



# **COURT PROCEDURES**

**Of**

**Magistrate Judge Richard W. Bennett**

## **TABLE OF CONTENTS**

- I. General information**
- II. Contact with court personnel**
- III. Initial conference & Scheduling and Docket Control Order**
- IV. Discovery disputes**
- V. Attorney appearances**
- VI. Motion practice**
- VII. Trial**
- VIII. Continuances**
- IX. Courtroom procedures and equipment**
- X. Settlements/Dismissals**

The [Federal Rules of Civil Procedure](#), the [Local Rules of the Southern District of Texas](#), and these courtroom procedures govern cases in which the parties have consented to a jury or bench trial before Magistrate Judge Bennett. With regard to cases or motions referred to Judge Bennett by a district judge, these procedures apply to the extent they do not conflict with the referring judge's procedures. To the extent applicable, these procedures also govern criminal docket proceedings before Judge Bennett.

## **I. GENERAL INFORMATION**

Counsel, parties, and witnesses are expected to conduct themselves in accordance with Local Rule 83.8, [Appendix C, "Courtroom Etiquette."](#) Counsel are expected to know and conform to [Appendix D, "Guidelines for Professional Conduct."](#)

Counsel may question witnesses while seated at the counsel table or standing at the podium. Counsel only needs to request permission to approach the witness once for each witness. Thereafter, counsel may approach that witness as needed without requesting permission.

Counsel must file all original documents through the CM/ECF system. Handing documents to the court or Case Manager does **not** constitute filing of the documents. Information regarding the filing of documents should be obtained from the CM/ECF or Pacer system. If necessary, direct questions to the Civil Docket Coordination Center of the U.S. District Clerk's Office at (713) 250-5500.

Audio and video recording and the taking of photographs inside the courtroom are prohibited. Spectators and witnesses must completely power off and store all cell phones, beepers, and other electronic devices before entering the courtroom. Any person seen using an electronic device or cell phone to record or photograph courtroom proceedings is subject to being held in contempt of court or prosecuted.

After requesting permission from the court, counsel seated at counsel table or in front of the bar may use electronic devices as needed for court business. Counsel should not use electronic devices or cell phones while seated in the gallery.

If a power-point presentation is used during oral argument, provide a printed copy of the presentation to the court and opposing counsel at the hearing. Provide video or audio exhibits on a thumb drive or disc labeled with the exhibit number.

Water is allowed at counsel table. No other food or drink should be brought into the courtroom.

## **II. CONTACT WITH COURT PERSONNEL**

Direct all questions regarding criminal matters to the Case Manager, (713) 250-5703, or the Clerk for the Criminal Intake Desk, (713) 250-5123.

Case-related inquiries should be made only to the Case Manager. Do not contact law clerks with case-related questions. Do not address substantive issues in phone calls or emails to the Case Manager. To the extent substantive issues are addressed in a letter, the letter must be filed on the

docket. Any email directed to the Case Manager is subject to docketing by the court at its discretion.

Inquiries may be made to the Case Manager via telephone, email, or letter addressed to:

Shannon Jones, Case Manager  
United States District Clerk  
515 Rusk Street, Room 7007  
Houston, Texas 77002  
(713) 250-5860  
[shannon\\_jones@txs.uscourts.gov](mailto:shannon_jones@txs.uscourts.gov)

Parties may contact the Case Manager to inquire about the status of any civil motion that has been ripe for decision for more than sixty days.

### III. INITIAL CONFERENCE & SCHEDULING AND DOCKET CONTROL ORDER

Prior to any scheduled Rule 16 Conference, the parties **must** conduct the initial meeting required by Rule 26, make mandatory disclosures in accordance with Rule 26, file the Joint Discovery/Case Management Plan, and submit a proposed Scheduling and Docket Control Order.

Refer to Rule 16 of the Federal Rules of Civil Procedure, Local Rule 16.1, and Section IV (“Attorney Appearances”) below for general procedures regarding initial conferences. Counsel should be prepared to discuss every aspect of the case, including the discovery plan, settlement possibilities, and mediation at the initial conference. In addition, the court may hear oral argument and rule on pending motions at the initial conference.

The Scheduling and Docket Control Order entered after the Rule 16 Conference will control the subsequent course of the case except as revised by the court.

When parties consent to trial before Judge Bennett, any previously entered Scheduling or Docket Control Order may be vacated and a new Scheduling and Docket Control Order entered. Consent cases will receive a date certain for trial.

### IV. DISCOVERY DISPUTES

Most scheduling and discovery disputes can and should be resolved between counsel without the intervention of the court. Compromise is encouraged and the court expects parties to actively negotiate potential resolutions of the dispute, including, for example narrowing the breadth of requests or time frames for the requests.

Only after counsel have conferred by **telephone or video conference** and are unable to reach agreement may any party request a conference with the court. The requesting party must file a **letter** of no more than three pages summarizing the dispute, the date, time and method of the parties’ conference and the identity of the attendees, the outcome of the discussions, and the relief sought from the court. Upon receipt of the letter, the court will hold a conference on the dispute,

preferably within 2-3 business days of receipt of the letter. Any responses to the letter that initiated the conference should be filed at least 24 hours before the conference date.

To the fullest extent possible, the court will dispose of discovery disputes at the conference and without resort to motion practice. If a written motion continues to be necessary, the remaining issues to be addressed in the motion and a briefing schedule will be established during the conference.

Before parties seek court intervention for a dispute concerning discovery of electronic data, the court expects the parties to discuss in person, by telephone, or by video conference, the alleged need for and burdens of searching for and/or producing the data (*e.g.*, the number of document custodians at issue, the amount of time and expense required to search for, locate, or produce the data, the expected volume of data, etc.). The parties must also discuss prior to court intervention, the potential options for decreasing the alleged burdens of searching for and producing electronic data. Counsel for a party resisting discovery of electronic data shall be prepared to discuss, or have in attendance (in person or by telephone) a person prepared to discuss, the specific burdens or difficulties involved in the searching for and/or production of the requested electronic data.

## V. ATTORNEY APPEARANCES

The court prefers to have counsel appear in-person. However, counsel may request permission to appear by telephone or video conference. Telephone appearances may be allowed even though some counsel will appear in-person. Video conference is available only when all parties appear by video.

Requests to appear by telephone or video conference shall be made in writing to Judge Bennett's Case Manager at least three days prior to the scheduled appearance. If the request is granted, call-in or videoconference instructions will be provided by the Case Manager. Parties should access the telephone or video conference **at least 5 minutes prior** to the scheduled hearing time. It is the responsibility of those who appear by video conference to ensure the adequacy of their equipment, including internet bandwidth.

Any attorney who appears at a hearing or conference must be familiar with the case, have authority to bind the client, and be in charge for that appearance.

The court encourages experienced lawyers and their clients to provide speaking roles for lawyers licensed fewer than 7 years, particularly when those lawyers have, to a substantial degree, drafted the motion or response being argued, or prepared the witness being presented.

Counsel and pro-se litigants shall notify the Case Manager **immediately and in writing** if an issue set for hearing or a case set for trial is resolved in advance of the date and time for the scheduled appearance.

Failure to appear for a court setting may subject the attorney and/or his or her client to appropriate sanctions, including dismissal of claims.

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.

## VI. MOTION PRACTICE

All motions must follow the written motion practice outlined in the Local Rules for the Southern District of Texas (Local Rule 7).

Non-dispositive motions will be automatically struck if they do not include a Certificate of Conference in compliance with Local Rule 7.1(D).

Without leave of court, all motions are limited to 25 double-spaced pages with 13-point font and 1" margins.

The court rules on most motions by submission but sets some motions for oral hearing. Any party may request an oral hearing by filing a request separately from the motion.

All requests for expedited consideration of motions shall be filed separately from the motion.

In some instances, the court may shorten the filing deadline for a response to a motion. A party may file a motion to request that the shortened date be extended.

Discovery motions should be filed only after the procedures in Section III "Discovery Disputes" have been followed but have failed to resolve the dispute.

The court will consider opposed motions for extensions only if timely filed.

**Courtesy copies and voluminous exhibits.** The court generally does not require courtesy copies of motions or exhibits. However, if the exhibits exceed 50 pages (either singly or in combination), the party must provide the exhibit/exhibits in the form of a **single electronic pdf document**. The .pdf document must contain **bookmarks identifying each exhibit and bookmarks set to the portions of the document cited or referenced in the motion or brief**. Further, when a motion or brief refers only to a small portion of a voluminous exhibit, the party should **highlight the referenced portion of the exhibit**. Counsel shall also provide a copy of the bookmarked and highlighted .pdf to opposing counsel.

## VII. TRIAL

**Joint Pretrial Order.** The deadline for filing the Joint Pretrial Order will be set in the Scheduling Order. The Joint Pretrial Order shall follow the form set forth in Local Rule 16.2, [Appendix B](#).

Counsel for the plaintiff is responsible for ensuring that the **Joint Pretrial Order** is timely filed. If the plaintiff fails to file the Joint Pretrial Order, the defendant(s) is responsible for filing its portion of the Pretrial Order.

The parties are responsible for exchanging exhibits and deposition excerpts far enough in advance to allow each party to include objections to exhibits and testimony in the Joint Pretrial Order.

Plaintiff must deliver a courtesy copy of the Joint Pretrial Order to the court with all attachments.

For bench trials, each proposed conclusion of law will contain citation of legal authority supporting the conclusion. Findings of fact shall include references to testimony and exhibits that support the finding. These references shall be supplemented at the close of each trial day during the bench trial. Parties must submit Findings of Fact and Conclusions of Law to the court in an electronic Word document.

**Joint Proposed Jury Charge.** Parties should observe the following additional instructions for the joint proposed jury charge:

- Each requested instruction must be numbered and presented with authority.
- The parties shall include in the proposed jury charge all necessary instructions or definitions.
- Whenever possible, the charge should conform to the Fifth Circuit Pattern Jury Instructions or the Texas Pattern Jury Charge, as modified by case law or statutory amendments. Counsel must identify and provide legal authorities for any proposed deviation from the applicable pattern jury charge.
- If the parties cannot, in good faith, agree on all instructions, definitions or questions, the parties should nonetheless submit a single, **unified charge** with notations of any disagreement. 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.
- The parties shall submit the proposed charge to the Case Manager in an electronic Word document.

The court usually holds an informal charge conference during the trial and a formal charge conference on the evening before or the morning of the last day of trial.

The court will read the charge to the jury before closing arguments. Counsel may tell the jury what you believe the substance of the court's instruction was on a particular subject or read or quote any instruction given by the court. Each juror receives a copy of the instructions before argument.

**Trial Schedule.** During trial, court hours are generally 9 a.m. to 5 p.m. with breaks in the morning, afternoon and for lunch, but the court will defer to the jury's preferred schedule to the extent possible. Attorneys are expected to arrive before court and stay after court to handle any issues that need to be addressed outside the jury's presence. If any counsel anticipates that an extended trial day will cause hardship due to child-care or other responsibilities, please notify the Case

Manager in advance of trial. The court will do its best to accommodate both the jury's schedule and the family obligations of counsel, the parties, and the witnesses.

Once the jury begins deliberating, counsel are to remain near the courtroom and immediately available for the reading of any jury notes or a verdict.

**Voir Dire.** The court will commence jury selection with some general opening remarks and will ask most of the questions submitted by the parties. The court will allow counsel some time to conduct their own voir dire. The proposed voir dire questions and topics must be included in the Joint Pretrial Order. The court may impose time limitations for voir dire.

**Exhibits.** Parties shall mark and number all exhibits prior to trial. Such numbering shall correspond to the exhibit list included in the Joint Pretrial Order.

Counsel for each party shall provide a tabbed and indexed notebook of exhibits for the court and the witness.

To the extent possible, the court will rule on all objections to the exhibits at the Final Pretrial Conference or prior to the start of the first day of trial. Exhibits to which no objection is offered or to which an objection is overruled shall be admitted into evidence. All exhibits admitted into evidence will go to the jury room with the jury during its deliberations. Once admitted, the official copies of the exhibits are to be kept in the court until the completion of trial.

Counsel should obtain the court's permission before passing an exhibit to the jury during trial.

Counsel should become familiar with Local Rule 79.2 regarding disposition of exhibits following trial.

In the event of a bench trial, the court will retain the copies of the exhibits pending the final resolution of the matter.

**Witnesses.** Counsel is responsible for summoning a witness into the courtroom and instructing witnesses on proper courtroom decorum.

Witness rooms are available for the parties' use and are located on the 7th Floor. Please contact the Case Manager the week prior to trial to reserve a room and ensure the room is unlocked during trial.

**Depositions.** The court will accept the parties' agreement to use a deposition at trial even though the witness is available. Absent agreement, follow Federal Rule of Civil Procedure 32.

Counsel should designate the portions of any deposition to be read at trial by citing the page and line reference in the Joint Pretrial Order. Counsel must provide the court with a single copy of any deposition from which excerpts will be used at trial and should use color-coded highlighting to represent each parties' requested deposition excerpts. Objections to designations of deposition excerpts must be identified by page and line, include supporting authority, and be filed with the Pretrial Order.



**Objections.** Objections to testimony or evidence made in the presence of the jury should include the Rule of Evidence on which counsel relies as a basis for the objection. Counsel should not argue the ruling on the objection in the presence of the jury. Instead, ask to be heard outside the presence of the jury.

**Post-trial contact with jurors.** After the jury is excused, counsel may **not** contact jurors unless the court permits them to do so. Local Rule 47.

## **VIII. CONTINUANCES**

The court will consider motions for continuance filed at least two weeks prior to the trial date provided in the Scheduling and Docket Control Order. Any response to a motion for continuance shall be filed at least one week prior to the scheduled trial date.

Agreed motions for continuance are not binding on the court. Parties **must** notify the court of agreed continuances by submitting an unopposed or agreed motion for continuance along with a proposed order.

## **IX. COURTROOM PROCEDURES AND EQUIPMENT**

**Access to the Courtroom:** Enter and leave the courtroom only through the doors at the rear of the courtroom. Make arrangements with the Case Manager to arrange for access to the courtroom to test or set up equipment.

**Equipment:** The court has exhibit display monitors on counsel tables and the witness stand. The Display on the monitors can be projected to a drop-down screen for the jury. The court also has an ELMO that can be used to display information on the drop-down screen, a large white board, and an easel with paper pad.

**Work rooms:** An Attorney Conference Room is available on the 7th Floor. Depending upon availability, the court will provide the parties with separate rooms to be used during trial for witnesses, exhibits and other items.

## **X. SETTLEMENTS & DISMISSALS**

The parties should notify the court immediately of any settlement. The parties may request, or the court may enter, a 30 or 60-day conditional Order of Dismissal. This Order dismisses the case but allows for reinstatement within the 30 or 60-day period if the settlement cannot be finalized.

In accordance with Federal Rule of Civil Procedure 4(m), the court may dismiss without prejudice any defendant upon whom service has not been perfected within 90 days after the complaint is filed.

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

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

**CONSENT TO PROCEED BEFORE  
UNITED STATES MAGISTRATE JUDGE  
RICHARD W. BENNETT**

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 Richard W. Bennett 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 Judge Richard W. Bennett** 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.

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Date

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UNITED STATES DISTRICT JUDGE

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Date

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**RICHARD W. BENNETT**  
UNITED STATES MAGISTRATE JUDGE

**APPROVAL REQUESTED:**

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Counsel for Plaintiff(s)

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Date

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Counsel for Defendant(s)

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Date