



JUDGE GRAY H. MILLER

COURT PROCEDURES

**THE ATTACHED MUST BE SERVED
WITH THE SUMMONS AND COMPLAINT
OR REMOVAL PAPERS**

Your attention is directed to the Court Procedures and attachments, which are applicable to cases assigned to Judge Miller.

Plaintiff must serve these materials on all defendants with the summons and complaint. The Order for Conference also must be served on all defendants. A party removing a case to this court has the same obligations as a plaintiff filing an original complaint. A form of Certificate of Service In Removed Action is attached. Proof reflecting service of these materials must be filed with the Clerk.

In addition, parties may, at their option, proceed with civil cases before a Magistrate Judge. Attached is a Consent Form for use by parties that agree to consent to proceed before Magistrate Judge Nancy K. Johnson. Please follow the instructions in the accompanying "Notice of the Right to Try a Civil Case Before a Magistrate Judge."

The accompanying procedures are to be used in conjunction with the Local Rules for the Southern District of Texas and not as a substitute for them, except where noted. The Local Rules of this District can be obtained on the District website at www.txs.uscourts.gov. The court requires strict compliance with these Local Rules.

JUDGE GRAY H. MILLER
United States Courthouse
515 Rusk Avenue, Room 9136
Houston, Texas 77002
Telephone: (713) 250-5377
Fax: (713) 250-5189

RHONDA MOORE-KONIECZNY
Case Manager for Judge Gray H. Miller
515 Rusk Avenue, Room 9010C
Houston, Texas 77002
Telephone: (713) 250-5129
Fax: (713) 250-5894
Email: cm4141@txs.uscourts.gov

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1. CONTACT WITH COURT PERSONNEL

- A. The court expects that parties will file documents through the District Court’s Case Management/Electronic Case Filing (“CM/ECF”) System. *See* Southern District Local Rule 5.1 (as amended in September 2004) and Administrative Procedures for CM/ECF. **Case-related telephone calls and email inquiries should be made only to the case manager.** Inquiries should **not** be made to chambers or the court’s law clerks. At the court’s discretion, law clerks may contact counsel; however, they will not discuss matters other than the subject of the call.
- B. Information about the status of documents, entry of orders, or docket entries should be obtained from the CM/ECF or Pacer Systems, or, if absolutely necessary, from the United States District Clerk’s Office at (713) 250-5500.
- C. The court’s caseload does not allow the case manager to respond to casual telephone inquiries about the status of motions or cases. All inquiries to the case manager should be by letter or delivered to Chambers, or by email.
- D. Correspondence with the court must be delivered or sent to the court’s Chambers:
- 1) Case-related correspondence should be addressed to:

Rhonda Moore-Konieczny
Case Manager to Judge Gray H. Miller
United States Courthouse
515 Rusk Avenue, Room 9010C
Houston, Texas 77002
Or by email:
cm4141@txs.uscourts.gov
 - 2) Letters should be used for minor procedural matters and for discovery disputes. **Do not** address substantive issues in letter or email form. All letters may be docketed at the court’s discretion.
 - 3) Copies of urgent documents (including letters) may be sent or hand-delivered to Chambers (*see* Emergencies, § 3 below), or may be emailed to the case manager and counsel prior to and in the same manner as the document is transmitted to the court. They may **not** be faxed without express prior permission of the court.

2. COURTESY COPIES OF DOCUMENTS

- A. All letters to the court must be delivered or sent to Chambers, or transmitted by email.

- B. All parties must forward promptly to Chambers courtesy copies of all documents that exceed ten (10) pages in length, including exhibits and attachments. Parties may at their option forward to Chambers courtesy copies of other documents. The court prefers that courtesy copies of voluminous filings be provided in three ring binders with tabbed dividers and an index. **DO NOT FAX OR EMAIL** copies of documents to Chambers unless specifically authorized to do so by the court.

3. EMERGENCIES

- A. Applications for restraining orders or for other immediate relief shall be filed electronically through the CM/ECF system and all related communications with the court must be through the case manager. Such applications shall be presented to the court by the case manager following counsel's affirmation that the opposing party has been contacted and that both parties can be available for a conference before the court, or an explanation of why such contact is not legally required. *Ex parte* applications for restraining orders will **not** be entertained by the court unless the requirements of FED. R. CIV. P. 65(b) have been satisfied.
- B. Motions for extension of deadlines or cut-off dates in the Docket Control Order are **not** emergencies. (*See* Continuances, § 4 below.)

4. CONTINUANCES

- A. Pursuant to The Civil Justice Reform Act of 1990, 28 U.S.C. § 473(b)(3), and the Cost and Delay Reduction Plan adopted by the Court on October 24, 1991, "**all requests for extensions of deadlines for completion of discovery or for postponement of the trial [must] be signed by the attorney and the party making the request.**"
- B. Agreements or joint motions among counsel for continuance are not binding on the court. Motions for continuance will be granted only at the court's discretion.
- C. Vacation requests will be respected if they are made well in advance of a trial setting.
- D. A trial will **not** be continued because of the unavailability of a witness. Counsel are expected to anticipate such possibilities and should be prepared to present testimony by written deposition, videotaped deposition or by stipulation.

5. APPEARANCES AND WITHDRAWALS OF COUNSEL

- A. An attorney who appears at a hearing or conference shall:
 - 1) be familiar with the case,
 - 2) have authority to bind the client, and
 - 3) be in charge for that appearance.

- B. Out-of-town counsel wishing to appear at a conference or hearing by telephone must submit a written request to the case manager at least three business days prior to the setting. The court will attempt to accommodate such requests.
- C. Counsel or a pro se litigant will notify the case manager **immediately in writing** of the parties' settlement of any matter set for trial or hearing before the court. Upon receipt of a notice that the entire case is settled, the court may enter a conditional order of dismissal.
- D. Failure to appear when notified of a setting may subject the attorney and/or his or her client to sanctions, including dismissal for want of prosecution and/or other appropriate order or judgment.
- E. Motions for admission *pro hac vice* shall include the attorney applicant's averment that he or she has familiarized him/herself with the Local Rules of the Southern District of Texas and these Procedures. Attorneys located in the Houston area will not be admitted *pro hac vice*.
- F. If an attorney who has made an appearance in a case desires to withdraw as counsel and this withdrawal will leave his or her client pro se, the attorney must serve a copy of the motion to withdraw on his client by certified mail, return receipt requested. The motion to withdraw must include the last known address and phone number of the client, as well as a certificate of service indicating that the motion was properly sent to the client.

6. MOTION PRACTICE

- A. **General Guidelines:** The court generally follows the written motion practice described in the Local Rules. However, if counsel believes an oral hearing would assist the court, a request for oral hearing may be made. The case manager will notify counsel if the court determines that an oral hearing would be beneficial.
 - 1) Counsel must make serious and timely efforts to confer with opposing counsel on all motions to try to reach agreements on the relief sought by movant.
 - 2) Every non-dispositive motion must contain a certificate of conference and a proposed order granting the relief requested. Failure to comply may result in the party's pleading being denied or stricken.
 - 3) All motions except motions pursuant to FED. R. CIV. P. 56 must be accompanied by a separate proposed order granting or denying the relief requested.

- 4) Opposed motions and responses generally will be considered by the court after the submission date, which is 21 days after filing. However, when circumstances dictate, the motion may be considered prior to the expiration of the full 21 days. The submission date may be extended by agreement of counsel except when the extension violates a court-imposed deadline. Counsel must immediately notify the court by letter or agreed order of such an agreement.

Reply briefs filed by movants will be considered if submitted before the court rules on the motion. Reply briefs should be submitted within five (5) days after the non-movants' response to the motion is filed and should not exceed five (5) pages in length.

- 5) Any party wishing to make a discovery motion should arrange for a conference with the court before submission of any motion papers. See "Discovery and Scheduling Disputes" below.
- 6) Because most motions will be ruled on without an oral hearing, brief, clear motion papers are very important.
- 7) All pleadings or other documents filed under seal in a civil case must be identified as "SEALED" and by the title of the document. For example, a motion for summary judgment filed under seal must be docketed as "MOTION for Summary Judgment (SEALED)." No pleading may be filed for docketing simply as "SEALED DOCUMENT."

B. Submitted Motions – Need for Expedited Decision:

- 1) The court will rule on motions as soon as possible after the submission date or a response is filed. Counsel of record and *pro se* parties will be furnished with copies of orders.
- 2) If a pending motion requires resolution on an expedited basis, please advise the court by letter. See *supra* Section 1.D.

C. Discovery and Scheduling Disputes: The court believes that most discovery and schedule-related disputes, especially those dealing with (i) scheduling, (ii) the number, length and form of oral and written questions, (iii) the responsiveness of answers to oral and written questions, and (iv) the mechanics of document productions, including protective orders and the proper method of raising claims of privilege, can be resolved by counsel without the intervention of the court.

- 1) Counsel are responsible for conferring in good faith to resolve discovery and scheduling disputes. If counsel for the parties are unable to reach an agreement, a conference with the court **MUST** be sought by the movant.

Email or fax the case manager to schedule a pre-motion conference. The request must specify the date, time and place of the parties' prior out-of-court discovery conference and the names of all counsel participating therein. If counsel have been unable to confer because of the unavailability or unwillingness of certain counsel to do so, the statement shall recite the facts concerning attempts to confer.

- 2) Counsel for the party opposing the discovery sought by the party requesting a conference shall submit before the conference, if feasible, a response to the movant's letter.
- 3) The court will dispose of discovery disputes at the conference to the extent possible. If a written motion is necessary, the issues to be addressed and a briefing schedule will be set during the conference.
- 4) If relief is sought against a non-party to the litigation, the relief may be sought by motion.

D. **Young Lawyers:** The court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or "stand-up" opportunities in court, particularly for young lawyers (i.e. lawyers practicing for less than seven years). The court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response. In those instances where the court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate—such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a "bet-the-company" type case. Even so, the court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young lawyers, to clients, and to the profession generally. Thus, the court encourages all lawyers practicing before it to keep this goal in mind.

E. **Motions for Default Judgment:** Parties seeking default judgment must follow the procedures in Federal Rule of Civil Procedure 55(b)(2), Local Rule 5.5, and Servicemembers Civil Relief Act, 50 U.S.C. App. § 521.

7. MEMORANDA OF LAW

A. **Page Limits and Briefing Requirement:** The court requires concise, pertinent, and well organized memoranda of law. Without leave of court, any memorandum shall be limited to 25 pages. Reply briefs should not exceed five (5) pages in length. Any memorandum that has more than ten (10) pages of argument must contain the eight (8) items listed below. A courtesy copy of the memorandum is to be delivered to

Chambers. Do not fax pleadings to Chambers unless specifically authorized to do so by the court. All memoranda of law must contain items 3, 4, 6, and 7 below.

- 1) A table of contents setting forth the page number of each section, including all headings designated in the body of the brief or memorandum.
- 2) A table of citations of cases, statutes, rules, textbooks and other authorities, alphabetically arranged.
- 3) A short statement of the nature and stage of the proceeding.
- 4) A statement of the issues to be ruled upon by the court and, with respect to each issue, a short statement (supported by authority) of the standard of review.
- 5) A short summary of the argument.
- 6) Succinct headings dividing the argument into separate points.
- 7) A short conclusion stating the precise relief sought.
- 8) Proposed orders (except on summary judgment motions).

B. Copies of Authorities and Other Material Cited:

- 1) Please append copies of cases and the relevant parts of authorities that are cited in a brief, memorandum or motion only if the authorities are not found in the United States Code, United States Supreme Court Reporter, Federal Reporters, Federal Rules Decisions, Federal Supplement, Southwestern Reporter Second or Third, or Vernon's Revised Statutes, and Codes Annotated.
- 2) Copies of supporting affidavits, deposition testimony excerpts, and other discovery referred to in the briefs should be separately filed in one or more appendices of no more than 40 pages.

C. Citations:

Citations should be in the text of the document, not in footnotes. Citations to depositions or affidavit testimony must include the appropriate page or paragraph numbers. Citations to other materials with three or more pages must include some sort of pinpoint identification (section number, page number, Bates stamp number).

8. INITIAL PRETRIAL CONFERENCES AND DOCKET CONTROL ORDERS

Please refer to Local Rule 16.1 and the court's Order for Conference. In addition:

- A. A Joint Discovery/Case Management Plan (in the attached form) must be filed by the due date in the Order for Conference.
- B. The Court does not hold a scheduling conference. Once all of the parties are before the Court, they should agree on a scheduling order, then submit it to the Court through the case manager, Rhonda Moore-Konieczny, via email to cm4141@txs.uscourts.gov. The following requirements apply when submitting the proposed agreed scheduling order: the dispositive motion and all other pretrial motion deadlines must be the same date; there must be four months between the motion deadlines and the docket call; the docket call will be either eleven, twelve or thirteen months from the date the case was filed. In the event the parties are unable to reach an agreement prior to the due date, they should contact the case manager.
 - 1) The Docket Control Order will govern throughout the case. The Docket Control Order deadlines shall not be modified except by leave of court upon a showing of good cause.
 - 2) If a change to an existing Docket Control Order is requested, the parties shall submit recommendations for adjusting all dates in the Docket Control Order that follow the date sought to be modified.
 - 3) Counsel shall include their email addresses in their filings.
- C. **Added Parties:** If new parties are joined after the Docket Control Order is entered, the party causing such joinder shall provide to the new parties (i) copies of all orders previously entered in the case, (ii) the operative Docket Control Order and, (iii) these Court Procedures.

9. REQUIRED TRIAL MATERIALS

- A. **Joint Pretrial Order:** Joint Pretrial Orders must be signed by all counsel. All parties are responsible for complying with all requirements to prepare the Joint Pretrial Order.
- B. **Other Required Documents:** With the filing of the Joint Pretrial Order, each party also must file:
 - 1) **For All Trials and Evidentiary Hearings:**
 - a. **Exhibit List** (see attached form). Copies of any exhibits not previously produced shall be made available no later than the date the

joint pretrial order is filed.

- b. **Witness List** for live witnesses.
 - c. **Designation** of deposition excerpts for witnesses being called by deposition. A copy of each deposition excerpt must be provided to the court.
 - d. **Objections**, if any, to an opponent's exhibits must be filed at least seven (7) days before trial with copies of disputed exhibit and authority. *See* S.D. TEX. LOCAL RULE 46. A party requiring authentication of an exhibit must notify the offering party in writing within seven (7) days after the exhibit is listed and made available. Failure to object in advance of the trial in writing concedes authenticity. *See* S.D. TEX. LOCAL RULE 44.1.
- 2) For **Jury Trials**, the parties must file a single, joint proposed jury charge, including all necessary instructions, definitions, and questions.
- a. **Each** requested **instruction** must be numbered and presented with authority.
 - b. The parties shall include in the proposed jury charge all necessary instructions or definitions. The instructions shall, at a minimum, include (1) the *prima facie* elements of each cause of action and defense asserted, (2) legal definitions required by the jury, (3) items of damages, and (4) methods of calculation of damages. A template for the preliminary instructions and jury charge may be found at the bottom of our procedures. Counsel should use these templates as a starting point. Changes to the templates should be clearly delineated and should follow the Fifth Circuit Pattern Jury Instructions, as modified by case law or statutory amendments, whenever possible. Any deviations from the pattern must be identified and accompanied with legal authorities for the proposed deviation.
 - c. Even if the parties, in good faith, cannot agree on all instructions, definitions, or questions, the parties should nonetheless submit a single, **unified charge**. Each disputed instruction, definition, or question should be set out in bold type, underlined or italicized, and identified as disputed. Each disputed item should be labeled to show which party is requesting the disputed language. Accompanying each instruction shall be all authority or related materials upon which each party relies.

- d. The parties shall also submit the proposed charge electronically to the case manager, preferably in Corel WordPerfect X3 or higher, or alternatively in Microsoft Word.
 - e. The parties shall submit a trial memorandum of law addressing the law governing the case and all contested issues.
- 3) For **Non-Jury Trials**, each party must file:
- a. **Proposed Findings of Fact** (electronically in Corel WordPerfect X3 or higher, or Microsoft Word). Counsel are strongly encouraged to include references to testimony and exhibits which support each proposed finding;
 - b. **Proposed Conclusions of Law** (electronically in Corel WordPerfect X3 or higher, or Microsoft Word). Each proposed conclusion of law will contain citation of legal authority supporting the conclusions; and
 - c. **Memorandum of Law**. The memorandum of law, proposed findings of fact and proposed conclusions of law should, at a minimum, address the following: (1) the *prima facie* elements of each cause of action and defense asserted, (2) legal definitions, (3) components of damages, and (4) methods of calculation of damages.
- 4) The court has adopted a standing order in limine covering most common issues (see attached). Any additional case-specific motions in limine shall be filed concurrently with the joint pretrial order.

10. TRIAL SETTINGS

- A. **Civil Cases:** The court sets trial dates at Docket Call in civil cases. Docket Call is a final pretrial conference. Parties should be prepared to answer questions on all pending motions. Pending motions may be ruled on at Docket Call. Trial may be set for any day after the Docket Call. If a case is not reached for trial when set, it is subject to trial during the next two weeks on 48 hours' telephone notice. A case not reached for trial will be reset as soon as possible.
- B. Unless an attorney has actually commenced trial in court, another trial setting will not cause the court to pass a trial setting in a case.
- C. Information on Trial Settings. The case manager cannot definitively ascertain when a case will be reached or where a case is on the trial docket. Any predictions given by the case manager are only "educated guesses" and are NOT binding on the court.

11. EXHIBITS

- A. All exhibits must be **pre-marked** and exchanged among counsel at the time the Pretrial Order is filed, unless a later date is agreed to by counsel. Generally, in civil cases, exhibits that have not been disclosed to opposing counsel **prior** to trial will not be received in evidence. The offering party shall mark its name, the case number, and the exhibit number on each exhibit to be offered.
- B. A party requiring authentication of an opponent's exhibit must notify offering counsel in writing within seven (7) days after the exhibit is identified and made available for examination. Failure to do so is an admission of authenticity. *See* S.D. TEX. LOCAL RULE 44.1.
- C. Unless otherwise directed by the court, a party in a civil case may offer in evidence any exhibits listed in the final Joint Pretrial Order **unless** opposing counsel files specific **written objections** with supporting authority at least seven (7) days before trial. *See* S.D. TEX. LOCAL RULE 46. Exhibits will be offered and admitted into evidence as the first item of business at the pretrial conference unless opposing counsel has filed written objections. The court endeavors to rule on objections to exhibits outside the presence of the jury and will do so prior to opening statements, to the extent possible.
- D. The parties shall provide the court with one complete set of exhibits for use at trial.
- E. **Trial Procedure as to Exhibits**
 - 1) Counsel may **not** pass exhibits to the jury during trial without obtaining permission in advance from the court.
 - 2) Admitted exhibits will go to the jury during its deliberations.
- F. **Disposition of Exhibits**: At the conclusion of trial, the attorneys shall withdraw all exhibits that were admitted into evidence and keep custody of the exhibits pending any appeal. The case manager will provide a form for the attorneys to certify that they have withdrawn the exhibits.

12. EQUIPMENT

- A. **Sound and Video Equipment**: The court has substantial projection, document camera, sound and video equipment in the courtroom. Counsel are invited to use that equipment during trial. Counsel who seek to test the equipment prior to trial shall contact the case manager by email, letter or phone, so arrangements can be made to accommodate building security. Parties also may provide their own equipment, but special arrangements must be made with the case manager prior to trial.

- B. **Other:** Easels with writing pads are available for use in the courtroom upon request to the case manager prior to trial.

13. COURTROOM PROCEDURES

- 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. Court normally will convene at 9:00 a.m. and adjourn by 5:00 p.m., with a 12:15 p.m. to 1:30 p.m. lunch recess. The court generally does not try cases on Fridays, due to civil and criminal conferences, sentencing, and other matters scheduled for that time. These hours are subject to change.
- B. **Access at Other Times:**
- 1) Counsel needing access to the courtroom to set up equipment or exhibits before or after normal hours of court must arrange in advance with the case manager to have the courtroom open.
 - 2) Enter and leave the courtroom only by the front doors; do not use the court's entrance or the side entrances without permission.
- C. **Telephones:** Telephone messages for counsel generally will not be taken by the judge's staff, and counsel shall refrain from requesting use of telephones in Chambers. A public telephone is available in the clerk's office.
- D. **Filing of Documents:** Handing documents to the court or case manager does **not** constitute the filing of documents.
- 1) All original documents must be filed in the court clerk's office or electronically.
 - 2) Copies of documents filed within seven (7) days prior to and during trial should be submitted to the case manager **IN DUPLICATE**.
- E. **Attorney Conference Room:** Attorney conference rooms are available upon request to the judge's case manager. A key will be given to counsel for use throughout the trial. Counsel must clear the room of all materials and return the key to the judge's case manager at the conclusion of the trial.
- F. **Decorum:**
- 1) Counsel and parties will comply with S.D. TEX. LOCAL RULE 83.8 and Cr. L.R. 57.2 regarding courtroom behavior. These procedures are strictly enforced.

- 2) Counsel shall stand when addressing the court. Counsel may use a lectern positioned appropriately to make oral argument. Counsel may question witnesses standing at the lectern or seated at counsel table.
- 3) Counsel will ensure that they, all parties and all witnesses refrain from drinking (other than water), eating, chewing gum, or reading newspapers, books, etc. in the courtroom. All beepers, pagers, and cellular phones must be turned off in the courtroom.

G. **Witnesses:**

- 1) Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. Witnesses may be questioned by the attorney seated at counsel table or standing at the lectern.
- 2) Counsel should bear in mind the court's hours and arrange for witnesses accordingly. The court will not recess to permit counsel to call a missing witness, unless he or she has been subpoenaed and has failed to appear.
- 3) Counsel shall make every effort to elicit from the witnesses only information relevant to the issues in the case and to avoid cumulative testimony.

H. **Seating Assignments:** In civil cases, 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. In criminal cases, the Government is assigned the counsel table closest to the jury.

I. **Jury Matters:**

- 1) While the jury is deliberating, counsel are to remain near the courtroom to be immediately available for jury notes or a verdict, unless given permission to leave by the court.
- 2) After the jury is excused, counsel may not contact jurors unless permitted to do so by the court. *See S.D. TEX. LOCAL RULE 47.*

14. VOIR DIRE

The court generally conducts a preliminary examination of the jury panel.

- A. Following the court's examination, each side in civil cases usually will be allowed to examine the panel briefly, provided that the proposed voir dire questions are submitted as part of the Joint Pretrial Order.

- B. The court will conduct most, if not all, of the examination of the panel in **criminal cases**, although the court makes a case-by-case determination.

15. DEPOSITIONS

- A. The court will accept the parties' agreement to use a deposition at trial even though the witness is available, otherwise follow FED. R. CIV. P. 32.
- B. Depositions may be submitted to the case manager immediately before trial if they are to be used.
- C. Counsel will designate the portion of a deposition to be read by citing pages and lines in the Joint Pretrial Order. Objections to those portions (citing pages and lines) with supporting authority must be filed at least seven (7) days before trial. The court will attempt to rule on the objections before trial commences.
- D. Use of videotape depositions is permitted if counsel edit to resolve objections.

16. SETTLEMENTS AND ORDERS OF DISMISSAL

A. Motions resolved by the parties:

If the parties are able to resolve a pending motion without court intervention, they should advise the case manager **immediately**. The court will then deny the motion as moot.

B. Settlements:

- 1) **Upon the settlement of any case set for conference, hearing, or trial, counsel must immediately notify the case manager in writing, by letter, or by email (cm4141@txs.uscourts.gov).**
- 2) Upon receipt of parties' announcement of settlement, the court will enter a 30 or 60-day conditional order of dismissal, which permits a party to move to reopen the case if final settlement cannot be completed within the allotted time.
- 3) Upon settlement of a suit involving a minor plaintiff, counsel must jointly move for appointment of a guardian *ad litem* if there is a potential conflict of interests between the parent(s) and the minor.
 - a. If counsel cannot agree on a guardian *ad litem*, the court will make the appointment. Counsel may submit the names of qualified attorneys they propose for the appointment.

- b. Contemporaneously with the motion for appointment, counsel must notify the case manager by letter requesting a settlement conference.
 - c. Prior to the settlement conference, counsel will furnish the court a copy of the proposed final judgment and any additional information which would be helpful to the court in approving the settlement. Any motion by the guardian ad litem requesting that funds be placed in the registry of the court must be filed prior to the conference and approved by the Finance Section of the Clerk's Office.
 - d. All counsel and parties plaintiff must attend the settlement conference unless excused by the court.
- C. **Orders of Dismissal for Want of Prosecution:** Any defendant upon whom service has not been perfected within 120 days after the complaint is filed will be dismissed for want of prosecution in accordance with FED. R. CIV. P. 4(m).

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

_____	§	
	§	
<i>Plaintiff(s),</i>	§	
	§	
v.	§	Civil Action H-_____
	§	
_____	§	
	§	
<i>Defendant(s).</i>	§	

CERTIFICATE OF SERVICE IN REMOVED ACTION

I certify compliance with the Court's Procedures.

On _____, 20____, I served copies of the Order for Conference and Court Procedures on all other parties.

Date

Attorney for _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**NOTICE OF THE RIGHT TO PROCEED IN
A CIVIL CASE BEFORE A MAGISTRATE JUDGE**

With the consent of all parties, a United States Magistrate Judge may preside in a civil case, including a jury trial and entry of a final judgment.

The choice to proceed before a Magistrate Judge is entirely yours. Tell only the Clerk. Neither the District Judge nor the Magistrate Judge will be told unless all the parties agree.

The District Judge to whom your case is assigned must approve the referral to a Magistrate Judge.

You must use the consent form attached to these procedures. The form is also available from the Clerk.

David J. Bradley, Clerk
United States District Clerk
Southern District of Texas

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<i>Plaintiff(s),</i>	§	
	§	
v.	§	Civil Action H-_____
	§	
<i>Defendant(s).</i>	§	
	§	

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

All parties to this case waive their right to proceed before a district judge and consent to have a United States Magistrate Judge conduct all further proceedings, including the trial and judgment. 28 U.S.C. § 636(c).

	<i>for</i>	
	<i>for</i>	
	<i>for</i>	
	<i>for</i>	

ORDER TO TRANSFER

It is ORDERED that this matter is transferred to United States Magistrate Judge Nancy K. Johnson to conduct all further proceedings, including final judgment.

Date

Gray H. Miller
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<i>Plaintiff(s),</i>	§	
	§	
v.	§	Civil Action H-_____
	§	
<i>Defendant(s).</i>	§	
	§	

JOINT DISCOVERY/CASE MANAGEMENT PLAN

UNDER RULE 26(F) OF FEDERAL RULES OF CIVIL PROCEDURE

*(Please **restate** the instruction in **bold** before furnishing the responsive information.)*

1. State where and when the conference among the parties required by Rule 26(f) of the Federal Rules of Civil Procedure was held, and identify the counsel who attended for each party, including name, address, bar number, phone and fax numbers, and email addresses.
2. List the cases related to this one that are pending in any state or federal court with the case number and court, and state how they are related.
3. Briefly describe what this case is about.
4. Specify the allegation of federal jurisdiction.
5. Name the parties who disagree with the plaintiff's jurisdictional allegations and state their reasons.
6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
7. List anticipated interventions.
8. Describe class-action issues.
9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.
10. Describe the proposed agreed discovery plan, including:
 - a. Responses to all the matters raised in Rule 26(f).
 - b. When and to whom the plaintiff anticipates it may send interrogatories.

- c. When and to whom the defendant anticipates it may send interrogatories.
 - d. Of whom and by when the plaintiff anticipates taking oral depositions.
 - e. Of whom and by when the defendant anticipates taking oral depositions.
 - f.
 - (i) Specify the date experts for plaintiff (or party with the burden of proof on an issue) will be designated and their reports provided to opposing party.
 - (ii) Specify the date experts for defendant will be designated and their reports provided to opposing party.
 - g. List expert depositions the plaintiff (or party with the burden of proof on an issue) anticipates taking and their anticipated complete date. *See* Rule 26(a)(2)(B) (expert report).
 - h. List expert depositions the defendant (or opposing party) anticipates taking and their anticipated complete date. *See* Rule 26(a)(2)(B) (expert report).
11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
 12. Specify the discovery beyond initial disclosures that has been undertaken to date.
 13. State the date the planned discovery can reasonably be completed.
 14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.
 15. Describe what each party has done or agreed to do to bring about a prompt resolution.
 16. From the attorneys' discussion with their client(s), state the alternative dispute resolution techniques that are reasonably suitable.
 17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.
 18. State whether a jury demand has been made and if it was made on time.
 19. Specify the number of hours it will take to present the evidence in this case.
 20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.
 21. List other pending motions.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.
23. Certify that all parties have filed Disclosure of Interested Persons as directed in the Order for Conference and Disclosure of Interested Persons, listing the date of filing for the original and any amendments.
24. List the names, bar numbers, addresses, email addresses, and telephone numbers of all counsel.

Counsel for Plaintiff(s)

Date

Counsel for Defendant(s)

Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Plaintiff(s),
v.

Defendant(s).

§
§
§
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§

Civil Action H-_____

RULE 16 SCHEDULING ORDER

Anticipated Length of Trial: _____ days Jury: _____ Non-Jury: _____

The disposition of this case will be controlled by the following schedule:

1. _____ **NEW PARTIES** shall be joined by this date. The attorney causing such joinder must provide copies of this ORDER to the new parties.
2. _____ **AMENDMENTS** to pleadings by Plaintiff or Counter-Plaintiff shall be made without motion by this date. Absent parties' agreement or court approval, answers may not be amended more than 20 days after this date. Answers to amended claims and counterclaims are due 20 days after amended claims or counterclaims are filed. Any amendments after this date must be accompanied by a motion.
3. _____ **EXPERT WITNESSES FOR PLAINTIFF/COUNTER-PLAINTIFF** shall be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for each opinion.
4. _____ **EXPERT WITNESSES FOR DEFENDANT/COUNTER-DEFENDANT** shall be identified by a report listing the qualifications of each expert, each opinion the expert will present, and the basis for each opinion.
5. _____ **DISCOVERY** must be completed by this date. Written discovery requests are not timely if they are filed so close to this deadline that the recipient would not be required under Federal Rules of Civil Procedure to respond until after the deadline.
6. _____ **MEDIATION/ADR** to be completed by this date or the parties shall file a report stating why Mediation/ADR is not appropriate.
7. _____ **DISPOSITIVE MOTIONS** and **ALL OTHER PRETRIAL MOTIONS** (including *Daubert/Kumho* motions, but **not** including other motions in limine) will be filed by this date.
8. _____ **JOINT PRETRIAL ORDER** shall be filed on or before this date. Plaintiff is responsible for timely filing the complete Joint Pretrial Order in the form set forth in the published Court Procedures.
9. _____ **OBJECTIONS** to exhibits and/or witnesses shall be filed on or before this date.
10. _____ **DOCKET CALL** is held in Courtroom 9D starting at 10:00 a.m. on this date. (The Court will set this date) Absent parties' agreement or court approval, no documents filed within five (5) days before the Docket Call will be considered at Docket Call.

All communications concerning the case shall be directed in writing to Rhonda Moore-Konieczny, Case Manager for United States District Judge Gray H. Miller, P.O. Box 61010, Houston, Texas 77208, or cm4141@txs.uscourts.gov.

Date

Gray H. Miller
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<i>Plaintiff(s),</i>	§	
	§	
v.	§	Civil Action H-_____
	§	
<i>Defendant(s).</i>	§	
	§	

JOINT PRETRIAL ORDER

[See generally Judge Miller’s Court Procedures, § 9.A.]

Appearance of Counsel

List the parties, their respective counsel, and the addresses, email addresses and telephone numbers of counsel in separate paragraphs.

Statement of the Case

Give a brief agreed statement of the case for the information of the court which the court may read to the jury panel to see if the panel is acquainted with the facts or parties to the case. Include names, dates and places.

Jurisdiction

Briefly set out why the court has full and complete jurisdiction of the subject matter and the parties. If there is an unresolved jurisdictional question, state the problem.

Motions

Identify any pending motions.

Contentions of the Parties

State concisely in separate paragraphs what each party claims.

Admissions of Fact

List all facts which have been stipulated and admitted and require no proof.

Contested Issues of Fact

List all factual issues in controversy necessary to the final disposition of the case.

Agreed Applicable Propositions of Law

Delineate those legal propositions not in dispute.

Contested Issues of Law

State briefly the issues of law in dispute. A memorandum of law should be filed which addresses these issues.

Exhibits

Each counsel must attach to this Joint Pretrial Order a list (in the form shown by Attachment A or a similar form) of all exhibits to be offered and must provide copies of all such exhibits to opposing counsel. This rule applies to rebuttal exhibits except in the limited circumstances when the exhibits cannot be anticipated.

Any counsel requiring authentication of an exhibit must so notify the offering counsel in writing within seven (7) days after the exhibit is listed and made available to opposing counsel for examination. Failure to do so is an admission of authenticity. *See* S.D. TEXAS LOCAL RULE 44.1.

Exhibits listed in the final pretrial order may be admitted into evidence unless opposing counsel files written objections at least seven (7) days before trial with copies of the disputed exhibit and authority. *See* S.D. TEXAS LOCAL RULE 46.

The offering party will mark his/her own exhibits prior to trial and include the party's name, case number, and exhibit number on each exhibit to be offered.

Witnesses

List the names and addresses of witnesses who will or may be called and include a brief statement of the subject matter and substance of their testimony. If a witness is to appear by deposition, cite the inclusive pages and lines to be read. Objections to those portions (citing pages and lines) with supporting authority must be filed at least seven (7) days before trial.

Each counsel will also attach to the joint pretrial order a list of witnesses' names.

In the event there are any other witnesses to be called at the trial, their names, addresses and the subject matter of their testimony shall be reported to opposing counsel as soon as they are known. This restriction shall not apply to a purely rebuttal or impeaching witness if necessity of the witness or the testimony cannot reasonably be anticipated before trial.

Settlement

Include a statement addressing whether or not all settlement efforts have been exhausted, the current settlement demand and offer, and whether the case can reasonably be expected to settle.

Trial

Include in this paragraph the following:

- a) Whether trial will be Jury or Non-Jury;
- b) Probable length of trial; and
- c) Availability of witnesses.

Additional Required Attachments

Motions in Limine: State whether any party is filing a Motion in Limine. (All Motions in Limine must be filed with the Pretrial Order.)

For Jury Trials include the following:

- a) Proposed questions for the jury panel.
- b) Proposed jury instructions, definitions, and interrogatories. Each requested instruction, definition, and interrogatory must be numbered and presented on a separate sheet of paper with the citation and authority upon which counsel rely.
- c) Memorandum of Law.

For Non-Jury Trials include the following:

- a) Proposed Findings of Fact.
- b) Proposed Conclusions of Law.
- c) Memorandum of Law.

Date

Gray H. Miller
United States District Judge

APPROVAL:

Counsel for Plaintiff(s)

Counsel for Defendant(s)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

v.

§
§
§
§
§

Civil Action No.

STANDING ORDER IN LIMINE

During the trial of any civil jury case in this court, except to the extent that the operation of this order has been suspended with reference to a specific trial, no attorney shall make mention, refer to, or suggest any of the matters set forth in this order in the presence or hearing of the jury, the venire, or of any member of either without first approaching the bench and securing a ruling from the court authorizing such reference. In addition, each attorney shall admonish the client, client's representatives, and all non-adverse witnesses the attorney may call to testify similarly to refrain from any such statement, reference, or suggestion unless it is essential to respond truthfully to a question asked by opposing counsel.

The matters to which reference is prohibited by this order are as follows:

1. **Insurance**. Unless the defendant is an insurance company, that the defendant is or is not protected, in whole or in part, by liability insurance, or that defense counsel was retained by, or all or any part of the costs of defense, or of any resulting judgment, are or will be paid by an insurance company, or any other matter suggesting the involvement of any insurance company with the defense of the case.

2. **Jurors' Connection with Insurance Industry**. Inquiring of potential jurors as to their present or past employment or connection with the insurance industry, or present or past

connection of any family member with the insurance industry, except that:

- a. If a potential juror's Juror Questionnaire discloses employment in the insurance industry, that juror may be questioned concerning his/her employment.
 - b. Inquiry may be made of potential jurors concerning their experience (or that of members of their family), if any, reviewing, adjusting or allowing/disallowing claims, as long as no express reference is made to "insurance."
3. **Liability or Non-Liability for Judgment.** That any defendant may or may not have to pay any resulting judgment.
4. **Collateral Source.** That any portion of the damages sought by the plaintiff have been, or will be paid by any collateral source, including but not limited to:
- a. health and accident or disability insurance;
 - b. any employee benefit plan, formal or informal, including payment of wages for time not actually worked;
 - c. social security or welfare;
 - d. veterans or other benefits;
 - e. provisions of medical services free of charge or for less than reasonable and customary charges, provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for the plaintiff (or whose medical records are offered by the plaintiff), or to any letter of protection securing any such charges.

5. **Retention of Attorney.** The time or circumstances under which either party consulted or retained an attorney provided that if any attorney referred a party to a health care provider who testifies in the case (or whose medical records are introduced by such party) that fact may be a subject of inquiry.
6. **Attorneys' Fees.** That any party will have to pay attorneys' fees, or any reference to the amount or basis of any attorneys' fees, unless a claim for recovery of attorneys' fees in the case will be submitted to the jury.
7. **Independent Medical Examination.** That the plaintiff offered to, or was or is willing to, undergo an examination by an independent physician or psychologist.
8. **Criminal Offenses.** That any party or witness has been suspected of, arrested for, charged with or convicted of any criminal offense unless there is evidence of a specific conviction that the court has previously ruled is admissible in the case.
9. **Alcohol or Drug Use.** That any party or witness uses or abuses alcohol, tobacco, or any controlled substance, unless and until such alleged use or abuse is shown to be specifically relevant to the matters in controversy.
10. **Settlement Negotiations or Mediation.** Any negotiations, offers, or demands with respect to any attempted settlement or mediation.
11. **Discovery Disputes.** Any reference to discovery disputes that arose during the preparation of the case for trial, any position taken by any party, or to the court's rulings.
12. **Prior Suits or Claims.** That any party has been a party to any prior lawsuit, or has asserted any prior claim, or that any prior claim has been asserted against a party; provided that this

does not prohibit inquiry about a prior injury that may have been the subject of another claim, if the nature of injuries claimed in the present suit make the prior injury relevant.

13. **Ex Parte Statements of Witnesses.** Any reference to any ex parte statement of any witness or alleged witness, other than an adverse party or agent of an adverse party, unless and until such witness has been called to testify and has given testimony conflicting with such ex parte statement. A deposition or a statement in business or medical records that have been proved up as required by the Federal Rules of Evidence is not an ex parte statement.
14. **Testimony of Absent Witness.** Any statement or suggestion as to the probable testimony of any witness or alleged witness who is unavailable to testify, or whom the party suggesting such testimony does not, in good faith, expect to testify in the trial. If the party is expected to testify by deposition, this does not apply to testimony contained in the deposition expected to be offered.
15. **Failure to Call Witness.** Any reference to the failure of an opposing party to call any witness.
16. **Hearsay Medical Opinions.** Any hearsay statement offered for the truth of the statement by an allegedly injured person concerning any diagnosis or medical opinions communicated to such person by a physician or other health care provider.
17. **Photographs and Visual Aids.** Showing any documents, photographs or visual aids to the jury, or displaying them in such a manner that the jury or any juror can see them, unless and until the item has been tendered to opposing counsel, and has been admitted in evidence or approved for admission or use before the jury, either by the court or by all counsel.

18. **Requests for Stipulations**. Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact.
19. **Requests for Files**. Any request or demand in the presence of the jury that opposing counsel produce any document or thing, or that opposing counsel or any party or witness exhibit, turn over, or allow examination of the contents of any file or briefcase (except that a party may demand to see a document used by a witness on the stand to refresh his/her recollection, or that a witness testifies that he/she has used previously to refresh his/her recollection).
20. **Discrimination**. Any argument that a party should be treated more or less favorably because of such party's race, gender, national origin, nationality, religion, marital status, occupation, or financial status.
21. **Social Cost of Award**. Any argument or suggestion that an award of damages will affect insurance premiums, the price of any goods or services, or the level of taxation.
22. **Hardship or Privation**. Any argument or suggestion that a failure to award damages will cause a plaintiff privation or financial hardship.
23. **Golden Rule**. Any argument or suggestion that the jurors should put themselves in the position of a party.
24. **Counsel's Opinion of Credibility**. Any expression of counsel's personal opinion regarding the credibility of any witness.
25. **Evidence Not Produced in Rule 26 Disclosures or in Response to a Proper Discovery Request**. Calling any witness, or offering any document in evidence, if the identity of such witness or the document has not been disclosed in Rule 26 Disclosures or in response to a

proper discovery request. If a party has a good faith basis to urge that such witness or document should be received either because (a) neither Rule 26 nor any discovery request properly called for its disclosure, or (b) good cause existed for failure timely to disclose, counsel shall first approach the bench and secure a ruling. To the extent possible or predictable, such matters should be addressed and a ruling sought at the pretrial conference.

- 26. Objections to Evidence Not Produced in Discovery.** Any objection based on failure to disclose evidence in pre-trial discovery. Any party desiring to urge any such objection shall request to approach the bench and urge this objection outside the hearing of the jury. To the extent possible or predictable, such matters should be addressed and a ruling sought at the pretrial conference.

Signed at Houston, Texas on _____, 2015.

Gray H. Miller
United States District Judge

Preliminary Instruction and Jury Charge templates are located on the court's website.

These can also be obtained by navigating to
<http://www.txs.uscourts.gov/district/judges/ghm/CivCrimInstructionsCharge.pdf>.