



JUDGE ANDREW S. HANEN

United States Courthouse
515 Rusk Street, Room 8631
Houston, Texas 77002
(713) 250-5908

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Note: This is helpful information. Nothing in this packet supersedes formal rules or common sense.

1. **CONTACT WITH COURT PERSONNEL**

- A. Case-related inquiries are to be made to the Case Manager only at (713) 250-5518 or to Rhonda_Hawkins@txs.uscourts.gov. **E-mail is the preferred method of communication with the Case Manager. Inquiries should not be made to the Court, the Court's judicial assistant, or law clerks.**
- B. Information about the filing of documents, entry of orders, or docket entries should be obtained by logging into CM/ECF or PACER, or from the Clerk's Office at (713) 250-5500.
- C. Correspondence.
 - 1) Unless pursuant to Section 8A, do not address substantive issues in letter form addressed to the Court because they may not be docketed or included in the appellate record.
 - 2) Case-related correspondence must be addressed to and e-filed with:

United States District Clerk
515 Rusk Street, Room 5300
Houston, Texas 77002
 - 3) All counsel of record should be copied.
- D. File-stamped courtesy copies of urgent documents may be sent to Chambers (via the Case Manager) after the originals are filed with the Clerk of the Court. Obviously, opposing counsel should be copied at the same time unless they are automatically copied electronically. Courtesy copies should designate the docket number of the filed document. They should include all exhibits and should not be redacted even if the filed motion is.
- E. All counsel are advised to keep their email addresses current in CM/ECF as the Clerk of the Court provides transmission of orders and motions through that interface.

2. **EMERGENCIES**

- A. Applications for restraining orders or other applications for immediate relief must be made through the Clerk's Office: U.S. District Clerk's Office, 515 Rusk Street, Room 5300, Houston, Texas 77002, (713) 250-5500.
 - 1) Applications shall be presented to the Court via the Case Manager following counsel's affirmation that the opposing party has been contacted and that both parties can be available for a conference before the Court.
 - 2) *Ex parte* applications for restraining orders are discouraged and will not be entertained by the Court unless the requirements of FED. R. CIV. P. 65(b) have been satisfied.
- B. Counsel shall email or contact the Case Manager at (713) 250-5518 for matters requiring immediate attention.
- C. Motions for extension of deadlines in the Scheduling and Docket Control Order are not emergencies.
- D. In addition to any physical filing or electronic filing of emergency motions, counsel shall send a file-stamped courtesy hard copy of emergency motions directly to the Case Manager so that they quickly reach the Court's attention.

3. **ELECTRONIC FILINGS**

- A. The Southern District of Texas requires electronic filing of all pleadings. LR 5.1. This reduces the burden on the Clerk's Office and increases the efficiency of the Court. Generally, parties should not submit courtesy hard copies to the Case Manager. Nevertheless, parties should submit courtesy hard copies to the Case Manager if any part of a filing is sealed. Additionally, the Court may request a courtesy hard copy of any party at any time and the parties should promptly deliver the copy to Chambers.
- B. Electronic filings shall be in accordance with [Administrative Procedures for Electronic Filing in Civil and Criminal Cases](#). Questions regarding electronic filing should be directed to the Clerk's Office.

- C. Voluminous, double-sided, or irregular documents:
 - 1) Leave of Court is required for the conventional filing of documents greater than 25 pages in length. Such documents should be filed electronically when possible.
 - 2) Leave of Court is required for the conventional filing of documents printed on both sides. Such documents should be filed electronically when possible.
 - 3) Leave of Court is required for the filing of over-sized or irregularly shaped documents which are not capable of being readily imaged by court personnel and equipment. Such documents should be filed electronically when possible.
- D. In cases where a courtesy copy is required, both the courtesy hard copy and the electronic filing must be filed on the same day.
- E. Counsel shall not combine two different and unrelated pleadings (motions, responses, replies, or exhibits) into the same electronically filed document.

4. CONTINUANCES

- A. This Court tries not to set multiple cases for the same day. The Court considers the trial setting in the Scheduling Order to be a real setting. Therefore, counsel are cautioned when proposing trial dates to the Court or the Magistrate Judge to be realistic given the circumstances of the particular case. Joint motions for continuances are not binding on the Court, and they will be granted only at the Court's discretion. Any motions for continuances should include a proposed order with the specific relief requested.
- B. Counsel are reminded that, as required by The Civil Justice Reform Act of 1990, 28 U.S.C. § 473(b)(3), the Cost and Delay Reduction Plan, "all requests for extensions of deadlines from completion of discovery or for postponement of the trial [must] be signed by the attorney and the party making the request."
- C. A trial will not be continued because an expert or medical witness is unavailable. Counsel should anticipate such possibilities and be prepared to present testimony by written deposition, videotaped deposition, or by stipulation.

- D. It is the Court's intention to confer with counsel concerning trial scheduling at the initial pretrial conference, but as stated above, once a trial is scheduled, a continuance will only be granted in extraordinary circumstances.

5. APPEARANCES

- A. All counsel shall be on time. Failure to appear timely shall subject the attorneys and/or their clients to sanctions including dismissal for want of prosecution and/or appropriate adverse ruling or judgment.
- B. An attorney in charge of a case must appear at all hearings or conferences. A Motion to Appear on behalf of the attorney in charge will be granted only upon showing of good cause, and only if the substitute attorney is familiar with the case and has full authority to bind the client. The Motion to Appear must be ruled on in advance of the hearing or conference date.
- C. It is the Court's preference that counsel appear at all hearings. If out-of-town counsel desire to appear by telephone, a written request should be made to the Case Manager as far as reasonably possible in advance of the conference. Email contact with the Case Manager is permitted. If permission to attend by phone is granted, requesting counsel shall make the necessary arrangements and bear all related expenses. Permission to attend by phone will not be granted for pretrial conferences or docket calls. Counsel shall inform opposing counsel that they will be attending by phone to give them the same option. Counsel shall only use a land-based phone.
- D. Counsel will notify the Case Manager **immediately** of the resolution of any matter that is set for trial or hearing.
- E. The Court will not grant a Motion to Appear *Pro Hac Vice* to any attorney whose office is located in the Southern District of Texas, unless they can show that they have applied for admission and have scheduled attendance at the Southern District's attorney admissions workshop. For more information, see the [attorney admissions requirements](#) of the Southern District.

6. TRANSFERRED CASES

When a case is transferred from another district court to Judge Hanen, all deadlines and settings are cancelled pending a new schedule.

7. **MOTION PRACTICE**

- A. With the following qualifications, the Court follows the written motion practice described in the [Local Rules](#).
- B. Unless otherwise indicated in the Scheduling Order entered at the Initial Pretrial Conference, dispositive motions must be filed at least 120 days, and nondispositive motions must be filed at least 45 days, before the date set for final pretrial conference (also referred to as docket call). A *Daubert* motion falls under the rule governing dispositive motions. Motions in limine may be filed with the Final Pretrial Order, but counsel are cautioned not to try to utilize a limine motion in lieu of a motion that should have been filed as a dispositive or *Daubert* motion.
- C. The following requirements now apply to Certificates of Conference under Local Civil Rule 7.1 and Local Criminal Rule 12.2:
 - 1) Parties are expected to make a good faith effort to confer about the disposition of all pretrial motions. All pretrial motions must contain a certificate of conference.
 - 2) A certificate stating that the moving party has been unable to reach agreement with another party will be sufficient only if it specifies:
 - a. The name of the opposing counsel with whom movant's counsel has conferred or attempted to confer;
 - b. If counsel have not been able to confer, the date and time of all attempts to contact opposing counsel; and
 - c. If counsel have conferred but have been unable to reach agreement, the precise nature of the disagreement.
 - 3) The Court will not consider the conference requirement to be satisfied by an unsuccessful attempt to reach opposing counsel occurring less than two full business days before a motion is filed.
 - 4) The Court expects that, in most cases, the conference requirement should eliminate the need to file motions under Rule 16 of the Federal Rules of Criminal Procedure and Rule 404(b) of the Federal Rules of Evidence. Additionally, the Court expects that the conference requirement should

dramatically reduce the length of motions in limine and motions to compel discovery.

- 5) Counsel who repeatedly fail to return phone calls or e-mails relating to the conference requirement will be asked to explain this behavior to the Court. In extreme cases, sanctions may be imposed.
- D. Unless otherwise ordered, counsel **must** respond to an opposed motion within 21 days from the date the motion is filed with the Clerk's Office. If the movant desires to file a reply, it must be filed within 10 days thereafter. The reply should not unnecessarily repeat arguments made in the motion and should only respond to any new arguments, authority, or evidence presented by the opposing party in the response. Failure to respond to a motion will be taken as a representation of no opposition. Failure to file a timely response shall be taken as an indication that the opposing party agrees to the motion and the relief requested. A sur-reply may be filed as per the local rules; but the Court will not wait on a sur-reply to rule. The Court may rule on any motion once it becomes ripe regardless of whether a response, reply, or sur-reply has been filed.
 - E. Responses, replies, and sur-replies must reference the docket entry number of the motion being responded to, preferably in the first paragraph.
 - F. After the motion, response, reply, and sur-reply are filed, the Court will not entertain any additional or supplemental filings unless they are accompanied by a motion for leave to file. The motion for leave to file must explain why the argument, evidence, or legal authority contained in the additional filing was not included in earlier documents already in the record and state a specific reason why the Court should grant the motion for leave in the interests of justice.
 - G. Any motion, response, or reply filed after the time limits contained in these rules must be accompanied by a motion for leave to file that explains why the document was not timely filed. The Court will only grant a motion for leave to file a motion, response, or reply late if good cause is shown. A motion, response, or reply filed late, and not accompanied by a motion for leave, will not be considered.
 - H. Unless a motion hearing is set by the Court, all motions to which the non-movant has had 21 days to respond will be decided without the necessity of a hearing.
 - I. 1) Requests for oral argument are not necessary. The Case Manager will notify counsel should the Court determine that a hearing on the motion would be

beneficial. If a motion is pending, all ripe pending motions will be addressed at the next status conference unless counsel are specifically notified to the contrary.

2) While requests for hearings are not needed, counsel may indicate if the movant's lawyer is the one who actually researched and drafted the motion and if that lawyer is qualified as a young lawyer as defined in Paragraph K.

J. If counsel anticipate the need to offer evidence and testimony, leave to do so must be obtained from the Court in advance.

K. Young Lawyers. Today there are fewer opportunities for lawyers to speak in court. This is particularly true for lawyers with less than seven years of experience. The Court strongly encourages more experienced senior or supervisory lawyers and their clients to allow less experienced lawyers to have the primary or only speaking roles in pretrial or motion conferences, and in trials and other proceedings when evidence and arguments are presented. This opportunity is particularly important and appropriate when the less experienced lawyer has drafted or contributed significantly to the underlying motion or response or to the trial or hearing preparation.

The Court understands that, in some circumstances, it may not be appropriate to allow a less experienced lawyer such a prominent role. If the only lawyer who drafted or substantially prepared the motion, brief, or evidentiary presentation is the senior lawyer, or if the motion is dispositive in a "bet-the-company" case, litigants may justifiably want the senior lawyer to do all or most of the in-court presentation. Excluding these rare cases, it is crucial to provide substantive speaking opportunities to less experienced lawyers. The Court strongly encourages all lawyers and their clients to do so. The Court will take this into consideration in deciding whether to grant requests for oral argument on motions or issues that the Court would usually or otherwise decide on the papers.

L. All motions should incorporate supporting briefs or authority and pertinent exhibits. Motions are not to exceed twenty pages. Briefs must be filed together with or incorporated within a motion, response, or reply.

1) All briefs and memoranda of law must be concise, pertinent, and well organized. All briefs, legal memorandum, motions, and pleadings of any kind shall be limited to 25 pages, unless permitted by the Court to exceed this limit.

- 2) All briefs and memoranda must contain:

Statement of the Issues to be Ruled upon by the Court: a short statement highlighting the issues before the Court with supporting authority and standard of review for each issue.

Summary of the Argument: a short summary divided under appropriate headings and succinctly setting forth separate points.

Conclusion: a short conclusion stating the precise relief sought.

- 3) Any brief or memorandum with more than 10 pages of argument must also contain the following items:

Table of Contents: setting forth the page number of each section, including all headings designated in the body of the brief or memorandum.

Table of Authorities: listing cases, statutes, rules, textbooks, and other authorities, arranged alphabetically by category.

Statement of the Nature and Stage of the Proceeding.

- M. References to evidence in support of or in opposition to a motion must be specific, citing page and line numbers for depositions, or page and paragraph number for any other type of exhibit.
- N. If motions are decided without a hearing or are taken under advisement, the Court will make a ruling as soon as possible, and counsel will be furnished with copies of orders.
- O. All motions should be accompanied by a proposed order stating the exact relief sought.
- P. No motion to dismiss for failure to state a claim or counterclaim under FED. R. CIV. P. 12(b)(6), or motion for judgment on the pleadings on a claim or counterclaim under FED. R. CIV. P. 12(c), will be considered or decided unless the moving party includes a certification that, before filing the motion, the movant notified the opposing party of the issues asserted in the motion and the parties tried but could not agree that the pleading deficiency could be cured in any part by a permissible amendment offered by the pleading party. The movant may comply with this rule

through personal, telephonic, or written notice of the issues it intends to assert in a motion to dismiss. A motion that does not contain the required certification may be stricken without further notice.

8. **DISCOVERY AND OTHER PRETRIAL DISPUTES**

- A. The Court believes that most discovery disputes can be resolved by counsel without the Court's intervention, especially those dealing with (1) scheduling, (2) the number, length, and form of oral and written discovery requests, (3) the responsiveness of answers to oral and written questions, and (4) the mechanics of document production, including protective orders and the proper method of raising claims of privilege.

Any party wishing to raise disputed discovery or other pretrial matters must arrange for a conference with the Court before filing any motion, brief, or accompanying material. The party must email the Case Manager and opposing counsel to arrange for a pre-motion conference. Prior to arranging for this conference, the parties must have actually conferred in an attempt to work out the issues. Merely sending an e-mail or making a phone call is **not** a valid attempt to work out the dispute. The attorneys must have actually talked. See Section 7C above.

The Court will schedule the pre-motion conference as soon as practicable commensurate to the demands of its docket, generally within a few days after the request is made. Unless otherwise directed, counsel may participate only by a land-based telephone.

The party seeking the conference must submit a one- to two-page letter to the Court with copies to all counsel and unrepresented parties, identifying the disputes and setting out the issues to be addressed. This is not a brief and need not set out case law or argument. Instead, the letter is an agenda for the pre-motion conference and should simply set out the dispute. Opposing parties must respond in similar fashion before the Conference, with the same limitations. The letters must include a written statement that counsel have actually conferred in a good-faith effort to resolve the issues but are unable to reach an agreement.

To the extent possible, the disputed issues will be resolved at the pre-motion conference, without the need for a formal motion or response. If the Court cannot resolve all or part of the issues raised without a written submission and response, the issues to be addressed and a filing schedule will be set during the conference.

- B. In order to curtail undue delay in the administration of justice, the Court will not hear discovery motions unless moving counsel has advised the Court, in the motion, that counsel have conferred in a good faith effort to resolve the matters in dispute but are unable to reach an agreement. If counsel have been unable to confer because of unavailability or unwillingness of opposing counsel to do so, the statement shall recite the facts concerning attempts to confer. Routine motions for sanctions for discovery abuse are discouraged. Sanctions should be sought only in those rare instances when they are necessary and merited.
- C. Motions for extension of discovery deadlines must be filed far enough in advance of the deadline so that opposing counsel may respond prior to the deadline.

9. COPIES OF AUTHORITIES AND OTHER MATERIAL CITED

- A. Please append copies of cases and the relevant portions of authorities that are cited in a brief, memorandum, or motion if the authorities are not found in the Federal Rules of Civil Procedure, United States Code, United States Supreme Court Reporter, Federal Reporter, Federal Rules Decisions, Federal Supplement, Southwestern Reporter Third, Vernon's Revised Statutes and Codes Annotated, or through Westlaw.
- B. Copies of any affidavits, exhibits, deposition testimony, or other discovery referenced should also be contained in the appendix.
- C. All appendices should contain a paginated table of contents and should be tabbed such that the Court can locate the materials more readily.

10. INITIAL PRETRIAL AND SCHEDULING CONFERENCE

- A. Joint Discovery/Case Management Plan
 - 1) At least 14 days before the conference, counsel must file a joint case management plan including the identity and purpose of witnesses, sources and types of documents, and other requirements for a prompt and inexpensive preparation of the case for disposition by motion or trial. *See* FED. R. CIV. P. 26(f).
 - 2) A form Joint Discovery/Case Management Plan is attached.

- B. The parties may agree on additional deadlines for completion of pretrial matters and may bring a proposed Scheduling Order with them to the initial pretrial conference. Suggest a realistic trial date.
- C. Attached is a form Scheduling Order used by the Court.
- D. The Court will, to the extent possible, honor all dates chosen in the case management plan. Counsel are advised to give these dates careful consideration as the Court will not automatically honor agreements between counsel to alter such dates in the case management plan. Agreements between counsel changing deadlines for dispositive motions, replies thereto, final pretrial order, final pretrial conference, and jury selection will not be honored. Counsel may change other deadlines, if all parties agree and a letter memorializing the change signed by counsel for all the parties is filed with the Court. The initial conference will be conducted by the United States Magistrate Judge.

11. **REQUIRED PRETRIAL MATERIALS**

- A. Pretrial Disclosures
 - 1) The pretrial disclosures relate to the evidence that the party may present at trial, other than solely for impeachment. Each party must provide the following information to the other side:
 - a. The identity of witnesses, including separately identifying which witnesses the party intends to present and those that it may call if the need arises.
 - b. The designation of those witnesses whose testimony is expected to be presented by deposition, including a transcript of the pertinent portions of testimony to be presented. Use of depositions will be governed by the Federal Rules, unless leave of Court is obtained.
 - c. The appropriate identification of each document or exhibit to be represented, including any summaries, separately identifying which documents the party expects to present and those that the party may present if the need arises.
 - 2) Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. *See* FED. R. CIV. P. 26(a)(3). *The opposing party*

must, within 14 days of the disclosures, serve objections to admissibility of witness testimony or exhibits. Failure to timely object waives all objections, except as to relevancy-based objections under FRE 402 and FRE 403. See FRCP 26(a)(3)(B).

B. Joint Pretrial Order

- 1) Counsel for the plaintiff is responsible for ensuring that the Joint Pretrial Order is filed on time. Defense Counsel are instructed to cooperate in this endeavor.
- 2) Follow the form distributed by the Court, adapting it within reason to the size and type of case. The Joint Pretrial Order must be signed by all counsel.
- 3) A form Joint Pretrial Order is attached.

C. Other Required Documents

- 1) With the filing of the Joint Pretrial Order, each party must file the following documents separately (captioned, signed by counsel, and with service certified):
- 2) Jury Trials:
 - a. Proposed voir dire questions, proposed jury instructions, definitions, and interrogatories.
 - (1) The jury instructions and interrogatories must be simple and concise. If they are not e-filed in a format that may be used by the Court, counsel should email jury instructions to the Case Manager in Microsoft Word.
 - (2) Each requested instruction, definition, and interrogatory must be numbered and presented on a separate sheet of paper with the citation of authority upon which counsel rely.
 - (3) Failure to file same will be deemed to be a waiver of any such question, instruction, definition or interrogatory and such failure will be deemed as agreement with the charge as given by the Court.

- b. Memorandum of Law.
- 3) Non-Jury Trials:
 - a. Proposed Findings of Fact and Conclusions of Law.
 - (1) Each proposed conclusion of law must cite supporting authority.
 - (2) Counsel are strongly encouraged to include references to testimony and exhibits that support each proposed finding of fact.
 - (3) Counsel must e-file the originals, provide hard copies to the Case Manager, and email the Word version to the Case Manager.
 - b. Memorandum of Law should be e-filed according to the prevailing rule. Hard copies need only be filed of those authorities not readily available.
 - c. Parties must file their exhibit list, objections to the exhibits and their witness list for all trials and hearings. (See attached form).

12. **TRIAL SETTINGS**

- A. The Court uses the final pretrial conference as docket call.
 - 1) All pending motions may be ruled on at docket call, and a case will be set for trial if the complete Joint Pretrial Order has been filed.
 - 2) The Court maintains a trailing docket during which a case is subject to call to trial on short notice.
- B. At the Pretrial Conference, the Court will address any outstanding motions, objections to exhibits, and deposition proffers. The parties are to provide the Court a copy of all potential exhibits at the Pretrial Conference.

For any deposition proffers and counter-proffers, the party making the proffer will provide a copy of the proffer, counter-proffer and a complete copy of the deposition

to the Court five days prior to the Pretrial Conference for the Court's review. Rulings on admission will be made at the Pretrial Conference.

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

13. EXHIBITS

- A. All exhibits must be marked and exchanged among counsel prior to trial. The offering party will mark his own exhibits with the party's name, case number, and exhibit number on each exhibit to be offered.
- B. Any counsel requiring authentication of an exhibit must notify 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.
- C. Subject to Section 11A which controls, the Court will admit all exhibits listed in the Final Joint Pretrial Order into evidence unless opposing counsel files written objections supported by authority pursuant to the requirements of Rule 26(3)(B). Counsel are expected to be prepared to address the admission exhibits at the pretrial conference.
- D. Counsel will not pass exhibits to the jury during trial without identifying them to opposing counsel and obtaining permission in advance from the Court. All admitted exhibits will go to the jury during its deliberations.
- E. In addition to the original exhibits, counsel for each party is required to provide the Court with a copy of that party's exhibits in a properly tabbed and indexed notebook.
- F. Counsel are advised to plan on the Court admitting only admissible, relevant, and needed exhibits. Wholesale listing of documents is burdensome to the Court and the jury and will not be allowed.
- G. All exhibits must be withdrawn at the conclusion of the trial by the party that submitted the exhibit. Each party will sign a "Receipt for Withdrawal of Exhibits," after which all admitted exhibits will be returned to the appropriate party. Each party is responsible for entering their exhibit on the Court's ECF system.

14. EQUIPMENT

- A. Counsel are responsible for providing any equipment necessary to facilitate the presentation of their case (e.g. PowerPoint, etc.). Contact the Case Manager/Court Reporter prior to trial to see what equipment will be needed and to assure your equipment works in Judge Hanen's courtroom. This includes providing any special equipment that the jury will need to access exhibits when it deliberates.
- B. Easels with writing pads and drawing boards are available for use in the courtroom.
- C. A Document Camera is available for projecting letter-sized or smaller documents, including pictures. VGA and HDMI connections for laptops to project documents or videos to the jury are available at counsel tables.
- D. Any requests for a daily copy provided by the Court Reporter should be handled before the beginning of trial. The Court Reporter reserves the right to not provide a daily copy.

15. COURTROOM PROCEDURES

- A. Hours: The Court's hours during trial vary depending upon the type of case and the needs of the parties, counsel, witnesses, and the Court. Trials will normally convene at 8:30-9:00 a.m. and adjourn at 5:00-6:00 p.m. depending on the status of the case and witnesses. Recesses include lunch between 12:00 noon and 1:30 p.m., as well as morning and afternoon breaks.
- B. Access at Other Times: Counsel must arrange access to the courtroom in advance with the Case Manager to set up equipment or exhibits before or after normal hours of court.
- C. Telephones: Telephone messages for counsel will not be taken by the Court's staff, and counsel shall refrain from requesting use of telephones in chambers. Public telephones are not generally available. Cell phones are not allowed in the courtroom without the Court's permission.
- D. Filing Documents: Two copies of documents filed immediately prior to and during the trial should be submitted to the Case Manager.

E. Decorum:

- 1) Counsel and parties will comply with the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyers Creed and the Local Rules adopted by the Southern District of Texas. These procedures are strictly enforced. (See also the Courtroom Etiquette attachment).
- 2) Counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, smoking, or reading newspapers, books, etc., in the courtroom. No such articles are allowed in the courtroom. No cellular telephones, iPads or other tablets, computers, or beepers are allowed in the courtroom without the Court's permission. If permission is given, all such devices shall be silenced. No recordings of any kind are allowed. Any person who violates this policy should be prepared to forfeit that device. Make arrangements with the Case Manager in advance.

F. Witnesses:

- 1) Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. Witnesses shall be questioned while standing at the podium.
- 2) Counsel must obtain Court's permission before approaching a witness.
- 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.
- 4) Counsel should bear in mind the Court's hours and arrange for witnesses accordingly. The Court will not recess to permit counsel to call a missing witness unless he or she has been subpoenaed and has failed to appear.

G. Seating:

- 1) The Court has designated the counsel table nearest the jury as the plaintiff's table; seating at the respective tables is determined on a first come first served basis on the first day of trial.

- 2) Once counsel have determined their seating arrangement, the Case Manager or reporter will note their position on a chart for the Court and there will be no change once trial has begun, except at the Court's direction.
 - 3) Enter and leave the courtroom only by the front doors; do not use the Court's entrances or side doors.
 - 4) Stand to make objections and remain standing until the Judge has ruled or you have been otherwise instructed.
- H. Deliberations: While the jury deliberates, counsel are to remain in or near the courtroom to be available for jury notes or a verdict. Counsel should supply a telephone number to the Case Manager for contact during deliberations.
- I. Ex-juror contact: After the jury and counsel are excused, neither counsel nor their clients, agents, or representatives may contact jurors without the Court's permission.

16. VOIR DIRE

- A. In general, the Court will conduct the initial examination of the venire. In most cases the Court will allow counsel a limited time to conduct the voir dire. This issue should be raised at a pretrial conference or by motion.
- B. Proposed voir dire questions must be filed with the clerk with the Joint Pretrial Order.

17. DEPOSITIONS

- A. The Court will generally accept the parties' agreement to use relevant portions of a deposition at trial even though the witness is available; otherwise, follow FED. R. CIV. P. 32. Nevertheless, the Court cautions counsel against the overuse of deposition testimony. Jurors do get bored.
- B. Counsel will designate the portion of any deposition to be read by citing page and line numbers in the Joint Pretrial Order. Objections to those portions, citing page and line numbers, with supporting authority must be filed at least three (3) business days before the final pretrial conference. Counsel making such objection shall have the burden of securing a ruling from the Court either at the final pretrial conference or at some other time before the trial has begun.

- C. Use of videotape depositions is permitted if counsel voluntarily edit the offer to resolve objections and incorporate rulings by the Court. The Court prefers that deposition offers be presented in pagination order.
- D. In a non-jury trial, counsel shall provide a list of the portions of the depositions offered as an exhibit, citing page and line numbers and an edited portion of the deposition for the Court's use and the judge will read all deposition evidence.

18. SETTLEMENT AND ORDERS OF DISMISSAL

- A. Counsel shall immediately notify the Case Manager via e-mail upon settlement of any case.
- B. Announcements of Settlements:
 - 1) Announcements must be received in writing and shall always include how the court costs are to be divided.
 - 2) The Court will either enter an Order of Dismissal upon receipt of the announcement of settlement or request further documentation from the parties. It will give the parties a deadline for filing agreed upon disposition documents.
 - 3) The parties' closing papers will supersede the Court's Order of Dismissal.
- C. Suits Involving Minor Plaintiffs:
 - 1) Upon settlement of a lawsuit or prior to any mediation or other ADR procedure of a case involving a minor plaintiff, counsel will jointly move for appointment of an attorney ad litem if there is potential conflict of interest between the parent(s) and the minor.
 - 2) Counsel shall keep in mind and comply with FED. R. CIV. P. 5.2(a) to protect the identities and other privileged information of minors.
 - 3) If counsel cannot agree on an attorney ad litem, each counsel will submit the names of three proposed attorneys ad litem, and the Court will appoint one.

- 4) If the case is settled contemporaneously with the Motion for Appointment, counsel will notify the Case Manager by letter requesting a settlement hearing.
 - 5) All parties and attorneys must appear for the settlement hearing, unless excused by the Court.
- D. Any cause of action in which service upon defendant has not been perfected within 90 days after filing of the complaint will be dismissed for want of prosecution in accordance with FED. R. CIV. P. 4(m).

19. **SPECIFIC TYPES OF CASES**

The Court has adopted specific rules for certain kinds of cases:

- A. **Employment Cases** (See attached “Rules Governing Employment Cases”)
- B. **FLSA Cases** (See attached “Rules Governing Initial Discovery Protocols for FLSA Cases”)
- C. **Patent Cases** - While this Court subscribes in general to the national and Local Patent Rules of the Southern District of Texas, it has found that delays in the orderly progression of cases involving intellectual property disputes routinely increases the expenses incurred by all parties and routinely lends to costly discovery disputes and expansion of claims well beyond those contemplated by the parties. In order to minimize those expenses and lend to a more orderly disposition of the case, counsel should be aware that the Court anticipates that every patent case will proceed to trial within 18 months of filing. With that in mind, counsel should anticipate the implementation of these approximate deadlines:

Case Filed	72 weeks before trial
Initial Discovery	72-50 weeks before trial
<i>Markman</i> Hearing	50 weeks before trial
<i>Daubert</i> Motions	30 weeks before trial
Disposition Motions	24 weeks before trial
Exchange Motions in Limine, Deposition Excerpts, Exhibits	10 weeks before trial
Final Pretrial Order	8 weeks before trial
Pretrial Conference	5 weeks before trial
Jury Selection and Trial	(Date Provided by the Court)

[ATTACHMENTS]

UNITED STATES DISTRICT COURT ☆ SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Civil Action H-

Order Setting Conference

1. Counsel shall appear for an initial pretrial conference:

_____, 202____, at _____ .m.
United States Magistrate Judge Frances H. Stacy
Seventh Floor - Courtroom 704
United States Courthouse
515 Rusk Street
Houston, TX 77002

2. Within 15 days of receiving this order, counsel must file a list of all entities that are financially interested in this litigation, including parent, subsidiary, and affiliated corporations as well as all known attorneys of record. When a group description is effective disclosure, an individual listing is not necessary. Underline the names of corporations with publicly traded securities. Counsel must promptly amend the list when parties are added or additional interested parties are identified.
3. The plaintiff must serve the defendant within 90 days of filing the complaint. The plaintiff's failure to file proof of service within that time may result in dismissal by the court on its own initiative. *See* FED. R. CIV. P. 4(m).
4. At least 14 days before the conference, counsel must file a joint case management plan listing the identities and purposes of witnesses, sources and types of documents, and other requirements for a prompt and inexpensive preparation of this case for disposition by motion or trial. *See* FED. R. CIV. P. 26(f).

5. The parties shall agree on additional deadlines for completion of pretrial matters including all expert designation dates and discovery cut-offs as well as dates for exchanging of initial disclosures if they have not already been completed.
6. By the conference, counsel will have interviewed their clients and read all relevant documents; readily available documents will have been exchanged at the plan meeting at the latest.
7. The court will set a schedule for initial preparation and may rule on motions pending or made at the conference.
8. Counsel in charge of a case must appear at all hearings or conferences. A motion to appear on behalf of the attorney-in-charge will be granted only upon showing of good cause, and only if the attorney to be substituted is familiar with the case and has authority to bind the client. The motion to appear must be ruled on in advance of the hearing or conference date.
9. Counsel who appear at the conference must have authority to bind the client and must know the facts.
10. Counsel must have discussed alternative dispute resolution with their clients and each other; at the conference, the court will consider whether a method of ADR is suited to this case.
11. The court will enter a scheduling order and may rule on any pending motions at the conference.
12. The Plaintiff(s) filing this suit, or the party removing this suit from state court, SHALL SERVE THE OPPOSING PARTY OR PARTIES with copies of:
 - A. this ORDER FOR CONFERENCE,
 - B. the form for the JOINT REPORT ON MEETING REQUIRED BY RULE 26(f) AND JOINT DISCOVERY/CASE MANAGEMENT PLAN.
13. These papers SHALL BE SERVED CONTEMPORANEOUSLY WITH THE SUMMONS AND COMPLAINT.
14. The parties will be bound by the provisions contained in this ORDER, the papers mentioned in No. 4 above, and the dates set out in the scheduling order to be entered in this case.

15. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of expenses.
16. All parties receiving this order shall copy all other parties with a copy of this order.

BY THE ORDER OF THE COURT

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Civil Action H-

**JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER RULE 26(F)
FEDERAL RULES OF CIVIL PROCEDURE**

Please restate the instruction before furnishing the information.

1. State where and when the meeting of the parties required by Rule 26(f) was held and identify the counsel who attended for each party.
2. List the cases related to this one that are pending in any state or federal court with the case number and court.
3. Specify the allegation of federal jurisdiction.
4. Name the parties who disagree and the reasons.
5. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
6. List anticipated interventions.
7. Describe class-action issues.
8. 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.
9. Describe the proposed agreed discovery plan, including:
 - A. Responses to all the matters raised in Rule 26(f).

- B. When and to whom the plaintiff anticipates it may send interrogatories.
 - C. When and to whom the defendant anticipates it may send interrogatories.
 - D. Of whom and by when the plaintiff anticipates taking oral depositions.
 - E. Of whom and by when the defendant anticipates taking oral depositions.
 - F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B) and when the opposing party will be able to designate responsive experts and provide their reports.
 - G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).
 - H. List expert depositions the opposing party anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).
10. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
 11. Specify the discovery beyond initial disclosures that has been undertaken to date.
 12. State the date the planned discovery can reasonably be completed.
 13. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.
 14. Describe what each party has done or agreed to do to bring about a prompt resolution.
 15. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable and state when such a technique may be effectively used in this case.
 16. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.
 17. State whether a jury demand has been made and if it was made on time.
 18. Specify the number of hours it will take to present the evidence in this case.
 19. List pending motions that could be ruled on at the initial pretrial and scheduling conference.
 20. List other motions pending.

21. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

22. List the names, bar numbers, addresses and telephone numbers of all counsel.

Counsel for Plaintiff(s) _____ Date _____

Counsel for Defendant(s) _____ Date _____

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
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Civil Action H-

Scheduling Order

1. Trial: Estimated time to try: _____ days. ☐ Bench ☐ Jury

2. New parties must be joined by: _____
Furnish a copy of this scheduling order to new parties.

3. The plaintiff's experts will be named with a report furnished by: _____

4. The defendant's experts must be named with a report furnished by: _____

5. Discovery must be completed by: _____
*Counsel may agree to continue discovery beyond the deadline, but there will be no intervention by the Court.
No continuance will be granted because of information acquired in post-deadline discovery.*

6. Dispositive Motions will be filed by: _____
Response due by: _____

Non-Dispositive Motions will be filed by: _____

***** The Court will provide these dates. *****

7. Joint pretrial order is due: _____
The plaintiff is responsible for filing the pretrial order on time.

8. Final Pretrial Conference is set for 1:30 p.m. on: _____

9. Jury Selection is set for 9:00 a.m. on: * _____

The case will remain on standby until tried.

Signed this the _____ day of _____, 20____.

Andrew S. Hanen
United States District Judge

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
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Civil Action H-

REQUIRED CONTENTS OF THE JOINT PRETRIAL ORDER

1. **Appearance of Counsel.** List each party, its counsel, and counsel's address and telephone number in separate paragraphs.
2. **Statement of the Case.** Give a brief statement of the case, one that the Judge could read to the jury panel for an introduction of the facts and parties; include names, dates, and places.
3. **Jurisdiction.** Briefly specify the basis for the Court's jurisdiction of the subject matter and the parties. If there is an unresolved jurisdictional question, state it.
4. **Motions.** List pending motions.
5. **Contention of the Parties.** State concisely in separate paragraphs each party's claims.
6. **Admission of Fact.** List all facts that require no proof.
7. **Contested Issues of Fact.** List all material facts in bona fide 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 separate form similar to the one provided by the Clerk, each party will attach four 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 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 days after the exhibit is listed and made available; failure to object in writing in advance of the trial 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. On a separate form, each party will attach four lists with the names and addresses of witnesses who may be called with a brief statement of the nature of their testimony.
- B. 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. **Settlements.** State that all settlement efforts have been exhausted, and the case will have to be tried.

13. **Trial.** State estimated length of trial and logistical problems, including availability of witnesses, out-of-state people, bulky exhibits, and documentation.

14. **Attachments.** Each party must file as a separate document (captioned, signed by counsel, and with service certified) these required attachments in duplicate.

- 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 with agreed and contested ones separated.
- (2) Conclusions of law with authority.

Approved:

Attorney-in-Charge, Plaintiff

Date: _____

Attorney-in-Charge, Defendant

Date: _____

UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS			
<i>versus</i>		HOUSTON DIVISION			
		CIVIL ACTION No. H-			
		EXHIBIT LIST			
LIST OF: TYPE OF HEARING:		COUNSEL:			
JUDGE: ANDREW S. HANEN	CLERK: RHONDA HAWKINS	REPORTER:			
No.	DESCRIPTION	OFR	OBJ	ADM	DATE
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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
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		CIVIL ACTION No. H-	
		WITNESS LIST	
LIST OF: TYPE OF HEARING:		COUNSEL:	
JUDGE: ANDREW S. HANEN	CLERK: RHONDA HAWKINS	REPORTER:	
No.	NAME OF WITNESS		
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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
<i>versus</i>		HOUSTON DIVISION	
		CIVIL ACTION No. H-	
		WITNESS LIST	
LIST OF: TYPE OF HEARING:		COUNSEL:	
JUDGE: ANDREW S. HANEN	CLERK: RHONDA HAWKINS	REPORTER:	
No.	NAME OF WITNESS		
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UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

**Notice of the Right to Try
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 jury trial and final judgment.

The choice of trial before a Magistrate Judge is entirely yours. Tell only the clerk. Neither the Judge or Magistrate Judge will be told until all the parties agree.

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

You may get consent forms from the clerk.

David J. Bradley, *Clerk*

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
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Civil Action H-

Consent to Proceed Before a Magistrate Judge

All parties to this case waive their right to proceed before a district judge and consent to have a United States Magistrate Judge conduct all further proceedings, including the trial and judgment. 28 U.S.C. § 636(c).

Order to Transfer

This case is transferred to United States Magistrate Judge _____
to conduct all further proceedings, including final judgment.

Date

Andrew S. Hanen
United States District Judge

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

FOR INFORMATION REGARDING THE FOLLOWING:

U.S. DISTRICT CLERK 713-250-5500
JURY..... 713-250-2155
ADMISSION OF ATTORNEYS.....713-250-5500
APPEALS713-250-5500
BAIL BONDS, DISBURSEMENT.....713-250-5546
BILL OF COSTS, CERTIFICATION OF JUDGMENT, ABSTRACTS.....713-250-5500

CASE MANAGER TO JUDGE HANEN:

RHONDA HAWKINS.....713-250-5518

JUDICIAL ASSISTANT TO JUDGE HANEN:

LAUREN WEBSTER.....713-250-5068

CASE MANAGER TO UNITED STATES MAGISTRATE JUDGE FRANCES H. STACY

BEVERLY WHITE 713-250-5565

INTERPRETERS713-250-5638
UNITED STATES ATTORNEY'S OFFICE.....713-567-9000
UNITED STATES PROBATION OFFICE.....713-250-5266
UNITED STATES PUBLIC DEFENDER'S OFFICE.....713-718-4600
UNITED STATES MARSHAL'S OFFICE.....713-718-4800

UNITED STATES DISTRICT COURT ☆ SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Courtroom Etiquette

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

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

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

RULES GOVERNING EMPLOYMENT CASES

This court has adopted **INITIAL DISCOVERY PROTOCOLS FOR EMPLOYMENT CASES ALLEGING ADVERSE ACTION**. This program was originally initiated by the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure (*see* <https://www.fjc.gov/sites/default/files/2012/DiscEmpl.pdf>).

The Discovery Protocols will apply to all employment cases pending in this case that challenge one or more actions alleged to be adverse, including:

1. class actions;
2. cases in which the allegations involve only the following:
 - a. discrimination in hiring;
 - b. harassment/hostile work environment;
 - c. violations of wage and hour laws under the Fair Labor Standards Act (FLSA);
 - d. failure to provide reasonable accommodations under the Americans with Disabilities Act (ADA);
 - e. violations of the Family Medical Leave Act (FMLA);
 - f. violations of the Employee Retirement Income Security Act (ERISA); and
3. retaliations claims involving any of those acts mentioned above.

Parties and counsel must comply with the Initial Discovery Protocols attached to this order. If any party believes that there is good cause why this case should be exempted from the Initial Discovery Protocols, in whole or in part, that party may raise the issue with the court.

Within 30 days after the defendant's submission of a responsive pleading or motion, the parties must provide to one another the documents and information described in the Initial Discovery Protocols for the relevant time period. This obligation supersedes the parties' obligations to provide initial disclosures under FED. R. CIV. P. 26(a)(1). The parties will use the

documents and information exchanged in accordance with the Initial Discovery Protocols to prepare the FED. R. CIV. P. 26(f) discovery plan.

The discovery provided under the Initial Discovery Protocols must comply with the FED. R. CIV. P. obligations to certify and supplement discovery responses, as well as the form of production standards for documents and electronically stored information. As set forth in the Protocols, this Initial Discovery is not subject to objections, except on the grounds set forth in FED. R. CIV. P. 26(b)(2)(B).

If any of the parties think that a protective order should be entered in this case, the part[y/ies] seeking the order should request an order from the court as soon as possible, but no later than 15 days after the defendant's submission of a responsive pleading or motion. A model protective order is attached to this order and contains possible provisions that the court might use in a particular case. If the parties seek a protective order, the part[y/ies] seeking the order are encouraged to submit a proposed order that selects provisions the part[y/ies] believe[s] are appropriate.

INITIAL DISCOVERY PROTOCOLS
FOR EMPLOYMENT CASES ALLEGING ADVERSE ACTION

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. 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 (FED. R. CIV. 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.
- b. 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 FED. R. CIV. 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 the 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 FED. R. CIV. 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 FED. R. CIV. 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 FED. R. CIV. P. 26(e) regarding supplementation and FED. R. CIV. P. 26(g) regarding certification of responses.
- e. This Initial Discovery is subject to FED. R. CIV. P. 34(b)(2)(E) regarding form of production.

PART 2: PRODUCTION BY PLAINTIFF.

(1) Timing.

- a. 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.

- a. 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.

PART 4: MODEL PROTECTIVE ORDER.

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, as well as the parameters of any such order, rests 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.

EXHIBIT A

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled _____ 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.

DATED: _____

Signed in the presence of:

_____ (Attorney)

**RULES GOVERNING INITIAL DISCOVERY
PROTOCOLS FOR FAIR LABOR STANDARDS ACT CASES**

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. The Initial Discovery Protocols are not intended to preclude or modify the rights of any party for discovery as provided by the Federal Rules of Civil Procedure and other applicable local rules, but they are intended to supersede the parties' obligations to make initial disclosures under FED. R. CIV. P. 26(a)(1) for the FLSA Claims.
- b. The Initial Discovery Protocols were prepared by a balanced group of highly experienced attorneys from across the country who regularly represent plaintiffs or defendants in FLSA matters. The Protocols require the exchange of information and documents routinely requested in FLSA cases. They are unlike initial disclosures under FED. R. CIV. P. 26(a)(1) because they focus on the type of information most likely to be useful in narrowing the issues for FLSA cases.

(2) Definitions. The following definitions apply to cases proceeding under the 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 FED. R. CIV. 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.

e. ***Defendant.*** Any person or entity alleged to be an employer or joint employer of the plaintiff(s) in the operative Complaint, unless otherwise specified.

f. ***Plaintiff.*** Any named individual(s) alleging FLSA Claim(s) in the operative Complaint.

(3) Instructions.

a. For this Initial Discovery, the relevant time period begins two years before the date the initial Complaint was filed, or, if willfulness is alleged, three years. If the Plaintiff alleges a shorter relevant time period, then that is the time period for Initial Discovery.

b. For this Initial Discovery, the relevant time period continues through the last date for which the Plaintiff seeks recovery or relief.

c. This Initial Discovery is not subject to objections except for the reasons under FED. R. CIV. P. 26(b)(2)(B) or on the grounds of privilege or work product. Documents withheld based on a claim of privilege or work product are subject to the provisions of FED. R. CIV. P. 26(b)(5).

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

e. This Initial Discovery is subject to FED. R. CIV. P. 26(e) on supplementation and FED. R. CIV. P. 26(g) on certification of responses.

f. This Initial Discovery is subject to FED. R. CIV. P. 34(b)(2)(E) on form of production.

g. This Initial Discovery will be subject to the attached Interim Protective Order unless the parties agree or the court orders otherwise. The Interim Protective Order will remain in place only until the parties agree to or the court orders a different protective order. Absent agreement by the parties, the Interim Protective Order will not apply to subsequent discovery.

h. Prior to the production of documents by either Party to the other pursuant to the Initial Discovery Protocols, the Parties will meet and confer regarding the format (e.g. TIFF/text, searchable .pdf, Excel) for such production. This will not delay the timeframes for Initial Discovery absent ruling by the court.

PART 2: PRODUCTION BY THE PLAINTIFF.

(1) Timing.

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

(2) Documents that the Plaintiff must produce to the Defendant.

- a. Documents created or maintained by the Plaintiff recording time worked.
- b. Documents created or maintained by the Plaintiff recording wages or other compensation paid or unpaid by the Defendant.
- c. If the Plaintiff reported or complained internally to the Defendant (including but not limited to supervisors or administrative departments, such as human resources, payroll, timekeeping or benefits) about the FLSA Claim(s), the report(s) or complaint(s) and any response that the Defendant provided to the Plaintiff.
- d. Any offer letters, employment agreements, or compensation agreements for the Plaintiff.
- e. Any sworn statements from individuals with information relevant to the FLSA Claim(s).
- f. Documents that the Plaintiff relies on to support a claim of willful violation.
- g. All other documents that the Plaintiff relies on to support the Plaintiff's FLSA Claim(s).

(3) Information that the Plaintiff must produce to the Defendant.

- a. Identify persons the Plaintiff believes to have knowledge of the facts concerning the FLSA Claim(s) or defenses, and a brief description of that knowledge.
- b. Identify the start and end dates for the FLSA Claim(s);
- c. The Plaintiff's title or position and a brief description of the Plaintiff's job duties for the relevant time period.
- d. Describe the basis for the FLSA Claim(s).

- e. A computation of each category of damages claimed by the Plaintiff, including a) applicable dates, b) amounts of claimed unpaid wages, and c) the method used for computation (including applicable rates and hours).
- f. The names of the Plaintiff's supervisors during the relevant time period.
- g. If the Plaintiff reported or complained about the FLSA Claim(s) to any government agency, the identity of each such agency, the date(s) or such reports or complaints, and the outcome or status of each report or complaint.
- h. If the Plaintiff reported or complained to the Defendant (including but not limited to supervisors or administrative departments such as human resources, payroll, timekeeping or benefits) about the any FLSA Claim(s), state whether the report or complaint was written or oral, when the report or complaint(s) was made, to whom any report or complaint(s) were made, and any response provided by the Defendant.

PART 3: PRODUCTION BY THE DEFENDANT.

(1) Timing.

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

(2) Documents that the Defendant must produce to the Plaintiff.

- a. Time and pay records created or maintained by the Defendant for the Plaintiff.
- b. If the Plaintiff reported or complained internally to the Defendant (including but not limited to supervisors or administrative departments, such as human resources, payroll, timekeeping or benefits) about the FLSA Claim(s), the report(s) or complaint(s) and any response that the Defendant provided to the Plaintiff.
- c. Any sworn statements from individuals with information relevant to the FLSA Claim(s).
- d. Documents that the Defendant relies on to support a claim that any alleged violation was in good faith.
- e. Any offer letters, employment agreements, or compensation agreements for the Plaintiff.
- f. Collective bargaining agreement(s) applicable to the Plaintiff.

- g. The job description for the position(s) the Plaintiff held during the relevant time period(s), if the job duties are at issue in the FLSA Claim(s).
- h. The Defendant's policies, procedures, or guidelines for compensation that are relevant to the FLSA Claim(s).
- i. The cover page, table of contents, and index of any employee handbook, code of conduct, or employment policies and procedures manual pertaining to compensation or time worked.
- j. Any other documents the Defendant relies on to support the defenses, affirmative defenses, and counterclaims to the FLSA Claim(s).
- k. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(3) Information that the Defendant must produce to the Plaintiff.

- a. Provide the following information related to the Plaintiff:
 - 1. Start and end dates for work performed;
 - 2. Work location(s);
 - 3. Job title(s);
 - 4. Employee or contractor identification number;
 - 5. In cases alleging the misclassification of the Plaintiff, the classification status of the Plaintiff (i.e., exempt or non-exempt);
 - 6. Immediate supervisor(s) and/or manager(s).
- b. If the Defendant does not have a job description for the Plaintiff, a brief description of the Plaintiff's job duties for the relevant time period(s), if the job duties are at issue in the FLSA Claim(s).
- c. Identify persons the Defendant believes to have knowledge of the facts concerning the FLSA Claim(s) or defenses, and a brief description of that knowledge.
- d. If the Plaintiff reported or complained to the Defendant about the FLSA Claim(s), whether the report(s) or complaint(s) were written or oral, when the report(s) or complaint(s) were made, to whom any report(s) or complaint(s) were made, and any response(s) provided by the Defendant.