



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Judge Keith P. Ellison

Updated August 2011

**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 George Hanks. 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:

Stephanie Loewe, 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: Stephanie_loewe@txs.uscourts.gov

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COURT PROCEDURES
OF
JUDGE KEITH P. ELLISON

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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 Stephanie Loewe, Case Manager and Court Coordinator at 713-250-5181 or stephanie_loewe@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) 250-5115.
- 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 letter, 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 Ave.
3rd 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. If counsel desires to appear by telephone, counsel will need to call Judge Ellison's conference dial-in number, **713-250-5238** at the scheduled time. 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.¹
- (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.²
- (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

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

² 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.

Clerk and copied to opposing parties and counsel, rather than 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 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. Any brief, memorandum, or motion that cites authorities not found in the United States Code, United States Supreme Court Reporter, Federal Reporter, Federal Rules Decisions, Federal Supplement, Southwestern Reporter Second, or Vernon's Revised Statutes and Codes Annotated should have appended to it copies of the relevant parts of such authorities other than cases, and complete copies of cases. 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.

7. REPLIES TO RESPONSES

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

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

8. COURTESY COPIES

- A. All documents filed of more than 20 pages are required to be sent to Chambers Room 3716 the day of filing. Double sided printing for courtesy copies is recommended.
- B. Any document over 50 pages should be hole punched and bound and tabbed in a binder type notebook. Double sided printing for courtesy copies 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 and bring a proposed docket control order with them to the

initial pretrial conference.

The parties should submit an Agreed Docket Control Order to the Court in lieu of an initial pretrial conference. Shortly after the case is assigned to Judge Ellison's Court, you will receive 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 can be made available if requested from the Case Manager at least 72 hours prior to a trial or hearing:
 - Document Camera
 - Projector and Screen
 - VCR/DVD
 - Annotation Monitors on Equipment Stand and Witness Box
 - 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