

## **– CONTACTING CHAMBERS –**

The Court permits counsel to contact chambers personnel for assistance. However, the Court admonishes counsel to read all orders provided in the case, the local rules, and information provided on this website before contacting chambers. The Court wants chambers personnel to be available to assist counsel; however, unnecessary phone calls to chambers are discouraged.

Questions concerning scheduling matters in civil and criminal cases shall be directed to Rosa Ferguson. Questions concerning substantive matters in criminal or civil cases shall be directed to Andrea Houston, Chief Staff Attorney.

## **– COURTROOM PROCEDURES –**

Counsel shall stand when addressing the Court. Further, when questioning witnesses or arguing to the Court or jury, counsel should do so from the podium. Often, particularly when hearing a complex motion, the Court will have counsel conduct their arguments from separate podiums, dealing with specific issues one at a time.

## **– MOTION PRACTICE –**

Counsel are encouraged to make every effort to resolve discovery issues without the necessity of Court intervention. The Court looks with disfavor on discovery motions, unless they are of substantial importance and the parties have worked diligently to resolve them.

Counsel are encouraged to use jump cites in cases cited to the Court and to provide specific citations to the record. Further, Counsel may request oral argument in their motion or response. Finally, the Court requests that the parties be judicious in their requests to exceed the page limits provided for in the local rules. In this Court, less is better.

## **– TRIAL –**

### **VOIR DIRE**

The Court will conduct a general voir dire of the jury panel. Counsel will then be permitted to examine the panel on issues pertaining to the case for approximately ten to fifteen minutes. At the pre-trial conference, counsel may request more time to examine the panel. Voir dire should not be used to argue the merits of the case.

### **OPENING STATEMENT**

The Court allows a full and complete opening statement, the length of which will be discussed at the pretrial conference.

### **TIME LIMITS**

Typically, in complex cases, the Court will request estimates from the parties concerning the length of time each party needs to try their case. The Court encourages parties to provide their time estimates with an eye toward using the jury and the Court's time efficiently. At the pre-trial conference, the Court will advise the parties as to the amount of time the parties have to try their case.

### **WITNESSES and WITNESS LISTS**

The Court prefers to swear in all witnesses available and in attendance at the beginning of an evidentiary hearing or trial. (For Bench and Jury Trials, this would occur after opening statements.) Witnesses are normally asked to step before the Courtroom Administrator's Bench, state their name for the record, and be sworn.

On all Video Depositions, the video and the transcript should be offered as a trial exhibit and a copy of the transcript should be provided to the Court Reporter. Counsel should designate their witnesses on their witness lists as follows:

- (A) Names of witnesses that will be called;
- (B) Names of witnesses that may be called; and
- (C) Names of witnesses that could be, but probably will not be called.

See Witness List under SAMPLE FORMS

### **EXHIBITS and EXHIBIT LISTS**

The Court's Docket Control Order will contain a section regarding exhibits as follows:

- A. On the first day of trial, each party is required to have on hand the following:
  - (1) One copy of their respective original exhibits. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff's or Defendant's Exhibit, the Exhibit Number and the Case Number. In addition, exhibits shall be placed in properly marked manilla folders and contained in a box with handles.
  - (2) Three (3) hard copies of their exhibit list and witness list. The Court's preferred format for Exhibit Lists is available on the Court's website at [www.txed.uscourts.gov](http://www.txed.uscourts.gov) under "Orders & Forms."
- B. During trial on a daily basis, each party shall tender to the Court a list of exhibits admitted for each day. A description of the exhibits is not necessary, just a list containing the exhibit numbers. For example, Plaintiff will submit a document entitled, "Plaintiff's List of Exhibits Admitted on (*the date*)."  
Said daily lists are to be tendered the following day. (If trial commences on Monday, Monday's list will be due Tuesday morning and so on until the conclusion of trial).
- C. At the conclusion of the evidentiary phase of trial, each party shall be responsible for pulling those exhibits admitted at trial and tender those to the Courtroom Administrator, who will verify the exhibits and tender them to the jury for their deliberations.
- D. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom.
- E. Within five business days of the conclusion of trial, each party shall submit to the Court (to Chambers) the

following:

- (1) A Final Exhibit List of Exhibits Admitted During Trial, and in addition provide the Court a disk containing this document in WordPerfect or Word format.
- (2) A disk or disks containing their respective admitted trial exhibits in PDF format, with the exception of sealed exhibits. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be copied on a separate disk. If tangible or over-sized exhibits were admitted, such exhibits shall be substituted with a photograph to be converted to a PDF file and shall be included in the Court's disk of admitted exhibits.

## – MEDIATION –

Typically, the Court orders each case to mediation. The parties are strongly encouraged to agree on a mediator. The Court will not grant extensions for parties to agree to a mediator. If the parties cannot agree to a mediator, the Court will appoint one.

## – STATUS / SCHEDULING CONFERENCES –

Appearance by counsel at all status conferences and scheduling conferences is required. The Court does not allow counsel to appear by telephone. Local counsel may appear and make announcements at the status / scheduling conference, or an opposing counsel can make announcements on behalf of a counsel who absolutely cannot attend, provided that he/she notifies the Court by email to the Courtroom Administrator, Rosa Ferguson ([rosa\\_ferguson@txed.uscourts.gov](mailto:rosa_ferguson@txed.uscourts.gov)), that he/she will not be in attendance. Said email notice shall provide notice of the name of counsel that will be appearing and making announcements on his/her behalf. This notice must be made at least 24 hours prior to the status/scheduling conference.

### **PATENT CASES:**

Typically, the Court schedules all patent cases for a status conference the first Monday of every month. The purpose of the conference will be to assign a claim construction hearing date and trial setting. The parties shall be prepared to inform the Court whether they will consent to trial before the Honorable Judge John D. Love.

At the conclusion of the status conference, the Court will enter an order setting forth the following dates: Markman Hearing, Pretrial Conference, Jury Selection, and Trial. The Court will order parties to meet and confer on the interim dates and to submit their proposed Docket Control and Discovery Order to the Court within 14 days of the date of status conference. The Court expects the parties to agree to a mediator and to agree to a mediation prior to the Markman Hearing. The Court will not grant extensions for parties to agree to a mediator. If the parties cannot agree to a mediator, the Court will appoint one. See "Patent" Docket Control Order and Discovery Order under SAMPLE FORMS.

### **NON-PATENT CASES:**

Typically, the Court schedules all non-patent civil cases for a scheduling conference the first Monday of every month.

If the parties come to an agreement on all scheduling conference matters, the parties shall file a Notice of Agreement seven days before the scheduling conference date. The parties will be directed to file a Notice of Agreement and attach their proposed Docket Control and Discovery Orders, which shall include the mediator's name, address and phone number, the mediation deadline, and approximate length of trial. The Discovery and Docket Control Orders shall be in a format to include the style of the case. Once the Court enters the parties' agreed Discovery and Docket Control Orders, the parties will be excused from attending the scheduling conference. See "Non-Patent" Docket Control Order and Discovery Order under SAMPLE FORMS.

If the parties do not reach an agreement on all scheduling matters, the parties are required to attend the scheduling conference. In addition, the parties shall file a Notice with the Court no fewer than seven (7) business days before the scheduling conference outlining all matters and/or dates that the parties could not resolve. The parties are to attach to the Notice (1) their proposed Discovery Order as outlined in Appendix A and (2) their proposed Docket Control Order as outlined in Appendix B. These proposed orders shall contain all agreed to dates and/or matters and leave blank those items outlined in the notice.

Seven business days after the scheduling conference, the parties shall re-file the Discovery and Docket Control Order to include all matters and/or dates as previously agreed, in addition to those matters and/or dates ruled on by the Court at the scheduling conference.

### **– SETTLEMENT –**

Counsel should notify the Court immediately of any settlement. When the Court has been advised that a case has settled, the Court will typically notify the parties that failure to file dismissal papers within forty-five days of the notice will result in the case being dismissed on the Court's own motion.

### **– COURTROOM TECHNOLOGY –**

Judge Davis's courtroom is fully equipped with some of the latest equipment and technology to facilitate litigants' presentation of evidence in the courtroom. The system allows different forms of media to be projected on a large screen (for jury trials) and monitors located on Judge Davis's bench, counsel tables, witness stand, main podium, court reporter's bench, and the Courtroom Administrator's bench.

The monitors located on the main podium, witness stand, and Judge Davis's bench have a "magic" screen that allows you to draw on the screen with your finger.

The courtroom has connections at both counsel tables and two consultant tables to allow litigants

to plug in their computers for slide presentations and/or projection of exhibits for the Court. Please bring a VGA Cable for your computers.

The courtroom also has a Document Camera (like an ELMO) to project documents, and a DVD player and VCR for playing DVDs and VHS Tapes.

Whether you have a slide presentation on your laptop, a video, or a document, all such forms of media will be projected throughout the courtroom on the monitors and large projection screen.

If you would like to test your computers with our equipment prior to a trial or hearing or if you have any questions regarding our electronic courtroom, you are welcomed to contact Rosa Ferguson.