

# **HONORABLE NANCY F. ATLAS**

## **COURT PROCEDURES AND FORMS**

October 2016

### **THESE PROCEDURES AND ATTACHMENTS MUST BE SERVED WITH THE SUMMONS AND COMPLAINT OR REMOVAL PAPERS**

Your attention is directed to the **Court Procedures** and **attachments**, which are applicable to cases assigned to Judge Nancy F. Atlas.

Plaintiff must serve these materials on all defendants with the summons and complaint. The Order for Conference also must be served on all defendants. A party removing a case to this Court has the same obligation as a plaintiff filing an original complaint. A form of Certificate of Service In Removed Action is attached. Proof reflecting service of these materials must be filed promptly with the Clerk.

In addition, parties may, at their option proceed with civil cases before a Magistrate Judge. Attached is a Consent Form for use by parties that agree to consent to proceed before a Magistrate Judge. Please follow the instructions in the accompanying "Notice of the Right to Try a Civil Case before a Magistrate Judge."

The accompanying procedures are to be used in conjunction with the Federal Rules of Civil Procedure, as amended effective December 1, 2015, and with the Local Rules for the Southern District of Texas, and not as a substitute for them. The Local Rules of this District can be obtained on the District website at [www.txs.uscourts.gov](http://www.txs.uscourts.gov). The Court requires strict compliance with these Rules.

As mentioned in the following Procedures, in certain Fair Labor Standards Act and employment cases alleging adverse actions, the Court uses the "Order in FLSA Case Requiring Discovery" and the "Initial Discovery Protocols for Employment Cases Alleging Adverse Action." The FLSA Order and the Protocols are attached to these Procedures.

#### **HONORABLE NANCY F. ATLAS**

United States Courthouse  
515 Rusk Street, Room 9015  
Houston, Texas 77002-2601  
Tel.: (713) 250-5990  
Fax: (713) 250-5994

#### **SHELIA ASHABRANNER**

Case Manager for Judge Nancy F. Atlas  
Post Office Box 61010  
Houston, Texas 77208  
Tel.: (713) 250-5407  
Fax: (713) 250-5994

Email: [shelia\\_ashabranner@txs.uscourts.gov](mailto:shelia_ashabranner@txs.uscourts.gov)

[Please **note** the spelling of Ms. Ashabranner's first name.]

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### Forms Attached:

- **Certificate of Service in Removed Action**
- **Joint Discovery/Case Management Plan**
- **Docket Control Order**
- **Joint Pretrial Order & Exhibit List Form**
- **Notice of Right to Proceed in a Civil Case Before a Magistrate Judge**
- **Consent to Proceed Before United States Magistrate Judge Dena H. Palermo**
- **Order in FLSA Case Requiring Discovery**
- **Initial Discovery Protocols for Employment Cases Alleging Adverse Action**

**1. CONTACT WITH COURT PERSONNEL**

- A. The Southern District of Texas requires that parties file documents through the District Court’s Case Management/Electronic Case Filing (“CM/ECF”) System. *See* Southern District Local Rule 5.1 and the District’s Administrative Procedures for CM/ECF (as amended and available at [www.txs.uscourts.gov](http://www.txs.uscourts.gov)).
- B. **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.**
- C. Information about the status of documents, entry of orders, or docket entries should be obtained from the CM/ECF or Pacer Systems, or if absolutely necessary, from the United States District Clerk’s Office ((713) 250-5115).
- D. Correspondence with the Court must be delivered or sent to the Court’s Chambers:
  - 1. Case-related correspondence should be addressed to:

**Shelia Ashabranner  
Case Manager to Judge Nancy F. Atlas  
United States Courthouse  
515 Rusk Street, Room 9015  
Houston, Texas 77002-2601**

**or**

**Email: [shelia\\_ashabranner@txs.uscourts.gov](mailto:shelia_ashabranner@txs.uscourts.gov)**  
[Note the spelling of Ms. Ashabranner’s first name.]

- 2. Letters should be used for minor procedural matters and for discovery disputes. Do **not** address substantive issues in letter or email form. The parties must file copies of all letters. Email correspondence with the Court will be docketed at the Court’s discretion.
- 3. Copies of **urgent** documents (including letters) may be sent by First Class Mail, emailed, or hand-delivered to Chambers (*see* Emergencies, § 2 below), to the Court’s Case Manager, with copies to all parties. Service copies must be transmitted to all counsel of record simultaneously with (or prior to) and in the same manner as the document is transmitted to the Court. The documents may **not be faxed without express prior permission of the Court.** (Note: If a document is emailed to the Court through the Case Manager after 4:00 p.m., the Judge will not see the document until the next morning.)

## 2. **COURTESY COPIES OF DOCUMENTS**

- A.** **Letters to the Court** may be hand-delivered, sent by First Class Mail to Chambers, or transmitted by email. All must be served with **copies to all parties** served prior to or at the time of filing. *See* addresses above. (Note: If a document is emailed to the Court through the Case Manager after 4:00 p.m., the Judge will not see the document until the next morning.) Letters concerning discovery and scheduling matters must be filed in the docket.
- B.** The parties **must deliver** promptly **courtesy copies** of:
- (i) complaints, answers, counter-claims and notices of removal, with all attachments,
  - (ii) all documents relating to substantive motions,
  - (iii) documents ten (10) pages or more in length (including exhibits and attachments), and
  - (iv) documents pertaining to matters being heard by the Court within seven (7) days after the document is filed.

**Represented parties** must deliver to Chambers courtesy copies of the documents listed above. **Pro se parties** must deliver courtesy copies to the Office of the Clerk of Court on 5<sup>th</sup> Floor of the Courthouse.

- C.** Do **NOT fax or email** copies of documents to Chambers unless specifically authorized to do so by the Court's Case Manager.

## 3. **EMERGENCIES**

- A.** Applications for **temporary restraining orders or for other emergency relief** shall be filed electronically through the CM/ECF system and all related communications with the Court must be through the Case Manager.
- (i) Such applications shall be presented to the Court by the Case Manager following counsel's written affirmation that the opposing party has been contacted and that both parties can be available for a conference before the Court, or an explanation why such contact is not legally required.
  - (ii) *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 continuances, or extensions of deadlines or cut-off dates in the Docket Control Order, are **not** emergencies. (*See* Sections 4, 7.A.4, and 7.A.5, below.)

#### 4. CONTINUANCES

- A. Agreements or joint motions among counsel for continuances are *not* binding on the Court. Motions for continuances or extensions of deadlines must be ruled upon and will be granted only at the Court's discretion. Parties **must** notify the Court of agreed continuances by submitting a joint motion *and* proposed order.
- B. Vacation requests will be respected if made well in advance of a trial setting.
- C. A trial will not be continued because of the unavailability of a witness. Counsel are expected to anticipate such possibilities and should be prepared to present testimony by written deposition, videotaped deposition, or by stipulation.

#### 5. APPEARANCES, CONFERENCES AND NOTICES OF SETTLEMENT—GENERAL

- A. Preparedness for conferences and hearings: An attorney or *pro se* party who appears at an evidentiary or motion hearing, or conference, **MUST**:
  - i. be fully familiar with the facts of and law applicable to the case,
  - ii. have authority to bind the client to stipulations or to settle the case, and
  - iii. be in charge of the case during that appearance.

Subject to the above requirements, the Court strongly encourages lawyers and their clients to provide substantive speaking opportunities to less experienced lawyers, especially attorneys fewer than six years out of law school, particularly when the less experienced attorney has written the brief or papers addressing the issues in dispute.

- B. Telephone Participation: All counsel wishing to appear at a conference or hearing by telephone must submit a written request by email to the Case Manager as far in advance of the conference as reasonably possible. The Court will attempt to accommodate such requests.
- C. Settlements before conferences: Counsel and *pro se* litigants shall notify the Case Manager **immediately in writing** of the parties' settlement of any matter. Upon receipt of a notice that the entire case is settled, the Court may enter a conditional order of dismissal. *See* Section 15 below.
- D. Failure to appear when notified of a setting may subject the attorney and/or his or her client to sanctions, including dismissal for want of prosecution and/or other appropriate order or judgment.
- E. Pro Hac Vice Admissions: Motions for admission *pro hac vice* shall include the attorney applicant's averment that he or she has **familiarized him/herself with the Local Rules of the Southern District of Texas and these Procedures**.
- F. Email Addresses: Counsel must include their email addresses with their signatures on all submissions.

## 6. INITIAL PRETRIAL CONFERENCES AND DOCKET CONTROL ORDERS

Please refer to Local Rule 16.1 and the Court's Form Order for Conference in civil cases. Counsel and *pro se* parties **must** be familiar with the facts of and law applicable to the case. See Section 5 above ("Appearances and Conferences") regarding general procedures for conferences. In addition:

- A. A Joint Discovery/Case Management Plan ("Case Management Plan")** in the form attached to these Procedures must be filed at least five (5) business days before the Initial Pretrial Conference.
1. The Court encourages parties to make initial disclosures prior to the Initial Pretrial Conference. **Initial disclosures must include production of copies of all documents** responsive to the categories listed in Federal Rule of Civil Procedure 26(a).
  2. In **Fair Labor Standards Act** ("FLSA") cases, counsel should review the attached "Order in FLSA Cases Requiring Discovery" and be prepared to discuss the utility of the Order (or parts thereof) at the Initial Pretrial Conference.
  3. In **employment discrimination cases based on an adverse action**, the parties must use the "Initial Discovery Protocols for Employment Cases Alleging Adverse Action" attached to these Procedures, *unless* the Court orders otherwise after discussion with counsel.
- B. At the Initial Pretrial Conference, the Court will enter a Docket Control Order in the form attached hereto.**
1. The parties are encouraged to agree on pretrial deadlines and bring a proposed Docket Control Order to the Initial Pretrial Conference.
  2. The Docket Control Order entered by the Court will govern the case. Docket Control Order deadlines may **not** be modified except by agreement of the parties or leave of this Court upon a showing of good cause.
  3. If changes to an existing Docket Control Order are requested, the parties must submit recommended new dates to adjust all scheduled dates that follow the first deadline sought to be modified.
- C. Additional Parties:** If new parties are joined after entry of the Docket Control Order, the party causing such joinder shall provide to the new parties copies of: (i) all orders and pleadings previously filed in the case, (ii) the operative Docket Control Order, and (iii) these Court Procedures.

## 7. MOTION PRACTICE

A. **General Guidelines:** The Court follows the procedures for motion practice described in the Southern District of Texas Local Rules. *See, e.g.*, S.D. Tex. Loc. R. 7, 10, 11. In addition, the following procedures apply.

1. Counsel and *pro se* parties must make serious and timely efforts to **confer with opposing counsel** on *all* motions to try to reach agreements on the relief to be requested by movant.
2. Every **non-dispositive motion must** contain a **certificate of conference**. Failure to comply may result in the party's motion being denied or stricken.
3. **All** motions except summary judgment motions filed pursuant to FED. R. CIV. P. 56 must be accompanied by a **separate proposed order** granting or denying the relief requested.
4. **Opposed motions** generally will be considered by the Court after expiration of 28 days from the motion filing date. Responses by the non-movant must be filed within 21 calendar days of the motion. Movant's reply must be filed within 7 calendar days after the non-movant's response.

When circumstances dictate, the Court may consider a motion prior to expiration of the 28 day period provided in S.D. Texas Local Rule 7.

**By agreement**, parties may **extend a motion submission day**, but *must* give the Court prompt written notice of the agreement, with a proposed order granting the extension. Parties' agreed extensions in violation of a Court-imposed deadline require **Court approval**, which usually will be granted.

5. Any party with **discovery or scheduling issues** must send a **BRIEF letter** explaining the matters in dispute and the relief requested, and should seek a prompt conference with the Court **before** submission of **any** motion papers. *See* "Discovery and Scheduling Disputes" in Section 7.C below. The Court will schedule a conference as soon as practicable.
6. **Most motions will be ruled on without oral hearing.** Focused, clear motion papers are very important. *See* page limits and other requirements in Section 8 below. Except as noted below, requests for oral argument on motions are not appropriate or necessary. The Court's Case Manager will notify counsel should the Court determine that oral argument would be beneficial.

The Court strongly encourages all lawyers and their clients to provide substantive speaking opportunities to **less experienced lawyers**, especially attorneys out of law school fewer than six years. The Court therefore will consider requests for oral argument on motions, if a party commits to entrust the argument to such a less experienced lawyer.

7. All pleadings or other **documents filed under seal in a civil case** must be identified as “SEALED” in the title of the document. For example, a motion for summary judgment filed under seal must be docketed as “MOTION for Summary Judgment (SEALED).” No pleading may be filed for docketing simply as “SEALED DOCUMENT” without advance permission of the Court.

**B. Submitted Motions – Need for Expedited Decision:**

1. **The Court will rule on motions as soon as possible** after the submission day or a response is filed. *See* Section 7.A.4 above. Counsel of record and *pro se* parties will be furnished with copies of orders. *See also* Section 8.B below regarding format of motion papers.
2. If a pending motion requires resolution on an **expedited basis**, please advise the Court by letter.

**C. Discovery and Scheduling Disputes:** Most discovery and scheduling disputes can and should be resolved by counsel without the intervention of the Court. Compromise is encouraged.

1. Counsel are responsible for **conferring in good faith to resolve discovery and scheduling disputes**. If counsel for the parties are unable to reach an agreement, a conference with the Court must be sought by **letter** summarizing the relief sought. The request **MUST** specify the date, time and place of the parties’ prior out-of-court discovery or scheduling discussion(s), the names of all counsel participating therein, and give a *brief* summary of the results of the discussions.
2. **The party opposing the request** giving rise to the conference shall submit – at least 24 hours before the conference – a response to the requester’s letter.
3. **The Court will dispose of discovery disputes at the conference to the extent possible**. If a written motion is necessary, the issues to be addressed and a briefing schedule will be established during the conference.
4. **Discovery Disputes with Non-Parties:** If relief is sought against a non-party to the litigation, the relief may be sought by motion without a letter.
5. **Electronic Data Discovery Disputes.** If parties have a dispute concerning discovery of electronic data for which parties seek Court intervention, the parties shall bring in person or have available by telephone at the conference a person with detailed knowledge of the computers and electronic databases in issue. This computer and database expertise will permit reliable responses to the Court’s inquiries and will assist the Court in developing an appropriate resolution of the dispute.



## 8. **MEMORANDA OF LAW AND OTHER PARTY SUBMISSIONS**

- A. Courtesy copies:** Courtesy copies of motions, memoranda of law and supporting exhibits of 10 pages or more must be delivered by hand. *See* Section 2 above.
- B. Page Limits and Briefing Requirements:** The Court requires concise, pertinent and well organized memoranda of law. Without leave of Court, all memoranda of law are limited to 25 pages, 13-point type-font, double-spaced, with 1" margins.

All memoranda of law must contain items 3, 4, 6, and 7 below. Any memorandum that has more than ten (10) pages of argument must contain the following 8 items. Do **not** fax or email pleadings to Chambers unless specifically authorized to do so by the Court.

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. Succinct headings dividing the argument into separate points.
7. A short conclusion stating the precise relief sought.
8. Proposed orders (except on summary judgment motions).

**C. Copies of Authorities and Other Material Cited:**

1. Please append copies of cases and the relevant parts of authorities that are cited in a brief, memorandum, or motion only if the authorities are **not** published or reasonably available through Westlaw or Lexis-Nexis.
2. Copies of supporting affidavits, deposition testimony excerpts, and other discovery referred to in the briefs should be separately filed in one or more appendices of no more than 40 pages each.
3. All appendices should contain a table of contents, and courtesy copies of appendices or those filed conventionally (*i.e.*, not electronically) should be tabbed at the right margin to facilitate location of the materials cited.

## 9. REQUIRED TRIAL MATERIALS

- A. **Joint Pretrial Order:** Joint Pretrial Orders must be signed by all counsel. All parties are responsible for complying with all requirements to prepare the Joint Pretrial Order.
1. **Plaintiff is primarily responsible** for ensuring that a complete Joint Pretrial Order is filed timely. A form Joint Pretrial Order is attached. It should be followed, but may be adapted, within reason, to accommodate the size and nature of the case. If plaintiff fails to file the Joint Pretrial Order, then the defendant is responsible for filing defendant's portions of a Proposed Pretrial Order in the Joint Pretrial Order format.
  2. Plaintiff must deliver to Court's Chambers a **courtesy copy** of the Joint Pretrial Order with all attachments.
  3. **Failure to file the Joint Pretrial Order timely** will subject counsel and the client to sanctions, including dismissal for want of prosecution and/or other appropriate relief. This applies also to parties appearing *pro se*.
- B. **Other Required Documents:** With the filing of the Joint Pretrial Order, each party also must file:
1. For **All Trials and Evidentiary Hearings:**
    - a. **Exhibit List** (*see* attached form).
    - b. **Witness List** for live witnesses.
    - c. **Designation** of deposition excerpts for witnesses being called by deposition. A copy of each deposition excerpt must be provided to the Court.
    - d. **Objections**, if any, to an opponent's exhibits, witnesses or depositions excerpts must be filed within seven (7) calendar days after the joint pretrial order is filed. This time limit supersedes S.D. TEX. LOCAL RULE 46.
  2. For **Jury Trials**, the parties must file a single, joint proposed jury charge, including all necessary instructions, definitions and questions.
    - a. **Each** requested **instruction** must be numbered and presented with authority.
    - b. The parties shall include in the **proposed jury charge all necessary instructions or definitions**. The instructions shall, at a minimum, include: (1) the *prima facie* elements of each cause of action and defense asserted, (2) legal definitions required by the jury, (3) items of

damages, and (4) methods of calculation of damages. Counsel are to use the Fifth Circuit Pattern Jury Instructions, as modified by case law or statutory amendments, whenever possible. Any deviations must be identified, and accompanied with legal authorities for the proposed deviation.

- c. Even if the parties, in good faith, cannot agree on all instructions, definitions or questions, the parties should nonetheless submit a single, **unified charge**. Each disputed instruction, definition, or question should be set out in bold type, underlined or italics and identified as disputed. Each disputed item should be labelled to show which party is requesting the disputed language. Accompanying each instruction shall be all authority or related materials upon which each party relies.
- d. The parties shall also submit the proposed charge electronically on a CD in Corel WordPerfect 6.1, 8.0, or 9.0.
- e. The parties shall submit a **trial memorandum of law** addressing the law governing the case and all contested issues.

3. For **Non-Jury Trials**, each party must file:

- a. **Proposed Findings of Fact** (on a CD in Corel WordPerfect 6.1, 8.0, or 9.0);
- b. **Proposed Conclusions of Law** (on a CD in Corel WordPerfect 6.1, or 8.0, or 9.0); and
- c. **Memorandum of Law**. The memorandum of law, proposed findings, and proposed conclusions at a minimum should address the following: (1) the *prima facie* elements of each cause of action and defense asserted, (2) legal definitions, (3) components of damages, and (4) methods of calculation of damages.

## 10. **TRIAL SETTINGS**

- A. **Civil cases:** The Court sets trial dates at Docket Call in civil cases. Docket Call is a final pretrial conference. Parties should be prepared to answer questions on all pending motions. Pending motions may be ruled on at Docket Call. Trial may be set for any day after the Docket Call.
- B. **Criminal cases:** The Court sets the trial date for criminal cases at pretrial conferences.
- C. Unless an attorney has actually commenced **trial in another court**, the other trial setting will not cause the Court to pass a trial setting in a case.

- D. Information on Trial Settings:** The Case Manager cannot definitively ascertain when a case will be reached or where a case is on the trial docket. Predictions given by the Case Manager are only “educated guesses” and are NOT binding on the Court.

## 11. EXHIBITS

- A. Civil cases:** All exhibits must be **pre-marked** and exchanged among counsel at the time the Pretrial Order is filed, unless a later date is agreed to by counsel. Generally, in civil cases, exhibits that have not been disclosed to opposing counsel **prior** to trial will not be received in evidence. The offering party shall mark its name, the case number, and the exhibit number on each exhibit to be offered.

The schedule for disclosure of exhibits will be set at the pretrial conference in **criminal cases**.

- B. Authentication Objections:** Counsel requiring authentication of an opponent’s exhibit must notify offering counsel in writing within seven (7) days after the exhibit is identified and made available for examination. Failure to do so is an admission of authenticity.

- C. Other Objections to Exhibits:** Unless otherwise directed by the Court, a party in a civil case may offer in evidence any exhibits listed in the final Joint Pretrial Order *unless* opposing counsel files specific **written objections** within seven (7) days after the joint pretrial order is filed. The Court endeavors to rule on objections to exhibits outside the presence of the jury and will do so prior to opening statements, to the extent possible.

- D. Copies of Exhibits:** The parties must provide the Court with a complete set of exhibits for use at trial.

- E. Trial Procedure as to Exhibits:**

1. Counsel may not pass exhibits to the jury during trial without obtaining permission in advance from the Court.
2. Exhibits must be identified in front of the jury before they will be received in evidence. Only exhibits admitted during trial will go to the jury during its deliberations.

- F. Disposition of Exhibits:** Counsel should become familiar with S.D. TEX. LOCAL RULE 79.2 regarding disposition of exhibits following trial.

## 12. EQUIPMENT

- A. Sound and Video Equipment:** The Court has projection, document camera, sound and video equipment in the courtroom. Counsel are invited to use that equipment during trial. Counsel who seek to test the equipment prior to trial shall contact the Court’s Case Manager by email, letter or phone to make arrangements to test the

equipment. Parties also may provide their own equipment, but special arrangements must be made with the Case Manager *prior* to trial.

- B. Other:** Easels with writing pads are available for use in the Courtroom, upon request to the Case Manager prior to trial.

### **13. 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 convene at 8:30 a.m. and adjourn by 6:00 p.m., with a 12:15 to 1:30 p.m. lunch recess. The Court generally does not try cases on Friday afternoons, due to civil and criminal conferences, sentencings and other matters scheduled for that time.

**B. Access at Other Times:**

1. Counsel needing access to the Courtroom to set up equipment or exhibits must arrange access in advance with the Case Manager or chambers to have the Courtroom open.
2. Enter and leave the Courtroom only by the front doors; do not use the Court's entrance or the side entrances without permission.

- C. Telephones:** Telephone messages for counsel generally will **not** be taken by the Judge's staff, and counsel shall refrain from requesting use of telephones in Chambers.

- D. Filing of Documents:** Handing documents to the Court or Case Manager does **not** constitute filing of the documents in the CM/ECF system.

1. All original documents must be filed through the CM/ECF system.
2. Copies of documents filed within seven (7) days prior to and during trial should be submitted to the Case Manager **IN DUPLICATE**.

- E. Attorney Conference Rooms:** Attorney conference rooms are available upon request to the Judge's Secretary. A key will be given to counsel for use throughout the trial. Counsel must clear the room of all materials and return the key to the Case Manager or Secretary at the conclusion of the trial.

**F. Decorum:**

1. **General:** Counsel and parties will comply with S.D. TEX. LOCAL RULE 83.9 regarding Courtroom Behavior. These procedures are strictly enforced.
2. **Counsel's Oral Presentations:** Counsel shall stand when addressing the Court. Counsel may use a lectern positioned appropriately to make oral argument. Counsel may question witnesses standing at the lectern or seated at counsel table.

3. Counsel, parties, and witnesses may **NOT drink or eat** anything other than water **in the Courtroom**.
4. **No telephones**, beepers, pagers, or other electronic devices may be operated in the Courtroom **without the Court's express permission**.

**G. Witnesses:**

1. Counsel are responsible for summoning witnesses into the Courtroom and instructing them on Courtroom decorum. Witnesses may be questioned by the attorney seated at counsel table or standing at the lectern.
2. 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.
3. Counsel shall make every effort to elicit from the witnesses only information relevant to the issues in the case and to avoid cumulative testimony.

**H. Seating Assignments:** The Court does not designate seating at counsel tables. Seating is determined on a first-come, first-served basis on the first day of trial.

**I. Jury Matters:**

1. While the jury is deliberating, counsel are to remain near the Courtroom to be immediately available for jury notes or a verdict, unless given permission to leave by the Court.
2. After the jury is excused, counsel may **not** contact jurors unless permitted to do so by the Court. *See* S.D. Tex. Local Rule 47.

**14. VOIR DIRE**

The Court generally conducts a preliminary examination of the jury panel.

- A. Civil Cases:** Following the Court's examination of the potential jury panel, each side in **civil cases** often is allowed briefly to pose questions to the panel on matters specific to the case, provided that the proposed *voir dire* questions are submitted as part of the Joint Pretrial Order.
- B. Criminal Cases:** The Court will conduct most, if not all, of the examination of the panel in criminal cases, although the Court makes a case-by-case determination whether counsel may question on matters specific to the case.

## 15. **SETTLEMENTS AND ORDERS OF DISMISSAL**

### A. **Settlements and Conditional Orders of Dismissal**

1. Upon **settlement** of any case set for conference, hearing or trial, counsel must **immediately notify** the Court's Case Manager in writing, by letter, or by email ([shelia\\_ashabranner@txs.uscourts.gov](mailto:shelia_ashabranner@txs.uscourts.gov)).
2. Upon receipt of parties' notice of settlement, the Court generally will enter a **30- or 60-day conditional order of dismissal**, which permits a party to move to reopen the case if final settlement cannot be completed as agreed or fully documented within the allotted time.
3. Upon settlement of a suit involving a **minor plaintiff**, counsel must jointly move for a hearing to approve the settlement and appointment of a **guardian ad litem** if there is potential conflict of interest between the parent(s) and the minor.
  - a. If counsel cannot agree on a guardian *ad litem*, the Court will make the appointment. Counsel may submit the names of qualified attorneys they propose for the appointment.
  - b. Contemporaneously with the motion for appointment, counsel must notify the Case Manager by letter requesting a settlement conference.

### B. **Orders of Dismissal For Want of Prosecution**

Any defendant upon whom service has not been perfected within 90 days after the complaint is filed likely will be dismissed for want of prosecution in accordance with FED. R. CIV. P. 4(m).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Plaintiff(s),	§	
	§	
	§	
v.	§	Civil Action No. 4: _____
	§	
Defendant(s).	§	
	§	

**CERTIFICATE OF SERVICE IN REMOVED ACTION**

I certify compliance with the Court's Procedures.

On \_\_\_\_\_, 20\_\_, I served copies of the Order for Conference and Court Procedures on all other parties.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

_____ ,	§	
	§	
Plaintiff(s),	§	
	§	
v.	§	Civil Action No. 4: _____
	§	
_____ ,	§	
	§	
Defendant(s).	§	

**JOINT DISCOVERY/CASE MANAGEMENT PLAN**  
**under Rule 26(f) of the**  
**Federal Rules of Civil Procedure**

*(Please **restate** the instruction in **bold** before furnishing the responsive information.)*

1. State where and when the conference among the parties required by Rule 26(f) of the Federal Rules of Civil Procedure was held, and identify the counsel who attended for each party, including name, address, bar number, phone and fax numbers and email addresses.
2. List the cases related to this one that are pending in any state or federal court with the case number and court, and state how they are related.
3. Briefly describe what this case is about. Specify, generally, the claims, defenses and threshold issues that are or likely will be asserted by each party. *See* Section # 5 below.
4. Specify the basis of federal jurisdiction. Name the parties who disagree with the plaintiff's jurisdictional allegations and each of their reasons.
5. List anticipated additional parties that should be included in the suit and by whom they are wanted. Specify the dates for joining the additional parties.
6. List anticipated interventions, if any.
7. Describe issues presented for class-action certification (Fed. R. Civ. Pro. 23) or collective action conditional certification under the Fair Labor Standards Act; specify whether there will be opposition to class or conditional certification, and provide the proposed definition of the class. If there is opposition, state generally the basis for that opposition.

8. State whether (a) discovery initially can be focused or targeted on information relevant to the most important issues and available from the most easily accessible sources; (b) discovery can be conducted in phases or targeted to certain issues.
9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures. **NOTE:** All disclosures of documents must be made by producing the responsive materials; merely listing the documents or sources is insufficient.
10. Describe the proposed agreed discovery plan (to be considered in light of thorough initial disclosures as provided by Fed. R. Civ. P. 26(a)), including:
  - a. Production of Documents and Tangible Things: Whether there are issues pertaining to document production or inspection of documents or tangible things. **NOTE:** Parties must comply with Rule 34(a) and (b), as amended eff. December 1, 2015. Objections must be specific and production of non-objectionable material must be within the time period and in the manner specified by Rule 34(b)(2).
  - b. Issues and any agreements concerning discovery of electronically stored information. *See* Rules 34(a)(1)(A), (b)(1)(C), (b)(2)(D), (b)(2)(E);
  - c. Interrogatories – Plaintiff: (i) when and to whom plaintiff anticipates it may send interrogatories, (ii) whether the Rule 33(a) limit of 25 interrogatories per party should apply, and (iii) if the limits should not apply, explain why not.
  - d. Interrogatories – Defendant: (i) when and to whom defendant anticipates it may send interrogatories, (ii) whether the Rule 33(a) limit of 25 interrogatories per party should apply, and (iii) if the limits should not apply, explain why not;
  - e. Depositions – Plaintiff: (i) of whom and by when plaintiff anticipates taking oral depositions, (ii) whether the Rule 30(a)(2)(A) presumptive limit of 10 deposition per side should apply, and (iii) if the limits should not apply, explain why not;
  - f. Depositions – Defendant: (i) of whom and by when defendant anticipates taking oral depositions, and (ii) whether the Rule 30(a)(2)(A) presumptive limit of 10 deposition per side should apply, and (iii) if the limits should not apply, explain why not;
  - g. Expert disclosures (*see* Rule 26(a)(2)(B) (expert reports)):
    - (i) State the date experts for plaintiff (or party with the burden of proof on an issue) will be designated and their reports provided to opposing party **and** whether there are likely to be experts other than on attorney’s fees;
    - (ii) State the date experts for defendant (or party without the burden of proof on an issue) will be designated and their reports provided to opposing party **and** whether there are likely to be experts other than on attorney’s fees;
    - (iii) List expert depositions that plaintiff (or party with the burden of proof on an issue) anticipates taking **and** their anticipated completion date; and

- (iv) List expert depositions that defendant (or party without the burden of proof on an issue) anticipates taking *and* their anticipated completion date;
- 11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
- 12. Specify discovery–beyond initial disclosures–that has been served or accomplished to date.
- 13. State the date discovery can reasonably be completed (including expert discovery).
- 14. Settlement:
  - a. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in the Rule 26(f) meeting. Describe what each party has done or agreed to do to bring about a prompt resolution of this dispute.
  - b. From the attorneys’ discussion with their client(s), state the alternative dispute resolution techniques that are reasonably suitable.
- 15. Magistrate judges may now hear jury and non-jury trials. Indicate the parties’ joint position on (a) referral of this case to a magistrate judge for pretrial proceedings, and (b) a trial before a magistrate judge.
- 16. State whether a jury demand has been made and if it was made on time.
- 17. Specify the number of hours it will take to try this case (including jury selection, presentation of evidence, counsel’s opening statements and argument, and charging the jury).
- 18. Motions:
  - (a) List pending motions that could be ruled on at the initial pretrial conference.
  - (b) List other pending motions.
- 20. Indicate other matters peculiar to this case, including but not limited to discovery issues pertaining to traditional and electronically stored information, that deserve the special attention of the court at the conference.
- 23. Certify that all parties have filed Disclosure of Interested Persons as directed in the Order for Conference and Disclosure of Interested Persons, listing the date of filing for original and any amendments.
- 24. List the names, bar numbers, addresses, email addresses, and telephone numbers of all counsel.

\_\_\_\_\_

Counsel for Plaintiff(s)

\_\_\_\_\_

Date

\_\_\_\_\_

Counsel for Defendant(s)

\_\_\_\_\_

Date

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

		§	
,		§	
	Plaintiff(s),	§	
		§	
v.		§	CIVIL ACTION NO. 4: _____
		§	
,		§	
	Defendant(s).	§	
		§	

**DOCKET CONTROL ORDER**

Anticipated Length of Trial: \_\_\_\_\_ Days                      Jury: \_\_\_\_\_    Non-Jury: \_\_\_\_\_

The disposition of this case will be controlled by the following schedule:

1. (a) **NEW PARTIES** shall be joined by: \_\_\_\_\_  
The attorney causing the addition of new parties must provide copies of this Order to new parties.
- (b) **AMENDMENTS to PLEADINGS** by Plaintiff or Counter-Plaintiff shall be filed by: \_\_\_\_\_  
(Absent parties' agreement or court approval, answers may not be amended more than 21 days after this date. Answers to amended claims and counterclaims are due 21 days after amended claims or counterclaims are filed.)
  
2. **EXPERT WITNESSES for PLAINTIFF/COUNTER-PLAINTIFF** shall be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for each opinion.    DUE DATE: \_\_\_\_\_
  
3. **EXPERT WITNESSES for DEFENDANT/COUNTER-DEFENDANT** shall be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for each opinion.    DUE DATE: \_\_\_\_\_
  
- 3a. **REBUTTAL OPINIONS FROM EXISTING EXPERTS** \_\_\_\_\_

4. **DISCOVERY** must be completed by: \_\_\_\_\_  
 Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline.
5. **MEDIATION/ADR:**  
 \_\_\_\_\_ **Required;** \_\_\_\_\_ **Strongly suggested**  
 \_\_\_\_\_ **Parties' Option**  
**ADR TO BE COMPLETED** by: \_\_\_\_\_
6. **DISPOSITIVE MOTIONS** will be filed by: \_\_\_\_\_
7. **ALL OTHER PRETRIAL MOTIONS** (including *Daubert/Kumho* motions, but *not* including other motions in limine) will be filed by: \_\_\_\_\_  
 (Typically this date will match ¶ 6.)
8. **JOINT PRETRIAL ORDER** will be filed by: \_\_\_\_\_  
 Plaintiff is responsible for timely filing the complete Joint Pretrial Order in the form set forth in the published Court's Procedures.
9. **DOCKET CALL** is held in Courtroom 9-F, starting at 2:30 p.m. \_\_\_\_\_  
 on the date listed here. (The Court will set this date.)  
 Absent parties' agreement, no documents filed within 5 days before the Docket Call will be considered at Docket Call without prior permission of the Court to late file.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**NANCY F. ATLAS**  
**UNITED STATES DISTRICT JUDGE**

**APPROVAL REQUESTED:**

\_\_\_\_\_  
 Counsel for Plaintiff(s)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Counsel for Defendant(s)

\_\_\_\_\_  
 Date

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Plaintiff(s),	§	
	§	
	§	
v.	§	Civil Action No. 4: _____
	§	
	§	
Defendant(s).	§	
	§	

**JOINT PRETRIAL ORDER**

**[See generally Judge Atlas’s Court Procedures, § 9.A.]**

**Appearance of Counsel**

List the parties, their respective counsel, and the addresses, email addresses and telephone numbers of counsel in separate paragraphs.

**Statement of the Case**

Give a brief agreed statement of the case for the information of the Court and/or which the Court may read to the jury panel to see if the panel is acquainted with the facts of or parties to the case. Include names, dates and places.

**Jurisdiction**

Briefly set out why the Court has full and complete jurisdiction of the subject matter and the parties. If there is an unresolved jurisdictional question, state the problem.

**Motions**

Identify any pending motions.

### **Contentions of the Parties**

State concisely in separate paragraphs what each party claims.

### **Admissions of Fact**

List all facts that have been stipulated and admitted and require no proof.

### **Contested Issues of Fact**

List all factual issues in controversy necessary to the final disposition of this case.

### **Agreed Applicable Propositions of Law**

Delineate those legal propositions not in dispute.

### **Contested Issues of Law**

State briefly the issues of law in dispute. A memorandum of law should be filed which addresses these issues.

### **Exhibits**

Each counsel must attach to this Joint Pretrial Order a list (in the form shown by Attachment A or a similar form) of all exhibits to be offered and must provide copies of all such exhibits to opposing counsel. This rule applies to rebuttal exhibits except in the limited circumstances when the exhibits cannot be anticipated.

Any counsel requiring authentication of an exhibit must so notify the offering counsel in writing within seven (7) days after the exhibit is made available to opposing counsel for examination. Failure to do so is an admission of authenticity. *See* S.D. TEXAS LOCAL RULE 44.1.

Exhibits listed in the final pretrial order are admissible in evidence unless opposing counsel files written objections within seven calendar days after the joint pretrial order is filed. This rule supersedes S.D. TEXAS LOCAL RULE 46.

The offering party will mark his own exhibits prior to trial and include the party's name, case number, and exhibit number on each exhibit to be offered.

### **Witnesses**

List the names and addresses of witnesses who will or may be called and include a brief statement of the subject matter and substance of their testimony. If a witness is to appear by deposition, cite the inclusive pages and lines to be read or submitted. Objections to those portions (citing pages and lines) with supporting authority must be filed within seven (7) days after the joint pretrial order is filed.

In the event there are any other witnesses to be called at the trial, their names, addresses and the subject matter of their testimony shall be reported to opposing counsel as soon as they are known. This restriction shall not apply to a purely rebuttal or impeaching witness *if* necessity of the witness or the testimony cannot reasonably be anticipated before trial.

### **Settlement**

Include a statement addressing whether or not all settlement efforts have been exhausted, the current settlement demand and offer, and whether the case can reasonably be expected to settle.

### **Trial**

Include in this paragraph the following:

- (a) Whether trial will be Jury or Non-Jury;
- (b) Probable length of trial; and
- (c) Availability of witnesses.

### **Additional Required Attachments**

**Motions in Limine:** State whether any party is filing a Motion in Limine. (All Motions in Limine must be filed with the Pretrial Order.)

### **For Jury Trials include the following:**

- (a) Proposed questions for the venire panel.
- (b) 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 and authority upon which counsel rely.
- (c) Memorandum of Law.



**For Non-Jury Trials include the following:**

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

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Date

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**NANCY F. ATLAS  
UNITED STATES DISTRICT JUDGE**

**APPROVAL:**

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Counsel for Plaintiff(s)

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Counsel for Defendant(s)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

\_\_\_\_\_,  
Plaintiff,

Civil Action/Criminal No. \_\_\_\_\_

Judge: Nancy F. Atlas  
Case Manager: Shelia Ashabraner

v.

Courtroom Deputy: \_\_\_\_\_  
Court Reporter: \_\_\_\_\_

\_\_\_\_\_,  
Defendant.

Proceeding: \_\_\_\_\_

**EXHIBIT LIST OF \_\_\_\_\_**

NO.	DESCRIPTION	Offer	Obj.	DATE ADMIT	DATE N/ADM

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**NOTICE OF THE RIGHT TO PROCEED IN  
A CIVIL CASE BEFORE A MAGISTRATE JUDGE**

With the consent of all the parties, a United States Magistrate Judge may preside in a civil case, including a jury trial and entry of a final judgment.

The choice to proceed before a Magistrate Judge is entirely yours. Tell only the Clerk. Neither the District Judge or Magistrate Judge will be told until and unless all the parties agree.

The District Judge to whom your case is assigned must approve the referral to a Magistrate Judge.

You must use the consent form attached to these procedures. The form also is available from the Clerk.

David Bradley, Clerk  
United States District Clerk  
Southern District of Texas

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	§	
	§	
Plaintiff(s),	§	
	§	
v.	§	Civil Action No. 4: _____
	§	
	§	
	§	
Defendant(s).	§	

**CONSENT TO PROCEED BEFORE  
UNITED STATES MAGISTRATE JUDGE DENA PALERMO  
(Civil Case)**

In accordance with the provisions of 28 U.S.C. § 636(c), the parties to this action waive their rights to proceed before a District Judge of the Court and consent to have United States Magistrate Judge Dena Palermo conduct all further proceedings in the case, including hearings and rulings on motions, pretrial conferences and trial, and the entry of judgment. Counsel for all parties must execute this form.

	for	
	for	
	for	
	for	

**ORDER TO REASSIGN**

It is **ORDERED** that the Clerk of Court reassign this action to **United States Magistrate** to conduct all further proceedings, including hearings and rulings on motions, pretrial conferences and trial, and the entry of final judgment in accordance with 28 U.S.C. § 636(c) and the consent of the parties.

\_\_\_\_\_  
Date

\_\_\_\_\_  
NANCY F. ATLAS  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

_____	§	
Plaintiff(s),	§	
	§	
v.	§	CIVIL CASE NO. _____
	§	
_____	§	
Defendant(s).	§	

**ORDER IN FLSA CASE REQUIRING DISCOVERY**

This Order governs initial discovery obligations in cases with claims under the Fair Labor Standards Act (FLSA). The parties must comply with the following deadlines and requirements:

1. By [DATE], the parties must serve on each other (but not file) copies of the following:

**Plaintiff**<sup>1</sup>:           1. The documents in Plaintiff’s possession, custody, or control that pertain to the unpaid wages claimed in the Complaint.

**Defendant**:           1. The time sheets or other time records and payroll records in Defendant’s possession, custody, or control that pertain to work the Plaintiff performed during the period for which the Plaintiff claims unpaid wages.

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<sup>1</sup> If there is more than one Plaintiff or Defendant, the singular reference to Plaintiff or Defendant includes the plural.

2. Written pay policies and job descriptions pertaining to Plaintiff and his job.

2. By **[Date]**, Plaintiff must answer the Court's Interrogatories attached to this Order, under oath or penalty of perjury, serve a copy on Defendant. The answers should *not* be filed with the Court.

3. In collective actions, the exchange of documents in Paragraph 1 will occur for the named Plaintiffs and for the opt-in Plaintiffs who join the action before a court-approved opt-in notice is issued. This document exchange will occur within 21 days after the opt-in consent notices are filed with the Court. Each opt-in Plaintiff will file and serve his or her respective answers to the Court's Interrogatories within an additional 21 days.

4. By **[DATE]**, counsel for the Plaintiff and the Defendant must meet and confer in person in good faith effort to settle all pending issues, including attorneys' fees and costs.<sup>2</sup> The parties, including a representative of each corporate party with full authority, will at a minimum be available by telephone during the conference to consider and approve any settlement.

5. By **[DATE]**, counsel must jointly file a Report Regarding Settlement that informs the Court:

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<sup>2</sup> In the case of an individual party who is not represented by counsel, the individual must comply with the provisions of this Order.

- (a) Whether the parties have settled the case. If so, a 60-day conditional order of dismissal will be entered by the Court.
- (b) That the parties have not settled the case but want to continue settlement discussions for a specific identified period.
- (c) Whether the parties want a formal mediation conference before a specific mediator on or before a specified date and, if so, who and when.
- (d) Whether either party requests a settlement conference before the United States Magistrate Judge who, on the parties' consent, will have the authority to approve the settlement as a "fair and reasonable resolution of a bona fide dispute" over FLSA issues without additional filings.
- (e) Whether the parties have exhausted all settlement efforts. If so, the parties must hold a Rule 26(f) conference, and file a Joint Discovery/Case Management Plan within 14 days of conclusion of settlement discussions.

6. Until the parties file the Joint Discovery/Case Management Plan, all discovery in this case other than that provided in this Order is **STAYED**.

7. In the event no settlement is reached under these procedures, and this Court later grants a motion permitting notice to be sent to similarly situated individuals advising them of their right to opt-in, the limitations period for any person

receiving notice will be tolled from the date of this Order until the parties file their Rule 26(f) Joint Discovery/Case Management Plan and the Court lifts the stay in this case.

**8.** If the parties settle at a later time, they must immediately advise the Court and promptly submit a joint motion to approve the settlement.

**9.** Due to the volume of cases based on the FLSA, the Court expects strict adherence to these deadlines. Exceptions will be granted only for compelling reasons. Failure to comply may result in sanctions, including but not limited to the dismissal of the case and the striking of pleadings.

**10.** Either party may move to alter this schedule for good cause.

Signed at Houston, Texas, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

---

NANCY F. ATLAS  
SENIOR UNITED STATES DISTRICT JUDGE



## **Court Interrogatories**

1. During what period of time were you employed by the Defendant?
  2. Who was your immediate supervisor?
  3. Did you have a regularly scheduled work period? If so, specify.
  4. What was your title or position? Briefly describe your job duties.
  5. What was your regular rate of pay?
  6. What is the nature of your claim (check all that apply)?
    - Off the clock work (Defendant failed to record, or prohibited you from recording, all of your working time;
    - Misclassification (Defendant mistakenly classified you as exempt from overtime);
    - Misclassification (Defendant failed to correctly calculate your compensation);
    - Other (Please describe):
- 
7. Provide an accounting of your claim, including:
    - (a) dates
    - (b) regular hours worked
    - (c) over-time hours worked
    - (d) pay received versus pay claimed

- (e) total amount claimed
8. If you have brought this case as a collective action:
- (a) Describe the class of employees you seek to include in this action.
  - (b) Has an opt-in notice been filed for every potential opt-in Plaintiff who has identified himself or herself as a person who wishes to join this action?
9. Please specify all attorney's fees and costs incurred to date. With respect to attorney's fees, please provide the hourly rate(s) sought and the number of hours expended by each person who has billed time to this case.
10. When did you (or your attorney) first complain to your employer about alleged violations of the FLSA?
11. Was this complaint written or oral? (If a written complaint, please attach a copy).
12. What was your employer's response? (If a written response, please attach a copy).

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PLAINTIFF (PRINT & SIGN NAME)  
[Plaintiff's answers must be sworn to  
and the signature must be notarized.]

**INITIAL DISCOVERY PROTOCOLS**  
**FOR EMPLOYMENT CASES ALLEGING ADVERSE ACTION**

**PART 1: INTRODUCTION AND DEFINITIONS**

**(1) Statement of purpose**

a. The Initial Discovery Protocols for Employment Cases Alleging Adverse Action is a proposal designed to be implemented as a pilot project by individual judges throughout the United States District Courts. The project and the product are endorsed by the Civil Rules Advisory Committee.

b. In participating courts, the Initial Discovery Protocols will be implemented by this court's order and will apply to all employment cases that challenge one or more actions alleged to be adverse, **except**:

- i. Class actions;
- ii. Cases in which the allegations involve only the following:
  1. Discrimination in hiring;
  2. Harassment/hostile work environment;
  3. Violations of wage and hour laws under the Fair Labor Standards Act (FLSA);
  4. Failure to provide reasonable accommodations under the Americans with Disabilities Act (ADA);
  5. Violations of the Family Medical Leave Act (FMLA); or
  6. Violations of the Employee Retirement Income Security Act (ERISA).

If any party believes that there is good cause why a particular case should be exempted, in whole or in part, from this pilot program, that party may raise such reason with the Court.

c. The Initial Discovery Protocols are not intended to preclude or to modify the rights of any party for discovery as provided by the Federal Rules of Civil Procedure (F.R.C.P.) and other applicable local rules, but they are intended to supersede the parties' obligations to make initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1). The purpose of the pilot project is to encourage parties and their counsel to exchange the most relevant information and documents early in the case, to assist in framing the issues to be resolved and to plan for more efficient and targeted discovery.

d. The Initial Discovery Protocols were prepared by a group of highly experienced attorneys from across the country who regularly represent plaintiffs and/or defendants in employment matters. The information and documents identified are those most likely to be requested automatically by experienced counsel in any similar case. They are unlike

initial disclosures pursuant to F.R.C.P. 26(a)(1) because they focus on the type of information most likely to be useful in narrowing the issues for employment discrimination cases.

(2) **Definitions.** The following definitions apply to cases proceeding under these Initial Discovery Protocols.

a. **Concerning.** The term “concerning” means referring to, describing, evidencing, or constituting.

b. **Document.** The terms “document” and “documents” are defined to be synonymous in meaning and equal in scope to the terms “documents” and “electronically stored information” as used in F.R.C.P. 34(a).

c. **Identify (Documents).** When referring to documents, to “identify” means to give, to the extent known: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) the author(s), according to the document; and (v) the person(s) to whom, according to the document, the document (or a copy) was to have been sent; or, alternatively, to produce the document.

d. **Identify (Persons).** When referring to natural persons, to “identify” means to give the person’s: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to the plaintiff or defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(3) **Instructions**

a. For this Initial Discovery, the relevant time period begins three years before the date of the adverse action, unless otherwise specified.

b. This Initial Discovery is not subject to objections except upon the grounds set forth in F.R.C.P. 26(b)(2)(B).

c. If a partial or incomplete answer or production is provided, the responding party shall state the reason that the answer or production is partial or incomplete.

d. This Initial Discovery is subject to F.R.C.P. 26(e) regarding supplementation and F.R.C.P. 26(g) regarding certification of responses.

e. This Initial Discovery is subject to F.R.C.P. 34(b)(2)(E) regarding form of production.

## **PART 2: PRODUCTION BY PLAINTIFF.**

### **(1) Timing**

The plaintiff's Initial Discovery shall be provided within 30 days after the defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

### **(2) Documents that Plaintiff must produce to Defendant**

- a. All communications concerning the factual allegations or claims at issue in this lawsuit between the plaintiff and the defendant.
- b. Claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. Documents concerning the terms and conditions of the employment relationship at issue in this lawsuit.
- e. Diary, journal, and calendar entries maintained by the plaintiff concerning the factual allegations or claims at issue in this lawsuit.
- f. The plaintiff's current resume(s).
- g. Documents in the possession of the plaintiff concerning claims for unemployment benefits, unless production is prohibited by applicable law.
- h. Documents concerning: (i) communications with potential employers; (ii) job search efforts; and (iii) offer(s) of employment, job description(s), and income and benefits of subsequent employment. The defendant shall not contact or subpoena a prospective or current employer to discover information about the plaintiff's claims without first providing the plaintiff 30 days notice and an opportunity to file a motion for a protective order or a motion to quash such subpoena. If such a motion is filed, contact will not be initiated or the subpoena will not be served until the motion is ruled upon.
- i. Documents concerning the termination of any subsequent employment.
- j. Any other document(s) upon which the plaintiff relies to support the plaintiff's claims.

### **(3) Information that Plaintiff must produce to Defendant**

- a. Identify persons the plaintiff believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.

- b. Describe the categories of damages the plaintiff claims.
- c. State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action, whether any application has been granted, and the nature of the award, if any. Identify any document concerning any such application.

### **PART 3: PRODUCTION BY DEFENDANT**

#### **(1) Timing**

The defendant's Initial Discovery shall be provided within 30 days after the defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

#### **(2) Documents that Defendant must produce to Plaintiff**

- a. All communications concerning the factual allegations or claims at issue in this lawsuit among or between:
  - i. The plaintiff and the defendant;
  - ii. The plaintiff's manager(s), and/or supervisor(s), and/or the defendant's human resources representative(s).
- b. Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. The plaintiff's personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff's supervisor(s), manager(s), or the defendant's human resources representative(s), irrespective of the relevant time period.
- e. The plaintiff's performance evaluations and formal discipline.
- f. Documents relied upon to make the employment decision(s) at issue in this lawsuit.
- g. Workplace policies or guidelines relevant to the adverse action in effect at the time of the adverse action. Depending upon the case, those may include policies or guidelines that address:
  - i. Discipline;
  - ii. Termination of employment;
  - iii. Promotion;
  - iv. Discrimination;
  - v. Performance reviews or evaluations;
  - vi. Misconduct;
  - vii. Retaliation; and

- viii. Nature of the employment relationship.
- h. The table of contents and index of any employee handbook, code of conduct, or policies and procedures manual in effect at the time of the adverse action.
- i. Job description(s) for the position(s) that the plaintiff held.
- j. Documents showing the plaintiff's compensation and benefits. Those normally include retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation.
- k. Agreements between the plaintiff and the defendant to waive jury trial rights or to arbitrate disputes.
- l. Documents concerning investigation(s) of any complaint(s) about the plaintiff or made by the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not otherwise privileged.
- m. Documents in the possession of the defendant and/or the defendant's agent(s) concerning claims for unemployment benefits unless production is prohibited by applicable law.
- n. Any other document(s) upon which the defendant relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the adverse action.

**(3) Information that Defendant must produce to Plaintiff**

- a. Identify the plaintiff's supervisor(s) and/or manager(s).
- b. Identify person(s) presently known to the defendant who were involved in making the decision to take the adverse action.
- c. Identify persons the defendant believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- d. State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action. State whether the defendant has provided information to any third party concerning the application(s). Identify any documents concerning any such application or any such information provided to a third party.

The Initial Discovery Protocols for Employment Cases Alleging Adverse Action are designed to achieve the goal of more efficient and targeted discovery. If a protective order will be entered in a case to which the Initial Discovery Protocols applies, immediate entry of the order will allow the parties to commence discovery without delay. In furtherance of that goal, the Employment Protocols Committee offers the following Model Protective Order. Recognizing that the decision to enter a protective order and the parameters of any such order rest within the Court's sound discretion and is subject to local practice, the following provisions are options from which the Court might select.

### **MODEL PROTECTIVE ORDER**

It is hereby ordered by the Court that the following restrictions and procedures shall apply to certain information, documents and excerpts from documents supplied by the parties to each other in response to discovery requests:

1.  Counsel for any party may designate any document, information contained in a document, information revealed in an interrogatory response or information revealed during a deposition as confidential if counsel determines, in good faith, that such designation is necessary to protect the interests of the client. Information and documents designated by a party as confidential will be stamped "CONFIDENTIAL." "Confidential" information or documents may be referred to collectively as "confidential information."
2.  Unless ordered by the Court, or otherwise provided for herein, the Confidential Information disclosed will be held and used by the person receiving such information solely for use in connection with the above-captioned action.
3.  In the event a party challenges another party's confidential designation, counsel shall make a good faith effort to resolve the dispute, and in the absence of a resolution, the challenging party may thereafter seek resolution by the Court. Nothing in this Protective Order constitutes an admission by any party that Confidential Information disclosed in this case is relevant or admissible. Each party specifically reserves the right to object to the use or admissibility of all Confidential Information disclosed, in accordance with applicable law and Court rules.
4.  Information or documents designated as "confidential" shall not be disclosed to any person, except:



- a.  The requesting party and counsel, including in-house counsel;
  - b.  Employees of such counsel assigned to and necessary to assist in the litigation;
  - c.  Consultants or experts assisting in the prosecution or defense of the matter, to the extent deemed necessary by counsel;
  - d.  Any person from whom testimony is taken or is to be taken in these actions, except that such a person may only be shown that Confidential Information during and in preparation for his/her testimony and may not retain the Confidential Information; and
  - e.  The Court (including any clerk, stenographer, or other person having access to any Confidential Information by virtue of his or her position with the Court) or the jury at trial or as exhibits to motions.
5.  Prior to disclosing or displaying the Confidential Information to any person, counsel shall:
- a.  inform the person of the confidential nature of the information or documents; and
  - b.  inform the person that this Court has enjoined the use of the information or documents by him/her for any purpose other than this litigation and has enjoined the disclosure of that information or documents to any other person.
6.  The Confidential Information may be displayed to and discussed with the persons identified in Paragraphs 4(c) and (d) only on the condition that prior to any such display or discussion, each such person shall be asked to sign an agreement to be bound by this Order in the form attached hereto as Exhibit A. In the event such person refuses to sign an agreement in the form attached as Exhibit A, the party desiring to disclose the Confidential Information may seek appropriate relief from the Court.
7.  The disclosure of a document or information without designating it as “confidential” shall not constitute a waiver of the right to designate such document or information as Confidential Information provided that the material is designated pursuant to the procedures set forth herein no later than that latter of fourteen (14) days after the close of discovery or fourteen (14) days after the document or information’s production. If so designated, the document or information shall thenceforth be treated as Confidential Information subject to all the terms of this Stipulation and Order.

8.  All information subject to confidential treatment in accordance with the terms of this Stipulation and Order that is filed with the Court, and any pleadings, motions or other papers filed with the Court disclosing any Confidential Information, shall be filed under seal to the extent permitted by law (including without limitation any applicable rules of court) and kept under seal until further order of the Court. To the extent the Court requires any further act by the parties as a precondition to the filing of documents under seal (beyond the submission of this Stipulation and Order Regarding Confidential Information), it shall be the obligation of the producing party of the documents to be filed with the Court to satisfy any such precondition. Where possible, only confidential portions of filings with the Court shall be filed under seal.

9.  At the conclusion of litigation, the Confidential Information and any copies thereof shall be promptly (and in no event later than thirty (30) days after entry of final judgment no longer subject to further appeal) returned to the producing party or certified as destroyed, except that the parties' counsel shall be permitted to retain their working files on the condition that those files will remain confidential.

The foregoing is entirely without prejudice to the right of any party to apply to the Court for any further Protective Order relating to confidential information; or to object to the production of documents or information; or to apply to the Court for an order compelling production of documents or information; or for modification of this Order. This Order may be enforced by either party and any violation may result in the imposition of sanctions by the Court.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
HONORABLE \_\_\_\_\_

**EXHIBIT A to Protective Order**

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled \_\_\_\_\_, Case No. \_\_\_\_\_ (\_\_\_\_\_ District), \_\_\_\_\_ have been designated as confidential. I have been informed that any such documents or information labeled “CONFIDENTIAL --- PRODUCED PURSUANT TO PROTECTIVE ORDER” are confidential by Order of the Court.

I hereby agree that I will not disclose any information contained in such documents to any other person. I further agree not to use any such information for any purpose other than this litigation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Dated

Signed in the presence of:

\_\_\_\_\_  
Attorney for \_\_\_\_\_

\_\_\_\_\_  
Dated