



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

Judge Gregg J. Costa

Updated November 2013

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 Gregg J. Costa.

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 John R. Froeschner. 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. The Court requires strict compliance with these Local Rules.

ALL inquiries regarding ANY case, please contact:

Arturo A. Rivera, Case Manager
To United States District Judge Gregg J. Costa
United States District Clerk
601 Rosenberg Street, Suite 613
Galveston, Texas 77550
Telephone: 409-763-7811
Facsimile: 409-766-3539
Email: Arturo_Rivera@txs.uscourts.gov

COURT PRACTICES AND PROCEDURES

A. GENERAL PROCEDURES

1. Contact with Court Personnel

Case-related inquiries regarding any case should be made by e-mail to the Case Manager, Arturo Rivera, at arturo_rivera@txs.uscourts.gov.

At the Court's direction, law clerks may contact counsel; however, they will not discuss matters other than the subject of the call. Lawyers must not call the law clerks unless they are returning a call.

2. Electronic Filing

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 and Administrative Procedures for CM/ECF (as amended and available at www.txs.uscourts.gov).

3. Appearances

An attorney who appears at a hearing or conference shall:

- (1) be familiar with the case and prepared to argue any pending motions (including at the scheduling conference);
- (2) have authority to bind the client; and
- (3) be in charge for that appearance.

All counsel wishing to appear at a conference or hearing by telephone shall notify the Case Manager of that desire at least one week prior to the hearing. Telephonic appearances are permitted for scheduling conferences. For other hearings, the Court will determine on a case-by-case basis whether it is permissible.

Failure to appear when notified of a setting may subject the attorney and/or his or her client to sanctions.

4. Young Lawyers

The Court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or “stand-up” opportunities in court, particularly for young lawyers (i.e., lawyers practicing for less than seven years). The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response. In those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The Court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate—such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a “bet-the-company” type case. Even so, the Court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young lawyers, to clients, and to the profession generally. Thus, the Court encourages all lawyers practicing before it to keep this goal in mind.

5. Courtesy Copies

A party must submit promptly to chambers a courtesy copy of any filing that exceeds twenty pages. For filings with a large number of exhibits, the party should organize the exhibits in a tabbed binder.

Such courtesy copies may be mailed to the Court at the following address:

Case Manager to Judge Gregg Costa
United States District Court
601 Rosenberg, Suite 411
Galveston, TX 77553-2300

6. Font

Filings must be in 14-point font.

B. PRETRIAL PRACTICE

1. **Scheduling Conferences**

The Rule 16 conferences are ordinarily scheduled approximately three months after the filing of the case to allow the full time period for service. In cases in which service is prompt, this often results in a two or three month dead period in the case. To prevent this delay, parties are allowed to commence discovery once service is effectuated and prior to the scheduling conference.

The parties may agree on additional deadlines for completion of pretrial matters and bring a proposed docket control order with them to the initial pretrial conference. *See* Local Rule 16.1.

The Court seeks to set all but the most complex cases for docket call within one year of the scheduling conference.

2. **Expedited Trial Alternative**

In cases that do not require substantial discovery, the Court provides the parties the option of agreeing to an abbreviated scheduling order and expedited trial. If the parties agree to forego dispositive motions and formal discovery, the Court will set a date for a jury or bench trial within three months of the pretrial conference. Counsel should contact the case manager as soon as possible if the parties seek this option so the Court can set a trial date. An expedited trial is a much less expensive alternative for cases in which the parties already possess at the time of filing most of the information they need. And agreeing to an expedited bench trial with no appeal is a less expensive alternative to arbitration.

3. **Pilot Program for Employment Discrimination Cases**

The Court is participating in a pilot program that seeks to make discovery in employment discrimination cases more efficient. The program establishes a standard set of initial discovery protocols in such cases. In these cases, the Court will issue the Standing Order for Certain

Employment Cases. That order, and more information about the pilot program, is available on the Federal Judicial Center's website, [http://www.fjc.gov/public/pdf.nsf/lookup/disceempl.pdf/\\$file/disceempl.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/disceempl.pdf/$file/disceempl.pdf).

4. Continuances

The parties may agree to extensions of discovery deadlines without seeking court approval, so long as the extension does not affect the dispositive motion deadline or docket call date. To continue the dispositive motion deadline or docket call date, the parties must submit a motion. Agreed motions for continuance are not binding on the Court.

5. Discovery Disputes

The Court expects that the parties will make a serious attempt to resolve all discovery issues absent court intervention. When those attempts prove unsuccessful, the complaining party should file a letter not to exceed two pages outlining the issue. Typically, the Court will then set a telephone conference within a week of receiving the letter. The opposing party may, but need not, submit a letter in response prior to the telephone conference.

6. Motion Practice

- A. A party should not file a motion and separate “Memorandum of Law.” The motion itself should include the party’s argument supporting the relief it seeks.
- B. Except for dispositive motions, all motions should include a proposed order.
- C. Nondispositive motions will be struck if they do not include a Certificate of Conference. *See* Local Rule 7.1.
- D. If a party wishes to file a pleading, motion, or exhibit under seal, the party must file a motion to file under seal, which will then be considered by the Court and admitted under seal if the Court deems such filing to be necessary.

- E. Absent leave of Court for extended briefing, any brief or memorandum shall be limited to 30 pages. Per the local rule, responses should be filed within 21 days unless the Court orders an expedited response.
- F. Replies should be filed within 10 days of the date the response is filed. A reply must not exceed 15 pages.

7. Protective Orders

Because of the presumption of public access to judicial records, any protective order the parties seek to have the Court enter must allow the Court to decide whether any documents filed with the Court should be sealed. The parties' confidentiality designations can govern disclosure of documents that are merely produced during discovery. But once those designated documents are filed as exhibits to a motion, or discussed in the motion itself, the Court will make the determination of whether the information should be kept from public view. This can be accomplished by language in the protective order along the following lines:

When a party files with the Court a document that has been designated as "confidential" or "highly confidential," or refers to such a document in a pleading or brief, the Party must file the document under seal and accompany that filing with a separate, sealed Motion to Seal that explains to the Court the justification for preventing public disclosure of the information.

8. Settlements

- A. 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.

- B. 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.

- C. 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 litem*s 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.

C. TRIAL PRACTICE

1. **Trial Settings**

Galveston Cases: The scheduling order will set the case for docket call, which will take place the first Tuesday of a month. If your case will be tried the week of docket call, the case manager will notify you at least a week in advance. Otherwise, expect your case to be set for trial later that month. Absent an order to the contrary, parties do not need to submit any pretrial filings prior to the docket call and the Court will set a date for those submissions when it sets a trial date and final pretrial conference during docket call. A pending dispositive motion does not cancel the docket call setting; in such cases, counsel are expected to appear and be prepared to discuss the motion and a trial setting.

Victoria Cases: The scheduling order will set the case for a specific trial date. Absent an order to the contrary, parties should submit their pretrial filings 10 days before jury selection.

2. **Pretrial Filings**

The parties do not need to file a Joint Pretrial Order. Instead, each party should file the following: (1) Exhibit List, (2) Witness List, (3) Deposition Designations; (4) Proposed Voir Dire Questions; (5) Proposed Jury Instructions, and (6) Motions in Limine. At least one day prior to the pretrial conference, each party shall submit to the Court (1) a tabbed binder containing these filings and (2) a separate binder (or binders) containing its exhibits.

The parties must confer prior to filing Motions in Limine and note which requests are unopposed. Parties should also keep in mind that a limine request should be limited to those matters that are so unfairly prejudicial that the prejudice resulting from disclosure during trial cannot be cured by a court instruction.

3. Exhibits

To make efficient use of jurors' time, the Court follows Local Rules 44 and 46 requiring pretrial objections to the authenticity and admissibility of exhibits. Counsel should be reminded that Rule 11 applies to authenticity objections. The Court will typically address evidentiary objections at the pretrial conference and seeks to preadmit as many exhibits as is reasonable under the circumstances.

4. Jury Selection

Jury selection is typically set for the afternoon. The Court will provide some background information and conduct a brief preliminary examination. Lawyers will then generally be allowed 30-90 minutes per side, depending on the nature of the case. The Court typically selects eight jurors for civil cases, though it may sit more in lengthier cases. The first afternoon will typically only be used to select the jury, with opening statements and testimony commencing the next morning.

5. Hours

The Court typically holds trial from 9:00-5:30. For trials expected to last more than two weeks, the Court will consider taking Fridays off.

7. Depositions

The Court will accept the parties' agreement to use a deposition at trial even though the witness is available. Counsel should provide the designations and objections with the pretrial filings. The Court will attempt to rule on objections at the pretrial conference.

8. Jury Trial Innovation Project

The Court is participating in a jury trial innovation project that requires using one or two of the following practices in each trial: (1) using a timing order; (2) instructing the jury on the law prior to trial; (3) allowing jurors to ask questions; and (4) allowing attorneys to make

minisummations during trial. The Court will address these practices during the pretrial conference and seek input from counsel about which practices are most suitable for their case. More information about this project is available on the Court's website.

9. Trial Decorum

Counsel may question witnesses while sitting or standing. Counsel should look at the witness, not the jurors, when asking questions. Counsel do not need to seek leave to approach the witness to show an exhibit.

10. Courtroom Technology

Counsel should consult with the case manager about technology needs at least one week in advance of trial.

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

Plaintiff(s),

v.

Defendant(s).

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CIVIL ACTION G-_____

CERTIFICATE OF SERVICE IN REMOVED ACTION

I certify compliance with the Court's Procedures.

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

Date

Attorney for _____