

# 400<sup>th</sup> JUDICIAL DISTRICT COURT

## Court Rules and Procedures

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### **PRESIDING JUDGE – EDWARD M. KRENEK**

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WebEx Link: <https://fortbendcountytexas.WebEx.com/meet/dc400th>

### **ASSOCIATE JUDGE – STUTI PATEL**

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These Court Rules and Procedures are applicable to all proceedings before the 400<sup>th</sup> District Court Presiding Judge and Associate Judge. However, they are subject to change by either Judge on a case-by-case basis depending upon the circumstances and in furtherance of effectuating justice. A specific Court instruction or order that contradicts these Court Rules and Procedures shall take priority. These Court Rules and Procedures are subject to change or modification by the Judge at any time.

## **GENERAL RULES AND COURT PROCEDURES**

### **COURT DECORUM AND ATTIRE BY COUNSEL, PARTIES AND VISITORS**

In order to maintain the dignity and respect of court proceedings and the judicial system, all individuals entering the courtroom are expected to dress in a manner that reflects the seriousness of the judicial process.

All attorneys (and their clients) are expected to dress appropriately. No attorneys will be allowed to conduct business with the Court wearing jeans, shorts, or similar informal attire without Court permission. Parties are not allowed in the Courtroom wearing inappropriate attire. See General Attire Guidelines below.

No food or beverages (other than water, tea, or coffee in a closed container) without Court permission are permitted in the Courtroom. No cursing or foul language is permitted in the Courtroom. Counsel are to conduct themselves in accordance with *The Texas Lawyer's Creed – A Mandate for Professionalism* and all applicable ethical rules.

Cellphones, tablets and computers are permissible for use by counsel; however, they must be silenced. No photographs may be taken in the Courtroom under any circumstances without permission from the Court.

If any telephones, tablets, or other electronic devices should ring or create unwarranted or unauthorized disturbances in court proceedings, they are subject to be taken and held by the Court Bailiff for the remainder of the day.

### **GENERAL ATTIRE GUIDELINES**

**Acceptable Attire for Men:** dress shirt with a collar; long pants (slacks or dress trousers); closed-toe dress shoes; jackets and suits are required for attorneys.

**Acceptable Attire for Women:** blouse or conservative top; slacks, skirts (at or below knee length), or dresses/suits; closed-toe or conservative dress shoes; business suits or formal dress attire are required for attorneys.

**Prohibited Attire** (applies to all individuals): shorts; tank tops, halter tops, or spaghetti straps; flip-flops and beach sandals; clothing with offensive graphics or language; hats or caps (unless for legitimate religious reasons and purposes); sunglasses (unless medically necessary); excessively tight, revealing, or low-cut garments; and clothing intentionally worn in a way that is suggestively revealing.

**Special Considerations:** i) legitimate Religious or Cultural Dress may be worn, but must be respectful of courtroom decorum; ii) Children should be dressed neatly if present in court; iii) Law Enforcement and Security Personnel may be in uniform or professional attire; and iv) Witnesses should be advised to dress professionally, as appearance may impact credibility.

**Enforcement:** i) Individuals not in compliance with proper attire may be denied entry or asked to leave and return in proper attire; ii) Judges have full discretion over enforcement and may issue sanctions or reschedule proceedings if attire is deemed inappropriate; and iii) the Court Bailiff and other Court Staff have full authority to enforce all rules applicable to courtroom proceedings, including courtroom attire, placement and positioning of persons in the courtroom, the use of technology/phones in the courtroom, and any actions that result in disturbances to courtroom proceedings.

## **CRIMINAL DOCKETS AND PROCEEDINGS**

### **APPEARANCES / RESETS**

Docket Call and general Hearing Start Time is at 9:00 AM, unless otherwise indicated by the Court. Please ensure appearances of counsel and Defendants in Court are timely. To prevent forfeiture, requests for resets should be emailed before docket call. Emails must include defendant's name and docket date and provide counsel's electronic signature block with contact information. If unable to timely email a reset request, you must contact the Court or otherwise appear to discuss the situation with the Judge presiding over the proceedings. The granting of any reset is subject to the Court's discretion.

All resets (including those submitted via email) **MUST** include the defendant's signature.

The presence of the defendant is required at all case settings, unless waived by the Court.

Certain cases may be permitted to appear virtually, but only by prior request with Court approval. The Court Coordinator will notify you if the request to appear electronically (generally via WebEx) is granted. Unless otherwise indicated by the Court or by electronic appearance with Court approval, Attorneys and the defendant must appear in-person.

In-Custody Defendants: Unless otherwise approved by the Court for such in-custody defendants to appear virtually (via WebEx), arrangements will be made for such inmates to appear in person.

## **PLEAS**

The defendant must appear in person for all bond pleas. Arrangements will be made for all defendants in custody to appear in person.

Plea/disposition paperwork must be signed and reviewed/approved by all parties (and probation department, if necessary) before the Court will take up such pleas.

## **INTERPRETERS**

Counsel for a defendant should be cognizant of interpreter needs and ensure that Court personnel are timely notified about the needs for an interpreter sufficiently in advance of any proceedings. All requests for an interpreter should be made to the Court Coordinator as early in the proceedings as possible. Interpreter requests should be made in writing preferably through a court filing/notice of the need for an interpreter, or at least via email to the Court Coordinator while also copying opposing counsel. Interpreter notice requirements also apply if either the State or the Defense are aware of the need for an interpreter for any witnesses anticipated to testify in any case proceedings.

## **COURT SETTINGS**

For all retained attorneys, a written appearance or other letter of representation must be on file.

Two announcement settings are generally permitted with the Associate Judge before a case will be transferred to the presiding Judge and set for trial. Any exceptions are to be approved by the Associate Judge or Presiding Judge. Jail cases will be placed on an expedited track and will be given priority on the Trial Calendar.

The defendant must appear in person for a bond violation hearing, unless prior approval is received from the Court.

Bond forfeitures are called at the end of the assigned dockets and are set aside only at the discretion of the Court.

Bench Trials and Motions to Revoke or Adjudicate Guilt can be set anytime during a nonjury week, or at any other time with approval by the Court Coordinator. Counsel should contact the Court Coordinator to obtain such settings.

Competency hearings are held during any week, as needed.

Agreed matters may go to the Associate Judge when the Court is otherwise in session or handling other matters, or as otherwise directed by the Presiding Judge.

## **COURT APPOINTMENTS**

The Court uses the rotating wheel and the Public Defender's Office at this time. Notification of Attorney appointments will be made by email by the Indigent Defense Office, through Court Order, or by other communication mechanisms.

Attorney Vouchers / Attorney Expense Claim Forms: Counsel should timely submit attorney compensation claim forms. If a defendant has multiple open cases which are disposed of at the same time, ALL CASES should be reported on a single Attorney Compensation/Expense Claim Form, (i.e. you may not bill twice for the same Court setting, jail visit, court proceeding, etc., even if the defendant has multiple cases).

The Court attempts to utilize approved billing rates for Attorney Compensation that are applicable and in place at the time that the legal services were/are provided. However, the Court has discretion to adjust attorney hourly compensation rates depending on the services provided, the charges at issue, case complications and nuances, as well as other case-specific circumstances and factors. It is the intention of the Court to be as competitive with hourly compensation rates as allowed within the approved attorney compensation guidelines then in place for Fort Bend County.

## **CRIMINAL TRIALS**

### **GENERAL**

Pre-trial matters are to be scheduled and heard before the trial date if possible and practical. Any matters to be held outside the presence of the jury should attempt to be scheduled prior to the start of *voir dire*; however, if there are strategic, scheduling or logistical constraints, the Court will attempt to accommodate those considerations. Efforts should be made by counsel to schedule for hearing or court consideration (prior to the date of the trial setting) any matters that require evidentiary testimony or significant legal arguments/briefing. Every trial will receive a pre-trial setting 1-2 weeks before trial. The Court will hold additional hearings upon request of counsel. The Court requests that extensive briefing and copies of case authorities be provided in advance of the hearing.

At the final pre-trial setting, both sides should be prepared to announce whether they are ready for trial. If either side is not ready for trial, counsel should be prepared to discuss all aspects of the case with the Court at that pre-trial setting. If a plea acceptable to the Defendant is anticipated, the Defendant is expected to accept the State's plea bargain offer (if any) on the record along with the presentation of evidence and testimony. The Court may also request the Defendant to reject a plea bargain offer on the record.

On Jury Trial or Bench Trial settings, the Defendant and Attorney must appear and announce ready for trial by 9:00 AM on the day of trial. The Court also retains the right to call the case to trial at a pretrial hearing, and then proceed with pretrial rulings on the case. Should that occur, the case is then officially called to and in trial such that any other courts attempting to call counsel to trial in a different case should be notified that counsel is already in trial in this Court.

Case trial priority is set in advance by the Court after consultation with the parties, with priority being given to in-custody defendants.

The Court will consider providing a preferential trial setting for cases that involve special circumstances (i.e., witness issues; travel considerations; etc.), but only by written request. Counsel should alert the Court Coordinator of any special circumstances that warrant a preferential trial setting.

The Court expects the State to ensure timely compliance with all *Brady* and other requirements. This includes ensuring that all law enforcement involved in the proceedings timely produce and turn over ALL relevant items to the Defense.

The Court will entertain requests for witnesses to provide testimony via electronic conferencing means (i.e., WebEx / Zoom) so long as such witnesses have sufficient data and internet capabilities. It is incumbent upon the attorneys to ensure the witnesses have the infrastructure capability to provide testimony using electronic means, and to make all arrangements for utilizing such electronic conferencing technology.

Motions for continuance must be in writing and be presented in advance of the trial setting absent emergency circumstances.

## **JURY TRIALS**

*Voir dire* is expected to begin as soon as the jury arrives. The Court prefers to begin trial proceedings immediately after *voir dire* and the selected jury panel is seated. However, the Court will consider requests to begin trial proceedings, including opening statements and trial testimony, the next day after jury selection and a jury panel is seated. It is incumbent upon counsel to make such request prior to the commencement of *voir dire*. The Court begins trial typically at 9:00 AM and ends at 5:00 PM, with an hour and fifteen minutes break for lunch.

The Court typically allows 30 - 45 minutes per side for *voir dire*. Any requests for additional time for *voir dire* must be presented to Court prior to the day trial begins. The Court will generally begin the *voir dire* process on certain topics. Thereafter, *voir dire* will be conducted by counsel for the State followed by counsel for the Defendant. After the *voir dire* questioning concludes, individual jurors may be questioned at the bench in order to assist the Court in deciding a for-cause challenge.

Requests to use a jury questionnaire should be made to the Court coordinator as soon as practicable, preferably at least 14 days before trial. Counsel for both sides should work together to prepare a joint questionnaire that is as brief as possible. If there are any questions not agreed on, those need to be presented to the Court by submission or oral hearing PRIOR to the day of trial.

Counsel and all parties are expected to stand each time the jury enters or exits the Courtroom and to obey all directions of the Bailiff and court staff. Once *voir dire* is completed, Counsel and the parties are expected to at all times refrain from having conversations with jury members prior to the selected jurors being released.

Please stand when addressing the Court. The Court may instruct counsel to remain seated in a hearing in which there will be a lot of back-and-forth discussion amongst the Court and counsel, or may allow counsel to either stand or sit depending on counsel's preference. When questioning a witness, counsel may sit at

counsel table or use the podium. Please request permission to approach the witness, as doing so will allow the witness to also anticipate counsel's approach towards the witness.

Parties are expected to schedule witnesses in such a way so as to avoid unnecessary delay. Advise the Court if there are witness timing issues so that witnesses may be taken out of order, if necessary, or allowed to be on call so they don't have to wait for a lengthy period of time prior to providing testimony. Parties are requested to cooperate in allowing witnesses to testify out of order and to be generous and professional towards each other in this regard. However, the Court will defer to a party's case strategy when the order of witness testimony is of significance to that party's case.

Identify yourself to the Judge and the Court Reporter before a hearing begins. Provide a business card with your name, correct address, phone number, fax number and e-mail address if counsel is able to do so. Also include party representation. When participating in a court proceeding via WebEx or other electronic conferencing means, counsel should identify themselves each time they begin to speak with the Court so that the court reporter can accurately reflect the speaker on the record.

The Court requests that *motions in limine* and agreements as to the admissibility of exhibits (for purposes of pre-admitting exhibits) be presented to and considered by the Court prior to the day trial is scheduled to begin, if possible. However, if doing so negatively impacts a party's case presentation or trial strategy, or if all pretrial matters will take less than 45 minutes, the Court will make every effort to allow for such actions on the day trial is scheduled to begin, typically before *voir dire* begins.

Accurate exhibit lists should be furnished to the Court and to the Court Reporter by both the State and on behalf of the Defendant. Exhibits are to be marked with exhibit stickers. When possible, use only numbers when marking exhibits instead of letters. Parties may provide their own exhibit stickers if they wish. Exhibits with multiple pages should be stapled, bound and/or assembled so that they may be accurately preserved. Videos, audio recordings, and other electronically-stored data should be provided to the Court and the Court Reporter on an electronic drive (i.e., thumb drive / flash drive or computer disc) so as to preserve the exhibit and to allow the Court to consider such items as part of the case presentation.

Redactions should be made prior to the exhibit being offered. Exhibits redacted after the exhibit is admitted (subject to redaction or without initial objection) are to be marked as an "A" exhibit, with the original, unredacted exhibit kept by the Court Reporter for the record. Once an exhibit is offered (even if not admitted), it must be tendered to the Court Reporter.

Once an exhibit number has been assigned, the same exhibit number may not be used for another exhibit, even if the original exhibit is withdrawn or not used in the hearing or trial. It is not problematic to have resulting skips in exhibit numbers; it is more important to ensure all exhibits are properly identified on the record and thereafter accurately referenced during trial.

Arrangements for obtaining trial/hearing testimony after a hearing or during a trial may be made directly with the Court Reporter.

## **CIVIL DOCKETS AND PROCEEDINGS**

### **AGREED, OPPOSED, AND UNOPPOSED MOTIONS**

Agreed or Unopposed Motions (other than trial continuances) do not have to be placed on the Court's oral hearing or submission docket. All unopposed or agreed motions should be titled as such. These motions are expeditiously presented to the Court without the necessity of a hearing. However, it is still incumbent upon the parties/counsel to notify the Court Coordinator about the filing of such Agreed or Unopposed Orders to ensure that they are presented to the Judge timely. Additionally, if the Court should have a question or concern about the relief presented in an unopposed or agreed motion, the Court may set an expedited hearing on the matter. Under those situations, the Court Coordinator will reach out to all counsel or *pro se* parties requesting availability for such an expedited hearing. The Court requests that counsel / *pro se* parties respond promptly to such requests. If necessary, the Court may also consider such expedited matters via WebEx hearing.

Opposed Motions will be set for hearing or other consideration on dates provided by the Court Coordinator. Movant should contact the Court Coordinator to obtain a hearing date. It is also incumbent upon the movant to file and serve a Notice of Hearing on such motions.

Requests to reset Opposed Motions should first be addressed by agreement between counsel and/or *pro se* parties. Counsel for the parties or the *pro se* party should make genuine efforts to conference and try to work out the hearing setting date and time. However, if the parties are unable to agree on a resetting, movant should contact the Court Coordinator and provide information about the hearing date in dispute. The Court will endeavor to address the reset request as expeditiously as possible, and may request the parties to participate in a WebEx or in-person hearing on an expedited basis. If any party believes expedited consideration by the Court is helpful or necessary, the movant should relay that information to the Court Coordinator.

Agreed motions and orders should contain signature blocks for all parties who are agreed to the relief requested and should state "AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED" above the signature block.

#### **SIGNATURE BLOCKS ON PROPOSED ORDERS/JUDGMENTS**

In order to expedite the handling and processing of Court orders using technology instead of paper, the Court prefers to receive signature blocks on all proposed orders that provide as follows:

Signed on: \_\_\_\_\_

\_\_\_\_\_  
Hon. Edward M. Krenek  
400<sup>th</sup> Judicial District Court

#### **DOCKET CONTROL ORDERS**

The 400<sup>th</sup> District Court is intent upon clearing out the backlog of cases existing as of 1/1/2025, and to conduct more timely trials and dispositions of cases. In order to better manage all counsel and party expectations and to move cases along in a reasonably prompt fashion while at the same time allowing sufficient time for discovery and other pretrial matters, the Court will issue a Docket Control Order ("DCO") with a Trial Setting that is approximately 10 months after an answer is filed or a year after the case is filed, whichever occurs earliest. The DCO will contain deadlines by which the designated events must occur. The Parties may change any of the deadlines in a DCO by agreement, with the exception of:

i) Trial Setting; ii) Pretrial/Docket Call; iii) Dispositive Motions deadline; and iv) deadline to present/hear Challenges to Expert Testimony (i.e., Daubert/Robinson challenges to expert qualifications and opinions).

If the parties believe a different DCO should be put in place for a case (e.g., because of the nature of the claims/defenses, significant expert or other witness issues, or extensive discovery/deposition needs) or if the parties wish to change the deadlines of an issued DCO, such relief should be sought as early in the case as possible, with a new proposed DCO submitted to the Court for consideration. The parties can contact the Court Coordinator to request alternative available trial setting dates along with a new pretrial/docket call date. With the new trial setting date, the parties can populate the deadlines by agreement and submit the proposed DCO to the Court for entry. The Court is happy to send a word processing version of the Court's proposed DCO's to the parties to use. Please contact the Court Coordinator to request the form DCO.

### **TRIAL CONTINUANCES**

ALL requests for trial continuances (whether agreed, unopposed or opposed) MUST state what number continuance motion is being filed (i.e. "Plaintiff's First" or "Defendant's Second" or "Third Agreed" etc.) and provide the basis for why the continuance is being sought. The Court requests: i) the movant also provide the amount of time being sought on the trial continuance; ii) the movant contact opposing counsel (or pro se party) and state opposing counsel/party's position on the continuance if not agreed or unopposed; iii) indicate the status of discovery (what has been done, what still needs to be done, and how much time is needed to complete such discovery); and iv) represent whether any pending discovery and/or anticipated mediation will be completed by the new trial setting date sought in the trial continuance. If a continuance is granted, the Court will provide new dates for both the trial setting as well as a pretrial/docket call.

### **COURT REQUESTS**

In certain situations, the Court will ask counsel/parties to supplement an unopposed motion, request for default judgment, or expedited foreclosure with additional evidence. Once such information is submitted/filed, counsel should contact the Court Coordinator to confirm that the additional evidence has been brought to the Court's attention.

### **COURT HEARING DATES AND RULINGS**

It is incumbent upon the parties or their counsel to request a hearing or submission date for motions and other relief sought. Do not assume the Court will automatically set a hearing date on all motions filed or relief sought. If a party is waiting on an expected ruling on a previously-filed motion or other request for relief, please contact the Court Coordinator to inquire about such ruling on relief being sought or to request a date for hearing or other court consideration. A party may also send email correspondence providing the Court Coordinator with: i) the case number and style; ii) the motion or other relief sought; and iii) the date such motion or other request for relief was filed.

### **CERTIFICATES OF CONFERENCE**

The Court requests that the parties/counsel undertake genuine efforts to attempt to resolve discovery disputes before presenting those to the Court. See Texas Rules of Civil Procedure 191.2 and our local rules.



Motions other than dispositive motions (i.e., motion for summary judgment; motion to dismiss; pleas to the jurisdiction) should include a certificate of conference. Certificates of conference should be explicit as to the party's efforts to resolve the dispute that is the subject of the motion with all other parties/counsel prior to filing. If a party was unable to reach the other side prior to filing the motion, the certificate of conference should state the efforts to communicate with that party and should always be supplemented as soon as possible after the parties have conferred. If opposing counsel refuses to return numerous phone calls or other messages, outline your efforts to confer in your certificate of conference.

## **DISCOVERY MOTIONS AND DISPUTES**

The Court is willing to handle most discovery disputes utilizing expedited procedures. When efforts between parties to resolve the discovery dispute reach an impasse, the moving party can submit a letter request or email correspondence providing the Court with the discovery at issue. It is not necessary for a fully-briefed motion to compel to be submitted. After sending the discovery correspondence to the Court and opposing counsel/party, the moving party should contact the Court Coordinator to request an expedited hearing. The Court is willing to conduct such expedited matters in person or via WebEx. If the non-movant should need additional time to respond to the discovery letter, the non-movant should notify the Court Coordinator of such request and provide the amount of time reasonably needed to respond. The expedited discovery consideration is intended for more routine discovery as opposed to unique or complicated discovery disputes.

A party is always entitled to submit a fully-briefed motion to compel if they wish. The Court will also consider such discovery dispute on an expedited hearing/consideration basis if there is some urgency to the requested discovery.

The Court requests that the full text of the discovery request in dispute, along with the response to such discovery request, be put into the body of the motion or letter, in addition to including a copy of the discovery request as an exhibit to a motion to compel if one is filed.

Always consult opposing counsel (preferably the lead attorney) in an attempt to work out the discovery dispute before filing any motion or letter correspondence related to such discovery. Include a sufficiently detailed certificate of conference as described above in the section of these procedures titled "Certificates of Conference."

Proposed orders should list each discovery request separately so that the Court may indicate its ruling (granting or denying the requested relief) as to each discovery request at issue, unless the discovery dispute involves the failure to answer any of the discovery requests.

## **ORAL HEARINGS**

The Court prefers to hear civil matters in person. However, if circumstances warrant, civil hearings may be held by WebEx. Please notify the Court Coordinator with all WebEx hearing requests sufficiently in advance of the hearing date.

It is the movant's responsibility to provide proper written notice of the hearing to the Court and to all parties, including the hearing date/time for expedited hearings. Please contact the Court Coordinator to obtain a hearing date. Do not set a hearing date without getting that date from the Court Coordinator.

If a hearing is being passed, it is the movant's responsibility to timely advise the Court and opposing counsel. If counsel or a *pro se* party is running late for a hearing, it is incumbent upon anyone running late to contact the Court and apprise the Court staff of the circumstances as well as the anticipated arrival time. Otherwise, absent such notification, the Court will proceed with hearing the matter at any time after the designated hearing time. The Court understands that circumstances may arise that delay a counsel's or party's arrival for the hearing, but please do not make tardy arrivals a habit.

PLEASE NOTE: Any matter that has been set by the parties for an oral hearing on a date later than the deadline in the DOCKET CONTROL ORDER will not be considered by the Court without a motion for leave explaining sufficient cause for the late filing. The Court will generally NOT consider substantial and potentially dispositive (or outcome determinative) motions on the eve of trial or the morning of trial without explanations for the need for late consideration.

Any counsel that attends a hearing on a case should have sufficient knowledge about the case and full authority to make decisions about trial and case settings. If appearance counsel does not have sufficient knowledge or authority on a case, someone with such knowledge and authority should be available via telephone.

The Court encourages all parties to file responses, replies and objections as early as possible so that the Court can review them and promptly rule. The Court's practice is to read all of the filings in advance of the hearing. Absent good cause, any filings made within 24 hours of the hearing may generally not be considered by the Court unless good cause for such late filing is presented to the Court.

The Court requests and readily accepts "highlighted" copies of pertinent/significant cases with operative sections highlighted in yellow. Such highlighted cases may also be filed as an exhibit to the motion or other relief sought.

Responses that are filed after the response deadline provided for in the rules MUST be accompanied by a separate motion for leave to late file the response with a proposed order. This requirement is essential for responses and replies concerning motions for summary judgment or other dispositive motions.

#### **EMERGENCY HEARINGS**

The Court will consider on an expedited basis any urgent matter in need of an emergency hearing. If emergency consideration is requested, the movant should notify the Court Coordinator and all counsel/parties of the need for such emergency hearing and the basis for same. The movant should contact the Court Coordinator to schedule the emergency hearing and thereafter provide notice of the emergency hearing to all counsel/parties. The Court may also determine on its own that it will handle any matter on an expedited basis, particularly if disputes arise on a case that has an impending trial setting or is the subject of other impending dispositive relief.

#### **TEMPORARY RESTRAINING ORDERS**

The Court will consider all requests for temporary restraining orders (TRO) on an expedited, emergency basis, with or without a hearing depending on the basis for such TRO relief. Such matter may be considered *ex parte*; however, if the dispute that is the subject of the TRO has already been in discussions with opposing parties/counsel, the Court expects the movant to notify the opposing party/counsel of the

request for a TRO as well as any date provided by the Court for hearing on the TRO. The Movant must contact the Court Coordinator to apprise the Court of the need for TRO relief and to request a date for the Court's consideration of or hearing on the TRO request.

## **SUBMISSION DOCKET**

The Court's Submission Docket is on Mondays at 8:00 am after 10 days' notice. If a matter is set for submission and the Court believes a hearing would be beneficial, the Court will contact counsel/parties to schedule a hearing on the matter. However, if a matter set for submission reflects entitlement to the requested relief as a matter of law and fact, the Court may rule on the requested relief before the submission date reflected. If that should occur and the opposing party believes the ruling before the submission date does not take into account pertinent information the opposing party wishes to provide on the issue, the opposing party should request reconsideration of the matter as promptly as feasible.

The Court generally prefers to consider default judgments by hearing. However, with the exception of matters that require prove up of unliquidated damages, default judgments may be set on the submission docket as long as the motion for default judgment contains all necessary exhibits demonstrating entitlement to default judgment. If evidence/testimony is needed to prove up unliquidated damages, the motion for default judgment should be set for oral hearing. As part of the motion for default judgment, the movant must submit the proper non-military affidavit by visiting the Defense Manpower Data Center's (DMDC) Military Verification service at <https://scra.dmdc.osd.mil> and a Certificate of Last Known Address. Please make clear in the title of the motion and proposed judgment whether the judgment will be final (disposing of all claims and all parties) or interlocutory (partial).

Oral hearings may be held for matters placed on the submission docket, if requested by any party or at the Court's discretion. A request for an oral hearing is not a substitute for a response nor for a motion to continue the hearing. Please clearly identify your request for an oral hearing or your request to continue the hearing by filing them separately from your response, along with proposed orders attached. The Court coordinator will inform you if the Court determines an oral hearing is appropriate.

The Court may request an oral hearing on any matter placed on the submission docket. If this occurs, the Court coordinator will contact all parties with available dates.

## **SANCTIONS**

Sanctions will infrequently be awarded, but will be considered on any matter requested, including circumstances where the opponent has violated a previous order or a party's or counsel's conduct is sufficiently egregious.

All requests for attorney's fees as sanctions MUST be established by affidavit or live testimony as to reasonableness and necessity as well as meet other legal requirements, unless the parties agree on the record, in a filed Rule 11 Agreement, or an agreed order as to the amount.

## **SEVERANCES**

All motions and orders for severance must contain the following:

- 1) New case number, Court number, case type and new style name;

- 2) Reference the parties in the new suit;
- 3) List of original case pleadings to be severed out and transferred to the new case;
- 4) List of pleadings a copy of which is to be transferred to the new case (movant must identify the pleading by filing number and/or by date and description);
- 5) Indicate the name, address and bar number (if counsel) to whom costs for the severance are to be assessed; and
- 6) Indicate the severance case's status, and whether the new case file is interlocutory (not a final appealable matter) or whether severance will cause the newly-severed matter to be final and appealable upon severance.

As an example, if a plaintiff obtains a summary judgment as to one of multiple defendants and severs the disposed claims against that defendant into a new cause, that severance order will start the appellate timelines because all claims in the new cause will be resolved as to all claims and all parties. This should be expressly stated in the motion for severance and the corresponding proposed order.

Parties may consider, in the proper case, a request for abatement of a cause of action, or separate trials within one lawsuit, as this may be a more appropriate and less expensive and less cumbersome alternative.

### **SPECIAL EXCEPTIONS**

Please explicitly identify by page and paragraph the pleading or portion thereof to which you are specially excepting (unless the special exception is only to the maximum amount of damages sought pursuant to Texas Rules of Civil Procedure 47).

Parties are encouraged to restate verbatim the paragraph(s) to which your special exceptions apply in the proposed order and provide blanks in which the Court may check "sustained" or "overruled" as to each separate matter to which the movant is specially excepting.

### **SUBSTITUTE SERVICE (RULE 106)**

All motions for substituted service under Rule 106 of the Texas Rules of Civil Procedure (R106) must meet compliance with Rule 106 and must be accompanied by an affidavit that includes the following information:

- 1) Efforts taken to verify that defendant actually lives or works at the subject address;
- 2) Each attempt at service, with date(s) and time(s). There should be a minimum of 4 service attempts, with attempts both during the late evening/weekend and during the workday/morning. Evidence must indicate attempted service within 3 months of filing the motion, although earlier service attempts may also be included to apprise the Court of all efforts to serve the Defendant;
- 3) Identity of persons who were present at the subject address and what was said, if anything; and
- 4) A printout of a public record or Public Data.com or similar online database confirming that the person to be served actually resides or is likely to reside at the address at which service is being attempted. This can also include a statement identifying license plates of cars in the driveway and attaching a printout of license plates registered to the person to be served. Statements by neighbors or by people residing in the abode must include the full name of the person and a description. The Court requires some assurance that the person resides at that address.

All Orders granting a R106 Motion for Substituted Service that allows for service by delivering the Citation and Petition to any person over age 16 or by leaving the Citation and Petition on the door/gate of the residence **MUST ALSO INCLUDE** the movant sending a copy of the Citation, Petition and the R106 Order to the Defendant(s) being served utilizing BOTH certified mail and regular US Mail. The proposed R106 Order must include all such requirements in the body of the Order.

The Court will also consider allowing substituted service that includes sending the Citation, Petition and the R106 Order utilizing email to a known and verified email address of the Defendant in lieu of utilizing mailing requirements set forth above. The Movant or its counsel must verify the accuracy of the email address being used and indicate the basis for why that email address of the Defendant is accurate. Such verification can be entitled “Declaration of Defendant’s Email Address” and filed with case filings.

### **VOLUNTARY NONSUITS/DISMISSALS**

All nonsuits and voluntary dismissals should be titled as interlocutory or final and should indicate whether they are “Agreed” in the title as well as the body of the filing. Interlocutory orders should expressly list which parties and claims are being dismissed and which remain (if any). It is incumbent upon the moving party to sufficiently state which parties are dismissed and which parties, if any, remain pending.

Final orders/judgments/dismissals **MUST** state that the order disposes of all claims and all parties and is a final, appealable order. Please submit a proposed Order for both Dismissals and Nonsuits (irrespective that the filing of a nonsuit under the Texas Rules of Civil Procedure dismisses the claims without the necessity of a signed order) as a signed order is necessary for the case to be officially closed, and doing so documents the finality of the case for the District Clerk’s Office to further process such action and close out the case.

Motions and notices of nonsuit as well as orders of nonsuit should expressly state that they are being filed pursuant to Rule 162 of the Texas Rules of Civil Procedure. These motions are immediately presented to the Court without the necessity of submission or oral hearing.

### **CASES INVOLVING MINORS**

Counsel representing a party that is acting on behalf of a minor should consider the timely request or application for a guardian ad litem to be appointed. All Minor Settlements require a hearing with and approval from the Court. The movant on behalf of the minor must ensure that a guardian ad litem is in place to evaluate and approve the settlement terms. Please ensure the appointment of a guardian ad litem is warranted and meets the requirements of Texas Rules of Civil Procedure 173.

If additional parties are to receive a portion of a financial settlement along with the Minor, as part of the Minor Settlement Hearing it is important to provide information about all parties receiving any part of the financial settlement as well as the amounts each party is to receive. This information is necessary for the Court to evaluate and approve the settlement amount apportioned to the Minor. This information can be provided to the Court confidentially (if necessary), or can be presented at the Hearing.

### **WITHDRAWAL AS ATTORNEY OF RECORD**

Withdrawals with substitution of new counsel should reflect whether opposing counsel is opposed or not opposed. If substitution of counsel is requested within 60 days of a current trial setting, then the motion

for substitution must also include whether new counsel will be ready for trial on the current trial setting, or alternatively whether new counsel will be seeking a trial continuance.

Substitutions of counsel generally do not require a basis other than representation that the party is replacing counsel. For withdrawals that do not include substitution of counsel (i.e., the party remains *pro se*), all such motions to withdraw should include the basis for withdrawal along with the following:

1. Representation that the motion to withdraw and notice of the hearing or notice of submission was provided to the client, including evidence of how such items were sent to the client (i.e., in person; email; certified mail; etc.);
2. An indication of whether the client consents to the motion;
3. The client's last known mailing address, phone/fax number, and email address ("Client's Contact Information") [if no new counsel is substituting into the case]; and
4. Notice to client that client has the right to appear at the hearing to object to the motion or file a response prior to the submission of the motion to the Court for consideration.

Motions to Withdraw that do not include substitution of counsel require a certificate of conference, as opposing counsel has a right to be heard on these motions or otherwise represent their position.

All proposed orders granting withdrawal when the client/litigant will remain *pro se* MUST include in the body of the Order **all** of the Client's Contact Information set forth above. This information must be readily available in the Order so that all future filings and notices can be provided to the client/litigant.

If the party represented by withdrawing counsel is an entity, the Motion to Withdraw will need to be set for hearing with the representative (for the entity whose counsel is withdrawing) notified to be present at the hearing. The hearing is requested to give the Court an opportunity to provide notice to the *pro se* party of the requirement that entities must be represented by licensed attorneys; to provide a deadline for new counsel to be retained; and to relay the ramifications of the failure to obtain counsel.

## **AD LITEMS**

The Court maintains a list of all attorneys who are qualified to serve as Attorney Ad Litem or Guardian Ad Litem in civil cases. An attorney who desires to be appointed shall apply with the Court via the application on the Court's website and forward their application and resume with the required evidence of qualifications to the Court coordinator. Fluency in languages other than English should also be listed.

Applications must indicate that the attorney satisfies the following minimal qualifications: Be licensed by and in good standing with the State Bar of Texas for at least one (1) year preceding the initial application.

An attorney who has received a public reprimand is disqualified from inclusion on the list for one (1) year following the reprimand. An attorney who received a suspension or disbarment is disqualified from inclusion on the list for one (1) year following reinstatement in good standing by the State Bar.

To qualify for selection as an ad litem, the Court looks to counsel that i) exhibits proficiency and a commitment to providing quality representation to clients on civil cases; ii) demonstrates professionalism

and reliability when providing representation to clients in civil cases; and iii) completes an Attorney Ad Litem or Guardian Ad Litem Continuing Legal Education program no more than two (2) years prior to the initial application. Thereafter, the ad litem applicant must attend specified CLE once every four years or as otherwise mandated by other applicable rules.

An attorney may be removed from the list if he or she fails to perform the duties as an Attorney Ad Litem or fails to satisfy the requirements for such position. An attorney on the list is responsible for notifying the Court when he or she no longer meets the requirements. Inclusion on the list does not constitute an endorsement or recommendation by the Court and no attorney so listed may state or imply that they have been recommended or endorsed by the 400<sup>th</sup> District Court for any reason or purpose. The ad litem may state that they are qualified or approved as an ad litem in the 400<sup>th</sup> District Court.

## **MEDIATORS/ARBITRATORS**

The Court maintains a list of individuals qualified to serve as a Mediator or Arbitrator for appointment as a mediator or arbitrator. The Court prefers to allow the parties to choose a mediator by agreement, but upon request will appoint such mediator.

An individual who desires to be appointed as a mediator or arbitrator shall apply with the Court via the application on the Court's website and forward their application and resume with required evidence of qualifications to the Court coordinator. Fluency in languages other than English should also be listed.

Individuals who desire to be included on the mediator/arbitrator list must indicate that he or she has completed training pursuant to the Texas Alternative Dispute Resolution Act. An attorney may be removed from the list if he or she fails to timely perform the duties as a mediator or arbitrator or fails to satisfy the requirements.

An attorney on the list is responsible for notifying the Court when he or she no longer meets the requirements of a qualified mediator or arbitrator.

## **CIVIL TRIALS**

### **GENERAL**

Throughout the pendency of a case, the parties, all counsel, and their agents or representatives shall obey and comply with the Texas Rules of Civil Procedure, the Texas Disciplinary Rules of Professional Conduct, and the Texas Lawyers' Creed – A Mandate for Professionalism (as applicable). The Court expects counsel to act professionally at all times. Violations of these procedures (or of other orders and/or instructions of the Court) are punishable by contempt. This punishment, which is anticipated to be applicable in the rarest of situations, can include up to a \$500.00 fine and/or six (6) months in jail. Violations may also be subject to sanctions pursuant to Rule 215, Texas Rules of Civil Procedure, as well as other applicable authority and the inherent power of the Court.

### **TRIAL SETTINGS**

All cases are set for trial by the Court Coordinator. The DCO will usually reflect the trial date for each case. If a case is set on a trial docket but does not reach trial during that scheduled trial date, the Court will attempt to send out a new trial setting notice. If counsel does not receive a new trial setting notice within

a reasonable time, it is incumbent upon counsel for the party to inquire about a new trial setting with the Court Coordinator.

### **CHALLENGES TO EXPERT WITNESSES**

A hearing on challenges to an expert's qualifications, methodologies or opinions should be scheduled well in advance of a trial setting. Unless indicated otherwise in a DCO, the deadline to schedule a hearing on any *Daubert/Robinson* motions or other challenges to expert witness qualifications is 30 days before trial, absent otherwise obtaining leave of Court to consider such motions less than 30 days before trial.

### **MEDIATION**

The Court requests the parties to consider and make good faith efforts to complete mediation or other alternative dispute resolution ("ADR") prior to trial. However, the Court does not mandate mediation on all cases. Any party that believes mediation or other ADR is appropriate, please file a Motion for Mediation with the Court and set it for hearing. Upon such a filing, the party opposing mediation should file a response indicating the reasons why mediation is not favored.

For cases that are more than 2 years old, the failure to have conducted mediation/ADR prior to the trial setting shall not be a proper basis or reason for a trial continuance.

### **JURY PANELS**

If you need a panel of more than 40 jurors, please let the Court coordinator know of the circumstances warranting a larger jury venire panel as early in the proceedings as possible, but in any case at least 4 weeks before trial.

### **CONTINUANCES**

Continuance motions should be filed as early in the case as possible. Cases that are more than 2 years old will need to demonstrate a significant reason or proper basis for continuance along with a showing of why such basis for continuance could not have been accomplished earlier. However, the Court intends to be reasonable when continuances are necessary due to the need for discovery that could not have been anticipated, or when recent developments warrant a continuance, or due to witness scheduling conflicts, or other similar reasons.

ALL continuance or reset motions (whether agreed, unopposed or opposed) MUST state what number continuance motion is being filed (i.e. "Plaintiff's First" or "Defendant's Second" or "Third Agreed Motion," etc.).

### **VOIR DIRE**

The Court typically allows 30 - 45 minutes per side for *voir dire*; however, the Court will entertain requests for additional time upon proper explanation and sufficient demonstration of a need for such additional time. The Court will begin the *voir dire* process and generally asks basic questions of the venire panel. Counsel will then follow with their *voir dire* questions. After both counsel has an opportunity to conduct *voir dire*, individual jurors may be questioned at the bench, only if necessary, to assist the Court in deciding a for-cause challenge.



If any party wishes to use a jury questionnaire, please let the Court coordinator know a sufficient number of days before trial (at least 14 days, if possible). Please work together to prepare a joint questionnaire that is as brief as possible. If there are any questions not agreed on, a hearing should be scheduled to address the jury questionnaire.

#### **PRETRIAL FILINGS - JURY CHARGES / FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court requires the parties to exchange proposed jury charges, *motions in limine*, exhibit lists, actual exhibits, party/attorney lists, witness lists, and deposition excerpts BEFORE the docket call/pretrial hearing, if possible. Each side's proposed jury charge should also be emailed to the Court Coordinator in a word processing format (not pdf) shortly before the start of the trial. The Court will hold a hearing for all *motions in limine* and pre-admit unopposed exhibits before the start of trial, usually the day before the trial setting or as otherwise set by the Court. The Court will also entertain any other evidentiary issues/disputes and trial scheduling matters at that hearing. All counsel should be prepared to address these matters, including having reviewed the *motions in limine* and exhibits so that they are in a position to address pretrial rulings.

Proposed Orders for *motions in limine* should identify each *limine* item by number and a brief description of the *limine* request, followed by:

Agreed \_\_\_\_\_ Granted \_\_\_\_\_ Denied \_\_\_\_\_

For bench trials, the Court requests proposed Findings of Fact and Conclusions of Law to be submitted by both sides (in lieu of a jury charge), with a word processing version also emailed to the Court Coordinator.

When preparing video deposition excerpts to play at trial, remember that some portions may be excluded under the Texas Rules of Evidence. Therefore, be prepared to present only the admitted portions without having to stop and start the presentation repeatedly in front of the jury. This may mean being prepared to edit the video deposition quickly during the course of the trial.

#### **DEPOSITIONS EXCERPTS**

Provide page/line for any witness anticipated to testify by deposition PRIOR to the docket call. Opposing counsel must promptly advise of any objections. If objections remain, then the party seeking to exclude the testimony should file a motion to rule on the objections as soon as possible so that the Court can promptly rule on the objections prior to *voir dire*.

#### **TIME FOR TRIAL**

Be prepared to advise the Court of a realistic amount of time necessary to present each side's case in chief and any lengthy cross-examinations or anticipated rebuttal witnesses/evidence.

#### **CASES TO BE READY FOR TRIAL**

At the pretrial / docket call, the Court will provide an indication of where a case stands on the trial docket. Parties and counsel must be prepared to start trial on the Tuesday that the case is set for jury *voir dire*. If

the higher-designated case should settle or resolve, the Court Coordinator will contact counsel/parties that the next case in line for trial is called. The first five (5) cases set on a trial docket should be prepared to go to trial on the designated trial setting. If a case called to trial resolves the morning that *voir dire* is scheduled to begin, the next case on the trial docket should be prepared to appear for trial on very short notice. The Court attempts to provide as much notice as possible relating to when a case is called to trial, but it is incumbent upon the parties/counsel to be prepared to go to trial on the day it is set, or on any other day that week or the following week.

## **TRIAL SETTING DATES**

The date a case is set for trial means that the case could be called to trial that day or any day during that trial week or the following week. The Court will attempt to provide as specific a trial start date as possible, but all parties and counsel should be prepared to be called to trial as indicated in these rules and procedures.

## **CIVIL TRIAL WHEEL**

In an effort to reduce civil case backlogs that existed prior to 1/1/2025, the 400<sup>th</sup> District Court attempts to provide parties as many opportunities as possible to get their case to trial. For cases **where all parties are in agreement that a case is ready for trial**, the Court will offer a “short notice” opportunity to take a case to trial. The parties who are in agreement to consider this trial opportunity can notify the Court Coordinator that both sides agree that the case is ready for trial. Then if/when a case about to go to trial settles, and if there is no other backup case going to trial on that trial docket, the Court Coordinator will then contact all parties/counsel and relay the opportunity to have their case slipped into that trial date. This doesn’t obligate a party or counsel to go to trial at that time or on any other offered trial date. The party/counsel need only respond that they do not wish to take that earlier trial opportunity. Signing a case up on the “Civil Trial Wheel” does not mandate any party to go to trial during an offered trial opportunity; it simply offers an opportunity for that case to go to trial on an earlier date than otherwise scheduled in the case’s DCO, but only if all parties/counsel are in agreement to go to trial on the earlier offered trial date.

The Civil Trial Wheel opportunity is simply another quicker opportunity to reach a disposition through trial. Even if a party is unavailable for an offered trial opportunity, that party can still remain on the Civil Trial Wheel for another future opportunity. Otherwise, that case continues to remain on the scheduled trial date as otherwise ordered by the Court or as set in the DCO.