

Judge Hittner's Court

TO COUNSEL FOR PLAINTIFF or DEFENDANT REMOVING CASE:

THE ATTACHED ORDERS MUST BE SERVED ON ALL PARTIES

Your attention is directed to the Court orders included in this packet which is distributed in all cases assigned to Judge Hittner. Plaintiffs must serve copies of the orders on Defendants with the summons and complaint. Defendants removing cases from state court must serve copies of the orders on all other counsel and file a Certificate of Service with the Clerk of this Court.

The procedures included in this packet are to be utilized throughout the pendency of this action.

Judge Hittner's orders contained herein will not apply and may be disregarded if you have filed the following type of case:

1. Prisoner Civil Rights
2. Habeas Corpus
3. Administrative Agency Appeals
4. Miscellaneous Government cases  
(Subpoena enforcement, forfeiture, etc.)
5. Miscellaneous matters  
(Motions to quash, etc.)

DAVID BRADLEY, CLERK

BY: \_\_\_\_\_

Ellen Alexander  
Case Manager for Judge David Hittner

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

v.

§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. H-

CERTIFICATE OF SERVICE IN REMOVED ACTION

I certify compliance with the Court's Order entered upon filing of the petition for removal of this case.

On \_\_\_\_\_, I served by certified mail counsel of record and unrepresented parties copies of the Court's Order, Docket Control Order and Court Procedures.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Attorney for Defendant(s)

CIVIL PROCEDURES MANUAL

IN ORDER TO INSURE AN EXPEDITIOUS DISPOSITION OF YOUR CASE BEFORE JUDGE DAVID HITTNER IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, THIS PROCEDURES MANUAL IS PROVIDED IN THE INTEREST OF BOTH THE ATTORNEYS AND THE COURT.

THE MANUAL IS DESIGNED TO PROVIDE ANSWERS TO THOSE QUESTIONS MOST OFTEN ASKED BY COUNSEL NOT FAMILIAR WITH THE PRACTICES OF THE INDIVIDUAL JUDGES. THIS IS NOT A REITERATION OF THE LOCAL RULES, BUT SHALL BE USED IN CONJUNCTION WITH THOSE RULES. BEFORE TELEPHONING THE CASE MANAGER ASSIGNED TO JUDGE DAVID HITTNER, PLEASE REVIEW THE COURT'S PROCEDURES CONTAINED HEREIN.

USE OF THIS MANUAL AND FAMILIARITY WITH THE LOCAL RULES FOR THE SOUTHERN DISTRICT OF TEXAS WILL EQUIP YOU TO PROCEED MOST EFFECTIVELY BEFORE THIS COURT.

NOTICE OF THE RIGHT TO CONSENT TO THE

DISPOSITION OF A CIVIL CASE BY A MAGISTRATE JUDGE

Upon the consent of all the parties, the United States Magistrate Judges of this court may conduct all proceedings in a civil case, including a jury trial and entry of a final judgment. Consent forms are available from the clerk.

Your decision to consent to your case's being referred to a United States Magistrate Judge is entirely voluntary and should be communicated solely to the clerk. Only if all the parties consent will either the district judge or magistrate judge be informed of your decision.

The district judge to whom your case is assigned must approve the reference of the case to a magistrate judge.

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

JUDGE DAVID HITTNER  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

Courtroom No. 8A, 8th Floor

United States Courthouse  
515 Rusk Avenue, Room 8509  
Houston, Texas 77002  
(713) 250-5711

Ellen Alexander, Case Manager  
United States District Clerk  
Post Office Box 61010  
Houston, Texas 77208  
(713) 250-5511

PROCEDURES

	Page
1. APPEARANCES AT SETTINGS.....	7
2. SCHEDULING ORDERS.....	7
3. TRIAL CALENDAR.....	8
4. PRETRIAL PROCEDURES.....	9
5. DISCOVERY (EXTENSION/MOTIONS).....	9
6. MOTION PRACTICE.....	9
7. CONTACT WITH THE JUDGE, LAW CLERK, CASE MANAGER.....	10
8. COURTROOM PROCEDURES.....	11
9. SANCTIONS.....	14
10. SETTLEMENT.....	15
11. CONSENT TO TRIAL BEFORE A MAGISTRATE JUDGE.....	15
12. ATTORNEY CONDUCT.....	15
13. ELECTRONIC CASE FILING.....	16

EFFECTIVE June 15, 2005

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USE OF THIS MANUAL AND FAMILIARITY WITH THE LOCAL RULES FOR THE SOUTHERN DISTRICT OF TEXAS WILL EQUIP YOU TO PROCEED MOST EFFECTIVELY BEFORE THIS COURT.

1. APPEARANCES AT SETTINGS

The attorney designated on the pleadings as "in charge" must attend all settings before the Court, or send an attorney familiar with the case who has authority to make decisions binding on the party represented.

The Court requires that counsel be on time for all settings.

Failure to appear when notified of a setting will subject that attorney and/or his or her client to sanctions, including dismissal for want of prosecution and/or

appropriate judgment.

Out-of-town counsel may appear for some conferences by telephone provided that arrangements are made through the Case Manager well in advance.

## 2. SCHEDULING ORDERS

If a party or counsel for a party fails to meet the deadlines in the Scheduling Order or, if a party or counsel for a party fails to appear, or appears substantially unprepared, or participates in bad faith at the scheduling conference, this Court may impose sanctions as provided in Rule 37(b)(2) and Rule 16(f) of the Federal Rules of Civil Procedure.

The Scheduling Order will include the cutoff dates for:

- (a) the joinder of new parties;
- (b) the designation of expert witnesses;  
at the completion of discovery;
- (d) the submission of all motions; and
- (e) the submission of a Joint Pretrial Order.

The Scheduling Order shall control the subsequent course of the case and shall not be modified except by leave of this Court upon a showing of good cause.

If new parties are joined subsequent to the mailing of the order, the party causing such joinder shall provide copies of all orders previously entered in the case, along with the Scheduling Order and the Court's Procedures Manual to the new parties.

## 3. TRIAL CALENDAR

Cases will be set for a trial term at a scheduling conference held before the U.S. Magistrate Judge.

Trial Term. Judge Hittner conducts a two-month trial term. The cases will be placed on a trailing docket for the scheduled term and will be reached as soon as possible. Your trial date will be set at a docket call held prior to the trial term or by order of the court.

The case manager will keep in close touch with counsel and every effort will be made to give maximum notice concerning the trial setting.

Continuances. Judge Hittner maintains a restrictive policy on trial continuances. A continuance will be granted only on the basis of exceptional circumstances.

Joint or agreed motions for continuance are not binding on the Court and will not be granted as a routine matter.

A trial will not be continued because of unavailability of a fact witness or an expert witness, including a medical witness. Counsel are expected to anticipate such possibility and be prepared to present testimony by written deposition, by videotaped deposition, or by stipulation, in accordance with applicable rules.

Settlement. If a case is settled, prompt notice (written or verbal) shall be given to the Case Manager. If timely notice is given, counsel need not appear for trial.

Upon the announcement of settlement, the Court will enter an Order of Dismissal, without prejudice to the right of any party to move for reinstatement within ninety (90) days upon presentation of adequate proof that final approval of the settlement could not be obtained from the respective principals for whom counsel act.

Counsel shall submit promptly the agreed final judgment for approval and entry on or before the expiration of the 90-day period.



#### 4. PRETRIAL PROCEDURES

Pretrial Order. Counsel for the Plaintiff is responsible for ensuring that the Joint Pretrial Order is filed timely. If, for some reason, Plaintiff fails to file the Joint Pretrial Order, then Defendant(s) is responsible for filing Defendant's Proposed Pretrial Order. All parties are responsible for complying with all requirements of the Joint Pretrial Order.

The required attachments—proposed Findings of Fact & Conclusions of Law or proposed **JOINT** Jury Instructions and Interrogatories (see below); Memorandum of Law or Pretrial Brief; Motions in Limine; proposed Voir Dire Questions (even though counsel will often conduct voir dire); Witness Lists; Expert Witness Qualifications; and Exhibit Lists—are a part of the Joint Pretrial Order and must be submitted for filing with such Order. All counsel must sign the Joint Pretrial Order.

Failure to appear and/or timely file the Joint Pretrial Order will subject counsel and his or her client to sanctions, including dismissal for want of prosecution and/or appropriate judgment.

#### JOINT JURY INSTRUCTIONS AND INTERROGATORIES

A single set of proposed jury instructions that have been agreed to by all counsel shall be submitted to the Court. These instructions should be in the most final form possible.

If the inclusion of any particular instruction is contingent upon events that may occur during the trial (for example, an instruction to disregard testimony that has been ordered stricken from the record), the instruction should be clearly indicated as contingent and set out in brackets.

If the parties, in good faith, cannot agree on all instructions, the parties will nonetheless submit a single proposed charge. Each disputed addition, deletion, or revision should be clearly indicated and set out in bold type, italics, or different colors. Label disputed language to show which party requests the language and include supporting authority.

#### 5. DISCOVERY (EXTENSION/MOTIONS)

Upon the Court's discretion, discovery motions may be referred to the Magistrate Judge assigned to Judge Hittner.

Motions for extension of discovery must be filed in advance of the deadline.

## 6. MOTION PRACTICE

Judge Hittner follows the written motion practice as outlined in Local Rule 7. Motions will be submitted in accordance with Local Rule 7 and are deemed unopposed, if no response is on file.

Requests for oral argument are not necessary. The Case Manager will notify counsel should the Court determine that oral argument would be beneficial. Motion conferences will be held in open court. If counsel anticipates the need to offer evidence and testimony, leave to do so must be obtained from the Court in advance.

Each memorandum or brief filed in this Court shall be limited to 20 pages. Any memorandum that is more than 15 pages must be accompanied by a concise summary, no longer than 3 pages, narrowing the points in the brief.

Excessive filing of a large number of motions or filing voluminous paperwork may result in sanctions.

All exhibits (contract, leases, affidavits, etc.) referred to in briefs must be attached to the brief. Copies of all unpublished cases (not available on West law or Lexis) and all state cases (not available on West law or Lexis) other than Texas cases cited shall also be attached to the pleading.

Substantive issues of law shall not be addressed in letter form to the Court. They should be filed in the form of a pleading with the Clerk.

Counsel must notify the Case Manager immediately if any matter is resolved prior to the setting.

**ALL PLEADINGS (SUBSEQUENT TO THE ORIGINAL COMPLAINT) FILED IN THIS COURT MUST BE: DOUBLE SPACED, NOT LESS THAN ONE INCH MARGINS AND 14 POINT FONT.**

If a Motion Hearing is scheduled and a pleading is filed within 5 days of the scheduled hearing, counsel shall deliver a courtesy copy to chambers.

## 7. CONTACT WITH THE JUDGE, LAW CLERK, CASE MANAGER

Counsel shall contact the Case Manager when requesting immediate action by the Court on emergency matters. Inquiries regarding settings and procedures should also be directed to the Case Manager.

Counsel are not permitted to discuss cases or procedures with either of the

Court's law clerks. (Local Rules, Appendix C)

Information about filing documents, entry of orders, or docket entries may be obtained from the docket clerk.

Copies of urgent documents (including letters) may be sent to chambers.

## 8. COURTROOM PROCEDURES

Conduct of counsel during the presentation of a case will be governed by Local Rule 83.8 regarding Courtroom Procedures and will be strictly enforced. Enter and leave the courtroom by the front doors.

### Hours

Court will generally convene for trial at 10:00 a.m. and adjourn at 6:00 pm. The lunch break is generally from 1:00 to 2:15 p.m. There will be a 15-minute recess during the morning and 15-minute recesses during the afternoon as appropriate. Hearings and bench trials may have variable hours.

All counsel and parties are expected to be seated at the counsel tables and ready to proceed when the Court is called into session. Counsel may drink water in the courtroom (provided at the counsel table), but no other eating or drinking is permitted. There is no smoking anywhere in the courthouse.

### Telephone Calls

The Judge's staff will not take messages for counsel. Please do not request the use of telephones in chambers; public phones are available outside the courtroom.

### Filing of Pleadings

Pleadings submitted by counsel during the course of a trial should be presented in duplicate (original for filing; copy for the Court) to the Case Manager.

### Interrogation by Counsel

Counsel may question witnesses either while standing at the lectern or seated at the counsel table, whichever is preferred.

### Address by Counsel

Counsel shall conduct opening statements and closing arguments either from the lectern, standing before the jury (in jury trials) or facing the Court (in bench trials).

### Expert Witnesses

Counsel shall submit, as part of the Final Joint Pretrial Order, a written summary of the qualifications of each expert witness. The Court expects the attorneys to prove their witnesses expertise through examination.

### Witnesses

Counsel shall submit as part of the Final Joint Pretrial Order two (2) copies of the witness list, listing such witnesses in the order in which they will be called. In a lengthy trial involving numerous witnesses, a special scheduling order may be issued in which time limits and subject matter for each witness will be required to be set forth.

Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum.

Counsel shall keep in mind the Court's hours and schedule witnesses accordingly.

### Equipment

Counsel are responsible for providing sound or video equipment. Prior permission must be obtained from the Case Manager so arrangements for bringing equipment into the building can be made with building security.

Easels with writing pads are available for use in the courtroom.

### Use of Depositions

A witnesses' testimony (jury or non-jury trial) may not be offered by deposition at any trial before the Court unless the witness is found by the Court to be unavailable pursuant to Federal Rule of Civil Procedure 32(a)(3).

With respect to all deposition testimony to be offered in evidence, counsel shall review the deposition and agree to excise all irrelevant and repetitive testimony and all colloquy between counsel. Counsel shall exchange their designated

testimony and attempt to resolve all objections prior to trial. Objections to any portion of the deposition shall be filed in advance of trial, and the Court will rule on the objections before the deposition is read.

In a Non-Jury Trial, counsel shall read only the most relevant deposition testimony into the record. In addition, counsel shall attach to the front of the deposition exhibit a summary of what each party intends to prove by such testimony. If portions of the deposition are to be offered, counsel shall attach to the front of the deposition exhibit the designated portions, citing line and page number inclusively, of such testimony to be read by the Court.

### Exhibits

Counsel for each of the parties shall assemble all documents, photographs, or other materials expected to be used at trial. Such documents or copies thereof shall be made available to opposing counsel prior to trial. Each counsel shall attach to the Final Joint Pretrial Order two (2) copies of the list of all exhibits to be offered.

A final revised list of exhibits to be offered, and a final witness list shall be submitted to the case manager at time of trial.

The Court considers all exhibits listed in the Final Joint Pretrial Order in evidence unless opposing counsel makes his or her objections known as provided by the applicable rules. Local Rule 46

All exhibits will be offered and received in evidence as the first order of business at the trial.

### Preparation of Exhibits

The offering party shall mark its exhibits with the party's name, case number, and exhibit number. Any courtesy copies of the exhibits shall be assembled in loose-leaf notebooks with a numbered sticker on each document. Such number shall also appear on a tab extending beyond the right side of the notebook. Each notebook shall be labeled on the outside cover with the name of the offering party, the case style, and the case number. Each notebook shall not exceed three (3) inches in depth.

The offering party shall provide two courtesy copies of this notebook for use by the Court, at the time of trial.

Exhibits of unmanageable size (such as charts, diagrams, posters, etc.) shall be

withdrawn immediately upon completion of trial and reduced reproductions or photographs substituted pursuant to Local Rule 79.2.

### Non-Jury Trial

Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Findings of Fact and Conclusions of Law in duplicate, and Memorandum of Law or Pretrial Brief.

Counsel shall limit Posttrial Briefs to specific questions assigned by the Court during or after trial.

### Jury Trial

Counsel shall submit, as part of the Final Joint Pretrial Order, proposed Voir Dire Questions, proposed Jury Instructions (with citation of authority on a separate page), and proposed Interrogatories to the Jury. Jury instructions and jury interrogatories must be short, simple, and concise.

Although voir dire questions are to be submitted, in most cases the Court will permit counsel to conduct their own voir dire examination in jury trials. Prior to the commencement of the voir dire, counsel for each party will receive a copy of a questionnaire on each prospective juror. This questionnaire will provide a comprehensive composite of each juror's background to aid the attorneys in narrowing the questioning and shortening the voir dire.

Counsel are to remain near the courtroom during jury deliberations to be immediately available for jury notes or a verdict, unless given permission to leave by the Court.

After the jury and counsel are excused, counsel may not contact jurors unless otherwise permitted by the Court.

## 9. SANCTIONS

It is expected that counsel comply with this Procedures Manual, the Local Rules for the Southern District of Texas, and the Federal Rules of Civil Procedure.

The Court will not be sympathetic toward those who seek to practice in this Court without regard to their obligations.

Failure of counsel to abide by these rules and procedures may result in the imposition by this Court of sanctions in accordance with Rules 11, 16, 26, and 37

of the Federal Rules of Civil Procedure, as well as 28 U.S.C. § 1927.

10. SETTLEMENT

The parties in every civil action must make a good-faith effort to settle; and settlement negotiations shall be entered into at the earliest possible time, well in advance of any pretrial conference.

The Court will be available for settlement discussions. In nonjury cases, the Court will not discuss settlement figures except upon request and approval of all concerned parties.

Counsel should notify the Case Manager immediately if any matter is settled.

11. CONSENT TO TRIAL BEFORE THE MAGISTRATE JUDGE

Upon written consent of all parties, civil jury/non-jury trials may be held before United States Magistrate Judge Stephen Wm. Smith.

12. ATTORNEY CONDUCT

The Court assumes that attorneys will conduct themselves in a professional manner and be courteous and civil at all times. Conduct including, but not limited to, discourtesy, personal antagonism, stalling tactics, and harassment of attorneys, clients, witnesses, or the Court staff will not be tolerated. Attorneys are directed to bring such conduct to the district judge's attention forthwith.

**SPECIAL AMENDMENT TO JUDGE HITTNER'S PROCEDURES**

In connection with the Court's move to Electronic Case Filing (ECF), Judge Hittner now requires that all parties submit the following paper courtesy copies directly to chambers:

1. all motions for summary judgment, as well as all responses and replies thereto; and
2. all motions and briefs that, *including any attachment*, are greater than 20 pages in length.

The parties must include the attachments to these motions with the paper courtesy copies submitted directly to chambers. The paper courtesy copy should be sent to chambers the same day that the motions are filed electronically.

OFFICE OF THE CLERK



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FOR INFORMATION  
REGARDING THE  
FOLLOWING: .....

CALL

ADMISSION OF ATTORNEYS .....	713-250-5500
APPEALS .....	713-250-5500
BAIL BONDS, DISBURSEMENT .....	713-250-5546
BILL OF COSTS .....	713-250-5550
CIVIL DOCKET COORDINATION CENTER .....	713-250-5500
CLERICAL ASSISTANTS TO U. S. MAGISTRATES JUDGES:	
Magistrate Judge Nancy K. Johnson.....	713-250-5703
Magistrate Judge Mary Milloy.....	713-250-5158
Magistrate Judge Stephen Wm. Smith.....	713-250-5129
Magistrate Judge Frances H. Stacy.....	713-250-5565
COPY REQUESTS .....	713-250-5500
COURT REPORTERS .....	713-250-5522
COURTROOM DEPUTIES TO DISTRICT JUDGES:	
Lynn N. Hughes .....	713-250-5516
David Hittner .....	713-250-5511
Kenneth Hoyt .....	713-250-5884
Sim Lake .....	713-250-5514
Melinda Harmon .....	713-250-5518
Ewing Werlein, Jr.....	713-250-5533
Lee H. Rosenthal.....	713-250-5517
Vanessa Gilmore.....	713-250-5512
Nancy F. Atlas.....	713-250-5407
Keith P. Ellison.....	713-250-5181
Gray Miller.....	713-250-5129
Alfred H. Bennett.....	713-250-5850

CRIMINAL CASES (Open & Closed) .....	713-250-5500
EXHIBIT RETRIEVAL .....	713-250-5500
FILE ROOM .....	713-250-5500
FINANCIAL SECTION .....	713-250-5875
INTERPRETERS .....	713-250-5667
JURY .....	713-250-2155
LOCAL RULES .....	713-250-5500
MAGISTRATE JUDGES (See Clerical Assistants)	
MONITION .....	713-250-5500
NATURALIZATION .....	281-847-7900
PRISONER RELATED CASES .....	713-250-5402
REGISTRY FUNDS .....	713-250-5875
SERVICE OF PAPERS .....	713-250-5500
STATISTICAL INFORMATION .....	713-250-5500
SUMMONS .....	713-250-5500
TRANSCRIPTS .....	713-250-5522
WARRANT OF SEIZURE .....	713-250-5500
XEROX COPIES .....	713-250-5500