Court Procedures

Hon. Nicholas J. Ganjei

These procedures apply to civil and criminal actions assigned to Judge Nicholas J. Ganjei.

When serving the summons and complaint or removal papers, Plaintiff must serve these procedures together with the Court's Order for Scheduling Conference and Disclosure of Interested Persons.

Parties should direct inquiries regarding any case assigned to Judge Ganjei to:

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Case Manager to Judge Nicholas J. Ganjei
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1. APPLICABILITY AND COMPLIANCE

a. Cases Applicable: These procedures apply to all civil and criminal cases assigned to Judge Nicholas J. Ganjei except for the following categories of cases:

- Prisoner civil rights;
- Habeas corpus;
- Administrative agency appeals; and
- Miscellaneous government cases, such as subpoena enforcement, forfeiture, and the like.

b. Strict Compliance: The Court requires strict compliance with these procedures. Use them together with the Local Rules and the Federal Rules of Civil and Criminal Procedure, with preference to these procedures where there is any inconsistency. Failure to follow these procedures and applicable rules may subject counsel and client or pro se parties to appropriate sanctions or dismissal.

c. Forms: Visit the Court's website and review the available forms. Use these forms when applicable. Additional information, forms, and the Local Rules are available on the website of the Southern District of Texas.

d. Service: Plaintiff must formally serve these procedures with the summons and complaint and file proof of service.

e. Additional Requirements in Removed Cases: Review Form 1 from Judge Ganjei's Home Page to see the information required in removed cases.

The removing party must file the certificate of service and provide the additional information within ten days of removal. The Court may summarily remand for failure of compliance.

2. ELECTRONIC FILING AND SERVICE

a. E-Filing Required: All parties must file documents through the Case Management/Electronic Case Filing System pursuant to LR5.1 and CrLR49. All parties must also obtain and follow the Administrative Procedures for Electronic Filing in Civil and Criminal Cases from the website of the Southern District of

Texas.

b. Service: For parties represented by counsel with CM/ECF credentials, filing through the CM/ECF system constitutes sufficient service on other parties. Other parties must provide formal service in compliance with applicable rules.

3. EMERGENCIES

a. *Ex Parte* Applications in Civil Cases: The Court does not entertain *ex parte* applications for restraining orders unless the initiating party satisfies the requirements of Rule 65(b).

b. Filing and Service: File any application for restraining orders or other immediate relief through the CM/ECF system. In addition to service required by rule, the initiating party must in good faith attempt immediate informal service on the opposing party by any available means, including forwarding the application to the last-known mail and email addresses.

c. Communication: Make all related communications through the Case Manager via telephone or email.

d. Disposition: The Case Manager will present the application to the Court after receiving written affirmation from the initiating party of contact with the opposing party and availability of all parties for a conference before the Court. Alternatively, the initiating party may provide written explanation that no legal requirement for such contact applies. The Court will order a conference or hearing as determined advisable. The Court will direct relief and discovery as determined advisable.

e. Emergency Motions: File emergency motions on the CM/ECF system. Then send a copy by email directly to the Case Manager so that it quickly reaches the Court's attention. Motions for extension of deadlines are not emergencies.

4. CONSENT TO PROCEED BEFORE MAGISTRATE JUDGE IN CIVIL CASES

a. Agreement Required: The parties by agreement may elect to proceed before a Magistrate Judge.

b. Required Form: Use Form 2 to give consent to proceed before a Magistrate Judge. Follow the instructions. Do not alter the form.

5. INFORMAL COMMUNICATION WITH THE COURT

a. Informal Communication Disfavored: The Court disfavors informal communication about cases except as stated in these procedures. Do not address substantive issues in informal communication. Address such issues only through written filings and in-person conferences and hearings. Neither the Case Manager, the Law Clerks, nor other personnel provide legal advice or predict what the Court will do on a given matter.

b. Case Manager as Main Point of Contact: Direct all informal communications to the Court through the Case Manager. Unless stated otherwise below, use the following:

- Letters to initiate discovery and scheduling disputes under Section 13;
- Letters or email for other minor procedural questions; and
- Email or telephone for matters requiring prompt attention.

c. Law Clerks: A Law Clerk may contact counsel with a specific inquiry at the Court's direction. Do not initiate contact with the Law Clerks unless returning a message. Do not discuss matters beyond the indicated subject.

d. Status Inquiries: Seek answers when possible from the District Court's website. Review information on the status of documents, entry of orders, and docket entries on the CM/ECF system prior to contacting the Court. Direct filing questions to the Office of the Clerk.

e. Service and Filing: Prior to or with delivery of any letter or email to the Court, use the same means to provide a copy to all other parties. Do not file copies of letters or email on the CM/ECF system. The Court dockets or directs filing as determined advisable.

6. COURT COPIES

a. When Required: Do not provide courtesy copies to the Court **except** for the following:

- Trial Exhibits to which objections have been lodged; and
- Trial Deposition excerpts when objections have been lodged. Highlight the objections and the questions/answers to which those objections are directed.
- Documents filed under seal; and
- Joint Pretrial Orders and other trial material.

b. Form: Provide hard copies as well as electronic copies. When providing hard copies, organize exhibits and attachments by tab at the right margin. Use the smallest binders that comfortably hold the material. Do not use binders larger than four inches. Divide into multiple binders when necessary. Provide courtesy copies marked with the file-stamped CM/ECF system docket number unless submitted on an urgent basis.

c. Delivery: Electronic copies should be sent to the Court's case manager via email. Hard copies should be mailed or hand-delivered to the attention of the Case Manager with a transmittal letter specifying the content. Do not file transmittal letters. Mail or email a copy of such letters without attachments to all other parties.

7. ATTORNEY APPEARANCES

a. Notice of Appearance: All counsel who wish to receive CM/ECF notices must file a notice of appearance. Inclusion of names in the signature block of a pleading does not constitute notice of appearance.

b. Attorney in Charge: Counsel of record designated as "in charge" must attend all settings or send a designated alternate.

c. Appearance at Hearing: Any counsel or *pro se* party who appears at a hearing or conference must be:

- Fully familiar with the facts and the law applicable to the case;
- Prepared to argue any pending motion and to discuss any anticipated motion; and
- Authorized to bind the client to stipulations relating to the appearance.

d. Waiver of In-Person Appearance in Criminal Cases: Submit a waiver of in-person appearance in criminal cases before or at the start of any hearing where the defendant may appropriately be excused, if desired.

e. Failure to Appear: Failure to appear when notified of a setting may subject the attorney and/or the party to sanctions, including dismissal for want of prosecution or another appropriate order or judgment.

f. *Pro Hac Vice* Admissions: Include the applicant's averment of familiarization with these procedures and the Local Rules with any application for *pro hac vice* admission.

g. Conduct: The guidelines for professional conduct set forth in the Local Rules are in Attachment 1. All counsel and *pro se* parties must always observe these guidelines. Bring violative conduct to the Court's attention immediately.

8. INITIAL SETTINGS AND FILINGS IN CIVIL CASES

Observe LR16.1. In addition:

a. Initial Settings: Review Form 3 to see the form of Order for Scheduling Conference and Disclosure of Interested Parties. The Court promptly issues this order to:

- Establish the parties' Rule 26(f) meet-and-confer deadline;
- Establish the filing deadline for the Joint Discovery/Case Management Plan; and
- Set the date for the Rule 16 Scheduling Conference.

b. Joint Discovery/Case Management Plan: Review Form 4 to see the form of the Joint Discovery/Case Management Plan and Proposed Scheduling Order.

All parties must sign and counsel for Plaintiff must file a single, complete joint plan. Follow Rule 26(f) in all respects. Parties proceeding *pro se* or counsel with knowledge of the case and authority to address substantive and scheduling matters must attend the conference between the parties.

c. Scheduling Conference: The Court sets a Scheduling Conference between sixty

and ninety days from filing of the case. Plaintiff may request a reasonable continuance if it has not perfected service.

Prepare to discuss all matters covered by Rules 16 and 26(f), the Joint Discovery/Case Management Plan, and the Scheduling Order. Prepare to argue any pending motions.

d. Orders of Dismissal for Want of Prosecution: The Court may dismiss for want of prosecution any Defendant upon whom Plaintiff has not perfected service within ninety days after filing the complaint pursuant to Rule 4(m).

9. CONTINUANCES AND EXTENSIONS

a. Approval Required: The Court will modify the Scheduling Order only upon a motion establishing good cause. Agreements on continuance of deadlines do not bind the Court but are given due consideration.

Requested changes must include recommended dates to adjust all deadlines following the first modification.

b. Reference Prior Motions and Positions of the Parties: The title of any Motion for a Continuance or Extension must reference to the opposing party's position regarding the merits of the motion (that is, Joint, Unopposed, or Opposed) and must also reference the number of any prior such motions presented to the Court. For example, "Parties' Joint First Motion to Extend Deadlines," or "Defendant's Unopposed Second Motion to Continue."

c. Discovery Deadlines: Parties may agree to extension of discovery deadlines without seeking approval when the extension does not affect the Scheduling Order or other deadlines set by the Court.

d. Vacation Requests: The Court respects and seeks to accommodate vacation and family requests if made well in advance of a hearing or trial setting.

e. Pending Motions. If the Court has not addressed a pending motion that a party believes needs imminent attention, a party may file a motion requesting a ruling. The motion should explain the posture of the case, the pending motion, and why the pending motion needs to be addressed quickly.

f. Continuances in Criminal Matters: Motions to Continue in criminal matters must specify the specific amount of time the moving party is requesting. Failure to do so will result in denial of the motion.

Parties should provide specific and detailed facts justifying the requested continuance rather than simply including boilerplate language. Parties are advised that because criminal matters implicate speedy trial concerns, requests for longer continuances concomitantly require greater justification.

10. PROTECTIVE ORDERS AND FILINGS UNDER SEAL

a. Protective Orders. The parties must jointly confer in good faith regarding appropriate terms for a protective order and file either a joint or opposed motion for entry of a protective order with the proposed order as an exhibit. Upon entry of the protective order, the parties' confidentiality designations govern disclosure and use of documents produced during discovery.

b. Motion Required to Seal: A presumption exists as to public access to judicial records. The Court disfavors the filing of any pleading, brief, or supporting material under seal. Seek permission by motion establishing good cause as follows, and refer to *Le v. Exeter Finance Corp*., 990 F.3d 410, 417–21 (5th Cir. 2021).

Under seal, file the at-issue pleading, brief, or other material. On the public record, separately file a motion to seal. Prepare and attach to the motion a redacted version of the material suitable to and proposed for filing on the public docket. In the alternative, establish cause why redaction is not possible.

Identify all under-seal filings on the CM/ECF system with an informative title and designation of SEALED. For example, *Motion for Summary Judgment (SEALED)*. Absent permission, do not simply identify a document as *SEALED DOCUMENT* without explanation.

c. Disposition: The Court promptly considers such motions and directs filings under seal or on the public docket as appropriate.

11. INITIAL DISCLOSURES AND COMMENCEMENT OF DISCOVERY IN CIVIL CASES

a. Initial Disclosures: Commence initial disclosures immediately. Include production of copies of all documents responsive to the categories listed in Rule 26(a). Do not file initial disclosures.

b. Commencement of Discovery: The parties may commence discovery by agreement once Plaintiff perfects service of the complaint on all Defendants. Absent agreement, the Court will permit discovery upon either the resolution of all outstanding motions to dismiss, or after the expiration of the time to file such motions. Parties may move for a variance to this rule.

c. Proportionality Required: Frame all interrogatories, document requests, and requests for admissions to meet the relevance and proportionality requirements of Rule 26(b)(1).

d. Objections: State only specific objections. Observe the following:

- Do not include a preamble with your responses to discovery;
- Do not make general objections;
- Do not make boilerplate objections;
- Do not state any objection to the extent that it "might apply" and instead specify all objections exactly;
- Do not state any response as subject to a stated objection without specifying the extent to which a party withholds information on that basis; and
- Do not state that more information will or may follow later without specifying a reasonable deadline for completion.

e. Electronically Stored Information: Produce ESI in the native format kept by the producing party or in a common interchange format accessible by the opposing party.

The Court initially limits production of ESI to the files of five custodians selected by the opposing party. Seek alternate limitations for more custodians only after reviewing the initial production and conferring in good faith.

f. Supplementation: Supplement disclosures and discovery responses as directed by Rule 26(e). The Court deals sternly with tactical supplementation delayed until near or after the close of discovery, including the striking of evidence, witnesses, claims, and pleadings as appropriate.

g. Discovery Continuances Disfavored: Continuances due to failure to complete discovery are disfavored. Rather than grounds for continuance, discovery failures may result in the striking of evidence, dismissal of claims, or the striking of defenses.

12. DEPOSITIONS AND EXHIBITS IN CIVIL CASES

a. Number of Depositions: Seek in good faith to agree to a reasonable limitation on the number of depositions. Consider relevance and proportionality under Rule 26(b)(1).

b. Order of Depositions: The Court presumptively permits Plaintiff to notice and take the first deposition with reasonable dispatch. Absent other agreement, the parties will then alternate depositions to the extent practicable on reasonable notice with no undue delay.

c. Time Limits: Not all depositions require the full time allotted under Rule 30(d)(1). Seek to establish reasonable, good faith, reciprocal time limits. The Court will not tolerate wasteful or harassing use of deposition time.

d. Sequential Numbering of Exhibits: Sequentially number each exhibit introduced at deposition without reference to party or deposition identity. Continue the sequence from deposition to deposition. For instance, if a deposition concludes at Exhibit 12, the next deposition commences at Exhibit 13.

   Do not mark any document as an exhibit more than once. Absent error or oversight, each exhibit should have only one number during the case. Use that number in later depositions and on trial exhibit lists.

13. DISCOVERY AND SCHEDULING DISPUTES

a. Good Faith Required: Make a serious attempt to resolve all discovery and scheduling disputes without intervention by the Court. This includes disputes to

compel or quash any discovery or for protection. Be pragmatic. Seek reasonable compromise. The Court may shift costs or order other relief against a party or counsel acting unreasonably or in bad faith.

b. Conference Between Lead Counsel Required: Lead counsel must personally confer on all discovery and scheduling disputes as a final attempt at resolution prior to involving the Court.

c. Initiating Letter Required: Do not bring a motion on discovery or scheduling disputes without permission. To obtain permission, the party seeking relief must submit a letter not exceeding approximately two single-spaced pages. Identify the nature of the dispute, outline the issues, and state the contested relief sought. Specify the conference between lead counsel and summarize the results. The opposing party should promptly submit a responsive letter of similar length identifying any disagreement. Do not submit a reply letter.

d. Disposition: The Court may dispose of the dispute on the letters. When determined advisable, the Court will schedule a conference as soon as practicable. The Court disposes of disputes at conference to the extent possible and establishes the issues and briefing schedule of any written motion allowed.

The Court may refer discovery disputes to a Magistrate Judge.

e. Disputes as to Electronic Data: When the dispute includes discovery of electronic data, each party must have available at any conference a person with detailed knowledge of the computers and electronic databases in issue. The Court may rely on accurate responses from those individuals when ordering relief as to that aspect of any dispute.

f. Disputes with Nonparties: An initiating letter is not required to seek discovery relief against a nonparty.

14. PRIVILEGE LOGS

a. Misuse of Privilege Logs: Privilege logs serve an important function to protect valid assertions of privilege. But the Court does not tolerate their misuse.

b. *In Camera* Review Available: When a party believes an opponent has misused its

privilege log, it may request that the Court make *in camera* inspection of not more than twenty documents.

Bring any request by letter not to exceed approximately three single-spaced pages. Lead counsel must confer in good faith to resolve the dispute prior to any letter. In the letter, identify the documents for review, state the grounds for challenge, specify the conference between lead counsel, and summarize the results. This letter establishes consent to *ex parte* contact between the Court and the party's opponent regarding the nature and verity of the asserted privilege.

Each party may freely submit only a single letter requesting *in camera* inspection. Submit any letter at least sixty days before the end of discovery or promptly upon receipt of any later privilege log. Seek any further or related requests according to Section 15.

c. Review by Magistrate Judge or Special Master: When on review a party appears to have misused its privilege log, the Court favors referral to the Magistrate Judge to review an appropriate sample of documents. An order for complete review of all logged documents by appointment of a Special Master may follow where necessary.

The Court will not hesitate to shift costs in favor of the prevailing party in appropriate circumstances.

15. MOTION PRACTICE AND HEARINGS

Observe the procedures for motion practice in LR7, LR10, LR11, and CrLR12. In addition:

a. Conference and Certificate Required: Make serious, timely, good faith efforts to seek agreement on all disputed matters and requests for relief, including dispositive motions.

The Court may strike motions that do not include a certificate of conference.

b. Motions to Dismiss or for Judgment on the Pleadings in Civil Cases: Pleading deficiencies of a claim or counterclaim are often cured in whole or in part by a permissible amendment to the subject pleading. Before filing a motion to dismiss

for failure to state a claim or counterclaim under Rule 12(b)(6), or a motion for judgment on the pleadings on a claim or counterclaim under Rule 12(c), identify such issues to the opposing party and confer in good faith to resolve them. The Court may strike motions that do not include this in the certificate of conference.

c. Requirement of Mediation or Settlement Conferences in Civil Cases: Private mediation or participation in a settlement conference before a magistrate judge is required prior to the scheduled docket call. Proceed as directed under Section 29. Failure to participate in good faith may subject a party to sanctions under Rule 16(f). Parties shall submit a joint report verifying either success or declaration of impasse by the mediator or Magistrate Judge within 14 days of the conclusion of mediation or settlement efforts. Docket call will be rescheduled if the mediation or settlement conference has not been completed by the date of the docket call.

d. Motions on Discovery and Scheduling: Do not bring a motion on discovery or scheduling disputes absent permission obtained under Section 13. Deadlines established by order remain in effect even upon the filing of a motion for extension. Submit such motions well in advance of any impending deadline.

e. Motions to Seal: The Court disfavors, but will consider, filings under seal. Proceed as directed under Section 10.

f. Submission Date and Briefing Deadlines in Civil Cases: File any response within twenty-one calendar days of the motion. File any reply within ten calendar days of the response. Do not file a sur-reply without advance permission. Opposed motions are considered upon the close of briefing. Promptly advise by email of the need for decision on an expedited basis or date certain. Provide reasons justifying prompt attention.

   Advise by letter or email of any agreed extension of the submission date. Provide a proposed order for any agreed extension. The proposed order must account for other deadlines set by the Court.

g. Submission Date and Briefing Deadline in Criminal Cases: The Court proceeds according to CrLR12 and Rule 12 of the Federal Rules of Criminal Procedure.

h. Proposed Orders: Use Form 5 to prepare draft proposed orders. Include a proposed order granting or denying the requested relief with all non-dispositive

motions and oppositions.

i. Oral Argument: The Court rules on most motions on the papers and sets oral argument when determined advisable. Counsel may jointly or individually advise the Court by email of any request for oral argument together with circumstances to justify the request. Counsel are advised not to assume that oral argument will be granted and should thus strive for sufficiency, clarity, and accuracy in their written submissions.

j. Resolution by Agreement: Immediately advise by email of resolution of a pending motion prior to the Court's ruling. The Court will then deny the motion as moot.

16. BRIEFING REQUIREMENTS

The Court requires succinct, pertinent, well-organized motion papers. Observe the following:

a. Separate Memorandum Not Allowed: File a single pleading. Do not file a separately designated Memorandum of Law. Include necessary factual support, legal argument, and requested relief in the motion itself.

b. Style: Use American letter-size paper, and a minimum of 1-inch margins with ½-inch margins for footnotes, page numbers and any headers or footers. Double space except for lengthy quotations, headings, and footnotes. Acceptable fonts are Times New Roman size 13 or larger, Book Antiqua size 12 or larger, and Century Schoolbook size 12 or larger.

c. Page Limits: Limit any motion or response to 5,000 words (approximately twenty-five pages). Limit any reply to 2,000 words (approximately ten pages). Do not file a sur-reply absent permission. Provide a certificate of word count following the signature block. Reliance on word-processor register is sufficient in this regard. Word limits do not include the case caption, table of contents, table of authorities, signature block, or certificates. Word limits are rarely extended. Anticipate and seek resolution of any motion for extension well in advance of the filing deadlines.

d. Footnotes: The Court disfavors footnotes and discourages their use by setting

word limits instead of page limits.

e. Briefing Requirements: All motions or similar filings must contain the following:

- A statement of the nature and stage of the proceeding;
- A statement of the facts necessary to resolution of the motion;
- A statement of the issues requiring resolution;
- A short statement (including citations to legal authority) of the standard of review for each issue;
- An argument devoted to relevant, persuasive legal authority;
- A short conclusion stating the precise relief sought; and
- Succinct headings dividing the motion into the above parts.

Submissions with an argument section greater than ten pages must also contain:

- A table of contents setting forth page numbers of all sections and point headings;
- A table of authorities organizing in categories and arranging alphabetically all cited cases, statutes, rules, textbooks, and other authorities;
- A concise summary of the argument immediately prior to the argument in full; and
- Succinct point headings dividing the argument into separate components.

f. Citations: Provide pinpoint citation for all legal authority. For evidence, cite to page and line for depositions, to page and paragraph number for affidavits and pleadings, and to page and section number for contracts and similar materials. Use Bates numbers as the page reference where available.

g. Supporting Evidence: Supply affidavits, deposition testimony excerpts, and supporting documents as separate exhibits to the filing. Provide a cover sheet to identify and separate each exhibit. Prepare and submit a table of contents when attachments are numerous. Upload exhibits as separate attachments during filing on the CM/ECF system.

h. Copies of Legal Authority: Supply all cases or other authorities not readily available through Westlaw or Lexis Nexis as an appendix to any filing. Provide a

cover sheet to identify and separate each authority.

i. Court Copies: Submit courtesy copies if required and as directed in Section 6.

j. Certification Regarding Use of Artificial Intelligence: Parties shall certify at the end of all motions, responses, or replies:

- Whether artificial intelligence ("AI") was consulted or otherwise used at any point in the research, outlining, drafting, or editing of the brief;
- The specific type, program, or model of AI used;
- A certification, signed by the lead attorney, that he or she has verified all the factual and legal assertions made in the brief—including case citations—comply with Rule 11 of the Federal Rules of Civil Procedure.

This certification shall be attached in the same manner as a certificate of service, albeit on a separate page. Negative responses (that is, the non-use of AI) likewise require a certification.

17. FINAL PRETRIAL CONFERENCE AND TRIAL SETTING

a. Final Pretrial Conference: The Court sets each civil case for a docket call in the Scheduling Order. Docket call may serve as the final pretrial conference. Prepare to address all objections to pretrial filings and to argue outstanding motions. The Court at docket call may set cases to a later date for the final pretrial conference.

The Court sets each criminal case for a final pretrial conference in the Scheduling Order. Prepare to address all objections to pretrial filings and to argue outstanding motions.

b. Trial Setting: The Court discusses civil trial settings with the parties at docket call. The Court sets the case on a trailing docket at the earliest time determined advisable. The Court establishes criminal trial settings in the Scheduling Order.

c. Continuances: Continuance of firm trial dates is disfavored absent exigent circumstances, and parties should establish good cause in any motion seeking continuance. A trial setting in another court is not considered good cause unless lead or other primary counsel has commenced trial. Continuance of a trial setting

due to witness unavailability is unlikely in civil cases. Anticipate testimony by stipulation or by oral or written deposition under Rules 27, 30, and 31.

18. JOINT PRETRIAL ORDERS IN CIVIL CASES

a. Form: Use Form 6 to prepare a Joint Pretrial Order. Adapt this form within reason to accommodate the nature and complexity of the case.

b. Same-Day Filings: When filing the Joint Pretrial Order on the CM/ECF system, attach the pretrial filings set out in Section 19 as exhibits.

c. Responsibility: All lead counsel must sign the Joint Pretrial Order. Primary responsibility rests with Plaintiff's counsel to ensure timely filing as established by rule unless otherwise set by Court order. On any failure by Plaintiff's counsel, Defendant's counsel must timely file Defendant's portions.

19. REQUIRED PRETRIAL FILINGS

a. Required Filings: Unless otherwise set by Court order, on the date the Joint Pretrial Order is filed each party must file:

- An exhibit list (Section 20);
- A witness list (Section 21);
- Designation of deposition excerpts (Section 22);
- Motions *in limine* (Section 23);
- Proposed topics and questions for voir dire (Section 24);
- In jury trials, a proposed joint jury charge (Section 25);
- In bench trials, proposed findings of fact and conclusions of law (Section 26); and
- A trial memorandum of law identifying and addressing the legal propositions that are necessary to the disposition and relief sought in the case, with indication of those which are not in dispute.

b. Court Copies: Confer, prepare, and provide a joint trial notebook. Include each party's materials paired together in the order listed above. In civil cases, include the Joint Pretrial Order as the first item. Counsel to plaintiff or prosecution must deliver three copies at least four business days prior to the final pretrial conference or docket call in the manner directed in Section 6.

20. TRIAL EXHIBIT LISTS

a. Form: Use Form 7 to prepare a trial exhibit list. Also refer to Section 12. Each offering party must mark its own exhibits with the party's name, case number, and exhibit number. List only those exhibits intended in good faith for use during trial.

b. Exchange and Filing: Seek agreement on the form of exchange. Absent agreement, exchange well-organized USB drives or provide for similar electronic transfer or download.

In civil cases, exchange all exhibits no later than the date the Joint Pretrial Order is filed. In criminal cases, a deadline for the schedule for disclosure of exhibits will be set when appropriate.

At the conclusion of the final pretrial conference or docket call, file all exhibits on the CM/ECF system. File any additional exhibits on the CM/ECF system promptly upon identification for use at or during trial.

c. Court Copies: Follow Section 19 regarding submission of all exhibit lists. In addition to the lists, each party must simultaneously submit all exhibits on a well-organized USB drive, together with three copies in the manner directed in Section 6.

d. Objections: Confer in good faith to identify and resolve objections. The filing of objections with authority is required within seven days of listing and exchange, and the time limits of LR44.1, LR46, and CrLR55.2.B are superseded. Objections must contain tailored discussion of the exhibit and issues. File any response within seven days. Reply is optional within four days.

This includes identification, in writing to the offering party, of exhibits requiring authentication. Telephonic depositions to authenticate exhibits will typically be allowed on an expedited basis with the potential for the shifting of costs when appropriate.

e. Disposition: All exhibits listed without objection will presumptively be admitted into evidence. But such exhibits are not considered admitted until referenced

before the jury.

f. Publication to Jury: Exhibits listed without objection do not require further permission for publication to the jury. Do not show exhibits with unresolved objections to the jury. Do not pass exhibits to the jury absent permission.

g. Deliberations: The Court sends all admitted exhibits to the jury during deliberations, with exceptions noted below in subsection (i).

The burden is on the parties to assemble and ensure that the Case Manager has all the admitted exhibits—and only the admitted exhibits—for delivery to the jury. The parties must jointly prepare and provide written certification of completeness.

h. Demonstrative Exhibits: Do not list demonstrative exhibits unless intended for admission into evidence.

Disclose demonstrative exhibits to all other parties by 9:00 p.m. of the evening prior to intended use. The Court resolves objections as a first order of business the following morning before seating the jury.

i. Sensitive Exhibits: Identify at the final pretrial conference any concerns about sensitive, dangerous, or bulky exhibits.

A government agent must retain custody throughout trial of exhibits such as weapons, drugs, money, and the like. Replace with photographs where appropriate for jury deliberation. While these original items can be made available for inspection upon specific request from the jury, photographs of these items will be substituted during the normal course of deliberations.

j. Control of Exhibits After Trial: Refer to LR79.2 and CrLR55.2.C.

21. WITNESS LISTS

a. Form: Use Form 8 to prepare the trial witness list.

Each party must file a list of witnesses it intends in good faith to call in its case-in-chief. State for each witness:

- Full name, address, and identifying information;
- A concise summary of the expected testimonial topics;
- Whether the witness will testify live or by deposition; and
- Whether testimony is fact, expert, or record custodian.

b. Court Copies: Follow Section 19 regarding submission of witness lists. Also furnish a copy to the court reporter before trial.

c. Objections: Confer in good faith to identify and resolve objections. File any objections with authority no later than seven days after the date the Joint Pretrial Order is filed. File any response within seven days.

d. Disposition: The Court endeavors to resolve objections to witnesses at the final pretrial conference.

e. Order of Witnesses: In civil cases, by 8:00 p.m. two days in advance of the first day of trial, plaintiff must notify all other parties as to the order of witnesses expected during the first two days of trial. Once trial commences, the parties must update one another at the end of each trial day on the order of witnesses expected during the next two trial days.

In criminal cases, prepare to discuss at the final pretrial conference whether the required notification above is appropriate or requires modification.

22. DEPOSITION DESIGNATIONS IN CIVIL CASES

a. Unavailability Required and Form: Jurors do not like hearing testimony from prior depositions. Follow Rule 32 to establish unavailability for use of designations. Use Form 9 to prepare deposition designations.

The Court presumptively limits designations to twenty-five minutes and counter-designations to fifteen minutes absent agreement or permission. Do not designate irrelevant or repetitive testimony, objections, or colloquy at depositions.

For bench trials, also offer the entire deposition marked as an exhibit.

b. Court Copies: Follow Section 19 regarding submission of all deposition

designations.

During trial, seek to de-designate unnecessary or cumulative testimony. Provide revised designations to opposing counsel three days in advance of intended use.

c. Objections and Counter-Designations: Objections to any deposition designation shall be filed no later than three business days after the date the Joint Pretrial Order is filed. Responses to those objections shall be filed no later than six business days after the date the Joint Pretrial Order is filed.

d. Disposition: As to each intended deposition designation, the designator must make a joint filing comprehending the parties' exchanges twenty-four hours in advance of intended use. Objections are typically resolved after the conclusion of the trial day of the day prior to the intended use of the designated testimony.

The designator must prepare and have each designated deposition ready upon request. Include a cover sheet with concise summary of topics for each witness, the first deposition page, and at least two pages prior to and after any designation. Highlight in contrasting colors to indicate all designated testimony, counter-designations, and objections. Use a condensed transcript (four pages to one) when available.

e. Presentation to Jury: After the Court rules on objections, review and agree on the accuracy of any final synthesis or videotape edit well prior to reading or playing.

23. MOTIONS IN LIMINE

a. Form: File separate motions *in limine* with a matching proposed order on the same date the Joint Pretrial Order is filed. Tailor the motion to the case. Do not file boilerplate motions. Confer in good faith so that only disputed motions remain for the Court to resolve.

Do not bring motions *in limine* in bench trials. Do not raise or re-urge topics resolved under *Daubert* or summary judgment practice. Keep in mind that *limine* practice typically concerns only topics so unfairly prejudicial that the Court cannot cure resulting prejudice by instruction.

b. Response: File a response to any motion *in limine* that is contested no later than

three business days after the date the Joint Pretrial Order is filed.

24. JURY SELECTION

a. Juror Questionnaire: The Court provides completed questionnaires to the parties prior to jury selection. Do not make copies. Return all questionnaires on conclusion of jury selection.

   Confer in good faith and propose topics and questions for examination of the panel that are specific to the case.

b. Time of Selection: The Court seeks to commence jury selection as early in the day as possible. Be prepared for opening statements to follow immediately after the seating of the jury. Testimony will also commence if time permits.

c. Examination: The Court provides background information to the panel and conducts a preliminary examination. The Court may allow each side time to examine prospective jurors on matters specific to the case.

   Counsel are reminded that the purpose of jury selection is to select a jury that can sit competently and impartially in the case at hand. Voir dire questioning should be focused on that specific goal. Voir dire is not an opportunity to argue one's case to the venire panel. Failure to adhere to this rule may result in the loss of additional voir dire.

d. Peremptory Challenges: Refer to 28 U.S.C. § 1870 for civil cases. Refer to Rule 24 of the Federal Rules of Criminal Procedure for criminal cases. Counsel are reminded that they are not *required* to use all of their challenges.

25. JURY INSTRUCTIONS

a. Joint or Unified Proposed Jury Charge in Civil Cases: Confer in good faith on the charge to the jury. Seek agreement and reasonable compromise in accord with the law.

b. File a Joint Proposed Charge: File a unified proposed charge even when not agreed in full. Observe the following:

- Submit a complete joint charge with the proposed instructions in the order that you would like them read to the jury;
- Where the parties agree, say so in the heading of that proposed instruction. Where the parties disagree, each party should offer their own proposed instruction in order;
- Present each instruction, definition, and question with supporting legal authority;
- Use the Fifth Circuit Pattern Jury Instructions whenever possible;
- Identify with legal support any deviations from the pattern instructions; and
- Identify by bold, italicized, or differently colored font any disputed language and which party requests each competing version.

c. Jury Charge in Criminal Cases: The Prosecution must file a proposed jury charge based on the Fifth Circuit Pattern Jury Instructions and supported modifications. The Defense must file objections or its own supported modifications. These must be filed three working days before the Final Pretrial Conference.

Each side must provide supporting legal authority for all requested instructions, definitions, and questions. If either side believes the case requires an instruction not included within the Fifth Circuit Pattern Jury Instructions, the parties must confer in good faith to propose agreed wording.

d. Court Copies: In civil cases, counsel for Plaintiff must also submit a Word version by email to the Court's Case Manager. In criminal cases, counsel for Prosecution and Defense must each also submit a Word version by email.

e. Charge Conference: The Court will modify the proposed jury charge in light of the evidence during trial and further consideration of applicable law. The Court establishes a final jury charge at a charge conference near the close of all evidence and prior to closing arguments.

26. BENCH TRIALS

a. Required Filings: Each party must file proposed findings of fact and conclusions of law at the time the Joint Pretrial Order is filed.

b. Proposed Findings of Fact: Each party must specify all proposed findings it

anticipates establishing at trial. To the extent possible, cite deposition testimony, expected witness testimony, exhibits, or other evidence to support each proposed finding. Specify stipulated or agreed facts.

c. Proposed Conclusions of Law: Each party must cite legal authority to support all proposed conclusions of law it seeks at trial. Specify agreed propositions of law. At a minimum, address the *prima facie* elements of each cause of action and defense, the relation of necessary evidence to those elements, necessary legal definitions, all components of damages, and methods of calculation of damages.

d. Post-Trial Supplementation: Following trial and at the time directed by the Court, the parties shall file joint proposed findings of fact and conclusions of law. Submit the proposed findings and conclusions as one document and in the order the parties believe makes the most sense. Use black font for all agreed findings and conclusions. Make it clear in the proposed findings that this means that the parties are agreed as to those. Where the parties disagree, use differently colored font. For example, if the parties do not agree on finding of fact number 7, plaintiff should submit their proposed number 7 in red and the defendant should submit their proposed number 7 in blue. Also, where the parties do not agree, provide citations to specific testimony and evidence from trial.

e. Court Copies: In civil cases, counsel for Plaintiff must also submit a Word version by email to the Case Manager. In criminal cases, counsel for Prosecution and Defense must each submit a Word version by email.

27. COURTROOM PROCEDURES AND CONDUCT

a. Decorum. The guidelines for courteous and orderly behavior set forth in the Local Rules are in Attachment 2. Counsel must ensure all participants always observe these conventions.

For emphasis, the Court does not tolerate personal invective directed at any person. Address one another, all witnesses, the jury, and the Court with courtesy and respect. Do not interrupt.

Dress respectfully. This means business attire for counsel (suit and tie for men, equivalent business dress for women), and appropriate attire for non-parties.

b. Devices. Audio or video recording, taking photographs, and broadcasting are prohibited. Laptops and tablets are permitted at counsel table only. Counsel must receive advance approval from the Court for an audience member to use laptops or tablets.

All cell phones and other electronic devices must be turned off and may not be used during court proceedings without authorization from the Court.

c. Hours: Hours during trial vary depending upon the type of case and the needs of the parties, counsel, witnesses, jurors, and the Court.

The Court typically convenes the jury at 9:00 a.m. and typically adjourns at 5:00 p.m. Expect to arrive earlier and stay later than the jury for trial conferences. Court recesses one hour for lunch and twenty minutes each morning and afternoon.

d. Courtroom Access: Arrange in advance by email with the Case Manager for any necessary access before or after normal hours.

Enter and leave the courtroom only by the front, public doors. Do not use the Court's other doors absent permission.

e. Seating: The Court designates the table closest to the jury for Plaintiff or Prosecution.

The Case Manager will note the original seating position of all counsel on a chart for the Court's reference. Remain so situated throughout trial or hearing. Seek permission before making any change.

f. New Documents Offered: File all original documents as soon as practicable. Handing documents to the Court or Case Manager does not constitute filing. Have ready for the Court two copies of documents filed during or within seven days prior to trial or hearing.

g. Witnesses: Counsel must instruct witnesses in advance on courtroom decorum and duties under *the Rule* when invoked.

The parties are responsible for summoning their respective witnesses when

called. The Court will not recess to permit counsel to call a missing witness unless a witness fails to appear on subpoena.

Arrange in advance for any necessary interpreter. The Court will not recess to permit counsel to obtain an interpreter unless a scheduled interpreter fails to appear.

When questioning witnesses:

- Stand at the lectern or remain seated at the party's table;
- Look at and address the witness, not the jurors;
- Seek leave of Court to approach the witness; and
- Make every effort to avoid cumulative testimony and to elicit from witnesses only information relevant to the issues in the case.

h. Food and Beverages: Counsel and staff may have water available at counsel table or at the lectern. Witnesses may have water available on the stand.

The Court permits no other food or beverage in the courtroom generally. Counsel must ensure that all spectators refrain from eating or drinking. Seek permission if necessary.

i. Jury Deliberations: Counsel must remain immediately available within the courthouse during deliberations. Seek permission if necessary.

j. Juror Contact After Trial: Observe LR47 and CrLR24.1 or seek permission.

28. COURTROOM TECHNOLOGY AND SUPPORT

a. Electronic Devices: Everyone must turn off all cellular telephones, pagers, or similar devices while in the courtroom. The Court rarely grants any exception.

Counsel and staff may have their laptops or similar computers before the bar and available solely for litigation purposes.

Counsel must make certain that their clients, witnesses, and spectators comply.

b. Audio, Visual, and Display Equipment: The Court makes available upon

advance request easels with writing pads, projection, document camera, sound, and video equipment.

Parties may provide their own equipment upon advance arrangement with the Case Manager and courthouse security.

c. Equipment Use and Testing: Consult with the Case Manager on technology needs or special arrangements well in advance of trial or hearing.

Arrange access to the courtroom to set up and test equipment. The Court will not recess to resolve technical difficulties arising from lack of preparation or testing.

d. Court Reporting: Make prior arrangement with the Court Reporter for daily or real-time transcription, if desired.

e. Copying Service: The Court's staff will not make copies absent unusual circumstances.

f. Trial Supplies: Parties may leave their exhibits, boxes, and other materials in the courtroom during any recess and overnight. Restore all supplies to good order at the end of each day.

g. Attorney Conference Rooms: Attorney conference rooms are available during trial or hearing. Make advance request to the Case Manager. Restore the room to good order and return the key at the conclusion of trial or hearing.

29. MEDIATION AND SETTLEMENTS IN CIVIL CASES

a. Periodic Updates: The Court encourages good faith settlement discussions between parties at appropriate intervals.

b. Alternative Dispute Resolution: Private mediation or settlement conference before a magistrate judge is required prior to docket call. Failure to participate in good faith may subject a party to sanctions under Rule 16(f). Parties shall submit a joint report verifying either success or declaration of impasse by the mediator or Magistrate Judge within 14 days of the conclusion of mediation or settlement efforts. Docket call will be rescheduled if the mediation or settlement conference has not been completed.

A mediator will be appointed when the parties cannot select one by agreement. The parties may make joint request to determine whether the magistrate judge is available to serve at no cost.

c. Notice of Settlement Discussions: Notify the Court by letter or email whenever serious settlement discussions are underway. The Court will postpone consideration of pending motions until advised of success or impasse.

d. Notice of Settlement and Conditional Orders of Dismissal: Parties shall immediately file a Notice of Settlement on the docket and notify the Court by email. The Court will enter an order providing a certain amount of time for the parties to file dismissal documents.

e. Settlements Involving Minors. Counsel must jointly move for a hearing to appoint a guardian *ad litem* and to approve settlement of any suit involving a minor when a potential conflict of interest exists between the parent(s) and the minor.

Seek agreement on a guardian *ad litem* to recommend. Absent agreement, individually submit the names of qualified attorneys for consideration. The Court will appoint one suggested or of its own choosing.

30. USE OF ARTIFICIAL INTELLIGENCE

a. Certification Required: All motions, responses, and replies require a certification regarding whether Artificial Intelligence (AI) was consulted or otherwise used at any point in the research, outlining, drafting, or editing of any brief submitted to this Court. This certification must comply with the requirements of Section 16(j).

The certifying attorney is responsible for ensuring that all facts and legal authority including in their respective briefs are true and correct.

b. Sanctions: Failure to include this certification, or the inclusion of "hallucinated" facts or legal authority, subjects the negligent party to potential sanctions including, but not limited to, the striking of the brief, as well as potential sanctions against the certifying attorney.

c. Applicability: These rules apply with equal force to briefing submitted by both licensed attorneys and *pro se* litigants.

31. REVISIONS TO PROCEDURES AND FORMS

d. Revisions: The Court adheres to these procedures and forms to answer common questions that arise during litigation, to reduce confusion as to the Court's preferences, and to guide the proper and efficient resolution of the parties' disputes. The Court revises these materials as experience dictates and provides updated versions on its website.

e. Suggestions Welcome: The Court appreciates suggestions for modifications. Raise any suggestions at hearings in open court or submit them by letter to the Case Manager with a copy for other counsel.

Attachment 1
Guidelines for Professional Conduct

Guidelines for Professional Conduct

Local Rules of the Southern District of Texas, Appendix D

A. In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

B. A lawyer owes, to the judiciary, candor, diligence and utmost respect.

C. A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

D. A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

E. Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

F. A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

G. In adversary proceedings, clients are litigants, and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

H. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.

I. Lawyers will be punctual in communications with others and in honoring scheduled appearances and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

J. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.

K. Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Attachment 2
Courtroom Etiquette

Courtroom Etiquette

Local Rules of the Southern District of Texas, Appendix C

People who appear in court or via video 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 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 and surnames, including lawyers, witnesses, and court personnel.

E. 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.

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 clerk, not the judge or reporter, all things 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 the summoning of witnesses from outside the courtroom. Furnish the clerk and marshal with a list of witnesses showing the order they are likely to be called.

K. Question witnesses while seated at counsel table or standing at the lectern. 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 material witness.

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.

P. Counsel are responsible for advising their clients, witnesses, and associate counsel about proper courtroom behavior.

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.