

## **Court Procedures**

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### **1. SCHEDULING ORDERS:**

We use a scheduling order in all cases which has a designated "Initial Trial Date". We use specific time periods revolving off of the "Initial Trial Date" in conjunction with incorporating the discovery period established by the Texas Rules of Civil Procedure 190.2 for Level I and 190.3 for Level II cases. The time periods established by the Scheduling Orders affect the time of filing of Daubert Motions, Motions to Compel, amended pleadings, and addition of parties. The Scheduling Orders also set up time periods affecting the management of trials, which time periods include deadlines for the exchange of lists of exhibits, (including demonstrative aids and affidavits), deadlines for designation of deposition testimony and filing of motions in limine, conferences to establish any stipulations as to facts, exhibits, and motions in limine, and the filing of an estimate of the length of trial. There is a different Scheduling Order required in Level III cases. The Scheduling Order for Level III cases includes the above deadlines and conferences for Level I and II cases as well as other deadlines and agreements concerning discovery. A form order is available upon request.

If a case continues past its original "Initial Trial Date", a new scheduling order will be necessary to change any of the deadlines established by the original scheduling order.

### **2. COURT'S MOTION DOCKET SETTINGS:**

Call the Clerk regarding the status of motions. For an expedited hearing, file the motion and talk to the Clerk regarding an appropriate time for a hearing. Should this be inadequate to meet your needs, contact the Court Coordinator who will discuss the

hearing with you and if necessary request the Court Coordinator talk with the Judge to find out if any other solution may be available. If I am not in trial, I can hear emergency matters by telephone conference immediately. The Coordinator will call you with rulings on motions which have been taken under advisement. However, if you feel the need to check on the status of pending motions, call the Court Coordinator who will be aware of the status of cases under advisement.

Discovery Motions: Generally heard at 9:30 and 1:30 p.m. on every other Monday and 9:00 a.m. on Thursdays.

### **3. HEARING DOCKET/PRE-TRIAL HEARING REQUIREMENTS AND SUGGESTIONS:**

Motions must contain a Certificate of Conference. If the motion is opposed, attach a fiat, an extra copy of the motion and a self-addressed, stamped envelope for the Clerk to return. The movant is to notify opposing counsel for the date and time set for the hearing. Agreed orders should be signed by all counsel, or the Certificate of Conference must state that the other side agrees. Orders reflecting rulings should indicate the other side's approval as to form or request the Court to hold a certain number of days (a minimum of 5 days) in order for the other side to have time to notify the Court of any objections.

Motions for Summary Judgment: In cases involving several Court jackets, a book should be submitted to the Court by both sides that includes the Motion, Response, and Reply as well as both sides' cases. Exhibits attached as evidence should be tabbed. Cases submitted with briefs should be underlined and submitted to not only the Court, but also opposing counsel.

Motions to Dismiss/Nonsuit (D.W.O.P.): Orders should be simultaneously presented with the motions and reflect within the title of the order if the order is either a partial or final order.

Motions in Limine: At the Court's option either the day prior to the trial date or the day of voir dire, attorneys must confer and reach agreements where possible prior to case being called to trial.

Motions for Substituted Service: The address of service must be verified for a Motion for Substituted Service under Rule 106. ex: neighbor, license plate located on property, billing address for utilities, family member. Mail tracing or an appraisal district address standing alone is not sufficient. A minimum of three sufficient attempts is also required. *Note*: One cannot get a 106 for a corporation's registered agent (see Tx. Civil Prac. & Rem. Code § 17.026). However, you may be able to obtain a 106 for other servable members of the corporation, in accordance with B.O.C. § 5.251(1)(B). If after filing an affidavit showing due diligence that a registered agent cannot be personally served, amend your petition. Your amended petition should reflect that after due diligence, the registered agent could not be served. In the amended petition, state that

in accordance with the statutory language of Tx. Civil Prac. & Rem. Code § 17.026, the Secretary of State may be served instead. The Secretary of State's gold sealed paper showing service on the registered agent must be filed with the court.

Generally, prior to a hearing on a Motion for Temporary Injunction, mediation is required.

Default Judgments: Default Judgments should only be heard if damages are unliquidated. No hearing is necessary if damages are liquidated. An affidavit of attorneys' fees, Certificate of Last Known Address for the defendant(s), and an affidavit of an individual defendant's non-military status must be filed at the time of the filing of the Motion For Default Judgment. Also included in the file must be an affidavit of amount due, including interest rate calculations and a copy of the underlying note or credit card account where applicable.

Special care should be taken to match the address of the delivery of citation with the Certificate of Last Known Address. The server also needs to state in his affidavit the complete address of service for the defendant. If the addresses do not match, a letter should be sent explaining the circumstances for the difference.

In addition to the non-military affidavit, a [confirmation of non-military status from the Department of Defense](#) must be attached. **As of January 2013 the DOD website does not state whether a social security number has been used in the search, but only if one has not been used.** If the social security number cannot be obtained, list facts as to why the defendant is not in the military.

For 3<sup>rd</sup> party creditors, state the name of the original creditor and ultimate successor creditor in the Petition. Include the Bill of Sale assigning the debt to the 3<sup>rd</sup> party creditor in the evidence.

#### **4. DISCOVERY:**

In case of discovery disputes just call the Court. The County Courts-at-Law have no master. Visiting judges are not paid for by the County Commissioners at this time.

#### **5. PLEADINGS & MOTIONS:**

The Court attempts to read all Motions for Summary Judgment, Special Appearances, Sanctions, and Motion For New Trial, their Responses and Replies in advance of hearing. Any late pleadings should be filed no later than 1:30 p.m. the day before the hearing at the desk of the clerk assigned to the Court and a copy provided for the Judge is to be given to the Coordinator. With the exception of these motions, filing pleadings or responses/replies to motions with the Court have no specific requirements except for those required by the Texas Rules of Civil Procedure.

Briefs should be organized with the most favorable issues briefed first. Subheadings are encouraged. If deposition testimony is required, attach only the relevant parts of the deposition. The language needing to be emphasized should be quoted in the body of the brief. If you are relying heavily on a case, the case should be provided to the Court with the relevant provisions highlighted in yellow or underlined in blue pen. Opposing Counsel should receive a copy reflecting the highlighted provisions.

When a motion is filed if it has a fiat or notice of hearing attached, the Clerks automatically set the case for a hearing. They send it back to whomever submitted it and then they are required to notice all parties involved. If counsel is from out-of-town, telephone conferences will be allowed when requested.

The Court automatically allows oral hearings upon request.

Call the Clerk or the Court Coordinator for an expedited hearing.

Telephone conferences for the resolution of motions are allowed. Attorneys should arrange them with the Coordinator at the time the motion is scheduled.

Attorneys or parties are notified of rulings on motions not made during the hearing by a phone call from the Court Coordinator.

## **6. COURT'S TRIAL SETTINGS:**

DWOPs are set and noticed automatically upon filing suit.

Whenever an answer is filed, the Court sets the case for trial. We will grant special trial settings. They are to be requested through the Court Coordinator.

We send notices out of trial settings by regular mail. We currently have jury cases set on Tuesdays and Wednesdays, non-jury cases are set every other Monday. If you are set non-jury on a Monday and you pay the jury fee, your trial date does not change. We do have weeks set aside for asbestos and silicosis cases.

## **7. PRIOR TO TRIAL:**

### Continuances:

Cases on file for less than one year may be reset by having a written motion and order for continuance. The Motion should include the reason for the continuance and a time frame agreed upon for the reset.

Cases on file for more than a year, even if agreed to, require a formal motion for continuance with signatures of all parties and all attorneys with a form order granting the same. An Agreed Scheduling Order with signatures must be submitted contemporaneously or else the deadlines will not be extended. Opposed motions must

contain a Certificate of Conference with opposing counsel stating that the motion is opposed and a fiat for the Clerk to set a hearing. If the hearing cannot be set prior to the trial date, it will be heard by telephone conference arranged through the Court Coordinator upon request.

Audio/Visual Equipment: The Court provides a blackboard, easel, Elmo, overhead projector, and video equipment.

## **8. TRIALS:**

The Court requires that opposing counsel refer to each other as "opposing counsel" to the jury instead of by name unless there are multiple parties.

Opening: Be prepared to advise the judge of the complexity of the case prior to opening. If the case is uncomplicated, the opening is limited to less than five minutes for party. *Note: Openings are for the purpose of outlining the evidence to be entered at trial, not for argument.*

Direct Examination: I require the attorneys to use a podium and use microphones.

Cross Examination: Use the podium.

*Proper Use of Depositions for Impeachment or Recall:* Depositions are only referred to for the purpose of recall or impeachment. The proper predicate must be used (sworn to tell the truth, date of depo), and then the page and line references announced, prior to the attorney being allowed to approach the witness. The witness then gets to read the specified portion of the deposition quietly to them before being required to answer follow-up questions.

BE CAREFUL IF THE PURPOSE OF THE DEPOSITION IS FOR IMPEACHMENT TO HAVE ASKED THE SAME OR A VERY SIMILAR QUESTION BEFORE ATTEMPTING IMPEACHMENT.

Closing: Time for closing will vary depending on the complexity and sensitivity of the case.

## **9. ALTERNATIVE DISPUTE RESOLUTION:**

Every case that is set for trial is automatically sent to mediation. The Court Coordinator assigns a mediator on a random basis unless the parties submit a Motion Requesting Mediator to whom they have already agreed. If a mediator has already been appointed and the parties want to agree to another mediator, a Motion Substituting Mediator is required within 30 days after appointment of the first mediator. Approval is automatic. If the Motion Substituting Mediator is filed after 30 days, a hearing will be required. The Court may order alternative dispute resolution unless both parties agree not to.

## **10. MASTERS & VISITING JUDGES:**

Masters are not used in the Court-at-Law courts due to the Dallas County Commissioner's policy. Visiting judges have, however, been used on occasion.

## **11. EMERGENCY RELIEF/CONTACTING THE COURT:**

Contact the Court Administrator in a true emergency.

E-mail addresses are given out as needed to attorneys in process of conducting a trial.

## **12. GUARDIAN AD LITEMS & MEDIATORS:**

All cases involving minors must be "proved up". If the settlement to the minor is less than \$5000, a Guardian Ad Litem may not be necessary.

I interview potential Guardian Ad Litem and Mediators prior to appointment.

Judge Sally Montgomery