - 3. Failure to appear when notified of a setting will subject that attorney and/or their client to sanctions, including dismissal for want of prosecution and/or appropriate judgment.

4. It is this Court's preference that local counsel shall appear in person at Court settings. If out of town counsel wish to appear for conferences by telephone, arrangements must be made through the case manager as well in advance as possible. The Court will attempt to accommodate such requests.
5. If a settlement is reached and/or a serious conflict arises, counsel must notify the case manager no less than four (4) working days prior to the setting. Otherwise, counsel must appear at the setting and make the announcement to the Court. Last minute motions or telephone requests for continuances will not be entertained by this Court.

C. Pretrial Procedures

1. A final pretrial conference will be set for the Friday preceding the beginning of a trial term, as set to commence, as set out in the Scheduling Order.
2. Counsel for the plaintiff is responsible for ensuring that the Final Joint Pretrial Order is filed *timely*. If, for some reason, plaintiff fails to file the Joint Pretrial Order, then defendant(s) is responsible for filing the defendant's Proposed Pretrial Order. All parties are responsible for complying with all requirements of the Final Joint Pretrial Order. Unless otherwise ordered, Pretrial Order will be due ten (10) days prior to docket call. At the time of filing of the Final Joint Pretrial Order, counsel shall send a Word version of the Joint Pretrial Order to the case manager, via email.
3. The required attachments - proposed Findings of Fact and Conclusions of Law or proposed Jury Instructions and Interrogatories; Memorandum of Law or Pretrial Brief; proposed Voir Dire Questions; Witness Lists; Expert Witness Qualifications; and Exhibit Lists - are a part of the Final Joint Pretrial Order and *must* be submitted for filing with such Order.
4. Failure to appear and/or timely file the Final Joint Pretrial Order will subject counsel and his or her client to sanctions, including prohibition of the calling of witnesses or using exhibits, dismissal for want of prosecution and/or appropriate judgment.

D. Trial Calendar

1. Most civil cases will be set for trial within the two week trial period set out in the Scheduling Order.
2. Trial Term: Judge Harmon conducts a two (2) week trailing trial docket. The cases will be placed on a trailing docket for the scheduled two (2) weeks only and will be reached as close to the original trial date as possible.

3. The case manager cannot ascertain when a case will be reached or where a case is on the docket in advance of the docket call/pretrial conference. After the two (2) week trial term begins, the case manager will keep in close touch with counsel and every effort will be made to give maximum notice concerning trial settings. Counsel are hereby notified that they will be on call on short notice during that two-week trial term. Unless an attorney has actually commenced trial in another court, prior settings will not cause a case to be continued. Should an attorney be in trial in another court when his or her case is reached in Judge Harmon's court, the attorney may be expected to go into trial in Judge Harmon's court upon conclusion or settlement of the case in trial if the conclusion falls within the two week period.
4. If a case is not reached for trial during the designated term, it will be reset as soon as the docket schedule permits and counsel will be notified in writing.
5. Continuances: The Scheduling Order governs the case and Judge Harmon expects diligence in meeting the deadlines set forth therein. Motions for continuance will not be granted as a matter of course, and Judge Harmon expects counsel to strictly adhere to these dates. Joint motions for continuance are not binding, and they will be granted only at the Court's discretion. Bona fide vacation requests will be respected if they are made well in advance of the trial setting.

A trial will not be continued because of unavailability of a fact witness or an expert witness, including a medical witness. Counsel are expected to anticipate such possibilities and should be prepared to present testimony by written deposition, video taped deposition, or by stipulation.

6. Settlement: If a case is settled, prompt written notice shall be given to the case manager. If timely notice is given (*i.e.*, at least 4 working days prior to the setting), counsel need not appear for trial. Upon written announcement of settlement, the Court will enter a ninety (90) day order of dismissal without prejudice. Counsel shall submit promptly the agreed final judgment for approval and entry.

IV. MOTION PRACTICE

- A. Judge Harmon follows the written motion practice as outlined in Local Rule 7, in most instances. 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. Further, when responding or replying to a pleading, please state in the beginning paragraph the docket number of the pleading to which you are responding/replying.

- B.** Requests for oral hearings are not necessary. The case manager will notify counsel should the Court determine that an oral argument would be beneficial. The motion docket date that appears on the docket entry when a motion is e-filed is NOT a hearing date. It is a public electronic count of days until the motion is considered “ripe” for ruling and essential for the Court’s running of reports.
- C.** Discovery Motions: In order to curtail undue delay in the administration of justice, the Court will refuse to consider any and all motions for discovery unless moving counsel advises the Court, in the motion, that counsel have conferred (in person or by telephone) in a good faith effort to resolve the matters in dispute but are unable to reach an agreement. The statements shall recite the date, time and place of such conference, and the names of all parties participating therein. UPON THE COURT’S DISCRETION, discovery motions may be referred to the Magistrate assigned to Judge Harmon.
- D.** Since the resolution of discovery motions requires the cooperation of counsel, the failure of any counsel to cooperate may result in the imposition of sanctions. The Court believes that most discovery disputes, especially those dealing with (1) scheduling, (2) the number, length and form of oral and written questions, and (3) 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.

V. SPECIAL PROCEDURES RELATED TO ELECTRONIC FILING

- A.** As all counsel should be aware, Local Rules require that, except in certain situations or by permission of the Judge, nearly all civil cases filed in this District must now be entered through the Electronic Case Filing (ECF) system. In connection with the Court’s move to ECF, Judge Harmon now requires that all parties submit a paper courtesy copy of electronically filed pleadings directly to chambers for the following:

 - (i) all motions for summary judgment, and all responses and replies thereto; and,
 - (ii) all motions and briefs that, *including any attachment*, are greater than 25 pages in length.

The parties must include the attachments in these paper courtesy copies submitted directly to chambers. Additionally, these paper courtesy copies must have the ECF header showing the ECF document number and the date and time of filing.

- B.** This submission of paper courtesy copies directly to chambers is to be done *in addition to* the electronic filing of the documents. That is, the parties must file any and all motions electronically, regardless of whether they have sent a courtesy copy

to chambers. The paper courtesy copy should be sent to chambers the same day that the motions are filed electronically.

- C. If this requirement of filing courtesy copies directly to chambers will cause a special hardship upon any party, that party should file a motion seeking leave to be excepted from the rule. Any such motion must specifically identify the reasons why the rule causes the party special hardship.

VI. PRETRIAL CONFERENCES

Pretrial conferences are discretionary with this Court and are not routinely set. Counsel may, however, request a settlement or pretrial conference by letter addressed to the case manager with copies to all counsel. The Court prefers that such letters set for the agreement of all counsel that a conference is necessary and the reasons therefore.

VII. REQUIRED PRETRIAL MATERIALS

A. Joint Pretrial Order

Counsel for the plaintiff is responsible for ensuring that the Joint Pretrial Order is filed on time. 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

1. Court Trial

- a. Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Findings of Fact and Conclusions of Law in duplicate, and Memorandum of Law or Pretrial Brief.
- b. Counsel shall limit Post-Trial Briefs to specific questions assigned by the Court during or after trial.

2. Jury Trial

- a. Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Voir Dire Questions, proposed Jury Instructions (with citation of authority on a separate page), and proposed Interrogatories to the Jury. Jury Instructions and Jury Interrogatories must be short, simple and concise.
- b. Although voir dire questions are to be submitted, in most cases the Court will permit counsel to conduct their own voir dire examination

in jury trials. Prior to the commencement of the voir dire, counsel for each party will receive a copy of a questionnaire on each prospective juror. This questionnaire will provide a comprehensive composite of each juror's background to aid the attorneys in narrowing the questioning and shortening the voir dire.

3. For all Trials and Hearings: include FOUR COPIES of the following:
 - a. Exhibit List;
 - b. Objections to Exhibits; and
 - c. Witness Lists.

VIII. COURTROOM PROCEDURES

Conduct of counsel during the presentation of a case will be governed by Local Rule 83 regarding Courtroom Procedures and will be strictly enforced. Counsel shall at all times enter and exit the courtroom by the front doors.

A. Hours

Court will generally convene for trial at 9:00 a.m. and adjourn at 5:30 p.m. The lunch break is generally from 12:00 noon to 1:30 p.m. There will be a 15 minute recess during the morning and afternoon sessions, as appropriate.

B. Telephone Calls

The Judge's staff will not take messages for counsel. Please do not request the use of telephones in Chambers or the courtroom. Cell phones are to be **TURNED OFF** in the courtroom.

C. Filing of Pleadings

Courtesy copies of pleadings e-filed during the course of trial should be presented to the case manager.

D. Decorum

1. All counsel and parties are expected to be seated at the counsel tables and ready to proceed when the Court is called into session. Counsel are expected to remain at the counsel tables and not go back and forth through the swinging doors.
2. Counsel may drink water provided in the courtroom. No plastic bottles or other containers will be allowed in the courtroom. No eating or other drinking is permitted.
3. All counsel are expected to stand at all times when addressing the Court.
4. Counsel may question the witnesses either while standing at the lectern or seated at the counsel table, whichever is preferred.
5. Counsel shall conduct opening statements and closing arguments either from the lectern, standing before the jury, or facing the Court.
6. Additionally, counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, or reading newspapers, books, *etc.* in the courtroom.

E. Witnesses

1. Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. Witnesses will be questioned while the attorney is seated at counsel table or standing at the podium. Permission to approach a witness must first be obtained from the Court.
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.

F. Seating

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.

G. Equipment

The courtroom is equipped with the following:

1. Document camera
2. Projector and screen
3. VCR
4. Annotation monitors on equipment stand and witness box.
5. Video and audio inputs at counsel tables, which provide for courtroom use of personal lap top computers and personal audio equipment.
6. Real time transcription capability, depending on the court reporter.
7. Equipment training and familiarization sessions prior to the beginning of trial or hearing are recommended and can be set up by contacting the Court's case manager. Counsel must consult with the case manager prior to bringing specialized equipment into the courthouse so that arrangements may be made with building security.

H. Exhibits

1. The Court encourages joint exhibits to avoid voluminous duplication.
2. All exhibits must be marked and exchanged among counsel *prior* to trial. The offering party will mark his own exhibits, placing the case number on each exhibit to be offered.
3. Any counsel requiring authentication of an exhibit must so notify offering counsel in writing within five (5) business days after the exhibit is made available to opposing counsel for examination. Failure to do so is an admission of authenticity.
4. All exhibits will be offered and admitted into evidence as the *FIRST ITEM* of business at trial. 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.
5. 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.
6. Counsel for each party is required to provide the Court with an original and one copy of that party's exhibits in a properly tabbed and indexed notebook.
7. Exhibits of unmanageable size (such as charts, diagrams, posters, etc.) shall be withdrawn immediately upon completion of trial and reduced

reproductions or photographs substituted pursuant to Local Rule 79.2.

I. Depositions

1. The Court will accept the parties' agreement to use a deposition at trial even though the witness is available; otherwise, follow Rule 32, Fed. R. Civ. P.
2. Before trial, counsel must provide the case manager with a copy of any deposition to be used at trial.
3. 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; the Court will rule on the objections before the trial commences.
4. Use of videotape depositions is permitted if counsel voluntarily edit them to resolve objections and incorporate rulings by the Court to objections.

J. Post Evidence

1. Counsel are to remain near the courtroom during jury deliberations to be immediately available for jury notes or a verdict, unless given permission to leave by the Court.
2. After the jury and counsel are excused, counsel may not contact jurors unless otherwise permitted by the Court.

IX. SANCTIONS

It is expected that counsel comply with this Procedures Manual, the Local Rules for the Southern District of Texas, and the Federal Rules of Civil Procedure.

The Court will not be sympathetic toward those who seek to practice in this Court without regard to their obligations.

X. SETTLEMENT

The parties in every civil action must make a good-faith effort to settle; and settlement negotiations shall be entered into at the earliest possible time, well in advance of any pretrial conference.

Counsel should notify the case manager immediately if any matter is settled. If settlement occurs before a setting (i.e., pretrial conference, trial, etc.), counsel must appear and

announce settlement at the setting, unless the case manager is notified at least four (4) working days prior to the setting.

XI. ATTACHMENTS

Attached on the following pages are:

- A. Telephone Directory for the Office of the Clerk;
- B. Consent to Proceed Before a Magistrate form;
- C. Instructions for filing a Joint Pretrial Order;
- D. Form to be used for a witness list; and
- E. Form to be used for exhibits.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FOR INFORMATION REGARDING THE FOLLOWING:	CALL
APPEALS	713-250-5500
ADMISSION OF ATTORNEYS	713-250-5500
BAIL BONDS, DISBURSEMENT	713-250-5546
BILL OF COSTS	713-250-5525
CASE MANAGERS TO DISTRICT JUDGES:	
Lynn N. Hughes	713-250-5516
David Hittner	713-250-5511
Kenneth Hoyt	713-250-5515
Sim Lake	713-250-5514
Melinda Harmon	713-250-5518
Ewing Werlein, Jr.	713-250-5533
Lee H. Rosenthal	713-250-5517
Vanessa Gilmore	713-250-5512
Nancy F. Atlas	713-250-5407
Keith P. Ellison	713-250-5181
Gray H. Miller	713-250-5129
Alfred H. Bennett	713-250-5551
CASE MANAGERS TO U. S. MAGISTRATE JUDGES:	
Frances Stacy	713-250-5565
Nancy K. Johnson	713-250-5534
Mary Milloy	713-250-5158
Stephen W. Smith	713-250-5129
COPY REQUESTS	713-250-5543
COURT REPORTERS	713-250-5522
FINANCIAL SECTION	713-250-5875
INTERPRETERS	713-250-5638
JURY	713-250-2155

LAW LIBRARY

713-250-5696

PRISONER RELATED CASES

713-250-5402

TRANSCRIPTS

713-250-5499

7. **CONTESTED ISSUES OF FACT**

List all material facts in controversy.

8. **AGREED PROPOSITIONS OF LAW**

List the legal propositions that are not in dispute.

9. **CONTESTED PROPOSITIONS OF LAW**

State briefly the unresolved questions of law, with authorities to support each.

10. **EXHIBITS**

A. On a form similar to the one provided by the clerk, each party will attach two lists of all exhibits expected to be offered and will make the exhibits available for examination by opposing counsel. All documentary exhibits must be exchanged before trial, except for the rebuttal exhibits or those whose use cannot be anticipated.

B. A party requiring authentication of an exhibit must notify the offering counsel in writing within five (5) days after the exhibit is listed and made available; failure to object in advance of the trial in writing concedes authenticity.

C. Within reason, other objections to admissibility of exhibits must be made at least three business days before trial; the court will be notified in writing of disputes, with copies of the disputed exhibit and authority.

D. Parties must mark their exhibits to include the date and case number on each.

E. At the trial, the first step will be the offer and receipt in evidence of exhibits.

11. **WITNESSES**

A. List the names and addresses of witnesses who may be called with a brief statement of the nature of their testimony. Include the qualifications of expert witnesses; these will be used to qualify the expert at trial.

B. Include: "If other witnesses to be called at the trial become known, their names, addresses, and subject of their testimony will be reported to opposing counsel in writing as soon as they are known; this does not apply to rebuttal or impeachment witnesses."

12. **SETTLEMENT**

State that all settlement efforts have been exhausted, that the case cannot be settled, and that it will have to be tried.

13. **TRIAL**

- A. Probable length of trial; and
- B. Logistical problems, including availability of witnesses, out-of-state people, bulky exhibits, and demonstrations.

14. **ATTACHMENTS**

Include these required attachments:

- A. For a jury trial:
 - (1) Proposed questions for the voir dire examination.
 - (2) Proposed charge, including instructions, definitions, and special interrogatories, with authority.
- B. For a non-jury trial:
 - (1) Proposed findings of fact (without repeating uncontested facts); and
 - (2) Conclusions of law, with authority.

Date: _____

MELINDA HARMON
UNITED STATES DISTRICT JUDGE

Approved:

Date: _____

Attorney-in-Charge, Plaintiff

Date: _____

Attorney-in-Charge, Defendant
IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

vs.

§
§
§
§
§
§

CIVIL ACTION NO. H-_____

WITNESS LIST OF _____

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

EXAMPLE

PLTF. *GMAC*
EXHIBIT *14*
H-85-604
JURY TRIAL

EXHIBIT STICKER
COLOR PREFERRED

Plaintiff - Yellow
Defendant - Blue