

162ND DISTRICT COURT POLICIES AND PROCEDURES

Judge Kim Bailey Phipps

ATTORNEY WITHDRAWALS

The Court requires strict compliance with Rule 10 of the Texas Rules of Civil Procedure and Local Rule 4.02. If the party that will be left without counsel (if the motion is granted) is a corporate entity, contemporaneous with advising the party of its right to object, counsel must also advise the corporate party that only an attorney licensed in this State can represent its interests in court. That is, that a corporate entity cannot appear before the Court as a self-represented party.

If a motion is not agreed to by the client, a 10-day letter should be attached to the motion and the Certificate of Service should reflect compliance with Rule 10 of the Texas Rules of Civil Procedure.

BENCH TRIALS

All parties must submit proposed judgments and proposed findings of fact and conclusions of law seven (7) days before the Trial Setting, along with trial briefs on contested issues of law. The submission must be emailed to Denise Alvarez at denise.e.alvarez@dallascounty.org, with a copy to all parties, in Word format.

Pretrial materials and conferences will be handled in the same manner as jury trials.

CANCELLATION OF HEARINGS

The movant shall call the Clerk to cancel the hearing.

CERTIFICATES OF CONFERENCE

Motions without certificates of conference in compliance and substantial conformance with Local Rule 2.07 will not be set for hearing by the Clerk, except to the extent excluded by Local Rules, such as for motions for summary judgment.

COMMUNICATIONS WITH THE COURT

Please do not email or fax the Court or Court's Coordinator any documents unless prior permission has been given. You may communicate with the Court's Coordinator via email or phone. No pleading may be filed with the Court's Coordinator. If permission is granted to communicate with the Court via email, it is limited to the particular incident and all opposing counsel/parties must be copied on the email.

Attorneys and litigants should assume all communications with the Court's staff could be viewed by the Court. The Court uses its discretion to file pertinent information in the Court's record.

CONTINUANCES

For cases that have been on file for less than one (1) year, the first motion for continuance of the trial requires only an agreed order to be submitted to the Court and will be granted, absent extenuating circumstances. For all cases that have been on file for more than a year, all requests for continuance of the trial, whether agreed or not, must be signed by all parties, as well as counsel. Multiple requests for continuance are disfavored and the Court may require a hearing, even if the motion is agreed.

Absent extenuating circumstances, the failure of the parties to meet the deadlines stated in the Scheduling Order (**including the mediation deadline and completion of discovery**) shall not be sufficient grounds for a continuance. Any continuance requested because of lack of discovery or because of discovery issues must be filed at least thirty (30) days before the Trial Setting and should detail the discovery efforts and outstanding discovery as of the date of the filing of the motion.

If a continuance is opposed by any party, the motion should be filed and set for hearing at least seven (7) days prior to the Trial Setting. Continuances must be supported by affidavits, unless consented to by all parties.

DALLAS COUNTY LOCAL RULES

The Local Rules adopted for use in the District Courts of Dallas, including this Court, may be located through the link on the District Clerk's website. Please also review any Emergency or Amended Orders listed on our website.

DEFAULT JUDGMENT

In cases where damages are proved by affidavits, the Court must be able to calculate the proposed damages from written instruments attached to the pleading on which the default judgment is based. Therefore, parties must "show their work" to substantiate and support calculations (i.e., proposed damages). If the Court cannot calculate damages (including interest and attorney's fees) from written instruments attached to the pleading, said damages are not liquidated and a hearing must be held, where testimony or affidavits may be offered. In any event, calculations in affidavits should not be conclusory figures without substantiation.

DISMISSAL/STATUS CONFERENCE DOCKET

Cases are put on the dismissal docket as determined by the Court. Letters are sent giving a date and time for an appearance.

The Court holds Dismissal/Status Conference dockets on Mondays at 2:00 p.m., in person. Counsel may file a motion to appear remotely if more than 100 miles away from the court.

Counsel should attend the hearing unless an order has been signed by the Court resetting or otherwise removing the hearing or notified in writing (via letter or email) from the Court's Coordinator. The following may result in the Court's dismissal of the case for want of prosecution:

1. The parties fail to submit a proposed judgment or dismissal order withing thirty (30) days after the Court announced a judgment or verdict, or the Court received a written notice that the parties settled.
2. A return of citation or other filing demonstrating service on a Defendant has not been filed on or before the Dismissal Hearing.
3. Plaintiff perfected service on a Defendant, Defendant has not filed an answer on or before the Dismissal Hearing, and Plaintiff fails to file a motion for default judgment.
4. Failure to prosecute a case with due diligence.

FAILURE OF PLAINTIFF TO APPEAR AT THIS HEARING WILL RESULT IN THE DISMISSAL OF THE MATTER FOR WANT OF PROSECUTION PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE 165A AND THE COURT'S INHERENT POWER.

EXPERT CHALLENGES

Unless otherwise allowed by order of the Court, expert challenges must be heard no later than forty-five (45) days before trial.

JURY CHARGE

A "working" charge must be emailed to the Court's Coordinator no later than three (3) days before the pretrial conference. The working charge should be presented in a manner that identifies the instructions, definitions, and questions on which there are competing proposals. For example, the proposed charge might set forward plaintiff's proposed instructions, definitions, and questions in a particular font (color or type) and defendant's in another, with those where there is agreement in

regular font. The working charge should be sent via email to the Court's Coordinator at denise.e.alvarez@dallascounty.org in Word format and in hard copy to the Court.

JURY TRIALS

All cases set for trial will be carried 2 weeks.

Special Settings will be determined on a case-by-case basis by the Court but are the exception and not the rule.

The Court should be notified that an interpreter will be used at the time of trial announcement.

MEDIATION

All cases are ordered to attend mediation at least thirty (30) days before trial unless waived by the Court. The mediator shall be named in the case Scheduling Order. If the parties cannot agree on a mediator, a mediator will be appointed. Failure to mediate is not a ground for a continuance.

MOTIONS AND BRIEFS

ORDERS MUST BE FILED WITH EVERY MOTION BEFORE SETTING A HEARING

On all contested motions, counsel must provide a courtesy copy of the motion, response, and reply, if any, to the Court no later than three (3) days prior to the hearing.

The Court requests courtesy copies of any motion and/or brief containing argument or authorities more than ten (10) pages in length. Such motions and/or briefs should have a table of contents and a table of authorities and begin with a summary of the argument. ONLY copies of the case or cases which are controlling as to the issue presented should be attached. Such copies should be highlighted and should be provided to opposing counsel highlighted in the same manner as the Court's copy.

Agreed motions in which an agreed proposed order is e-filed will be submitted to the Court for consideration without a hearing. The motion is not granted until the Court has signed the proposed order and counsel/self-represented litigants should assume that any hearing is still on the docket unless an order has been signed by the Court. The Court, at its discretion, may require a hearing for an Agreed or Unopposed Motion.

The use of any font less than 12 point or margins less than 1" on each side of a page is hereby prohibited. Additionally, the use of reduced, multiple pages (i.e., Min-u-script) is hereby prohibited.

Bring a paper copy of the Order you want signed to the hearing.

MOTIONS FOR SUMMARY JUDGMENT

Motions for Summary judgment will be heard by submission only. All motions for summary judgment must be heard no later than thirty (30) days before trial, unless otherwise ordered by the Court. Counsel is encouraged to call the clerk as soon as possible to receive a setting to ensure there is an available setting on the Court's docket.

OPEN DOOR POLICY

If you have a question about procedures, PLEASE ASK – we are here to serve. Remember, however, that we cannot give legal advice and cannot have *ex parte* communications about cases. When in doubt, put your question in writing and copy your opposing counsel/self-represented litigant. Please also make suggestions on how we can improve the efficiency and user-friendliness of our court.

PRETRIAL CONFERENCES

For most cases, the Court holds pretrial conferences from 8:30-9:30 a.m. on the morning of the Trial Setting. If parties anticipate outstanding pretrial issues will require more than one (1) hour to present to the Court, they should notify the Court's Coordinator no later than one (1) month in advance of trial and schedule a pretrial conference to occur no later than the week before trial.

The Court will not conduct a pretrial conference on matters the parties have not discussed and made a meaningful attempt to resolve. Unless otherwise ordered, parties should exchange all pre-trial materials no later than ten (10) days before trial. Parties shall meet and confer, to maximize agreement, on pretrial issues no later than seven (7) days before trial, but in all cases prior to the pretrial conference. The parties shall be prepared to have an informal discussion regarding a "working" Charge of the Court, as discussed above.

Prior to the pretrial conference, the parties shall meet and confer on the following matters:

- Admissibility of evidence and exhibits;
- Objections to witness and exhibit lists;
- Objections to deposition excerpts;
- The possibility of obtaining stipulations of fact;
- The length of trial;
- Proposed amount of time for voir dire, opening statement, and closing argument;
- Motions in limine;
- Jury questionnaires, if any; and
- Proposed jury charge, questions, instructions, and definitions.

At least three (3) business days prior to the pretrial conference, the parties shall file the materials stated in Rule 166 (e)-(l), an estimate of the length of trial, objections to deposition excerpts, motions in limine, and any other contested matters that will be considered at the pretrial conference.

Each side shall have courtesy paper copies of pretrial material delivered to the Court no later than three (3) business days before the pretrial conference, and counsel should notify the Court of all outstanding pretrial matters that will need to be addressed at the pretrial conference.

PROPOSED ORDERS

Proposed Orders are required for all hearings and shall be e-filed prior to the commencement of the hearing. If, at the conclusion of the hearing, the Court orders the parties to present an agreed order that reflects the Court's ruling, the order shall be e-filed and signed by all counsel, noting that the order is "Agreed as to Form."

PROTECTIVE ORDERS

Protective Orders are intended to preserve the rights of litigants in proceedings to claim confidentiality of certain documents to be produced in litigation between the parties. The Court has a proposed form that may be utilized for this purpose. No proposed Protective Order shall impose a duty on the clerk's office or the Court to handle protected documents or dispose of the same in a certain manner.

Protective Orders filed under Texas Uniform Trade Secrets Act ("TUTSA") shall specifically state in the caption: "Protective Order Under TUTSA CPRC 134A.006" and be consistent with the statutory provisions therein.

The closure of trial proceedings and sealing of the record of a trial involve specific statutory considerations which may be taken up as a separate matter upon the motion of any party in compliance with Rule 76a TRCP.

NO DOCUMENT SHALL BE FILED WITH THE COURT UNDER SEAL UNLESS CONSISTENT WITH RULE 76a.

REFERRAL TO ASSOCIATE JUDGE

The 162nd Associate Judge hears the following:

1. Motion for Admission Pro Hac Vice
2. Motion to Appoint Receiver (post judgment)
3. Motion for Attorney Withdrawal (more than 30 days before trial setting)

4. Motion to Compel (Discovery)
5. Motion for Default Judgment
6. Motion for Protective Order
7. Motion to Quash
8. Motion for Substitute Service
9. Motion for Substitution of Counsel
10. Special Exceptions
11. Temporary Restraining Orders

SCHEDULING ORDERS

All cases are set on a scheduling conference docket once an Answer has been filed. Parties are urged to submit an agreed Scheduling Order. Trials are set for Tuesdays at 9:30 a.m. (“Trial Setting”). The counsel/self-represented litigant may select any Tuesday for a Trial Setting (within the following guidelines). If the parties are unable to reach an agreement on a Scheduling Order, the Court will hold a Scheduling Conference and the Court will select the trial date.

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| Level 1: | 6-10 months out from the date of initial filing of the case. |
| Level 2: | 12-15 months out from the date of initial filing of the case. |
| Level 3: | 15-20 months out from the date of initial filing of the case. |

You will receive a notice requesting an agreed Scheduling Order to be removed from the Court’s scheduling conference docket. **YOU WILL HAVE A DEADLINE OF 3:00 PM ON THE THURSDAY BEFORE YOUR SCHEDULING CONFERENCE SETTING TO SUBMIT YOUR AGREED SCHEDULING ORDER AND BE RELIEVED OF ATTENDING THE HEARING.** If you miss that deadline, you WILL have to appear at the hearing to present your agreed Scheduling Order or proposed Scheduling Order if no agreement is reached.

The continuance of the Trial Setting does not automatically alter the deadlines in the Scheduling Order. If the parties do not request and obtain a continuance of the pretrial deadlines, the Court will enforce the deadlines set by the original Scheduling Order, calculated according to the original Trial Setting.

SETTING HEARINGS

1. All hearings are set with the Court Clerk – (214) 653-7156
2. Counsel should have pleadings on file and then call the Court Clerk to request a hearing. A letter indicating a dispute or need for ruling is insufficient to set a hearing.
3. Notify the Court Clerk of the time needed for the hearing. You will be expected to adhere to the time requested.
4. A hearing is not formally set on the Court’s docket until a Notice of Hearing is e-filed in the docket.

SETTLEMENT OF CASES

Cases that are mediated to settlement or otherwise reported as settled are set for final disposition approximately thirty (30) days from the date the Court becomes aware of the settlement.

If your case has been settled, please file a Notice of Settlement as soon as possible to clear the Court's docket for other cases that need hearings/trial and to eliminate the case being set on a dismissal docket.

All hearings will continue on the Court's docket unless an agreed order disposing of the case has been signed, a notice of nonsuit has been filed, or a Notice of Settlement has been e-filed.

Oral announcement of settlement and emails to the Court's Coordinator are appreciated, but future hearings will not be removed unless/until a Notice of Settlement is e-filed.

The Court requires orders on Notices of Nonsuit.

SUBMISSION HEARINGS

A party may set a hearing by submission. The responding party may file a written request for an oral hearing on a matter that has been set by submission at least two (2) days prior to the submission date. Once the request for oral hearing is filed, the movant shall set the matter for oral hearing.

TRIAL DOCKET AND ANNOUNCEMENT FOR TRIAL

All trial settings will be on a two-week trial docket ("Trial Docket") beginning on Tuesday (the "Trial Setting"). Cases are to be ready for trial on 24-hour notice during the two weeks following the Trial Setting.

Counsel or self-represented litigants are required to announce ready for trial no later than 10:30 a.m. on the Friday preceding the Trial Setting. Such announcement must include the following:

1. Ready/Not Ready
2. Number of days needed for trial
3. Number of witnesses to be presented

PLEASE NOTE THAT, UNLESS AND UNTIL IT HAS BEEN GRANTED, THE FILING OF A MOTION FOR CONTINUANCE DOES NOT EXCUSE THE NEED TO COMPLY WITH THIS REQUIREMENT.

IF PLAINTIFF OR ITS COUNSEL FAILS TO TIMELY ANNOUNCE, THE COURT MAY DISMISS THE CASE FOR WANT OF PROSECUTION. IF DEFENDANT OR ITS COUNSEL FAILS TO TIMELY ANNOUNCE, THE COURT MAY DEEM DEFENDANT READY AND MAY PROCEED WITH THE TAKING OF TESTIMONY.

USE OF COURTROOM

Counsel/parties are welcome to use the courtroom for purposes of preparing for trial, including use of the technology, provided court is not in session. Contact the Court's Coordinator to determine an appropriate time.

VOIR DIRE

Time limits will be set for voir dire on a case-by-case basis.

Parties may submit questionnaires, but they must be pre-approved by the Court at least three (3) days prior to trial.

Jury challenges will be handled privately after questioning.

Demonstrative aids may be used only if approved by the Court and should be shown to opposing counsel before voir dire commences, to give opposing counsel an opportunity to object.

Disqualification, exemption, and hardship issues will be explored by the Court and taken up with individual panel members and attorneys after voir dire and before challenges asserted by the parties.

YOUNG LAWYERS

The Court encourages opportunities for young lawyers (i.e., lawyers practicing for less than seven years) to participate in hearings and trials, particularly when the young lawyer drafted or contributed significantly to the underlying motion or response. Providing substantive speaking opportunities to young lawyers benefits the professions, the lawyers, and the clients.