



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**Judge Keith P. Ellison**

Updated July 2021

THE ATTACHED MUST BE SERVED  
WITH THE SUMMONS AND COMPLAINT  
OR REMOVAL PAPERS

Your attention is directed to the Court Procedures and attachments, which are applicable to cases assigned to Judge Keith P. Ellison.

Plaintiff must serve these materials, and the Order for Conference And Disclosure Of Interested Parties on all defendants with the summons and complaint. A party removing a case to this Court has the same obligation as a plaintiff filing an original complaint. Proof reflecting service of these materials must be filed with the Clerk. A Form of Certificate for Use in removed cases is attached.

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

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

ALL inquiries regarding ANY case, please contact:

Arturo Rivera, Case Manager  
To United States District Judge Keith P. Ellison  
United States District Clerk  
515 Rusk Avenue, Room 3716  
Houston, Texas 77002  
Telephone: 713-250-5181  
Facsimile: 713-250-5503  
Email: [Arturo\\_Rivera@txs.uscourts.gov](mailto:Arturo_Rivera@txs.uscourts.gov)

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1. **CONTACT WITH COURT PERSONNEL**

- A. The Court expects that parties will file documents through the District Court’s Case Management/Electronic Case Filing (“CM/ECF”) System. *See* Southern District Local Rule 5.1 (as amended in September 2004) and Administrative Procedures for CM/ECF. **Case-related telephone and email inquiries regarding any case should be made to Arturo Rivera, Case Manager and Court Coordinator at 713-250-5181 or Arturo\_Rivera@txs.uscourts.gov.**
- B. Information about the status of documents, entry of orders, or docket entries should be obtained from the CM/ECF or Pacer Systems or, if absolutely necessary, from the United States District Clerk’s Offices, (713) 250-5500.
- C. The Court’s caseload will not allow the Case Manager to respond to casual telephone inquiries about motions and case status generally. Inquiries to the Case Manager should be by email, unless time does not permit.
- D. At the Court’s direction, law clerks may contact counsel; however, they will not discuss matters other than the subject of the call.
- E.
  - 1. Case-related correspondence must be addressed to:  

United States District Court  
515 Rusk Street  
3<sup>rd</sup> Floor, Room 3716  
Houston, Texas 77002
  - 2. Do not address substantive issues in letter form, because letters are not docketed or included in the appellate record.
  - 3. Copies of urgent documents (including letters) may be sent to chambers, as well as to the clerk’s office, with a transmittal letter that states why the Court’s prompt attention is required.

2. **EMERGENCIES**

- A. Applications for restraining orders or for other immediate relief shall be made through the Case Manager. Such applications shall be presented to the Court by the Case Manager following counsel’s affirmation that the opposing party has been contacted and that both parties can be available for an in-chambers conference before the Court. Ex parte applications for restraining orders will not be entertained by the Court unless the requirements of FED. R. CIV. P. 65(b) have been satisfied.

B. Motions for extension of deadlines or cut-off dates are not emergencies.

3. **CONTINUANCES**

A. Joint motions for continuance are not binding, and they will be granted only at the Court's discretion.

B. Bona fide vacation requests will be respected.

4. **APPEARANCES**

A. An attorney who appears at a hearing or conference shall

- (1) be familiar with the case,
- (2) have authority to bind the client, and
- (3) be in charge for that appearance.

B. Counsel may appear by telephone for all non-evidentiary hearings, counsel will need to call Judge Ellison's conference dial-in number, **713-250-5238** at the scheduled time, enter Conference ID: **45238**, followed by ID: **13579**. Parties should use a land line, not cellular or speaker telephones. Telephonic appearances are disfavored in evidentiary hearings.

C. Counsel must notify the Case Manager immediately of the resolution of any matter.

5. **MOTION PRACTICE**

A. The Court follows the written motion practice described in the Local Rules. Since most motions will be ruled on without an oral hearing, brief, clear motion papers are very important. The Court will consider the motion and response after the submission date.

B. The submission date may be extended by agreement of counsel, except when the extension violates a Court-imposed deadline. Counsel should immediately notify the Case Manager, in writing, of such an agreement.

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<sup>1</sup>
- (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.<sup>2</sup>
- (5) If a party wishes to preserve in the record the fact that a particular request has been made to opposing counsel, this should be done through a letter to the Court, filed with the Clerk and copied to opposing parties and counsel, rather than

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<sup>1</sup> Accordingly, a moving party should begin efforts to confer with other parties at least two full business days before any motion deadline.

<sup>2</sup> Of course, these requirements are not intended to discourage motions when parties are genuinely unable to agree. Instead, they are simply meant to encourage parties, when possible, to resolve routine pretrial matters without the Court's involvement.

via an unnecessary pretrial motion.

- (6) Counsel who repeatedly fail to return phone calls relating to the conference requirement will be asked to explain this behavior to the Court. In extreme cases, sanctions may be imposed.
- D. Motions for extension of discovery must be filed sufficiently in advance of the discovery deadline that opposing counsel may respond prior to the deadline.
- E. Requests for oral argument on motions are not necessary. The Case Manager will notify counsel should the Court determine that oral argument would be beneficial.
- F. The Court will rule on motions as soon as possible. Counsel will be furnished with copies of orders.
- G. Every non-dispositive motion must contain a certificate of conference and a proposed order granting the relief sought. Failure to comply may result in the party's pleadings being denied or stricken.
- H. Each motion, except motions pursuant to Fed. R. Civ. P. 56, must be accompanied by a separate proposed order granting or denying the relief requested.

6. **BRIEFS**

- A. The Court requires concise, pertinent, and well-organized briefs and memoranda of law. Absent leave of Court for extended briefing, any brief or memorandum shall be limited to 25 pages. Any brief or memorandum containing more than 10 pages of argument must contain the following items. All briefs and memoranda must contain items (3), (4), (6), and (7).
  - (1) A table of contents setting forth the page number of each section, including all headings designated in the body of the brief or memorandum.
  - (2) A table of citations of cases, statutes, rules, textbooks, and other authorities, alphabetically arranged.
  - (3) A short statement of the nature and stage of the proceeding.
  - (4) A statement of the issues to be ruled upon by the Court and, with respect to each issue, a short statement, supported by authority, of the

standard of review.

- (5) A short summary of the argument.
  - (6) An argument divided into sections with appropriate headings succinctly setting forth separate points.
  - (7) A short conclusion stating the precise relief sought.
- B. Copies of any affidavits, deposition testimony, or other discovery referred to should also be contained in the appendix. Each appendix should contain a paginated table of contents and should be tabbed to locate easily the materials contained in the appendix.
- C. Unpublished authorities need only be included in an appendix if they are not available on Westlaw or LexisNexis.

7. **REPLIES TO RESPONSES**

The Court will accept replies without leave of Court with the following stipulations:

- (A) The Reply should be filed within seven (7) days of the date the Response was filed.
- (B) The Reply must be ten (10) pages or fewer.

8. **COURTESY COPIES**

- A. All emergency motions should be sent to Chambers Room 3716 the day of filing. Double sided printing for the courtesy copy is recommended.
- B. Any document with an appendix or set of exhibits that totals more than 50 pages should be sent to Chambers Room 3716 the day of filing. The document and exhibits should be hole punched, bound, and tabbed in a binder type notebook. Double sided printing is recommended.

9. **INITIAL PRETRIAL CONFERENCES AND SCHEDULING CONFERENCES**

Refer to Local Rule 16.1. Attached is a form Docket Control Order used by the Court. The parties may agree on additional deadlines for completion of pretrial matters.

The parties can submit an Agreed Docket Control Order to the Court in lieu of an initial pretrial conference. The Court will issue a separate Notice

Regarding the Initial Conference that contains a Proposed Docket Control Order with your trial date, Joint Pretrial Order date, and Dispositive Motion date included. The Court strongly encourages all parties to confer and submit an Agreed Scheduling Order one (1) week prior to the Initial Conference date. Attached is Notice Regarding Initial Conferences and a blank Docket Control Order for your convenience.

10. **REQUIRED PRETRIAL MATERIALS**

A. **Joint Pretrial Order**

Counsel for the plaintiff is responsible for ensuring that the Joint Pretrial Order is filed on time one week prior to trial. The Joint Pretrial Order should include parties' witness lists, exhibits lists, proposed JOINT jury instructions and objections to any. All counsel must sign the Joint Pretrial Order.

B. **Other Required Documents**

With the filing of the Joint Pretrial Order, each party also must file as separate documents (captioned, signed by counsel, and including a certificate of service):

(1) **For Jury Trials**

a. **Criminal Jury Trials**

In criminal trials, the Court does not require proposed jury instructions. If counsel believe the case does require jury instructions not included in the Fifth Circuit's Pattern Jury Instructions, all counsel shall confer and seek to agree on the proposed wording. If the parties cannot agree, counsel shall identify those parts of the requested jury instructions upon which they can agree and submit competing versions of the instructions as to which they cannot agree. All submissions shall be by both hard copy and on a disk or via email.

b. **Civil Jury Trials**

- (i) One set of proposed jury instructions that have been agreed to by counsel should be submitted to the Court electronically (via email in a Word format) and in hard copy at least one business day before the first day of trial. These instructions should be in the most final form possible.



If the inclusion of any particular instruction is contingent upon events that may occur during the trial (for example, an instruction to disregard testimony that has been ordered stricken from the record), the instruction should be clearly indicated in brackets and **bold** typeface.

- (ii) If counsel cannot agree on a particular instruction, the proponent of the contested instruction should submit, on a separate disk or email in a Word format and in hard copy, an additional set of proposed jury instructions with the requested addition, deletion, or revision clearly indicated in brackets and ***bold italic*** typeface.
- (iii) To the extent that these procedures are not followed, objections to jury instructions will be considered to have been waived.

(2) **For Non-Jury Trials**

- a. Proposed Findings of Fact.
- b. Proposed Conclusions of Law.

(3) **For All Trials**

Memorandum of law

11. **TRIAL SETTINGS**

- A. Exact trial dates will be given. The Court will reschedule a trial date within the first few days after it has been set, if counsel become aware of scheduling difficulties among themselves, their clients, or witnesses. If no such communication is promptly received by the Court, continuances are disfavored.
- B. Pretrial Conferences are discretionary with this Court and are not set routinely.
- C. Counsel may, however, request a settlement or pretrial conference by letter addressed to the Case Manager with copies to all counsel. The Court prefers that such letters set forth the agreement of all counsel that a conference is necessary and the reasons therefor.

12. **EXHIBITS**

- A. All exhibits must be marked and exchanged among counsel prior to trial. The offering party must mark his or her own exhibits with the party's name, case number, and exhibit number.
- B. Any counsel requiring authentication of an exhibit must notify offering counsel in writing within five (5) business days after the exhibit is listed and made available to opposing counsel. Failure to do so is an admission of authenticity. *See* Local Rule 44.1 and CrLR55.2A.
- C. The Court will admit all exhibits listed in the final pretrial order into evidence unless opposing counsel files written objections supported by authority at least three (3) business days before trial. *See* Local Rule 46 and CrLR55.2B.
- D. Counsel may not pass exhibits to the jury during trial without obtaining permission in advance from the Court. All admitted exhibits will go to the jury during its deliberations.
- E. Counsel for each party is required to provide the Court with three (3) copies of that party's exhibits in a properly tabbed and indexed notebook.
- F. Counsel should become familiar with Local Rule 79.2 and CrLR55.2C regarding disposition of exhibits following trial.

13. **EQUIPMENT**

- A. The following equipment is available for a trial or hearing:
  - Document Camera (ELMO)
  - 75" HD Display Screen
  - Two monitors at each Counsel's table
  - VCR/DVD
  - Annotation Monitors on Equipment Stand and Witness Box
  - HDMI, VGA Video and Audio inputs at counsel tables, which provide for courtroom use of personal laptop computers and personal audio equipment
  - Real Time transcription capability. Parties requesting Real Time Transcription must notify the Court at least three weeks prior to trial.
- D. Training and familiarization sessions can be set up by contacting the Court's Case Manager 713-250-5181.

14. **COURTROOM PROCEDURES**

- A. Hours: The Court's hours during trial will vary depending upon the type of

case and the needs of the parties, counsel, witnesses, and the Court. Court normally will not convene before 8:30 a.m. and normally will adjourn by 5:00 p.m., with a noon lunch recess.

- B. Access at Other Times: Counsel needing access to the courtroom to set up equipment or exhibits before or after normal hours of court must arrange in advance with the Case Manager to have the courtroom open.
- C. Telephones: The Judge's staff will not take telephone messages, and counsel shall refrain from requesting use of telephones in chambers.
- D. Filing of Documents: Pleadings submitted by counsel during the course of a trial should be presented in duplicate (original for filing and copy for the Court) to the Case Manager.
- E. Decorum:
  - (1) Counsel and parties will comply with Local Rules 83.8 and Civ. 57.2 regarding courtroom behavior. These procedures are strictly enforced.
  - (2) Counsel will ensure that all parties and witnesses refrain from eating or smoking in the courtroom.
  - (3) ***Cellular telephone, beepers or pagers must remain on silent while in the courtroom. Counsel are responsible for insuring that their clients, witnesses, and spectators comply with this order.***
- F. Witnesses:
  - (1) Counsel is responsible for summoning witnesses to the courtroom and instructing them on courtroom decorum. Witnesses may be questioned while the attorney is seated at counsel table or standing at the podium.
  - (2) Counsel shall make every effort to elicit from witnesses only information relevant to the issues in the case and to avoid cumulative testimony.
  - (3) Counsel should bear in mind the Court's hours and arrange for witnesses accordingly. The Court will not recess to permit counsel to call a missing witness unless the witness has been subpoenaed and has failed to appear.

G. Seating:

- (1) Unless otherwise requested by the parties, counsel for the plaintiff (or United States, in a criminal matter) shall sit at the counsel table nearest the jury, and counsel for the defendant shall sit at the counsel table farthest from the jury.
- (2) Counsel should enter and leave the courtroom only by the front doors and not through the Court's entrance or the side entrances.

H. While the jury is deliberating, counsel are to remain near the courtroom to be immediately available for jury notes or a verdict.

15. **VOIR DIRE**

The Court allows attorneys to conduct voir dire. The amount of time allowed will vary depending on the case.

16. **DEPOSITIONS**

- A. The Court will accept the parties' agreement to use a deposition at trial even though the witness is available; otherwise, counsel should follow Fed. R. Civ. P. 32.
- B. Before trial, counsel must provide the Case Manager with a copy of any deposition to be used at trial.
- C. Counsel must designate the portion of any deposition to be read by citing pages and lines in the Joint Pretrial Order. Objections to those portions (citing pages and lines) with supporting authority must be filed at least three (3) business days before trial.
- D. Use of videotaped depositions is permitted if counsel edits to resolve objections.

17. **SETTLEMENTS AND ORDERS OF DISMISSAL**

A. **Motions That Have been Resolved**

If the parties are able to resolve a pending motion without Court intervention, they should advise the Court immediately. The parties may do so by calling chambers at (713) 250-5806 and stating that all parties agree that the motion has been resolved. The Court will then deny the motion as moot.

B. **Settlements**

(1) If the parties are seriously contemplating settlement, they should advise the Court by calling chambers and indicating that the Court should postpone consideration of pending motions until the parties advise the Court as to whether a settlement has been reached. If the parties succeed in settling the case, they should inform the Court immediately.

(2) An order of dismissal without prejudice to the right of any party to move for reinstatement within 60 days will be entered on all settlement announcements.

(3) Upon settlement of a suit involving a minor plaintiff, counsel must jointly move for appointment of a guardian ad litem if there is potential conflict of interest between the parent(s) and the minor. The parties may (but are not required to) submit the names of proposed ad litems upon whom they agree. The Court will consider any names submitted, but may appoint as guardian ad litem a person whose name has not been submitted by counsel. Contemporaneously with the motion for appointment, counsel must notify the Case Manager by letter requesting a settlement conference.

B. **Orders of Dismissal**

Any defendant upon whom service has not been perfected within 120 days of the filing of the complaint will be dismissed for want of prosecution in accordance with fed. r. civ. p. 4(m).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

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

The choice to proceed before a Magistrate Judge is entirely yours. Tell only the Clerk. Neither the District Judge nor the Magistrate Judge will be told until and unless all the parties agree.

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

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

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

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

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*versus*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NUMBER:  
\_\_\_\_\_

**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  
Dena Palermo  
\_\_\_\_\_

to conduct all further proceedings, including final judgment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States District Judge

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

\_\_\_\_\_, §  
§  
Plaintiff(s) §  
§  
v. § Civil Action No. H-\_\_\_\_\_  
§  
\_\_\_\_\_, §  
§  
Defendant(s). §

CERTIFICATE OF SERVICE IN REMOVED ACTION

I certify compliance with the Court's Procedures.

On \_\_\_\_\_, 200\_\_, I served copies of the Order for Conference and Court Procedures on all other parties.

\_\_\_\_\_  
Date

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



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**ORDER TO DISCLOSE INTERESTED PERSONS**  
**(Entered in Cases assigned to Judge Keith P. Ellison)**

1. Each counsel for non-governmental parties shall file, within thirty days after each counsel's first entry of appearance, a certificate listing all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities that are financially interested in the outcome of the litigation. If a large group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded.
2. Each such certificate of counsel shall list *all* persons known to counsel to be so interested, in all sides of the case, whether represented by counsel furnishing the certificate or not. The burden is on counsel to ascertain and certify the true facts to the Court.
3. If new parties are added or if additional persons who are financially interested in the outcome of the litigation are identified at any time during the pendency of the litigation, each counsel shall promptly file an amended certificate.
4. Counsel who file or remove an action must serve a copy of this Order with the summons and complaint or with the notice of removal.

BY ORDER OF THE COURT

**Plaintiff** §  
§  
§  
v. § **CIVIL ACTION NO.**  
§  
§  
**Defendant** §

**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. Briefly describe what this case is about.
4. Specify the allegation of federal jurisdiction.
5. Name the parties who disagree and the reasons.
6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
7. List anticipated interventions.
8. Describe class-action issues.
9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.
10. 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).
11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
  12. Specify the discovery beyond initial disclosures that has been undertaken to date.
  13. State the date the planned discovery can reasonably be completed.
  14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.
  15. Describe what each party has done or agreed to do to bring about a prompt resolution.
  16. 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.
  17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.
  18. State whether a jury demand has been made and if it was made on time.
  19. Specify the number of hours it will take to present the evidence in this case.
  20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.
  21. List other motions pending.
  22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

23. 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**

*Keith P. Ellison*

United States District Judge

515 Rusk Street  
Houston, Texas 77002  
713-250-5806  
713-250-5503 Fax

**NOTICE REGARDING INITIAL CONFERENCE**

This notice is being issued in connection with the above referenced proceeding. We are currently scheduled for an initial, or scheduling, conference. As a standard practice in this court, we ask that parties try to agree to dates and deadlines and submit them in the form of a proposed scheduling order. If the parties are able to reach an agreement, the Court will dispense with the conference. I am attaching the standard form scheduling order, which can also be downloaded from the court's website: [www.txs.uscourts.gov](http://www.txs.uscourts.gov).

In working through the schedule, please keep in mind that trial is normally scheduled within eighteen months after the case is filed in, or removed to, federal court. Dispositive motions should be filed three months prior to the trial date. In the attached proposed scheduling order, we have included specific due dates for dispositive motions and the joint pretrial order. We have also noted a trial date based on the guidelines stated above.

If you return the completed scheduling order one week prior to your scheduled hearing, the conference will be cancelled. The order should be e-mailed to my Case Manager, Arturo Rivera at [Arturo\\_Rivera@txs.uscourts.gov](mailto:Arturo_Rivera@txs.uscourts.gov). Alternatively, you can fax it to him at 713-250-5503.

**IT IS SO ORDERED.**

A handwritten signature in black ink that reads "Keith P. Ellison".

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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

vs.

§  
§  
§  
§

C. A. No. H-

SCHEDULING/DOCKET CONTROL ORDER

Anticipated Length of Trial: \_\_\_\_ Days

Jury:\_\_\_\_ Non-Jury:\_\_\_\_

1. NEW PARTIES shall be joined by:  
The Attorney causing the addition of new parties will provide copies of this Order to new parties. \_\_\_\_\_
2. EXPERT WITNESSES for the PLAINTIFF will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE: \_\_\_\_\_
3. EXPERT WITNESSES for the DEFENDANT will be identified by a report listing the qualifications of each expert, each opinion that the expert will present, and the basis for it. DUE DATE: \_\_\_\_\_
4. DISCOVERY must be completed by:  
Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under the Federal Rules of Civil Procedure to respond until after the deadline. \_\_\_\_\_
5. DISPOSITIVE AND NON-DISPOSITIVE MOTIONS (except motions *in limine*) will be filed by: \_\_\_\_\_  
(Due 90 Days Prior to Trial Date)
6. JOINT PRETRIAL ORDER and MOTIONS *IN LIMINE* (The Court will fill in this date) \_\_\_\_\_  
(Due Monday one week before trial)
7. TRIAL will begin at 9:00 a.m. \_\_\_\_\_  
(15 Months from date case is filed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith P. Ellison  
United States District Judge

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

## PROPOSED PATENT CASE – SCHEDULING ORDER

*[INSERT – CASE CAPTION]*

It is hereby **ORDERED**, after consultation with the parties, that the following schedule will apply in this case:

0	1/1/05 <b>[sample date: chosen for illustration]</b>	<b>Scheduling Conference</b> (see # 32 re: <b>MEDIATION</b> )
1	[2 weeks after Scheduling Conf.] 1/15/05	<b>Comply with P.R. 3-1 and P.R. 3-2: Parties to make disclosure of asserted claims and preliminary infringement contentions &amp; make document production.</b> <i>After this date</i> , it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule (P.R.) 3-7. <b>Join additional parties.</b> It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court to join additional parties. <b>Add new patents and/or claims</b> for patents-in-suit. It is not necessary to file a motion to add additional patents or claims before this date. Thereafter, it is necessary to obtain leave of court to add patents or claims.
2	[6 weeks after # 1] 2/26/05	Comply with P.R. 3-3 and 3-4: <b>Parties to serve preliminary invalidity contentions</b> and make document production. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R.. 3-7. Add any <b>inequitable conduct allegations</b> to pleadings. Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations to pleadings.
3	[2 weeks after # 2] 3/12/05	Comply with P.R. 4-1: <b>Parties' exchange of proposed terms and claim elements needing construction.</b>
4	[3 weeks after # 3] 4/2/05	Comply with P.R. 4-2: <b>Parties' exchange of preliminary claim constructions and extrinsic evidence.</b> <b>Privilege Logs</b> to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).

5	[9 weeks after # 2; 17 weeks after Conf.] 4/30/05	Deadline to comply with P.R. 4-3: <b>Filing of joint claim construction and pre-hearing statement.</b>  <b>Disclosure of parties' claim construction experts &amp; service of FED. R. CIV. P. 26(a)(2) materials</b>
6	[matches # 5] 4/30/05	<b>Deadline for all parties to file amended pleadings (pre-claim construction).</b> It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. (It will be necessary to file a Motion for Leave to Amend after this deadline.)  <b>NOTE:</b> If the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to P.R. 3-7 irrespective of whether the amendment is made prior to this deadline.
7	[22 weeks after Scheduling Conf.] 6/4/05	Each party to provide name, address, phone number, and curriculum vitae for up to three (3) candidates for a <b>court-appointed special master</b> ( <i>see</i> FED. R. CIV. P. 53) or <b>court-appointed expert</b> ( <i>see</i> FED. R. EV. 706), with information regarding the nominee's availability for <i>Markman</i> hearing or other assignments as deemed necessary by the court. The parties shall indicate if they agree on any of the nominees.
8	[22 weeks after Scheduling Conf.; generally matches # 7] 6/4/05	Deadline for parties (optional) to provide Court with <b>written tutorials concerning technology involved in patent in issue.</b> If a special master or court-appointed expert is hereafter selected, the parties will provide each tutorial to the master or expert.
9	[2 weeks after # 6; generally 19 weeks after Scheduling Conf.] 5/14/05	<b>Responses to amended pleadings due.</b>
10	[2 weeks after # 9; 21 weeks after Scheduling Conf.] 5/28/05	<b>Discovery deadline on claim construction issues</b> ( <i>see</i> P.R. 4-4)
11	[7 weeks after # 5; 3 weeks after # 10; generally 24 weeks after Scheduling Conf.] 6/18/05	Comply with P.R. 4-5(a): <b>the party claiming patent infringement</b> must serve and file a <b>Claim Construction Opening Brief</b> with its supporting evidence. The moving party is to provide the Court with 2 copies of the binders containing their Opening Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Opening Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.
12	[2 weeks after # 11] 7/2/05	Comply with P.R. 4-5(b): <b>Responsive Brief and supporting evidence due to party claiming patent infringement.</b> The moving party is to provide the Court with two (2) courtesy copies of the Responsive Brief and exhibits. If a special master or court-appointed expert has been appointed, the nonmoving party must supply a copy of its Response on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.



13	[1 week after # 12] 7/9/05	<p>Comply with P.R. 4-5(c): <b>Party claiming infringement shall file a Reply Brief and supporting evidence on claim construction.</b> The moving party is to provide the Court with two (2) copies of the Reply Brief and exhibits.</p> <p>If a special master or court-appointed expert has been appointed, the moving party must provide the Reply Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.</p> <p>Parties to file a <b>notice</b> with the Court stating the <b>estimated amount of time</b> requested for the Claim Construction (<i>Markman</i>) Hearing. The Court will notify the parties if it is unable to accommodate this request.</p>
14	[1 week <i>before Markman</i> Hearing] 8/6/05	Parties to submit <b>Claim Construction Chart</b> in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(d).
15	[approx. 15 weeks after # 5; approx. 5 weeks after # 13; 32 weeks after Scheduling Hrg.] 8/13/05	<b>Claim Construction (<i>Markman</i>) Hearing at ____ .m. at the United States District Court, 515 Rusk Street, Courtroom 9-F, Houston, Texas</b>
16	[ <i>Markman</i> ruling within 6 weeks after <i>Markman</i> hearing] 9/24/05	<b>Court's Decision on Claim Construction (<i>Markman</i> Ruling)</b> <b><u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u></b>
17	[4 weeks after <i>Markman</i> Ruling (# 16)] 10/22/05	<b>Deadline for final infringement contentions and to amend pleadings on infringement claims</b> <b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
18	[6 weeks after <i>Markman</i> Ruling (# 16); 2 weeks after # 17] 11/5/05	<b>Deadline for final invalidity contentions and to amend pleadings on invalidity claims.</b> <b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
19	[matches # 17; ~10.5 mos. after Scheduling Conf.] 10/22/05	Comply with P.R.3-8. <b>All parties furnish</b> documents and privilege logs <b>pertaining to willful infringement.</b>
20	[4 weeks after # 19 ] [~ 8 weeks after <i>Markman</i> Ruling (# 16) and ~11.5 mos. after Scheduling Conf.]) 11/19/05	Date for <b>designation of expert witnesses on non-construction issues on which the party has the burden of proof ("BOP") and service of expert witness reports.</b> [Refer to Fed. Rules of Civil Proc. for information required.]
21	[4 weeks after # 20] 12/17/05	<b>Date for designation of responsive expert witnesses on non-claim construction issues on which party does <i>not</i> have BOP, and service of responsive expert witness reports.</b> [Refer to Fed. Rules of Civil Proc. for information required.]

22	[8 weeks after # 21, ~ 5 mos. after <i>Markman</i> Ruling (# 16), and ~14.5 mos. after Sched. Conf.] 2/11/06	<b>Discovery Deadline on all issues.</b>  <i>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</i>
23	Motions due: 3/11/06 [4+ weeks after # 22] Responsive Briefs due (3 wks): 4/1/06 Reply Briefs due (1 wk): 4/8/06	<b>Dispositive and Non-Dispositive Motions and Briefing deadlines</b>
24	[~ 8 weeks. after motions in # 23 filed; ~17 mos. from Sched'g Conf.] 5/6/06	<b>Court's ruling on all pending motions</b>
25	[4 weeks after # 24; at least 2 weeks before Docket Call] 6/3/06	<b>Joint Pretrial Order</b> due including <b>all components</b> required by Local Rules and this Court's Procedures (such as witness lists, exhibit lists and copies of exhibits ( <i>see</i> # 29 below), and (a) in bench trials, proposed findings of fact and conclusions of law with citation to authority and (b) for jury trials, joint proposed jury instructions with citation to authority, and proposed verdict form). <b>Statement of Expected Length of Trial:</b> _____ days (~6 hours with jury per day).
26	[same day as JPTO (# 25) – but filed separately] 6/3/06	<b>Written notice due for request for daily transcript or real time reporting of trial proceedings.</b>
27	[Same day as JPTO (# 25)] 6/3/06	<b>Video and Deposition Designations</b> due. Each party who proposes to offer a deposition by video must file a disclosure identifying the line and page numbers to be offered.  All other parties will have <b>1 week</b> to file a response requesting <b>cross designation</b> line and page numbers to be included. Each party is responsible for <b>preparation of the final edited video</b> in accordance with their parties' designations and the Court's rulings on objections.
28	[same day as JPTO (# 25)] 6/3/06	<b>Motions in Limine due.</b>
29	[1 week after JPTO filed (# 25)] 6/10/06	<b>Objections</b> to opponents' proposed witnesses, proposed exhibits, designated deposition testimony, and any other matters due.
30	[1 day before Docket Call – 3 p.m.] 6/17/06	The <b>parties</b> are directed to confer and <b>advise the Court</b> about (a) which limine requests the parties agree to.
31	[18.5 mos. after Scheduling Conf.; ~20 mos. after case filed] 6/18/06	9:00 a.m. <b>Docket Call/ Final Pretrial Conference</b> at the United States District Court, 515 Rusk Street, Houston, Texas.

32	<b>MEDIATION is required prior to Docket Call, 6/17/06</b>	<p><i>The Court refers most patent cases to mediation. The parties should discuss proposed mediators and timing of mediation prior to the Scheduling Conference and be prepared with recommendations for the Court.</i></p> <p><b>Mediation to be completed by this date.</b> The parties must select a mediator for this case. The parties and mediator must comply with S.D. TEXAS LOCAL RULE 16.</p>
33	[generally, the first day of jury trial] ~ <b>July, 2006</b>	9:00 a.m. <b>JURY SELECTION</b> at the United States District Court
34	[Generally same date as jury selection # 33] ~ July, 2006	<b>JURY TRIAL</b> (9:30 a.m.) commences, subject to Court's criminal docket

**OTHER REQUIREMENTS and LIMITATIONS:**

- (a) **All depositions** to be read into evidence as part of the parties' case-in-chief must be **EDITED** (*with* notice to opposing parties) to exclude all unnecessary, repetitious, and irrelevant testimony. **ONLY** those portions relevant to the issues in controversy may be read into evidence.
- (b) The Court will refuse to entertain any **motion to compel discovery** filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Southern District of Texas Local Rules 7.1, 7.2.
- (c) The following **excuses will neither warrant a continuance** nor justify a failure to comply with the discovery deadline:
  - (i) the fact that there are motions for summary judgment or motions to dismiss pending;
  - (ii) the fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) the failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (d) **Exhibits**
  - (i) Each party must provide the Court with a courtesy copy of exhibits and exhibit lists. The presiding judge's preferred format for Exhibit Lists is available on the Court's website at [www.txs.uscourts.gov](http://www.txs.uscourts.gov) under **Court Procedures**.
  - (ii) If exhibits are voluminous, provide only specific pages that pertain to the issues on the two courtesy copies. The original exhibits that are agreed upon by the parties, should be ready to be tendered to the Clerk of the Court at the beginning of trial.

Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.

- (iii) The parties are to label all proposed exhibits with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. For example:

<b>Plaintiff's Exhibit</b>
Exhibit No. _____
Case No. _____

<b>Defendant's Exhibit</b>
Exhibit No. _____
Case No. _____

SIGNED at Houston, Texas, this \_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
[JUDGE'S NAME]  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

vs.

§  
§  
§  
§  
§  
§  
§  
§

C. A. No. H-

**JOINT PRETRIAL ORDER**

1. **Appearance of Counsel**

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

2. **Statement of the Case**

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

3. **Motions**

Identify any pending motions.

4. **Exhibits**

Each counsel will attach to this joint pretrial order two copies of a list (in the form shown in Attachment A or a similar form) of all exhibits to be offered and will make all such exhibits available for examination by opposing counsel. This rule does not apply to rebuttal exhibits that cannot be anticipated.

Any counsel requiring authentication of an exhibit must so notify the offering counsel in writing within five (5) business days after the exhibit is made available to opposing counsel for examination. Failure to do so is an admission of authenticity.

The Court will admit all exhibits listed in the final pretrial order into evidence unless opposing counsel files written objections with authorities at least three (3) business days before trial.

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

5. **Witnesses**

List the names and addresses of witnesses who will or may be called and include a brief statement of the subject matter and substance of their testimony. If a witness is to appear by deposition, cite the inclusive pages and lines to be read. Objections to those portions (citing pages and lines) with supporting authority must be filed at least three (3) business days before trial.

Each counsel will also attach to the joint pretrial order two copies of a list of witnesses' names only for use by Court personnel.

Include in this section the following:

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

6. **Trial**

Include in this paragraph the following:

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

7. **Additional Required Attachments**

For Jury Trials include the following IN DUPLICATE:

- (a) Proposed jury instructions, definitions, and interrogatories. Each requested instruction, definition, and interrogatory must be numbered and presented on a separate sheet of paper with the citation and authority upon which counsel rely. Each requested instruction, definition, and interrogatory must also be submitted to the Court both in hard copy or electronically either on a disk or via email.
- (b) Memorandum of Law.

For Non-Jury Trials include the following IN DUPLICATE:

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

APPROVAL REQUESTED:

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Counsel for Plaintiff(s)

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Counsel for Defendant(s)

# UNITED STATES DISTRICT COURT

\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

## EXHIBIT AND WITNESS LIST

V.

Case Number: \_\_\_\_\_

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY					DEFENDANT'S ATTORNEY				
TRIAL DATE (S)					COURT REPORTER					COURTROOM DEPUTY				
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES									

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size.



### EXHIBIT AND WITNESS LIST – CONTINUATION

vs.					CASE NO.
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS AND WITNESSES