



**269TH DISTRICT COURT
HARRIS COUNTY, TEXAS**

JUDGE DAN HINDE'S COURT PROCEDURES

Revised: January 11, 2011

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These Guidelines are general in nature, and the Court may modify them at its discretion.

1. CONTACT WITH COURT PERSONNEL

A. Court telephone numbers:

Court Phone: (713) 368-6370

Clerk:	Quee Atkins	(713) 368-6370
Assistant Clerk:	Di Purvis	(713) 368-6370
Coordinator:	Alex Garibay	(713) 368-6376
Bailiff:	Lois Dewey	(713) 368-6381
Court Reporter:	Kathleen Keese	(713) 368-6386

- B. Information about the filing of documents, entry of orders, and the like is available from the Court Clerk at (713) 368-6370.
- C. Questions about trial settings, scheduling orders, and Docket Calls should be directed to the Court Coordinator at (713) 368-6376.
- D. Requests for hearing dates should be directed to the Court Clerk.

2. EMERGENCIES

- A. Motions for extensions of deadlines in the Docket Control Order are not emergencies.
- B. If all parties agree to an emergency hearing, call the Court Clerk to request a telephone conference with the judge. If fewer than all of the parties think the matter is an emergency, file a motion for emergency hearing directly with the Court Clerk. The Clerk will then present the request to the judge to determine whether to schedule an emergency hearing.

3. CONTINUANCES

- A. Joint, agreed, or unopposed motions for continuance are not binding on the Court.
- B. Requests for continuance should be filed well in advance of trial and should state that the client consents to the requested continuance. ***Parties should not wait until a deadline has passed or until Docket Call is imminent before moving for a continuance.***
- C. Provide details explaining why the current schedule cannot be met and more time is needed. If time is running out to complete discovery, identify specifically what remains to be done and explain why it cannot be accomplished under the existing schedule. ***The more detailed the motion is, the more likely it will be granted.***
- D. Specify the amount of time being sought.

- E. A trial will not be continued because a witness is unavailable. Counsel should anticipate such possibilities and prepare to present testimony of unavailable witnesses by deposition or stipulation.

4. ATTORNEY APPEARANCES

- A. An attorney who appears at a hearing, conference, Docket Call, or trial shall:

- 1) be familiar with the case;
- 2) have authority to bind the client; and
- 3) be in charge for that appearance.

B. Appearance by Telephone.

- 1) Out-of-town counsel may appear at hearings and Docket Call by telephone, except for evidentiary hearings or when out-of-town counsel will argue for or against a dispositive motion.
- 2) Counsel desiring to appear by telephone must contact the Court Clerk no later than twenty-four (24) hours before the scheduled hearing or Docket Call to request appearance by telephone. The Court will attempt to accommodate timely requests.

- C. **Motions to Appear *Pro Hac Vice*.** All *pro hac vice* motions **must** comply with TEX. GOV'T CODE § 82.0361.

- D. Counsel will **immediately** report to the Court Clerk the resolution of any matter that is set for conference, hearing, or trial.

5. MOTION PRACTICE

- A. Parties shall comply with the provisions in the Local Rules concerning motion practice.

- B. **Certificates of Conference.** The Court requires complete compliance with TEX. R. CIV. P. 191.2 and Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS. Statements similar to the following do not satisfy these Rules:

- “Sent a letter...did not get a response.”
- “Left a message...don’t know if the other side agrees or disagrees.”
- “The other side won’t return my phone calls.”
- “I have attempted to resolve this matter by agreement but was unable to do so.”

- C. Even if a hearing has been scheduled despite an insufficient certificate of conference, the Court may nonetheless deny the motion or require the parties to confer with each other before hearing the motion.
- D. **Agreed Motions.** Agreed Motions need not be set for hearing or placed on the Submission Docket. Just file them as an “Agreed” or “Joint” motion with the Court for consideration. If the Court denies an agreed motion without a hearing, the moving party may request a subsequent oral hearing on the motion.
- E. Counsel and all parties appearing *pro se* shall deliver to chambers a courtesy copy of all instruments filed within three (3) business days of any conference, hearing, Docket Call, or trial.

6. MOTIONS

A. Motions for Default.

- 1) Parties moving for default judgment should set the motion on the Submission Docket unless the moving party needs to elicit testimony to prove up damages or attorneys’ fees.
- 2) Motions for default should be set for submission promptly after filing.
- 3) The information in Servicemember Affidavits and Certificates of Last Known Address must be nearly contemporaneous with the date of filing of the motion for default judgment (i.e., within one week).

B. Discovery Motions.

- 1) The Court believes that counsel can resolve most discovery disputes, especially those dealing with (a) scheduling; (b) the number, length, and form of oral questions; (c) responsiveness to questions and requests; and (d) the mechanics of document production, including protective or confidentiality orders, without the intervention of the Court. Therefore, parties must confer thoroughly and comply with TEX. R. CIV. P. 191.2 and Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS before setting discovery disputes for hearing or written submission.
- 2) Attach a copy of the discovery response at issue.
- 3) Proposed orders should list each discovery issue separately with blanks to grant or deny the motion on each disputed request. For example:

DISCOVERY REQUEST	GRANTED	DENIED
Interrogatory No. 1	_____	_____

C. **Motions for Sanctions.** Do not request sanctions unless the opposing party has violated a previous order.

D. **Motions to Sever.**

- 1) The parties seeking severance must submit certified copies of all pleadings that they want to include in the severed case. Coordinate with the Court Clerk on the procedures. A less expensive alternative in some cases is to ask for abatement of one cause of action or separate trials on a cause of action.
- 2) The proposed Order must include the following: (a) the severed cause's case number and case caption; (b) a list of all pleadings to be included in the severed cause; (c) a statement whether the judgment included in the severed cause, if any, is final; and (d) a statement identifying which party or parties are liable for costs of court.

E. **Special Exceptions.**

- 1) Parties seeking a ruling on special exceptions must comply with the conference requirements of Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS and § 5(B) above.
- 2) Attach a copy of the pleading being challenged (unless the exception is only to the amount of damages sought).
- 3) Proposed orders should list each exception separately with blanks to sustain or overrule each exception. For example:

SPECIAL EXCEPTION	SUSTAINED	OVERRULED
Special Exception No. 1	_____	_____

F. **Motions for Summary Judgment.**

- 1) In Level 2 and 3 cases, the Docket Control Order sets a deadline for hearings on all dispositive motions. Parties moving for summary judgment should file their motions sufficiently far in advance to allow them to obtain a hearing date that meets this deadline as well as the notice and briefing deadlines set by the TEXAS RULES OF CIVIL PROCEDURE. Agreements to extend this deadline are not binding on the Court. Instead, parties desiring to have a motion for summary judgment considered after this deadline must file a motion for the Court to extend it.
- 2) The Court's hearing dates fill quickly. If a hearing date is not available within the deadline set by the Docket Control Order, the motion may be set on the Submission Docket, so long as the submission date satisfies the deadline in the Docket Control Order as well as the notice and briefing deadlines set by the TEXAS RULES OF CIVIL PROCEDURE.

G. Motions for Substituted Service under Rule 106. Parties requesting substituted service under Rule 106 must submit with their motions an affidavit that includes the following information:

- 1) Efforts taken to verify that the defendant actually lives or works at the subject address;
- 2) Each attempt at service, with date and time;
- 3) The identity of persons present at the subject address and a recitation of what was said;
- 4) The identity and ownership of cars in the driveway or other indications that the defendant resides or works at the subject address; and
- 5) The date that service by certified mail was sent and whether the serving party received a return receipt (green card).

H. Motions to Withdraw as Attorney of Record. Because motions to withdraw as attorney of record usually impose the burden of a *pro se* case on opposing parties and the Court, the Court will grant them only when absolutely necessary. Attorneys moving to withdraw must file the following materials before the Court will consider any such motion:

- 1) A notice of hearing or submission.
- 2) A statement of the particular circumstances and disciplinary rules requiring withdrawal. A general statement such as “irreconcilable conflicts” is not enough. Matters that are confidential may be addressed under seal in accordance with the procedures set forth in TEX. R. CIV. P. 76a.
- 3) A certificate by the attorney of record of the client’s name, address, and telephone number; whether such information is current; or if not current, when it was last known to be correct.
- 4) A copy of a letter—with the notice of submission or hearing at which the motion to withdraw will be considered attached—from the attorney of record to the client giving notice that: (a) the attorney is withdrawing; (b) the client is deemed to have knowledge of and is required to abide by the TEXAS RULES OF CIVIL PROCEDURE if the client proceeds *pro se*; (c) all notices from the Court to the client’s current address will be deemed to have been received unless the client notifies the Court of any change of address; and (d) no continuances or extensions will be granted to the *pro se* client in order to obtain other counsel.
- 5) In addition to the items described in item (4) above, if the client is a corporation, the attorney must notify the client that (a) a corporation cannot proceed *pro se* and (b) if the corporation has not obtained new counsel within 30 days, a default judgment may

be entered against the corporation if it is a defendant or its claims may be dismissed if it is a plaintiff.

- 6) If the client has agreed to the withdrawal, a signed acceptance of the terms of the letter described in item (4). If the client has not agreed to the withdrawal, proof of service of the letter described in items (4) and (5) must be filed.

7. RESPONSES

- A. Under Rule 3.3.2 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS, the Court may construe a failure to respond to a motion as no opposition.
- B. If time is short before a hearing, file any responsive briefing electronically or directly with the Clerk of the 269th District Court on the 13th Floor so that the Court may read the response before the hearing date.
- C. Include a proposed order denying the motion at issue.

8. FORMAT OF MOTIONS, BRIEFS, AND MEMORANDA OF LAW

- A. All motions, briefs, responses, petitions, applications, memoranda of law, or other similar documents must be double-spaced.
- B. Since the Court hears numerous motions every week, and since the Court reads all motions and briefs before the hearing, it is very important that parties submit *short, clear, concise* motions and response papers.
 - 1) No motion, brief, or memorandum of law may exceed twenty-five (25) pages (not including certificates of conference or service) without leave of Court.
 - 2) Parties who cannot avoid exceeding the page limit must request leave to exceed the page limit sufficiently in advance to permit the Court to consider and rule on their request prior to the time required to file the brief, memorandum, or motion.
- C. Any brief, motion, or memorandum of law longer than ten (10) pages (not including certificates of conference or service), must contain the following items:
 - 1) A table of contents setting forth the page number of each section, including all headings designated in the body of the motion, brief, or memorandum;
 - 2) A table of authorities listing cases, statutes, rules, textbooks, and other authorities alphabetically by type of authority;
 - 3) A short statement of the nature and stage of the proceeding;
 - 4) A statement of the issues for the Court to rule upon and, with respect to each issue, a short statement of the standard of review;

- 5) A short summary of the argument;
 - 6) Headings succinctly setting forth the separate points of the argument; and
 - 7) A short conclusion reciting precisely the relief sought by the party submitting the brief, motion, or memorandum of law.
- D. Every citation to an exhibit must include a reference to the letter or number of the exhibit. A party who submits more than five exhibits shall include a table of contents describing each exhibit along with its exhibit number or letter.
- E. Citations to deposition or affidavit testimony must include the appropriate page or paragraph numbers. *Citations to other documents or materials longer than one page must include some sort of pinpoint citation, such as a page, section, or Bates number directing the Court to the specific page, paragraph, or section being cited.*
- F. If a party cites legal authority not found in the SOUTHWESTERN REPORTS, VERNON'S TEXAS CODES ANNOTATED, or VERNON'S CIVIL STATUTES OF THE STATE OF TEXAS ANNOTATED, the party must submit the relevant parts of such authority as an exhibit with the motion, brief, or memorandum of law. If the authority is a case, include the entire case.

9. HEARINGS

- A. The Court generally schedules oral hearings on Fridays.
- B. Requests for Hearing.**
- 1) Except as stated elsewhere in these Procedures, any party may request an oral hearing concerning a motion filed with the Court. No formal request for oral hearing is required.
 - 2) The party requesting an oral hearing should call the Court Clerk for a date and time.
 - 3) Parties moving for default judgment should *not* set the motion for hearing (instead, set it on the Submission Docket), unless the moving party needs to elicit testimony to prove up damages or attorneys' fees.
 - 4) The party requesting the hearing must file a Notice of Hearing and serve it on all counsel and *pro se* parties in accordance with the Local Rules. *Do not submit a fiat for completion by the Clerk.*
- C. Parties who desire to have a record made of a hearing must request one before the hearing, when they arrive in Court, or as soon as the Court calls their case for hearing.

10. SUBMISSION DOCKET

- A. Parties who do not need an oral hearing may set their motions on the Submission Docket to be decided on the papers. The Submission Docket is Mondays at 8:00 a.m. after ten (10) days notice.
- B. Parties who set a matter on the Submission Docket must file a Notice of Submission and serve it on all counsel and *pro se* parties.
- C. If the movant places the matter on the Submission Docket and the respondent desires an oral hearing, the respondent may call the Court Clerk to request a date and time for a hearing. Respondents requesting a hearing for a matter previously placed on the Submission Docket must file a Notice of Hearing and serve it on all counsel and *pro se* parties in accordance with the Local Rules and these Procedures. A matter will not be taken off of the Submission Docket until a Notice of Hearing is properly filed and served.

11. TEMPORARY INJUNCTIONS

- A. Temporary Injunctions are generally set on Fridays at 4:00 p.m.
- B. Counsel should call the Court Clerk before the scheduled hearing and report whether or their client is ready to proceed with the hearing and how long the hearing will take. It may become necessary to reschedule the hearing and to consider whether to extend the Temporary Restraining Order.
- C. Both sides should bring to the hearing proposed Orders stating the relief they seek.

12. APPLICATIONS TO TRANSFER STRUCTURED SETTLEMENT PAYMENTS

- A. Persons applying to transfer any future structured-settlement payments must attend the hearing set for consideration of their Application.
- B. Prior to the hearing, the factoring company must provide the Applicant and file with the Court a statement certifying the effective interest rate or internal rate of return on the proposed transfer transaction.

13. CONFIDENTIALITY ORDERS

- A. **Agreed Confidentiality Orders.** If the parties agree to the terms of a Confidentiality Order, the parties should submit an Agreed Confidentiality Order signed by lead counsel for each party.
- B. **Opposed Orders.** If a party will not agree to the terms of a proposed Confidentiality Order, the party who seeks entry of the order should submit its proposed Confidentiality Order with a motion for entry of the order that identifies the provisions that are in dispute.

- C. **No Automatic Filing Under Seal.** No Confidentiality Order, whether agreed or not, should include language that automatically permits filing materials under seal. Instead, the order should state that any party who desires to file material protected by the Confidentiality Order must comply with TEX. R. CIV. P. 76a and obtain an order permitting the party to file the material under seal.

14. REQUIRED PRETRIAL MATERIALS

- A. **Trial Preparation Order.** The Court issues a Trial Preparation Order at the same time it issues a Docket Control Order and sets a case for trial. The Court's Trial Preparation Order identifies the materials that the Parties must file and serve before trial and sets a deadline for filing. The parties must file and serve these materials one week before Docket Call.

B. **Proposed Jury Charge.**

- 1) Parties must file and exchange proposed jury questions and instructions before trial in accordance with the deadline set forth in the Trial Preparation Order.
- 2) Each proposed question, instruction, or definition should include a citation to the authority supporting it.
- 3) The proposed charges need not include the boilerplate instructions required by TEX. R. CIV. P. 226a, pt. III; the Court will include those instructions as a matter of course.
- 4) *The Parties should also email courtesy copies of their proposed questions and instructions in Microsoft Word format to the Court Coordinator at: Alex_Garibay@justex.net.*

C. **Proposed Findings of Fact and Conclusions of Law.**

- 1) In nonjury trials, Parties must file and exchange proposed Findings of Fact and Conclusions of Law in accordance with the deadlines set forth in the Trial Preparation Order.
- 2) Each proposed conclusion of law must contain citation to legal authority supporting the conclusion.
- 3) Each proposed finding of fact should include references to testimony or exhibits that counsel expects will support the finding.
- 4) *The Parties should also email courtesy copies of their proposed Findings of Fact and Conclusions of Law in Microsoft Word format to the Court Coordinator at: Alex_Garibay@justex.net.*

15. TRIALS

- A. All cases are automatically set for trial after the defendant files an answer. If not reached at the first setting, most cases are reset within 1 to 2 months.
- B. The Court holds Docket Call approximately ten (10) days before the beginning of each two-week trial setting. All motions that have been heard or placed on written submission may be ruled on at Docket Call.
- C. The Court's Trial Preparation Order identifies materials that the Parties must file and serve before trial. These materials are due one week before Docket Call.
- D. **Trial Assignments.**
 - 1) At Docket Call, the Court will assign cases to a specific trial date within the two-week trial setting. The Court will attempt to accommodate the schedules of counsel and witnesses.
 - 2) At Docket Call, the Court may assign more than one case to a specific date, in which case the Court will assign docket positions to each case assigned to the same date.
 - 3) Cases that are not assigned the No. 1 position for the assigned date are subject to being called to trial on one-hour notice until 12 noon of the trial date assigned at Docket Call. Cases not called by 12 noon on the assigned date will be reset for a future two-week trial setting. Contact the Court Coordinator at (713) 368-6376 for updates.
- E. **Requests for Daily Copy.** Parties who anticipate needing a daily copy of the Court Reporter's Record should contact the Court Reporter several weeks in advance to allow her to make the necessary logistical arrangements.
- F. **Challenges to Experts.** Any Party desiring to limit or exclude an expert's testimony must file a motion and set it for hearing or submission in accordance with the deadlines set forth in the Docket Control Order. Do not wait until the first day of trial. Call the Court Clerk to address scheduling the matter for hearing or submission in accordance with the Docket Control Order.
- G. Unless an attorney has actually begun trial in another court, conflicting trial settings will not cause a case to be passed after the Court has assigned it a trial date at Docket Call.
- H. The Court permits jurors to take notes during trial and to use their own notes during deliberations.

16. EXHIBITS

- A. Exchange exhibit lists and make exhibits available for inspection and copying in accordance with the deadlines set forth in the Trial Preparation Order, *i.e.*, one week before Docket Call. Eliminate duplicate exhibits. For oversized exhibits, mark an 8½" x

11” sized-version for the record. Before voir dire the parties should be prepared to list exhibit numbers for which they have no objection.

- B. Before trial commences, counsel for each party must provide the Court a courtesy copy of the party’s exhibits in a properly tabbed and indexed notebook, along with a courtesy copy of the party’s Exhibit List. The Court’s preferred Exhibit List form may be found at: <http://www.justex.net/Courts/Civil/CourtSection.aspx?crt=19&sid=277> .
- C. Do not pass exhibits directly to the jury. Instead, ask the Court to have the Bailiff pass any exhibits to the jury.
- D. All exhibits admitted into evidence will go to the jury during its deliberations.

17. COURTROOM ETIQUETTE

- A. **Hours:** The Court’s hours during trial will vary depending upon the type of case and the needs of the parties, counsel, witnesses, and the Court. Normally, Court will convene by 8:30 a.m. and adjourn by 5:00 p.m., recessing for lunch between 11:45 a.m. and 1:30 p.m. Because the Court schedules motion and evidentiary hearings on Fridays, the Court normally does not try cases on Fridays.
- B. No beverages are permitted in the courtroom other than bottled water, except that jurors are permitted to drink coffee.
- C. At anytime other than during trial proceedings, reading materials are permitted. They must be read on the back row of the courtroom only.
- D. Counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, or smoking in the courtroom.
- E. Cell phones and pagers must be turned *off* while in the courtroom. Placing such devices on silent or vibrate-only mode does not comply with this requirement.
- F. **Witnesses:**
 - 1) Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. Counsel shall bear in mind the Court’s hours and arrange for witnesses accordingly. The Court will not recess to permit counsel to find a missing witness unless the witness has been subpoenaed and has failed to appear.
 - 2) Counsel may question witnesses while seated at counsel table or standing at the podium.
 - 3) Counsel shall make every effort to avoid cumulative testimony.
- G. **Seating:** The Court does not designate seating at counsel tables. Seating is determined on a first-come, first-served basis on the first day of trial or hearing.

H. Trial Etiquette.

- 1) **No speaking objections are permitted.** When rising to state an objection, counsel should simply state the ground for objection (i.e., “Hearsay,” “Relevance,” “Lacks Foundation,” etc.). If an explanation is needed the objecting party may ask to approach the bench.
 - 2) Counsel will conduct voir dire and give their opening statements and closing arguments from the podium.
- I. While the jury deliberates, counsel shall remain in the courtroom or in the attorney ready rooms to be available immediately for jury notes or a verdict.

18. VOIR DIRE

- A. **Time.** Time for voir dire depends on the complexity of the case.
- B. **Questionnaires.** Do not bring a jury questionnaire to the first day of trial. Discuss this with the court at an earlier status conference.
- C. Opening statements should be reserved for opening and should not be made during voir dire.
- D. Counsel should not question jurors as to opinions on the facts of the case.
- E. **Strikes for Cause.** The Court will hear motions to strike for cause after both sides have completed their examinations of the venire.

19. DEPOSITION USE AT TRIAL

- A. Before trial, counsel must provide the Court courtesy copies of any deposition to be used at trial.
- B. Deposition page/line designations must be filed and submitted in accordance with the deadlines set forth in the Trial Preparation Order, *i.e.*, one week before Docket Call.
- C. File and serve deposition counter-designations and objections to deposition designations by 5:00 p.m. on the Wednesday before Docket Call. Present any objections to which the Parties cannot agree to the judge prior to commencement of voir dire examination.
- D. Questions may be repeated as necessary to lay foundation on cross-examination.

20. AUDIO-VISUAL EQUIPMENT

- A. All courtrooms have state-of-the-art audio-visual equipment, including an ELMO (document camera), computer jacks, projectors, TV screens, and VCR and DVD players. Counsel are encouraged to use the ELMO to present exhibits to the jury.

- B. The Civil District Courts have prepared detailed instructions on use of the Courts' audio-visual equipment. Please refer to the following weblink:

<http://www.justex.net/Courts/Civil/CivilTechnology.aspx>

- C. The Court encourages counsel who are unfamiliar with the equipment to come to the courtroom early and learn.

21. SETTLEMENTS AND ORDERS OF DISMISSAL

A. Settlements.

- 1) Upon agreeing to settle any case, counsel shall *immediately* notify the Court Coordinator.
- 2) Parties must submit closing papers within thirty (30) days of the settlement announcement, or the Court will dismiss the case for want of prosecution.

B. Minor Settlements.

- 1) At least two days before a Minor Settlement Hearing, the parties should submit (a) the proposed judgment and (b) a courtesy letter identifying the terms of the settlement to be considered.
- 2) The Court encourages minor plaintiffs to attend the hearing on their settlement, unless counsel and the Guardian Ad Litem agree that attendance would not be in the minors' best interests.
- 3) Guardians Ad Litem must bring to the hearing records sufficient to support their requested fees, such as a fee invoices, descriptions of the tasks undertaken, the time spent on the tasks, the hourly rate being sought, and expenses incurred.

C. Judgments and Nonsuit or Dismissal Orders. Judgments and Nonsuit or Dismissal orders should include language specifying

- 1) Whether the order disposes of all claims, counterclaims, cross-claims, etc. asserted in the case, and
- 2) How costs should be taxed. *See* TEX. R. CIV. P. 162.