

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL, TEXARKANA AND TYLER DIVISIONS**

**REGARDING CASES ASSIGNED TO
U. S. DISTRICT JUDGE RODNEY GILSTRAP AND
U. S. DISTRICT JUDGE ROBERT W. SCHROEDER III**

**STANDING ORDER REGARDING “MEET AND CONFER”
OBLIGATIONS RELATING TO DISCOVERY DISPUTES¹**

WHEREAS, consistency and uniformity in both the form and substance of the methods and procedures used by counsel to meet and confer during discovery disputes is a meritorious goal;

WHEREAS, reasonable planning and steps by counsel to efficiently and effectively meet and confer as to discovery disputes in advance of the time for seeking direct intervention by the Court to maximize the best use of the Court’s limited resources is an additional meritorious goal; and

WHEREAS, such conduct, and this order for the implementation of the same, fall squarely within the Court’s inherent power to manage its docket and oversee the fair presentation of evidence at all stages of the litigation process;

NOW, THEREFORE, IT IS ORDERED THAT:

1. An opposed discovery related motion, or any response thereto, shall not exceed 7 pages. Attachments to a discovery related motion, or a response thereto, shall not exceed 5 pages. No further briefing is allowed absent a request or order from the Court.
2. Prior to filing any discovery related motion, the parties must fully comply with the substantive and procedural conference requirements of Local Rule CV-7(h) and (i). Within 72 hours of the Court setting any discovery motion for a hearing, each party’s lead attorney (*see* Local Rule CV-11(a)) and local counsel shall meet and confer in person or by telephone, without the involvement or participation of other attorneys, in an effort to resolve the dispute without Court intervention.
3. Counsel shall promptly notify the Court of the results of that meeting by filing a joint report of no more than 2 pages. Unless excused by the Court, each party’s lead attorney

shall attend any discovery motion hearing set by the Court (though the lead attorney is not required to argue the motion).

4. Any change to a party's lead attorney designation must be accomplished by motion and order.

The terms of this Standing Order shall immediately apply to and amend all active civil cases currently pending before the undersigned or that may otherwise be assigned to the undersigned hereafter.

SIGNED AND EFFECTIVE THIS 3rd DAY OF JUNE, 2016.



U. S. DISTRICT JUDGE RODNEY GILSTRAP



U. S. DISTRICT JUDGE ROBERT W. SCHROEDER III

¹ Commentary

Background

In-person lead and local counsel conference requirements for discovery disputes have been employed periodically in the Eastern District by judges in the Marshall, Texarkana, and Tyler divisions for over a decade. The in-person requirements were premised on the goal of resolving avoidable discovery disputes by insuring that the most experienced and objective members of the litigation teams personally discussed potential solutions, and the relative significance of any discovery related dispute, before taxing the resources of the court with motion practice. The in-person requirements have been imposed in addition to the conference requirements contained in the local rules.

Experience with the in-person conference requirement has shown that while it sometimes works as intended, it has equally produced unintended consequences. First, in cases involving geographically diverse counsel, the in-person requirements inject significant costs and delay

bringing necessary discovery disputes to the court. These costs and delays include attorney time and travel expenses often borne by the client and significant time delays occasioned by the need to coordinate the schedules of multiple attorneys to be present at a designated conference location. Second, because of the costs and time involved to hold an in-person conference, some parties improperly use the conference requirement as a shield to avoid confronting legitimate discovery deficiencies raised by an opponent. Third, because the in-person requirement mandates the physical presence of lead counsel, some parties improperly manipulate lead attorney designations. These manipulations include failing to formally identify a lead attorney as required by Local Rule CV-11(a), identifying an attorney who in reality is not the party's lead attorney as lead attorney, identifying multiple or "co-lead" attorneys in violation of Local Rule CV-11(a)'s requirement that "a" lead attorney be identified, or changing the lead attorney designation solely for in-person conference scheduling purposes. Fourth, because the in-person requirement also calls for the physical presence of local counsel, some parties discharge or delay retaining local counsel in support of arguments that any in-person conference should occur at a more favorable location. Additionally, local counsel are often forced into costly and unnecessary travel to accommodate distant conference locations. Finally, because of the difficulty scheduling in-person conferences, some parties attempt to inject disputes never previously raised when an in-person conference occurs, or deviate from traditional understandings of what is or is not a discovery dispute to either avoid or trigger the in-person conference requirement.

Alternatives to the In-Person Conference Requirement for Discovery Disputes

Alternatives to the in-person conference requirement exist and have proven effective in practice. These alternatives serve the same goal as the in-person conference requirement – resolving avoidable discovery disputes – and do so without many of the unintended consequences discussed above. These alternatives include: 1) requiring multiple conferences without a requirement that the conferences occur in-person; 2) requiring a summary written submission of discovery disputes to the court before and/or in lieu of full briefing (*see* Judge Illston's Nov. 10, 2015 Standing Order, N.D. Cal.); 3) requiring telephonic discovery dispute hearings based on succinct written reports after the conference process yields an impasse (*see* Judge Pender's Standing Order Section 5.4, International Trade Commission); or 4) requiring a second conference and report from lead counsel within 72 hours of any discovery motion being set for hearing (*see* Judge Love and Mitchell's Patent Discovery Order Forms, E.D. Tex.).

The court believes the above order will avoid the unintended consequences that have developed around the in-person requirement by replacing that requirement with a process that experience suggests may be more effective at resolving avoidable discovery disputes and reducing their burden on the court when necessary. First, the order still requires a personal conference between lead and local counsel before the filing of any discovery related motion, drawing on the enhanced discovery dispute conference requirements currently contained in Local Rules CV-7(h) and (i). If unresolved by the conference process, the order implements summary written submission of the discovery dispute to the court by limiting any motion or response to no more than 7 pages of briefing and 5 pages of attachments (all of which must comply with the spacing and type requirements of the Local Rules). Based on the summary motion and response, the court may resolve the dispute, request additional or more fulsome briefing, set a telephonic

hearing, or set an in-person hearing. Should the court choose to set the motion for hearing, within 72 hours each party's lead attorney and local counsel must confer again, without the involvement or participation of other attorneys, in an effort to resolve the dispute without court intervention and then file a joint report. This second conference is limited to only lead and local counsel to encourage a frank exchange by those hopefully best equipped to judge the both the merits and practical necessity of the dispute. This limitation on participants avoids the sort of one-upmanship sometimes exhibited by junior attorneys seeking to impress their superiors at the expense of efficient dispute resolution. This process also ensures that the court may reliably assign ultimate responsibility to the lead attorney for the outcome of the conference efforts. Finally, the lead attorneys must then attend the hearing, should it occur.

The order addresses the manipulations of lead attorney designations by expressly incorporating Local Rule CV-11(a)'s requirement that "a", singular, lead attorney must be designated upon a party's first appearance, and then adding the additional requirement that changes to the lead attorney designation must be accomplished by motion and order. This process should make questionable lead attorney designations apparent to the court, without burdening the ability to make legitimate changes to the designation when necessary.